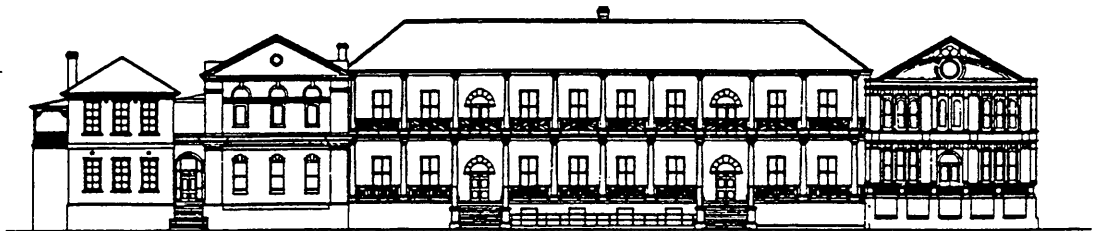




# **PUBLIC ACCOUNTS COMMITTEE**

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## **Darling Harbour: Sporting Facilities**



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## **MEMBERS OF THE PUBLIC ACCOUNTS COMMITTEE**

### **Mr Terry Rumble, FCPA, MP, Chairman**

Terry Rumble was elected Labor Member for Illawarra in March 1988. Before entering Parliament he qualified as an accountant and was employed in public practice and in the coal mining industry. He has served as a member of the Regulation Review Committee and is the Chairman of the Premier's Backbench Committee which involves Treasury, arts and ethnic affairs. Mr Rumble was elected Chairman of the Committee on 24 May 1995.

### **Mr Pat Rogan, MP, Vice- Chairman**

Pat Rogan has been member for East Hills since 1973. He has been active on numerous parliamentary committees in that time including the Joint Committee upon Public Accounts and Financial Accounts of Statutory Authorities. This was the Committee that reactivated a dormant Public Accounts Committee in 1983. Pat Rogan has also served as Shadow Minister for Minerals and Energy with a background as a senior sales engineer in automation.

### **Mr Joe Tripodi B.Ec (Hons), MP**

Joe Tripodi was elected to Parliament in May, 1995 as the Labor Member for Fairfield. Before entering Parliament he worked as an economist with the Reserve

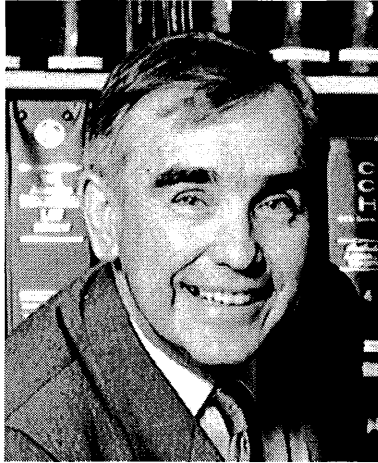
Bank of Australia and as a union official with the Labor Council of NSW.

### **Mr Ian Glachan, MP**

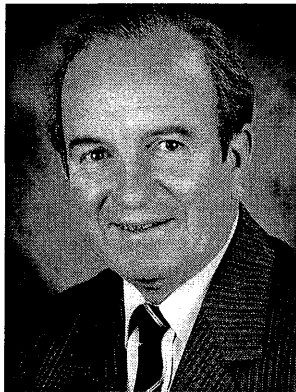
The Liberal Member for Albury since 1988, Ian Glachan has had a varied background. He served five years at sea as a marine engineer, was a farmer for ten years, and operated a newsagency in Albury for 18 years. Mr Glachan is also a past president of the Albury-Hume Rotary Club and a Paul Harris Fellow, an active member of the Anglican Church, and was the Legislative Assembly member on the Board of Governors of Charles Sturt University. His other parliamentary responsibilities have included the Chairmanship of the Public Accounts Committee.

### **Mr Peter Cochran, MP**

Following a background in farming, the Army, the Commonwealth Police, ASIO, and the Cooma-Monaro Shire Council, Peter Cochran won the seat of Monaro for the National Party in 1988. His other parliamentary responsibilities included the chairmanship of the Minister's Advisory Committee on Land and Water Conservation, deputy chairmanship of the Committee for Police and Emergency Services, and membership of the committee for the Environment and the Select Committee on Public Sector Superannuation. He was also the Premier's representative on the Anzac House Trust and the Anzac Memorial Trust. He is currently Secretary to Shadow Cabinet.



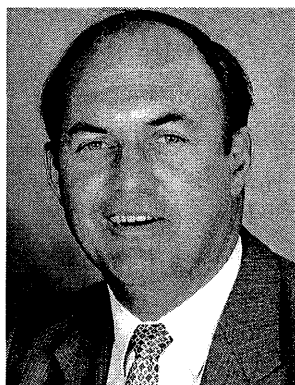
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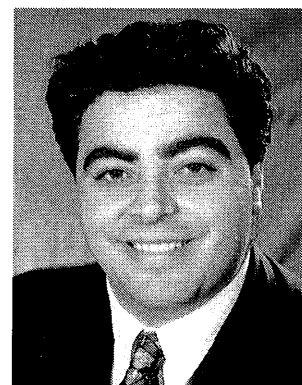
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**Vice-Chairman**



Mr Ian Glachan, MP



Mr Peter Cochran, MP



Mr Joe Tripodi, MP

# TABLE OF CONTENTS

<b>CHAIRMAN'S FOREWORD</b> .....	<b>(i)</b>
<b>EXECUTIVE SUMMARY</b> .....	<b>(ii)</b>
<b>FINDINGS</b> .....	<b>(vii)</b>
<b>PART 1: INTRODUCTION</b> .....	<b>1</b>
A.    ORIGIN OF THE INQUIRY .....	2
B.    METHOD OF THE INQUIRY .....	2
C.    STRUCTURE OF THE REPORT .....	2
<b>PART 2: CIRCUMSTANCES: CHRONOLOGY OF EVENTS</b> .....	<b>3</b>
A.    TABLE OF EVENTS .....	4
B.    BRIEF SUMMARY OF EVENTS .....	6
C.    DETAILED CHRONOLOGY OF EVENTS .....	6
(i)    Darling Harbour Development (1984) .....	6
(ii)   Darling Walk Proposal ( 1985 - December 1986) .....	7
(iii)  Discovery Village (December 1986 - January 1988) .....	8
(iv)   Darling Walk - Uras Holdings (January 1988 - September 1990) ...	11
(v)    Memorandum of Understanding (November 1990) .....	16
(vi)   Interim Use (1991 - 95) .....	16
(vii)  Current Agreement For Lease (since 3 July 1991) .....	17
(viii) Darling Walk (July 1991 - June 1995) .....	19
<b>PART 3: APPROPRIATENESS: ANALYSIS OF DHA'S DECISIONS AND METHOD OF FINANCING OF SITE</b> .....	<b>26</b>
A.    DHA'S OPTIONS IN 1990 .....	27
(i)    Provide Uras with a further extension .....	27
(ii)   Terminate the contract and find another developer .....	29
(iii)  Negotiate a new arrangement with Uras .....	34
B.    INTERIM USE 1991 - 1995 .....	36
(i)    General Aspects .....	36
(ii)   Financial Considerations .....	39
(a)    The Private Sector's \$5 million Contribution .....	39
(b)    Actual vs Projected Returns .....	44
(c)    Authorities own \$238,000 contribution .....	48
<b>PART 4 : CONCLUSION</b> .....	<b>50</b>

## **APPENDICES**

- I Picture of Site
- II Plan of Darling Harbour
- III Directors of Relevant Companies
- IV List of Witnesses
- V Submissions
- VI Agreement for Lease dated 3.7.91
- VII Minutes of Evidence

Appendices VI and VII are tabled in a separate volume

## CHAIRMAN'S FOREWORD

The Public Accounts Committee carried out an inquiry into the Darling Harbour Authority in 1989. This was a very wide-ranging inquiry which is in contrast to this current inquiry into the sports facilities inquiry, which was very specific in nature. The Committee was requested to look at the circumstances and appropriateness of the sports facilities which were constructed, as a temporary development, on the Darling Walk site in Darling Harbour.

Given the nature of the terms of reference, the Committee found itself in the somewhat unusual situation of not making any recommendations in its report. However, it did make a number of findings.

The patronage of the sports complex both through the week by office workers and, on the weekends by the youth of the surrounding areas, and the public response to the closure of the sports facilities suggests a shortage of such sporting complexes in the city area. The Committee was, therefore, heartened to hear that the Darling Harbour Authority was trying to identify a new location on which sports facilities could be constructed.

The Committee acknowledges that the Authority's development of an interim solution (in this case the temporary sports facility) for a troublesome site is an approach which has been adopted on other sites around the city. The Authority has, therefore, shown itself to be innovative in this area. However, the need to find a solution was, at least in part, caused by the Authority's determination to keep Uras as the site developer, even after it had failed to meet a number of contractual deadlines. As well, it must be stressed that the use of the site as a sports facility did not comply with the Darling Harbour Master Plan current at the time of the construction of the sports facilities. Furthermore, the Committee did have concerns over some details of the contractual arrangement. In particular, the expenditure of \$2.5 million of the developer's contribution on the sports complex was expected to return \$2.5 million to the Authority over 3 years. In fact, the sports facilities cost the Authority \$119,000 and the Authority will not even be able to recoup the capital investment of \$2.5 million.

I would like to make special mention of the work of Ian Thackeray, the Committee Secretariat's Senior Project Officer, who very capably carried out all the research and drafted the report; to Patricia Azarias who edited it, to Jozef Imrich and Caterina Sciara who prepared the manuscript for printing.

In conclusion, I must thank my fellow Committee members for their objective, even-handed and bi-partisan approach to the issues under consideration in this inquiry.



Terry Rumble, MP  
August 1995



# EXECUTIVE SUMMARY

## **Circumstances**

The Darling Harbour project, which commenced operations in 1984, included a proposal for an entertainment access way, named the Darling Walk, on the east of the development linking Liverpool St with the Foreshore Promenade of Darling Harbour. Its aim was to draw people from surrounding areas into Darling Harbour. Initially conceived as a low scale, mixed entertainment and food development based on pedestrian flows, it drew some of its ideas from Tivoli Gardens in Copenhagen.

The Authority, however, was advised that this approach was not commercially viable and, following the receipt of expressions of interest in the site, approved a more elaborate development in the form of a capital intensive, high-tech entertainment complex. However, the development of the site proved to be one of the most protracted for the Darling Harbour Authority.

The first Agreement for Lease was entered into with the Parry Group and CDT and the project, called Discovery Village, commenced construction in December 1986. Due to financial problems and disagreements between the partners, the project was halted in late 1987.

In January 1988, the Agreement for Lease was assigned to Uras Holdings (part of the Merlin/Hayson group), in preference to a public call for expressions of interest. The new developer soon experienced problems with the project, even though the Authority had approved amendments to make it more commercially viable, whilst still maintaining its high-tech entertainment theme. A number of variations and extensions to the agreement were negotiated, usually to accommodate delays to the construction.

When the developer failed to meet its 30 September 1990 deadline, the Authority issued a notice of default. The Authority, however, did not terminate the agreement and the notice provided the developer with a course of action to remedy the default. After considerable negotiations a memorandum of understanding was signed by the authority, the developer and its bank, which provided the basis for a future agreement for lease.

In July 1991, a new agreement for Lease was signed by the Authority and Uras. Uras lost part of the site (in its opinion the most valuable part) and provided, through its financier, up to \$5 million for the rehabilitation of the site so that it could be used at the discretion of the Authority for an interim period. In return, Uras was entitled to exercise an option to proceed with the development between November 1992 and December 1995, subject to satisfying a number of conditions.

The continued delays on this valuable site (currently between \$17 million and \$22 million), meant that the Authority was forgoing rent while at the same time the Darling Harbour project was being adversely affected by the unattractive, incomplete construction site. Accordingly, the Authority took action to remedy the problem in order to improve the

amenity of the site, while providing the developer time to arrange finance to continue the construction at a later date. It has transpired, however, that at the end of the lease period (1995), Uras will still be unable to finance the development and is seeking to assign the agreement for lease to Jacfun, which intends to develop a Sega theme park.

### **Appropriateness**

Faced with the breach of the agreement by Uras on the 30 September 1990, the Authority appears to have had three options in pursuing the development of the Darling Walk site.

#### *Provide Uras with a further extension*

This was not seriously considered. Extensions to deadlines had not brought the project any closer to completion. Furthermore, the Authority had for some time been concerned about the overall viability of this development. A further extension would not resolve inherent problems with the project.

#### *Terminate the Agreement/ Find a new developer*

The Authority rejected this approach on the grounds that a long and costly legal battle could ensue; it would take time to arrange; and in the prevailing recessionary climate no alternative developers were able to be found.

#### *Renegotiate a new agreement with Uras*

The Authority determined that, because the developer had not performed as the Authority had expected, it had lost the right to continue with the site under the existing arrangements. New arrangements were negotiated which set deadlines, reduced the area available for development and provided for the rehabilitation and interim use of the site, financed by a \$5 million contribution from the developer .

#### *Interim Use*

Under the terms of the July 1991 agreement, Uras provided the Authority with up to \$5 million to rehabilitate the Darling Walk site and develop an interim use at the full discretion of the Authority. The terms of the agreement were such that any amount less than the \$5 million not utilised by the Authority for the interim use would be returned to the developer. According to the Authority the \$5 million was neither a penalty nor a holding fee.

The cost of rehabilitation was estimated at \$2.5 million while the sports complex project, selected following a call for expressions of interest, was also estimated to cost \$2.5 million - fully utilising; therefore, the developer's \$5 million contribution. GamePlan, whose proposal for a sports complex was accepted for the interim use by the Authority, projected a profit for the complex, over three years, of approximately \$2.5 million. This did not eventuate and the Authority has, in fact, lost some \$119,000 on the operation of the complex. Nor will the Authority recover any of the \$2.5 million capital investment.

The Authority did not see the rehabilitation and the development of the interim use (the sports complex) as separate items, but regarded the \$5 million as a single contribution to the

## *Darling Harbour: Sports Facilities*

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rehabilitation of the site. The Authority, by developing the interim proposal, made full use of the developer's contribution, as was mentioned above. The agreement was such that if the restoration of the site for interim use had not cost the full \$5 million, any balance would have been returned to the Lessee. The Committee has reservations about this aspect of the option arrangement, which greatly reduced the discretion of the Authority in determining the optimal use of the contribution.

### **Conclusion**

The Committee formed the view that the Authority took appropriate action, in the light of continued problems experienced in developing the Darling Walk site, to negotiate an interim solution to rehabilitate the site, which the Committee agrees must have been aesthetically unacceptable and commercially unhelpful to the whole Darling Harbour project. Furthermore, the method of financing this rehabilitation through a contribution of the developer, is also considered appropriate. However, this view is qualified by the following points:

- The history of the site suggests that the Authority was too willing to overlook the developer's failure to meet deadlines. The Committee is not totally convinced by the Authority's arguments for not finding a new developer. Prior to implementing any interim solution, the Authority should have determined and then pursued with vigour any right to formally call for new public expressions of interest to develop the site. Given that both Haysons and the Authority had been searching, respectively, for partners and developers, it should have been in the interest of both parties to formally and publicly call for world-wide interest in the continued development of the site.
- In implementing the interim solution, the rehabilitation of the site to passive recreation at a cost of \$2.5 million and paid for the developer is appropriate. This satisfies the main objective of the Authority to improve the amenity of the site for the benefit of the whole of Darling Harbour. However, once the Authority determined to develop a commercial activity on the site, regardless of whether it was financed by the developer or not, the Authority should have applied all normal commercial practices and prudential standards in order to ensure a maximum return from this operation, including measures such as the proper assessment of the GamePlan projections.
- This indifferent attitude of the Authority with regard to the expected profit of \$2.5 million from the sports centre which became a \$119,000 loss to the Authority seems to be based on the fact that the finance was not Authority money but had been provided by the developer. The Committee is highly critical of this attitude.

The Committee concluded that, with regard to the July 1991 Agreement for Lease over the Darling Walk, the Authority, when faced with a difficult problem, acted firmly and responsibly to achieve its objectives. However, the Committee felt that the Authority was too committed to the keeping Uras on the site and, in a number of ways, showed that it lacked genuine commercial expertise, particularly with regard to the return it received from the capital investment in and operation of the sports complex.

## **FINDINGS**

### ***Background Pattern***

In 1988, following the failure of Parry Corporation to develop the Darling Walk site, the Darling Harbour Authority simply assigned Parry's lease to Uras in preference to undertaking a new process of open competitive bidding.

In February 1989, when it became apparent that Uras was having difficulties meeting its deadlines, the Authority agreed to a Variation of the Lease to accommodate Uras.

On 29 June 1990, when Uras was still experiencing difficulties meeting its obligations, the Authority granted Uras three months' extension of the Lease.

On 30 September 1990, when it was irrefutably clear that Uras still could not meet its obligations, and was thus in breach of its contract, the Authority began renegotiating the lease with Uras in preference to undertaking a new process of competitive bidding.

In November 1990, the Authority made an agreement with Uras whereby the company would provide (through its bank) \$5m to buy an option entitling it to develop the site in December 1995.

In July 1991 the Authority formally ratified this agreement.

### ***Finding 1***

Thus throughout the entire history of the site, a clear pattern emerges in which the Darling Harbour Authority accommodated Uras, appearing determined to ensure that Uras maintained a presence on the Darling Walk site in preference to considering all commercial possibilities of the site development. For reasons which the Committee does not find completely convincing, the DHA never formally sought an alternative developer to Uras, even when Uras repeatedly failed to meet contractual deadlines for the development of the site.

***Finding 2***

While the interim solution of developing the sporting facilities was an innovative one, the fact remains that it was a solution to a problem which the Authority, at least in part, had itself created. (pp38-9)

***Finding 3***

No business plan for the operation of the sports facilities on the Darling Walk site was ever prepared. (p47)

***Finding 4***

The Authority accepted GamePlan's projection of a \$2.5m return from the operation of the sports facilities but in the end sustained a \$119,000 loss. (p46)

***Finding 5***

The structure of the deal with Uras for the interim use of the site was such that it encouraged the use of the full amount of \$5m. As the funds did not belong to the Authority, it was thus absolved from the need to act in a financially responsible manner, and, as the eventual losses proved, did not do so. (p46)

***Finding 6***

Another unsatisfactory facet of the deal was that the Authority would not have recovered any of the investment in the site, even if Uras had finally developed the site. In other words, the deal provided that the sporting facilities would have to be demolished, even if Uras had been successful in exercising its option to develop the entertainment complex. (pp39-44)

***Finding 7***

Management of the Authority did not obtain Board approval for the \$238,000 extra expenditure on the gymnasium, even though the Board had made its position clear that the deal should involve no cost to the Authority. (p48)

**PART 1: INTRODUCTION**

## **A. ORIGIN OF THE INQUIRY**

The inquiry into the Darling Harbour Sports Facilities was referred to the Public Accounts Committee on 30 May 1995 by the Hon. Michael Knight, MP, Minister for Public Works and Services, Minister for the Olympics and Minister for Roads. Terms of reference for the inquiry were:

To inquire into and report upon the circumstances and appropriateness of:

- the Darling Harbour Authority's 1991 decision to construct sporting facilities on the Darling Walk Site at Darling Harbour, given the contractual arrangements for the future use of the site; and
- the method used to finance the sporting facilities.

## **B. METHOD OF THE INQUIRY**

Following the receipt of the terms of reference, the Committee inspected the sports facilities, accompanied by the General Manager of the Darling Harbour Authority (DHA), Mr Terry Jones.

The Committee advertised the inquiry in the Sydney Morning Herald on 3 June 1995, inviting submissions from interested persons and organisations. Six submissions were received. Public hearings were held on 21 June 1995. Committee staff visited the office of the Darling Harbour Authority on a number of occasions, where the Authority records were made available.

## **C. STRUCTURE OF THE REPORT**

The report is structured to cover the terms of reference. These require examination of the "circumstances and appropriateness" of the DHA's management of the site development in 1991.

Therefore, following an Introduction (Part 1), Part 2 of the report details the circumstances which led to the 1991 contractual arrangements for the site, and gives a chronology of the relevant events. Part 2 also contains information on Sega's plans for the site as provided in evidence to the Committee. While not directly related to the Committee's terms of reference, these details are provided for public information.

In conformity with the terms of reference, Part 3 then analyses the appropriateness of the arrangement, including the means of financing. The final section (Part 4) summarises the Committee's conclusions.

**PART 2**  
**CIRCUMSTANCES: CHRONOLOGY OF EVENTS**



**A. TABLE OF EVENTS**

<b>DATE</b>	<b>MILESTONE</b>
<b>Pre-Uras (Merlin)</b>	
June 1984	Darling Harbour Authority Act
September 1984	DHA commences operation
November 1984	Mr A Carmichael becomes Chairman of first Board
February 1986	Expressions of Interest sought for Darling Walk
12 December 1986	Authority signs Agreement for Lease with Creative Design and Technologies (CDT) and Parry Corporation for development of Darling Walk as Discovery Village
May 1987	Delays in construction identified by Authority
August 1987	Parry buys out CDT
December 1987	Parry Group in financial trouble. All work stopped on Discovery Village
<b>Uras (Merlin)</b>	
27 January 1988	Deed of Assignment. Agreement for Lease transferred from Discovery Village/Parry to Uras Pty Ltd/ Merlin International Properties (Haysons)
17 March 1988	Agreement for Lease - new agreement to incorporate changes to project to make it, according to Uras, more commercial - deadlines?
November 1988	Interim Board appointed - Mr Ken Baxter, Chairman
16 February 1989	Deed of Variation - Variation of completion dates - June 1990 deadline for initial phase
July 1989	New Board appointed - Mr James Graham, Chairman
December 1989	Authority concerned with progress, describes site as "embarrassing eyesore"
29 June 1990	Deed of Variation of Agreement for Lease. Variation to agreement to provide extension of deadline from 30 June to 30 September 1990

***Darling Harbour: Sports Facilities***

30 September 1990	Deadline in 29 June 1990 Agreement - Uras unable to comply
5 October 1990	Authority notifies Uras, mortgagees and guarantors that Uras is in breach of the agreement
29 November 1990	Memorandum of Understanding between Uras, its financier and the Authority. Included an option to rehabilitate the site while the developer raised finance and the exclusion of Stage 3
January 1991	Expressions of Interest for the development of an interim use of the site
March 1991	DHA informs GamePlan that it wishes to pursue the sporting/recreational concept for the interim use
3 July 1991	New Agreement for Lease between Uras and the Authority. Provided for the rehabilitation and the development of the site for interim use, financed by the developer. Set specific time frame for the developer to exercise its option to complete the project, subject to satisfying conditions set by the Authority. Excluded Stage 3 from the project.
September 1991	Construction begins on sports complex
April 1992	Opening of sporting complex (except gymnasium)
1993	Uras proposed a hotel/entertainment development. Rejected by the Authority
1993	Review of Darling Harbour Master Plan. The review gave highest priority to the development of sporting and entertainment land uses within Darling Harbour.
1994	Discussions between Sega, Uras and the Authority Uras plans to assign its lease to Jacfun
January 1995	Authority advises GamePlan of termination of Sports Centre operations on 31 May 1995
May 1995	Uras serves is Election Notice to construct with the Authority (30 June being last day under 1991 Agreement)

## **B. BRIEF SUMMARY OF EVENTS**

In order to assess the appropriateness of the Authority's 1991 decision to construct the sports complex on the Darling Walk site, it is necessary to detail the circumstances which led to the decision. Accordingly, this section provides an overview of development on the site.

In summary, the original concept for the Darling Walk site was that it should be a low scale entertainment area to attract patrons into the Darling Harbour. Later, this concept was changed to a high-tech entertainment area, development of which was commenced by the Parry Corporation in late 1986. A deadline of 1988 was set for completion of the development. However, the Parry Corporation ran into financial difficulties and it soon became apparent that the deadline could not be met.

In January 1988 the project was transferred to Uras (a Hayson Group company). Uras was also unsuccessful in completing the project within the agreed time frame. When Uras missed another deadline in late 1990, the Darling Harbour Authority issued a notice of breach of the agreement. In the end, the Authority decided to continue with Uras in developing the site, but with a new agreement. The renegotiated terms were formalised in two documents: first in a Memorandum of Understanding and second, in a new Agreement for Lease in July 1991. Both of these included options for the rehabilitation or interim use of the site. These options were exercised and a sports complex was constructed on the site as an interim measure.

Uras had an option until June 1995 to develop the site. However, it has been unable to raise the finance and the option has elapsed. The Authority is negotiating with Jacfun to develop a Sega Theme Park on the site.

## **C. DETAILED CHRONOLOGY OF EVENTS**

### **(i) Darling Harbour Development (1984)**

In 1984 the then Premier, The Hon Neville Wran, announced the government's decision that a \$1 billion redevelopment to regenerate the Haymarket area should be constructed. The project, which was to involve both the public and private sectors, was to be the focus of the 1988 Bicentennial celebrations in NSW. The area was to incorporate both community and commercial facilities.

The Darling Harbour Authority Act came into effect in June 1984 and the Authority commenced operations in September 1984. The Board held its first meeting in October that year and Mr A Carmichael was appointed Chairman in November.

**(ii) Darling Walk Proposal ( 1985 - December 1986)**

The early Darling Harbour concept envisaged an entertainment access way, named the Darling Walk, on the east of the development linking Liverpool St with Foreshore Promenade and drawing people from surrounding areas onto the foreshore (see plan, Appendix B). Based on the concept of the Tivoli Gardens in Copenhagen, it was envisaged as an entertainment street with a mix of commercial and retail, social and community activity with pedestrian flows.<sup>1</sup>

The Darling Harbour Quality Review Committee saw the Darling Walk in 1985 as a “picturesque, charming and humanly scaled zone” between the city and Darling Harbour,<sup>2</sup> which would contain a “narrow winding thoroughfare, a number of amusements and fun elements ... intermingled with a variety of shops, cafes, exhibitions, studios and stalls etc.”<sup>3</sup>

According to the Authority, it was advised, however, that this concept was not commercially viable. As a result, it considered only minimal development of the site until after 1988.<sup>4</sup>

However, in 1985, the Authority was approached by Mr Lugman Keele with a proposal for a “high capital cost, high-tech entertainment complex”.<sup>5</sup> While it was acknowledged that the scale of this proposal was “far more dominating” than the original concept, and it extended beyond the original Darling Walk site, it was regarded as having “more visitor potential”.<sup>6</sup>

In February 1986, the Authority sought expressions of interest for the development of the Darling Walk project.

It was decided that Mr Keele’s proposal, through his company Creative Design and Technologies (CDT) was the most attractive. While it would initially provide the Authority with a low return, it had the potential for good returns in the future “if the project was highly successful”. The Hayson group of companies had submitted a proposal which had included a

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<sup>1</sup> Darling Harbour Authority, Meeting No 58, 11th March, 1988, Agenda Item 2(b)

<sup>2</sup> Letter 1st July 1985, from Professor N Quarry, Chairman, Quality Review Committee, to Minister Brereton

<sup>3</sup> Darling Harbour Authority Meeting No 25, 20th January 1986, Agenda Item No 3(f), Briefing Paper

<sup>4</sup> Darling Harbour Board Meeting Discovery Village, Briefing Paper, 12 January 1988

<sup>5</sup> Darling Harbour Authority, Meeting No 58, 11th March, 1988, Agenda Item 2(b)

<sup>6</sup> Darling Harbour Authority Meeting No 25, 20th January 1986, Agenda Item No 3(f), Briefing Paper

Tivoli style project but this had not been successful.<sup>7</sup>

CDT did not have the financial resources to undertake the project and the Authority required that it “obtain an acceptable equity investor to control the project”.<sup>8</sup> Mr Keele was given time to arrange finance for his project and, although a number of potential backers showed interest, including Elders, Oceanic Fund Managers and representatives from Sea World, nothing came of these negotiations and all companies interested in due course pulled out.

CDT ultimately joined forces with the Parry Organisation and signed an Agreement for Lease with the Authority on 12 December 1986 to develop the Darling Walk under the name of *Discovery Village*.

**(iii) Discovery Village (December 1986 - January 1988)**

Discovery Village Pty Ltd was Parry and CDT’s corporate vehicle for the project. *Discovery Village* was to be developed in three stages, as follows:

- |         |  |
|---------|--|
| Stage 1 | (Southern Sector) Imax 3-D Theatre, the Koala Creek Complex and the Tavern/ Cafe/ Cabaret Complex. To be completed by January 1988.  |
| Stage 2 | (Northern Sector) Vortex and the Orbitron. To be completed by August 1988.   |
| Stage 3 | Space Theatres Complex - includes circlevision style theatre, an omnimax dome theatre, a theatre in the round, an interactive computer video theatre, a holavision style theatre and an amphitheatre. To be completed by November 1988. <sup>9</sup> |

The Agreement for Lease was an arrangement whereby, subject to the satisfactory compliance with certain conditions (mainly the construction of the proposed facilities), the Authority would enter into a lease with the developer. It was an arrangement used on a number of projects at Darling Harbour.

As with all the Darling Harbor Agreements for Lease, the rent was negotiated from the commencement of the lease, that is, following the construction of the project. As the General Manager of the Authority, Mr Terry Jones, told the Committee

**Mr JONES:** As you are very well aware, Darling Harbour was a public sector development which cost an enormous amount of public money. The private sector was encouraged to participate but, in the main, was reluctant to do so. Every contract

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<sup>7</sup> Darling Harbour Authority, Meeting No 58, 11th March, 1988, Agenda Item 2(b)

<sup>8</sup> Darling Harbour Authority, Meeting No 58, 11th March, 1988, Agenda Item 2(b)

<sup>9</sup> SYNOPSIS, dated December 1986, Darling Walk Lease Negotiations, General Manager, Darling Harbour Authority, Mr R Pentecost

## *Darling Harbour: Sports Facilities*

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that I am aware of in Darling Harbour where the private sector funded buildings the arrangements that were made were an agreement to lease, which included the construction requirements of the private sector participant. The lease commenced once the operations commenced. The authority did not receive any revenue until the tenant was receiving revenue.<sup>10</sup>

In the case of the Discovery Village proposal, rent was negotiated to be as follows:

Years 1-5	3% of Admissions Income
Years 6-10	8% of Admissions Income
Years 11-25	according to projections table of Admissions Income

Once again, it was not long before delays in the project became evident. The Authority's Chairman reported to the Board on 18 May 1987, that "the Authority had been disappointed so far with the productivity of the Parry Group in progressing its proposals". The Board accordingly requested a separate report on Discovery Village at its next meeting.<sup>11</sup> The Board was informed at its meeting on 20 July 1987, that Discovery Village had "experienced management and financial problems since the Agreement for Lease was signed", which had resulted in the breach of some of the conditions of that agreement, including that "no reasonable progress [had been made] towards achieving completion dates identified in the Agreement for Lease". However, the Authority had received legal advice that "none of these breaches is considered to be of such a fundamental nature to enable the Authority to terminate the Agreement"<sup>12</sup>

During 1987 differences of view between Parry Corporation and CDT became evident, with Parry Corporation becoming concerned with the viability of the project. They were eventually resolved by the Parry organisation buying out CDT's interest in the project. Parry's claimed that the new management arrangements would allow the completion of financial arrangements which had been delayed. Parry Corporation also indicated that it wished to continue with the project but sought approval to change some aspects to make the development more commercial.<sup>13</sup>

The proposed master plan submitted for the Authority's approval was assessed by the Authority's Project Design consultants, who expressed some concern with aspects of the proposal. Concerns related to the lack of "an overall guiding attitude or philosophy to the theme content of Discovery Village", with the shows and rides being "derived from American theme parks" and a "tendency to bring these concessions and amusements inside the building,

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<sup>10</sup> Minutes of Evidence 21 June 1995, p16

<sup>11</sup> Darling Harbour Authority, Minutes of Meeting No 45, 13 May 1987

<sup>12</sup> Darling Harbour Authority, Meeting No 48, 20th July 1987, Briefing Paper

<sup>13</sup> Darling Harbour Authority, Meeting No 48, 20th July 1987, Briefing Paper

addressing foyers and exits rather addressing and enlivening the public promenade".<sup>14</sup>

The proposed variations to the project, suggested by Parry Corporation at this time, were conditionally agreed to by the Authority, subject to the satisfactory resolution of some contractual and commercial matters.<sup>15</sup>

The variations were, however, not formalised. In November 1987 the Parry Corporation was reported to be in financial difficulties, having "undertaken a broad ranging review of its operations"<sup>16</sup>. By December Parry Corporation had suspended all design and construction constructions contracts on the Discovery Village project.

The Board of the Authority considered the site development at its meeting on 12 January 1988. The Authority had received legal advice that Discovery Village and Parry Corporation had fundamentally breached their agreement and that the Authority "was entitled to terminate the lease".<sup>17</sup>

In a draft document dated 12 January 1988, the Authority management set out two options for action. The first option was to formally terminate the lease and call for new expressions of interest. Management stated that this was the "most appropriate" option. The second option was to terminate the existing agreement and "negotiate with the Merlin/Hayson group, who were the other bidder at the time the project was previously put out to expressions of interest [late 1986]".<sup>18</sup> It should be noted, however, that Merlin/Hayson was not the only other bidder. It was, however, the only other proposal short listed along with Discovery Village for consideration by the Authority.

While the latter option (the assignment of the lease) would save some four to six weeks, "the disadvantage of this proposal is that there are some other parties interested in developing parts of the site and not calling expressions of interest may not be seen as fair".<sup>19</sup>

The draft document also pointed out that the assignment of the lease to Merlin/Hayson might

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<sup>14</sup> Letter, 29th October 1987, from Barry Young, MSJ Group, to Mr R Pentecost, General Manager, Darling Harbour Authority

<sup>15</sup> Darling Harbour Authority, Special Board Meeting, Discovery Village, Briefing Paper dated 12 January 1988

<sup>16</sup> Sydney Morning Herald 11/11/87

<sup>17</sup> Draft Letter, dated 12 January 1988, from Darling Harbour Authority to Minister Cox, p1

<sup>18</sup> Draft Letter, dated 12 January 1988, from Darling Harbour Authority to Minister Cox, p3

<sup>19</sup> Draft Letter, dated 12 January 1988, from Darling Harbour Authority to Minister Cox, p3

“attract public criticism” given the extent of Hayson’s involvement in Darling Harbour<sup>20</sup> While the board agreed not to send the draft (as it needed some points, in relation to assignment, clarified and/or amplified), it resolved that its “preferred option was to formally terminate the existing lease and call for fresh expressions of interest for development of the site”. The board, while “generally of the view that it did not like option 2” (that is, to terminate the existing agreement and negotiate with the Merlin/Hayson Group), had to be aware of it “if the government directed the Authority to act on it”.<sup>21</sup>

It would seem that the Board’s view did not prevail. On 25 January 1988, and without any intervening Board meeting, the Authority’s General Manager, Mr Bob Pentecost, wrote a memo to all board members which outlined a course of action contrary to that determined at the Board’s 12 January 1988 meeting. Where at that meeting the Board had favoured a public call for termination of the lease with Parry Corporation and a call for fresh expressions of interest, Mr Pentecost’s 25 January memorandum stated the following:

in accordance with the previously approved Board resolution<sup>22</sup>, the Authority has agreed to an assignment of the Discovery Village Agreement to Lease from Discovery Village Pty Ltd, 100% owned by Parry Corporation to a new entity, Uras Pty Ltd, which is to be 75% owned by Merlin International and 25% Parry Corporation. A Deed of Assignment is being prepared with signing anticipated on 27 January 1988.<sup>23</sup>

The agreement was duly signed. At the next Board meeting, which took place on 28 January 1988 (that is 3 days after the General Manager’s memo), the Board ratified this action by noting “a paper distributed to all members concerning Assignment of Discovery Village Agreement to Lease”.<sup>24</sup>

The Hayson group was, therefore, able to have the agreement for lease for the Darling Walk site assigned to it from the Parry Corporation, which must have been an attractive arrangement for Hayson’s for it avoided the costs of having to go through a competitive tendering process. This was the start of a pattern identified by the Committee, whereby the Authority appeared to give preferential treatment to Uras (ie Hayson/Merlin) thus ensuring the company’s continued involvement with the site.

#### **(iv) Darling Walk - Uras Holdings (January 1988 - September 1990)**

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<sup>20</sup> Draft Letter, dated 12 January 1988, from Darling Harbour Authority to Minister Cox

<sup>21</sup> Darling Harbour Authority, Minutes of Meeting No 55, 12 January 1988

<sup>22</sup> From the Authority’s records, the Committee has not been able to identify such a resolution or intervening Board Meeting where such a resolution could have been taken.

<sup>23</sup> DHA Memorandum, 25 January 1988, from General Manager, to all board members

<sup>24</sup> Darling Harbour Authority, Minutes of Meeting No 56, 28 January 1988



Uras (also known as Merlin) now proposed to develop the site, based on a proposal (known as Tomorrow's World) which had been one of the proposals in 1986. It incorporated 7 of the 16 attractions in the Discovery Village project. Those attractions omitted by Uras were regarded as contributing to the problem of the viability of Discovery Village. The proposal envisaged a capital investment of \$120 million,<sup>25</sup> and Uras intended to construct a "state of the art entertainment strip" which included video animation, hands-on computers, futuristic rides and nightclubs.<sup>26</sup>

Uras felt that part of the problem with the development was the requirement for considerable "front-end" capital investment for the infrastructure and, therefore, proposed a two-phase development. Phase 1 was to be completed by October 1989 and Phase 2 (Stages 2 and 3) by May. However, Phase 2 was to be commenced only after Phase 1 was operational, thus providing a cash flow.

It had been understood by both the Authority and Uras at the assignment of the lease in January, that the amendments to the project referred to above to make it more commercially viable, would be incorporated in a new agreement for lease. Accordingly, a renegotiated Agreement for Lease, which accommodated these changes, was signed on 17 March 1988.

In November 1988 the new Greiner government appointed an interim board. In February 1989, the current general manager of the Authority, Mr Terry Jones, a former naval officer, was appointed. The previous General Manager of the Authority, Mr Bob Pentecost, took up a position as a director of Merlin International. He figures prominently in correspondence between Uras (Merlin) and the Authority in matters relating to the site.

This development of the Darling Walk site under Uras was, just as had happened with Parry Corporation, beginning to experience delays. Ultimately it was to prove one of the most difficult sites for the Authority. As Mr Jones told the Committee in evidence "several sites [in Darling Harbour] were held up, none as significantly or as long as the Darling Walk site"<sup>27</sup>.

When it became clear that the Phase 1 deadline of October 1989 would not be met, a Deed of Variation, dated 16 February 1989, was entered into, which allowed for the variation of completion dates, including the completion of "the initial part of the development by June 1990".<sup>28</sup>

Thus the Haysons involvement in the development of this site again appears to have benefited

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<sup>25</sup> DHA Briefing Note, dated 1 September 1989, from Di Talty, Manager, Development, to Terry Jones, General Manager

<sup>26</sup> Sydney Morning Herald, 14 March 1995.

<sup>27</sup> Minutes of Evidence 21 June 1995, p. 2

<sup>28</sup> Submission No 5, DHA, Price Waterhouse report, p. 6

## *Darling Harbour: Sports Facilities*

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from a sympathetic hearing from the (previous) Board of the Authority.

By July 1989 Uras had approached the Authority with further requests for extensions of time, with the initial phase to be completed by March 1991 and phase 2 by August 1993.<sup>29</sup>

In July 1989, a new board was appointed. Mr James Graham, with a background in engineering and merchant banking, became Chairman.

By November 1989 problems were still occurring on site and to the management of the Authority it was "quite clear that Uras cannot comply with the completion date for stage 2 and unless a variation to the Agreement is made will be in default with relation to stage 2 by June 1990."<sup>30</sup>

The Authority was clearly considering its options for it was advised by its solicitors in December 1989 that

... in considering the concessions which Merlin seeks in relation to its Agreement for Lease it is appropriate to also consider both obligations of Merlin which have not as yet been fulfilled and also any additional requirements which DHA may have in relation to the project. We considered that it was not appropriate to resolve matters piecemeal with Merlin but that the appropriate approach was to look to clarify all matters in issue between DHA and Merlin together".<sup>31</sup>

The advice went on to say that :

.. we have prepared a draft schedule of obligations and record of Merlin's performance to date, and, with a view to clarifying the position and ensuring that our understanding was correct, we inspected the site on 10 November 1989.... That inspection confirmed that the only apparent works completed by Merlin to date are the hoardings around the perimeter of the site and the foundations.<sup>32</sup>

The General Manager of the DHA outlined his concerns about the site in a Memo to the Chairman in December 1989, describing the Darling Walk site as "an embarrassing eyesore". He initially considered recommending that "Uras Holdings not be given an extension of

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<sup>29</sup> DHA Briefing Note, dated 1 September 1989, from Di Talty, Manager, Development, to Terry Jones, General Manager

<sup>30</sup> DHA Briefing Note, dated 23 November 1989, from Di Talty, Manager, Development, to Terry Jones, General Manager

<sup>31</sup> DHA Briefing Note, dated 23 November 1989, from Di Talty, Manager, Development, to Terry Jones, General Manager

<sup>32</sup> Letter, dated 1 December 1989, from Sly and Weigall to DHA

time”, in which case the site would “revert to the control of the Authority.

However, in view of Merlin’s longstanding involvement in the Darling Harbour Project and the need to maintain some momentum” he reconsidered this approach. Instead he recommended amending the Agreement for Lease to provide that Uras develop the site “under very strict controls” including the establishment of milestones which would incur default or penalties if not achieved and the relinquishing of stage 3.<sup>33</sup> .

In January 1990, in a briefing note for the Premier, who was meeting with Tom and Ian Hayson of Merlin, the General Manager further outlined the difficulties being encountered with the site. He pointed out in particular that “Merlin has not paid for the site as the Authority only receives revenue as the stages come on line, delays to the project therefore have no impact on Merlin’s financial position but affect the Authority’s projected income”<sup>34</sup>. As Mr Jones conceded to the Committee in evidence, part of the cost to the Authority of the delays on site was in “foregone rent”<sup>35</sup> from Merlin.

In February 1990, the Chairman of the Authority met with Ian Hayson, chief executive of Merlin International, developments on the Darling Walk site and the possibility of a revised timetable. The Chairman reported details of the meeting in a memo to the Authority’s Managing Director. Mr Hayson was told that any new agreement would include a commitment to pay rent from 30 November 1991 on the total site, which would be a “minimum base rent irrespective of whether the project was completed in either whole or part” and that the Authority would have to review the use of the site if Merlin could not have the finance firmly committed by 30 June 1990.

However, the Chairman also pointed out the Authority’s desire to support the Hayson group, “as is reasonably practical”, given the support provided by the Hayson Group to Darling Harbour in the past”.<sup>36</sup>

The General Manager advised the Minister’s office on 20 June 1990 that following a meeting that day with the developer, it appeared “inevitable that finance will not be available” by the due date and that the board had resolved on 19 June that, in these circumstances, “formal legal action would probably be necessary:”<sup>37</sup>

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<sup>33</sup> Memo dated 12 December 1989, to Chairman from General Manager

<sup>34</sup> Memo dated 15 January 1990, from Terry Jones to Ken Baxter

<sup>35</sup> Minutes of Evidence 21 June 1995, pp. 12, 13

<sup>36</sup> Memorandum dated 7 February 1990, from James Graham to Terry Jones

<sup>37</sup> Memo, dated 20 June 1990, from Terry Jones - General Manager, to Carmel Carnivale - Minister’s Office

## *Darling Harbour: Sports Facilities*

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The Authority had two reasons for its increasing concern about the lack of progress on the site, obvious from late 1989. Firstly, there was no revenue being generated for the Authority and, secondly, the impact of such an eyesore, as the construction was deemed to be, on the rest of the Darling Harbour operation, was thought highly undesirable.

On 29 June 1990 a new Deed of Variation was entered into between Uras and the Authority granting a further extension of time, on the proviso that funding for the project would be finalised by 30 September 1990. Under the terms of the agreement the developer was to arrange funding for construction and completion of Stage 2 works, in the vicinity of \$140 million, not later than 30 September 1990 with construction to be completed no later than 30 July 1992. Further, if Uras failed to comply with its provisions, the Authority could terminate the agreement and consider alternative uses of the land by third parties.<sup>38</sup>

While this extension was the first granted to Uras by the new Board of the Authority, it does continue the pattern established by the previous Board of apparently accommodating Uras' requests for extensions of time on the site, rather than cutting ties with Uras and seeking a new developer.

In a briefing note to the Board Meeting on 18 September, the Authority management said it believed the developer would not be able to comply with this new agreement, an interesting conclusion only 3 months after providing Uras with an extension. Management set out the options available in the circumstances. These options were:

- Termination on 30 September. This was regarded as having no benefit as there was no alternative lessee or land use option immediately available
- Allow current Deed to run. It was felt that the developer would not obtain finance with "immediate termination provisions" applying, and alternative land uses with a satisfactory financial return in the prevailing market place was deemed unlikely.
- Accept the new phased development proposal for stage 2 subject to a number of conditions.<sup>39</sup>

In the event, as expected, Uras was unable to comply with the terms of the June 29 agreement. On 5 October 1990 the Authority notified Uras, the mortgagees and the guarantors that the Agreement for Lease had been breached.

However, in the same letter, the Authority also informed those same parties that it was prepared to consider acceptable proposals for a phased development, provided that new funding could be found and construction deadlines met. Yet again Uras appeared to have shown considerable skill in convincing the Authority of its ability to complete the development of the site.

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<sup>38</sup> Darling Harbour Briefing Note: 12306.DT

<sup>39</sup> Briefing Note, Authority Meeting No 97, 18 September 1990

**(v) Memorandum of Understanding (November 1990)**

On the 9th November 1990, the Authority indicated to Uras (Merlin) and its bank that it would be “prepared to favourably consider a Memorandum of Understanding” provided Uras and its financier satisfied a number of conditions which the Authority set out. This document would provided the basis for further negotiations between the Authority and Uras and ultimately a more detailed contract.

The Memorandum of Understanding, executed on 29 November 1990, dealt with a number of issues such as liquidated damages and rent. It also excluded from the project the Stage 3 land, 0.38 ha on the waterfront promenade, which was separated from the rest of the site by overhead freeways.

Essentially the Memorandum of Understanding set out options for the future development of the site, one of which included the provision of funds for the rehabilitation of the site on an interim basis. Specifically, the options were:

- (1) Uras’ bank would provide a significant portion of the funding for the entire project (stages 1 and 2, but not 3) by way of syndication and the DHA would agree to a new timetable for development of the project; or
- (2) If the bank thought it could not syndicate the financing it would provide up to \$5 million for rehabilitation of the site on the basis that Uras could postpone commencement of construction for between 2 and 5 years.

On 7 December 1990, the bank elected to follow the second option, which formed the basis of a new agreement. Consequently, a new Agreement for Lease was negotiated and signed on 3 July 1991. This is the current contract between the Authority and the developer and is the document referred to in the Committee’s terms of reference.

**(vi) Interim Use (1991 - 95)**

On 5 and 15 January 1991, the Authority advertised for expressions of interest for the short term lease of the site (Stages 2 and 3). It was stated that preference would be given for proposals utilising the sites for “entertainment, recreational, tourist or cultural purposes”.<sup>40</sup> Ten proposals were received, of which five were put to the board as having merit for further consideration.

GamePlan Sports and Leisure Pty Ltd, a company set up by John Curtis and Brad Drewitt to develop sports and leisure facilities, was selected from ten tenderers for the interim use of the site. GamePlan’s proposal for a sports centre was accepted by the Authority, albeit in an

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<sup>40</sup> DHA Meeting No 101 - 19 February 1991

### *Darling Harbour: Sports Facilities*

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amended form, the Authority having rejected the go-karts and amusements such as mini-golf. Construction began in September 1991.

GamePlan were retained as consultants during the design, development and construction. The complex was officially opened April 1992 (except for the Gymnasium) and GamePlan was successful in gaining the management contract. The company currently manages and markets the centre.

The costs of the major components of the development for the designated interim use were as follows:

	\$
Preliminary/ Temporary Works .....	623,000
Demolition, Site Clearance, Filling, Compacting .....	345,000
Roadworks, Walls, Paving .....	510,000
Site Services .....	370,000
Gymnasium, Restaurant & Pro-shop .....	1,250,000
Court Construction and Fencing .....	400,000
Amphitheatre/ Bridge Works .....	190,000
Soil, Planting and Irrigation .....	250,000
Professional Fees .....	586,000
Plant and Equipment .....	714,000
 TOTAL	 \$5,238,000

According to the Authority

- the total amount included an Authority contribution of \$238,000, approved initially by management on its own authority, for additional equipment to ensure the gymnasium and the restaurant were adequately equipped;
- Half of these costs (\$2.5 million), would have been required to convert the site into a public park of appropriate standard. The other half (\$2.5 million) is attributable to the sports centre.<sup>41</sup>

#### **(vii) Current Agreement For Lease (since 3 July 1991)**

The objective of this agreement, which essentially ratified the principles agreed to in the Memorandum of Understanding, was to rehabilitate the site while providing time for the developer to arrange finance from sources other than the bank in question. In the view of the Authority an interim use of the site was needed because Merlin "in the current climate ... were unable to raise sufficient capital to ensure completion of the development".<sup>42</sup>

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<sup>41</sup> Letter dated 13 April 1995 from General Manager, DHA, to Minister Knight

<sup>42</sup> Letter dated 12 December 1991 from Di Talty, Manager, Planning and Development, DHA to Mr RR Leitner

## *Public Accounts Committee*

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Accordingly, Merlin “funded interim development of the site as a sports facility”.<sup>43</sup> It was, however, still the intention of the Authority “that a major development will occur on the site” and to achieve this goal,<sup>44</sup> “the Authority has given the developer 4-5 years in which to get the finance in place”.<sup>45</sup>

The Agreement provided the developer (Uras/Merlin) with an option to construct the project within a 30 month period commencing at any time between 31 May 1993 and 31 December 1995, following the giving of 6 months notice of its intention to construct. On completion of construction the proposed lease would be executed for a period of 41 years with two options for renewal of 21 years - a total possible term of 99 years.

In the meantime the site was to be rehabilitated and used on a short term basis for a minimum of 18 months by the public or an interim user. This interim was to be funded by the developer (that is, by the developer’s bank) at a cost of up to \$5 million. Of this sum, \$1 million was to be paid immediately and the balance was to be placed in an account to be drawn on by the Authority as needed.

In summary, the main points of this agreement (a copy of which is in Appendix E) are:

- At any time between 30 November 1992 and 30 June 1995, Uras could elect to exercise its option to occupy the land in order to construct the agreed Darling Walk project. Following satisfactory completion of the works, the DHA would lease the land to Uras for a period of 41 years with two 29 year options (a total of 99 years).
- Uras could exercise this option by serving notice (“election notice”). The developer was entitled to commence construction six months after the serving of the “election notice” subject to the Authority being satisfied that a number of conditions had been met, including:
  - the arrangement of funding for construction and completion of the works;
  - the submission of Plans and Specifications, a permit application and a Works programme;
  - demonstration that a building contract with respect to the works could be secured.
- In the interim period (that is from 3 July 1991 until the developer was legally entitled to occupy the land) the Authority was entitled to allow the land to be used by an

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<sup>43</sup> Letter dated 12 December 1991 from Di Talty, Manager, Planning and Development, DHA to Mr RR Leitner

<sup>44</sup> Letter dated 12 December 1991 from Di Talty, Manager, Planning and Development, DHA to Mr RR Leitner)

<sup>45</sup> Letter dated 1 October 1991, from Terry Jones, General Manager, DHA to Mr E Whittaker

### *Darling Harbour: Sports Facilities*

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interim user at the absolute discretion of the Authority. The term of any arrangement with the interim user could not expire later than 31 December 1995. The arrangement could be terminated with 6 months written notice;

- The developer agreed to pay up to \$5 million to rehabilitate the land to a state suitable to be used by an interim user or the public. \$1 million was payable immediately with the remainder to be paid as the work progressed. The Authority received payment only for the interim development up to \$5 million. **Any of the \$5 million not expended by the Authority on this development was to remain with the developer's bank.**
- The Authority returned to the developer a Bank Guarantee held under the previous lease agreement;
- The Agreement and Lease could be terminated if the Lessee failed to comply with its obligations under the agreement, with the land reverting to the Authority;
- The Lessee was to provide \$500,000 Bank guarantee as security, on or before the occupation of the site;
- The Lessee could assign the Agreement for Lease;
- After the lease commenced, a percentage of admissions and concessions income was payable to the Authority as rent. Specifically, the percentage of Admissions Income payable as rent commenced at 4% in year one and increased to 8% in year 10; while the percentage of Concessions Income payable as rent started at 7% and increased to 8% in year 10.

#### **(viii) Darling Walk (July 1991 - June 1995)**

While not directly related to the Committee's terms of reference, this section of the report outlining events to date is provided for completeness and public information.

##### *(a) Uras*

While the Authority was developing the interim use of the site, Uras was endeavouring to obtain the finance for the eventual development. In August 1991, it was reported that Merlin believed the "financiers will soon be jumping to invest in the park, which is expected to attract four million visitors a year". Merlin expected "to have substantial funding by June"<sup>46</sup>. The park would be "a cross between a modern Luna Park and Disneyland" and include "a space theatre, restaurants, al fresco cafes, food outlets and shops". Mr Hayson said that "parents can leave their children in the amusement park while they try their hand at blackjack

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<sup>46</sup> Daily Telegraph Mirror 15 August 1991



[in the nearby casino]”. The park would “be open by the end of 1994” Merlin stated.<sup>47</sup>

However, these plans did not come to fruition and Haysons considered alternative developments. In September 1993, the Hayson Group sought Authority approval for entertainment, retail, food and restaurant uses and some 200 residential apartments, “in three mid rise blocks”. The Authority rejected the proposal on the grounds that the general public would be excluded from the area.

Haysons then presented a second proposal for a budget hotel with entertainment and food retail use. The Authority concluded that there was “no justification for a consideration of a change of land use in the Darling Walk project” at this time.”<sup>48</sup>

Mr Hayson had decided that the use of the site for purely entertainment purposes was hindering development. Presumably, this was the reason for his support for a hotel development,<sup>49</sup> a point confirmed by him in further correspondence.<sup>50</sup>

Mr Hayson pursued this hotel-style development on the Darling Walk. In February 1994, he informed Terry Jones that Uras’ “plan to combine a special type family oriented hotel with the entertainment centre on Darling Walk has met with unanimous enthusiasm from experienced hotel operators and investors in this type of project”.<sup>51</sup> Mr Hayson enclosed supporting material. He wrote on the same day in similar terms to Minister Webster stating that “we now have the funding in place” for the hotel /entertainment development.<sup>52</sup> Mr Hayson was informed that the Authority had rejected the proposal on the grounds that it considered the hotel an inappropriate development on the site and that such a change in usage of the site would necessitate a call for expressions of interest.<sup>53</sup>

Mr Hayson was certain that this development would have been successful. He told the Committee that his “twenty-first century interactive, entertainment hotel” was viable because he “was knocked over in the race for it” as “some of the greatest hotel people in the world wanted to be part of it”. Somewhat paradoxically, he felt that the current proposal for the site (see Sega Ozisoft proposal below) was the “ideal” proposal for the site because

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<sup>47</sup> Daily Telegraph Mirror 15 August 1991

<sup>48</sup> Ministerial Briefing Note for meeting with Tom Hayson, 3 November 1993

<sup>49</sup> Letter dated 1 December 1993, from General Manager, DHA, to Mr Tom Hayson

<sup>50</sup> Letter dated 7th December 1993, from Tom Hayson, to General Manager, DHA

<sup>51</sup> Letter 24 February 1994, from Tom Hayson to Terry Jones

<sup>52</sup> Letter 24 February 1994, from Tom Hayson to Minister Webster

<sup>53</sup> Letter dated 21 March 1994, Terry Jones to Tom Hayson

## *Darling Harbour: Sports Facilities*

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“entertainment ... is the missing link” in Darling Harbour.<sup>54</sup>

From the inception of the Darling Harbour project in the early 1980s, a master plan had been developed for the area. This original plan did not envisage that sporting facilities would be developed on the Darling Walk site.

In 1993, the Authority carried out a review of this original master plan. This review now identified “sporting” and “entertainment” land uses within Darling Harbour as having highest priority<sup>55</sup>. The review also determined that, should the entertainment development not proceed on Darling Walk, the sporting use of the site should be consolidated with “complementary recreational/ entertainment uses”.<sup>56</sup>

### *(b) Sega*

In July 1994, Sega Enterprises, a very large Japanese company specialising in entertainment, announced plans to expand its video and virtual reality activities into shopping malls and the city area, as well as its plans for a number of Sega World indoor theme parks to be “purpose built on sites of 10,000 sq m to 15,000 sq m in high traffic areas such as retail and tourist precincts for up to \$50 million each”<sup>57</sup>. Sega claimed to have received calls from hundreds of developers, landlords and investors to join these projects.<sup>58</sup>

In July 1994, Tom Hayson wrote to the Authority with regard to discussions between Uras, Sega Ozisoft, Sega’s representative company in Australia and New Zealand, and a bank<sup>59</sup>. Mr Hayson in his letter to the Authority went on to say that Sega’s Theme Park, which “they contemplate on Darling Walk, will be a great acquisition to Darling Harbour and to Sydney”.<sup>60</sup>

Uras was clearly keen to assign its lease to Sega Ozifsoft, and the management of the Authority met with Sega Ozisoft on 27 July 1994.

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<sup>54</sup> Minutes of Evidence 21 June 1995, p. 33

<sup>55</sup> Darling Harbour Authority, Master Plan Review, Summary and Findings, pp 6,7

<sup>56</sup> Darling Harbour Authority, Master Plan Review, Summary and Findings, p10

<sup>57</sup> Australian Financial Review 21 July 1994

<sup>58</sup> Australian Financial Review 21 July 1994

<sup>59</sup> The PAC has agreed to the Authority’s request that the bank not be identified, for reasons of commercial confidentiality.

<sup>60</sup> Letter dated 29 July 1994, from Tom Hayson, Uras, to Di Talty, Manager Planning and Development, DHA

## *Public Accounts Committee*

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In October 1994 Sega Ozisoft outlined to the Authority the changes which it wanted made to the Agreement for Lease. The Authority advised Sega that “the development is to be high quality and family oriented”<sup>61</sup>. It wanted attractions “to be unique and festive in character with an emphasis on interaction and group activity so that a place of interest for both participants and observers is created.”<sup>62</sup>

Mr Jones, in February, advised Jacfun Pty Ltd, the “project team ... established to develop” the Darling Walk<sup>63</sup>, that the Board was concerned “as both Lessor and development consent authority that the Sega World concept may prove to be incompatible with the Authority’s desired objectives re the development of the Darling Walk site.”<sup>64</sup>

Mr Jones appeared to share Uras’ keenness to assign the lease to Sega. In March 1995, he detailed the situation to Minister Webster<sup>65</sup>. He acknowledged the “considerable disquiet within the community and the Board” with regard to the Sega proposal, and pointed out that the proposal was not another amusement arcade similar to the “large indoor games parlour” in George St, but rather but an “upper level high-tech fun park” with eight different zones and “rides” “similar to those which can be found in Disneyland or Movieworld”. Mr Jones informed the Minister, without quoting his sources, that it was anticipated that the Theme Park would attract between 500,000 and 750,000 visitors annually, returning over \$1 million annually to the Authority. Currently the sporting complex caters for about 8,000 and provides virtually no net income<sup>66</sup>.

Minister Webster wrote to the Chairman of the Authority on 20 March 1995. He expressed his concern about the perception of a pinball parlour on the Darling Walk and requested that the Authority not approve any development until it was satisfied that such development was “in keeping with the Authority’s commitment to maintain its integrated educational, recreational, cultural and commercial aims...”. Accordingly, the Minister requested to see the Board’s recommended development prior to approval and stated that the approval process should include the identification of “an appropriate alternative location for [the] sports facilities”.<sup>67</sup>

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<sup>61</sup> Letter 10 November 1994, from Terry Jones to Kevin Bermeister, Managing Director, Sega-Ozisoft

<sup>62</sup> Letter 10 November 1994, from Terry Jones to Kevin Bermeister, Managing Director, Sega-Ozisoft

<sup>63</sup> Australian Financial Review, 3 April 1995

<sup>64</sup> Letter 24 February 1995 from Terry Jones to Kevin Bermeister

<sup>65</sup> Memo, 13 March 1995, from General Manager, DHA to Minister Webster

<sup>66</sup> Memo, 13 March 1995, from General Manager, DHA to Minister Webster

<sup>67</sup> Memo dated 20 March 1995, from Minister Webster to James Graham, Chairman, DHA

## *Darling Harbour: Sports Facilities*

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Accordingly, the Authority is working to identify an alternative site either within or outside Darling Harbour. The Chairman told the Committee:

**Mr GRAHAM:** ....and the community, which we have a responsibility to try to serve. In that regard, we would be aiming to encourage the proponent to be disposed perhaps to making some contribution to the establishment of an alternative sporting facility. We have, with the Minister's support, entered into a process of discussions with the city council and with City West Development Corporation with a view to trying to identify an attractive and appropriate alternative sporting facility. It may well be that that happens to fit within a wider issue which the city council has very much in mind—to have a swimming complex. The council would like to see some swimming, tennis, and multi-purpose facilities created, and we are working with them to achieve that. If we can negotiate an outcome with the incoming proponent to help to facilitate that in any financial way, we will do so.<sup>68</sup>

In evidence, Mr Graham confirmed that the Sega usage conformed with the master plan for the site.

**Mr GRAHAM:** ...About 12 or 18 months ago we revisited the master plan of Darling Harbour and went through an inordinate amount of consultation with the community, with our neighbours and with all parts of government that may have an interest in the facilities and the amenity of Darling Harbour. Again it was reiterated, as a result of that review of the master plan, that the retention of an entertainment area along the lines of that now in front of the authority for its determination was appropriate and proper in that location. So I hope that we will be very balanced in our approach and, to the extent that the current circumstances permit us to negotiate an outcome which maximises the broader interests, we will certainly seek to do so.<sup>69</sup>

The following extract from the evidence of Mr Bermeister, Managing Director from Sega Ozisoft/Jacfun is provided for public information on Sega's plan for the site:

**Mr ROGAN:** ... Could you briefly explain what a theme park is?.....

**Mr BERMEISTER:** ....The pictures I am showing you include a product called VR1 which is a 32-person moving platform simulator using virtual reality headset technology. This is the peak of the technology that Sega has developed. In each major attraction there is a preconditioning element. The ride takes about three or four minutes but the actual experience is 15 minutes. For example, at the VR1 theming area, 32 people arrive at one time. This is an internal space ship environment. The idea is that the planet Earth is being attacked by aliens and the 32 people are put into the space station and are supposed to be transported out to space in this vehicle. As they get out to space there are very large-scale monitors, actors and actresses who have been prerecorded in video to tell the story and to precondition people for the ride.

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<sup>68</sup> Minutes of Evidence 21 June 1995, p. 22

<sup>69</sup> Minutes of Evidence 21 June 1995, p. 21

Halfway through the video two actors rush in through doors with smoke coming out of their hair and with torn uniforms and start screaming and shouting that there has been an attack. All the people have to go immediately to the space station and enter the ship that they will be using to defend planet Earth. All the people progress through a set of automatically opening doors and are ushered in darkness onto the reality platforms. They are seated in a designed seat which has two controllers on either side of the armrests. There is a headset which they pick up and place on their heads and screw some bolts in at the front until it is comfortably locked in position. From that point they are projected into a fully animated world environment. Regardless of which direction they turn, either up or down, it is animated. For example, if they look down they will see their legs in animated form. If they look to the left they will see a person, but that person is animated. If that person is facing them they can see the headset because it is in real-time.

The person is then pushed on to the platform and shot out into space and travels through space down to planet Earth, all the time defending against the alien attack. The headset is what is called a heads-up display to lock on to the enemy and attack the enemy. The person goes through planet Earth's streetscapes and cityscapes and a variety of environments. In each game there is a winner. The more spaceships shot down the higher the score. If at the end of a ride there is a red flashing light next to someone's seat, then that person is the winner and is awarded a certificate. That is an outline of the nature of the experience. There are six experiences like that, ghost hunters, rail chasers, VR1, VRD and others.....

**Mr ROGAN:** Is it of a similar scope to Intensity where there has been adverse publicity about a fellow in his early twenties who spent \$1,000?

**Mr BERMEISTER:** No, let me give you some differences between Intensity and what we are proposing. Our theme park is very much more along the lines of Disneyland, as opposed to Intensity which does not have the character theming and the development of Disneyland. To give you some idea, Sega owns a number of intellectual property characters, including, Sonic the Hedgehog, which is its main character, Tails, Knuckles, Dr Robotnik, and many others. The internal section of the theme park will be themed in a tropical jungle feel. This is an internal section which stretches 200 metres, so it is a very large internal walkway which then leads off in subdirections to each of the major attractions. In this internal walkway will be animatronic characters of Sonic and Tails and all his friends; there will be what is called a four-D sound system, which is a sound environment that is created in the park. As you travel through the park, birds in the trees will make their sounds and they will travel along with you while you are walking through the park.

The experience is one of a Disney feel. Our characters will become a very prominent part of the internal Sega world facility. We have appointed Mary Lopez, who is creator/director of this project. Mary does the Sydney Schools Spectacular; she choreographed the recent dance for the Pope's visit; she does the entertainment at half time for much of the football; and she will be coordinating and controlling all of the Sega characters in the park so that without any doubt every person visiting Sega World will bump into Sega's characters and will experience people in costume who will interact with them in a way similar to the way in which he or she would interact with Disney's Mickey Mouse, Donald Duck, Pluto, Goofy and some other characters. We have a very different feel to the Intensity feel.

The other thing about Intensity is that it has a role-playing game called Red Dwarf; also

## *Darling Harbour: Sports Facilities*

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called Battletech. These products encourage continued development of your character in this virtual world. The person who spent \$1,000 is determined to be the best performing character in that virtual world. As you play more and more, so your character in this computer environment develops more and more strength and attributes. So the more you play with this character and the better you get with this character in this world, the stronger it will be and therefore your character, at some future point, will be able to compete against others, win and be the controller of this virtual world environment. This particular person is determined to achieve that status, and, as a result, is driven to spend more and more money in the process. These attractions are based around the world, have been for quite some time, and with the Internet this type of activity is growing. By the very nature of that process people are attracted to frequent usage of that environment, as opposed to our environment, in which there are certainly no games of that nature. They are fun rides and fun activities. They do not have any long process.....

**Mr BERMEISTER:** It is sometimes difficult to answer some of these questions as a director of Jacfun. I really need to answer these questions as a director of Sega. In that respect I am talking in specific detail of the theme park and the theme park elements. The nature of the technology that is emerging as opposed to 10-pin bowling alleys or products of that type which had fixed environments and fixed usages, the intention of the six major attractions—and there are a number of minor attractions, totalling approximately 200 in and around the facility—is to exchange or rotate new attractions into the site over a period of three years. From zero to three years the entire internal aspect of the theme park will have changed completely. Every one of the attractions will be different and the internal theme will also be different....

With the development of new technology that is the main focus of our activities in terms of increasing and sustaining frequency of visitation to the park. These are like new movies, in a sense. One of the attractions we have planned is called "Alien", which is a joint venture between Twentieth Century Fox and Sega. It is the creation of a walk-through environment taken from Alien the movie. In my opinion, the future development of theme parks will start to trend in this direction, so Batman Forever, for arguments sake, which is a current movie release, will also share a themed ride in that park for a period of six, eight or nine months during the time the movie is released. It is a part, a component of future life themes and future development of these sorts of properties worldwide. As we go out for the next five, 10 or 15 years our vision is that this will continue to evolve in that direction.<sup>70</sup>

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<sup>70</sup> Minutes of Evidence 21 June 1995, pp 51-54

**PART 3**

**APPROPRIATENESS: ANALYSIS OF DHA'S  
DECISIONS AND METHOD OF FINANCING OF  
SITE**

## **A. DHA'S OPTIONS IN 1990**

From the chronology of events, it is clear that the Darling Walk site has proved to be a problem for the Authority since the inception of the Darling Harbour project. However, events in 1990, specifically, the failure of Uras to meet its 30 June deadline, provided the relatively new Board with an opportunity to address the issue. Under its terms of reference, the Committee must consider if the Authority's decision in 1991 to construct sporting facilities was appropriate.

The agreement reached on 29 June 1990, required Uras to "arrange for the construction and completion of the initial stage of the project by 30 September 1990" (see page 15 above). If Uras did not comply with the provisions of the agreement, the Authority "had the right to ... serve a notice of immediate termination" and "was entitled to examine and consider alternate uses of the land ... with third parties"<sup>71</sup>. When the developer failed to comply on 30 September 1990, the Authority was faced with another missed deadline on the part of the developer.

In deciding upon a course of action at this time to resolve the problems being encountered on the Darling Walk site, the Authority had three options:

- (i) Provide Uras with a further extension
- (ii) Terminate the contract and find another developer
- (iii) Negotiate a new arrangement with Uras.

Each of these is dealt with separately below.

### **(i) Provide Uras with a further extension**

According to the Chairman, the new (1989) Board was not convinced of the viability of the proposals for the Darling Walk. Mr Graham, told the Committee that

**Mr GRAHAM:** .... When the proposal was at a stage at which it could be seriously evaluated by the authority the authority expressed to the principal lessee on a number of occasions its reservations that the approach that had been undertaken was excessively ambitious having regard to the size and structure of the Australian market. Despite the concerns expressed by the authority in relation to the particulars of the proposal advanced by the lessee, the lessee continued to express professional optimism in terms of its capacity to undertake and develop the site in that way at an early date...

My concern was that the scale of the proposal was beyond the reasonable commercial expectations of the marketplace to finance and deliver adequately. The lessee, however,

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<sup>71</sup> DHA Submission No. 5, Price Waterhouse Review, p. 7



certainly had involved in its group a wide range of professional consultants who sought to allay that concern. As I indicated a moment ago, the authority's view was that the lessee was overly ambitious in its proposals, and the authority expressed that view to the lessee on many occasions.<sup>72</sup>

Even under the newly negotiated 1991 arrangements, the Authority still harboured some doubts about the ability of Uras to complete the development. Mr Jones told the Committee that, in his opinion, the option "would be exercised almost at the end of the [interim] period", (i.e.) June 1995)<sup>73</sup> suggesting that Uras would need all the available time to finance the project.

Mr Jones further explained to the Committee the problems for such developments in operating on a stand-alone basis:

**Mr JONES:** ..... I have been involved in approximately three trips overseas since I became the general manager [in 1989] and I have seen a number of theme parks, all of which have been operated by companies such as Disney that operate several theme parks. It was when the authority received the present proposal from the company related to Sega Japan that I basically came to the conclusion that it was very difficult for the private sector to come up with a single theme park not related to other theme parks all over the world.<sup>74</sup>

These concerns were well founded, as Uras, even after the 4 years allowed under the agreement to raise the finance for the development, is still unable to do so and will not be able develop the site, as Mr Hayson confirmed this to the Committee:

**Mr ROGAN:** ...If your company Uras Holdings Proprietary Limited does not sign the lease to Jacfun Proprietary Limited, will Uras be in a position to develop the project?

**Mr HAYSON:** No.

**Mr ROGAN:** You are not?

**Mr HAYSON:** No.<sup>75</sup>

It was obvious that the previous extensions to deadlines had not resolved problems with the site. The September 1990 deadline, according to the Authority, "represented the first opportunity for the new Board of the Authority to implement effective management of the project". The developer had not performed and the Authority concluded that "In those circumstances your rights to continue to develop this site in the way it has been anticipated

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<sup>72</sup> Minutes of Evidence 21 June 1995, pp. 2, 3

<sup>73</sup> Minutes of Evidence 21 June 1995, p. 18

<sup>74</sup> Minutes of Evidence 21 June 1995, p. 3

<sup>75</sup> Minutes of Evidence 21 June 1995, p. 27

will have to be terminated"<sup>76</sup> and Board sought "alternative ways to develop the site"<sup>77</sup>.

According to the Authority, therefore, no extension of time was considered. Instead, as will be seen below, the Authority negotiated a new arrangement with Uras, which, in effect, included a number of conditions and penalties. Based on the history of this site, which is one of continual delays, any decision not to simply provide the developer with another extension of time is supported by the Committee. However, the Committee is of the view that, while the negotiation of a new arrangement with Uras is technically not simply extending the existing contract, it is, in effect the next best thing to providing Uras with a further extension on site and thereby continuing the problems on site. Uras' problems did in fact continue as it ultimately proved unable to complete the development.

## **(ii) Terminate the contract and find another developer**

While the Authority chose not to extend Uras' existing contract it also chose not to remove Uras from the site and find an alternative developer to take over the project. The Authority cited three reasons for this: those of a legal nature, those relating to the prevailing recession, and those stressing the time factor. These are each dealt with separately below:

### *(a) Legal Reasons*

Although the developer was in breach of its agreement, the Authority felt that the considerable financial investment already made to the development by Uras' bank would mean that a legal battle over the matter was virtually certain:

**Mr GLACHAN:** Legally, could you have got out of an arrangement with the other people and taken someone else if they had come along?....

**Mr GRAHAM:** It is practical to say that there would have been total default and a total surrender of the site. I am sure that if we had done so we would have ended up in a legal dispute.

**CHAIRMAN:** But the people you were dealing with breached their contract anyway, did they not?

**Mr GRAHAM:** Yes. If people had spent \$35 million on developing the site they would have argued under the arrangements with the previous management and the previous board that this had been an agreed course of action. They would have said that they had spent \$35 million of their money in meeting the requirements of the authority and they would certainly have pursued a legal claim against the authority. That would have been supported by the bank, which would have lost the entire security upon which its position was dependent. We would have had a site which was very much the subject of a public commercial dispute. That would have

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<sup>76</sup> Minutes of Evidence 21 June 1995, p. 9

<sup>77</sup> Submission No 5, DHA, Price Waterhouse report, p. 12

## *Public Accounts Committee*

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undermined our ability to encourage an alternative commercial operator to come in and spend, say, \$50 million to \$75 million, which would be an appropriate amount of money.<sup>78</sup>

The Committee notes, however, as was pointed out above (page 13), that Mr Jones had advised the Chairman in December 1989, while considering the previous request for an extension of time from Uras, that his initial response was that the extension not be granted and the site be allowed to revert to the Authority. He went on to say that he softened this position because of the “need to maintain some momentum [on the site]” and because of Uras’ longstanding involvement in the Darling Harbour Project. He makes no mention of a legal obstacle.<sup>79</sup>

In October 1990, in the midst of negotiations following the notice of default, Sly and Weigall, the Authority’s solicitors, sought legal advice on the Authority’s obligations to again call for expressions of interest if Uras’ involvement or interest in the project were reduced. The advice to Sly and Weigall was that, should the agreement be terminated or Uras’ involvement be substantially reduced, it would be legally prudent to again call for expressions of interest.<sup>80</sup>

More importantly and critically, Sly and Weigall advised the Authority in June 1990 (that is as the June deadline was approaching):

that “... in the event that the Conditions are not complied with it would be appropriate to terminate the Agreement to Lease on the basis that Merlin would be in breach of Clause 4 of the Deed of Variation of the Agreement to Lease dated 16 February 1989... Following a termination of the Agreement to Lease the Authority would be at liberty to negotiate a lease and development program for the Darling Walk site with new parties”.<sup>81</sup>

The advice went on to say that certain procedures would need to be followed and that “principles of law such as waiver, estoppel, reasonable notice and ‘time of the essence’ should be considered”<sup>82</sup>. The advice also canvassed the issue of damages and concluded that “a breach by Merlin will also give rise to a claim for damages by the Authority against Merlin”<sup>83</sup>.

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<sup>78</sup> Minutes of Evidence 21 June 1995, p. 14

<sup>79</sup> Memo dated 12 December 1989, to Chairman from General Manager

<sup>80</sup> Memo dated 26 October 1990, to Sly and Weigall from I Ellis-Jones

<sup>81</sup> Letter dated 15 June 1990 from Sly and Weigall to Darling Harbour Authority management, p1

<sup>82</sup> Letter dated 15 June 1990 from Sly and Weigall to Darling Harbour Authority management, p4

<sup>83</sup> Letter dated 15 June 1990 from Sly and Weigall to Darling Harbour Authority management, p4

## *Darling Harbour: Sports Facilities*

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The Committee finds the advice from the Authority's solicitors compelling. While the advice identifies legal issues to be considered, it does not suggest that the Authority would be ill advised to pursue the matter in the courts. Indeed it suggests that far from Haysons suing the DHA, it was open to the DHA to sue Haysons for breach. The Committee would not wish to be encouraging frivolous or trivial legal action, but it has received no evidence that the problems on the site were the fault of the Authority. Accordingly, the Committee is of the view that the Authority could have pursued its legal rights more vigorously.

If the Authority had followed the advice of its own solicitors to the effect that legal action was open to it, one result could have been that the Authority would not have been constrained in seeking another developer. A better deal for the Authority might have resulted.

The Committee thus treats with some reservations this first DHA argument for not seeking another developer.

### *(b) Lack of potential developers*

The Authority suggested that in the prevailing economic climate, it would have been "impossible" to find "an alternative developer in those days", it being "... a very difficult climate in which we were then operating".<sup>84</sup>

The Price Waterhouse review supported this position, stating that "the economic climate in the late 1980's / early 1990's was such that it was exceedingly difficult to find alternative developers for the site"<sup>85</sup>. In evidence, the difficulties of the economic climate were again stressed:

**Mr FEELY:** I would agree with it, and I shall explain why. My experience with Price Waterhouse—I audited a number of banks. I know what the banks were going through in 1990 and 1991. They simply were not prepared to lend for that type of development. It would have to be a fairly first-class facility with minimal risk for them even to consider it. They had so much exposure. So the evidence and my experience suggest that it would have been very difficult to get finance.<sup>86</sup>

In its submission to the inquiry, Keys Young state that "the city's 'boom/bust' cycle of development in the 80's and 90's produced many abandoned sites".<sup>87</sup>

The Authority also felt constrained from advertising for alternative developers because of its

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<sup>84</sup> Minutes of Evidence 21 June 1995, p. 12

<sup>85</sup> DHA Submission No5, Price Waterhouse Report, p. 13

<sup>86</sup> Minutes of Evidence 21 June 1995, p. 42

<sup>87</sup> Keys Young, Submission No. 2, p. 1

*Public Accounts Committee*

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existing contractual obligations with Uras. It had, however, endeavoured, in a determined but informal manner, to find an alternative developer for the site, according to the Authority:

**Mr GRAHAM:** We did seek at that time, in recognition that a potential problem was emerging, to engage in discussions with many of the substantial international entertainment operators, but we were unable to attract any interest in any expansion of business in the economic climate that then prevailed.

**Mr TRIPODI:** Do you have any documentation of those attempts to engage other businesses?

**Mr GRAHAM:** There would be board discussions, but otherwise you can call other board members who would be able to report on the discussions that were initiated with various parties.

**Mr TRIPODI:** There were no advertisements placed anywhere about expressions of interest?

**Mr GRAHAM:** We could only do it informally because we had a contractual obligation with Uras. Certainly we had approaches from Greater Union, the possibility of it undertaking development of a theatre-based operation on that site as an alternative. My diary would show a number of times when meetings took place in that regard. One of our then directors, Peter Charlton, had contacts with the Disney people and sought to involve them in some discussions. There were a number of areas pursued, but it had to be done informally because we could only present that as an opportunity to the lessee as an alternative way for it to progress its contractual rights.

**Mr JONES:** I had discussions with Disney in Orlando in the subject.<sup>88</sup>

According to Authority records, in mid June, an interested party was “willing to pay a substantial sum in consideration of either being granted a new lease over the Darling Walk land or the current lease being assigned to the third party”.<sup>89</sup> The Authority informed the Committee that this was the approach from Greater Union referred to by Mr Graham in evidence above. Mr Jones states that the “preamble to Sly and Weigall’s letter of 5 June 1990 (quoted just above) did not accurately reflect the situation”. However, the General Manager was not able to “remember the precise reasons why the proposal did not come to fruition”.<sup>90</sup> According to Greater Union, it did not ultimately pursue this project because it had concluded it would be “economically unviable”.<sup>91</sup>

There was, therefore, some interest in the site and the Committee must question the Authority’s approach to this issue. While the Authority claims that its inquiries had shown there was little interest at that time in developing the site, this was never genuinely tested in through public advertisement. The DHA’s inquiries appear somewhat informal and desultory

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<sup>88</sup> Minutes of Evidence 21 June 1995, p. 12

<sup>89</sup> Letter dated 5 June 1990, from Sly and Weigall to Terry Jones/Di Talty, DHA

<sup>90</sup> Letter dated 6 July 1995, from General Manager, DHA, to Public Accounts Committee

<sup>91</sup> Phone discussion Committee Secretariat and Managing Director, Greater Union, 13 July 1995

when compared to a full scale public search. A more formal, public, world-wide process (particularly in the light of Mr Jones' comments on the need for the development to be related to overseas theme parks) may have identified a potential developer who would have satisfied both the needs of Uras and the Authority. The Darling Harbour Authority does not appear to have discussed this approach with Uras, an approach which may have been mutually beneficial to both parties, nor did the Authority appear to seek further legal advice on its right to advertise, for it certainly has not supplied the Committee with any such advice.

Ultimately, Uras' continued involvement in the development, secured in part at least by the Authority's fear of prolonged legal action, has not resulted in any tangible result for Uras' financier nor the public. As Mr Hayson conceded to the Committee, his bank will receive \$4.5 million for the assignment of the lease to Jacfun, which is considerably less than the \$35 million expended on the site.<sup>92</sup>

Again, therefore, while broadly accepting that the recession may have created a difficult climate, the Committee treats this second DHA argument for not pursuing another developer with some reservations, on the grounds that possible world-wide interest was never formally tested.

*(c) Limited Time*

In the Authority's submission to the inquiry it is argued that, even if the factors detailed above had not been a consideration, the search for an alternative developer would have caused a considerable delay for "... if a developer could have been located the time taken to go through the design process would have meant that another considerable length of time would have elapsed before construction was underway".<sup>93</sup> This was a view that Mr Feely, from Price Waterhouse, expressed again in evidence:

**Mr FEELY:** Yes, primarily because the banker and the developer must be found, and they then must come up with a suitable design. To find a developer and immediately give him the plan on the table involves a big assumption that the developer would pick up the plan and run with it. If you had asked Mr Hayson about the changes made to his plan from 1988 until today, they would have been many given that the idea was for a state of the art technology theme park.<sup>94</sup>

The Committee notes, however, in considering the assignment of the lease from Parry Corporation to Uras in January 1988, the previous Board of the Authority originally concluded the termination of the lease and the call for expressions of interest was the "most appropriate" course of action (see above p.10) and that the calling for expressions of interest

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<sup>92</sup> Minutes of Evidence, 21 June 1995, p. 31

<sup>93</sup> Submission No. 5, DHA (Price Waterhouse report)

<sup>94</sup> Minutes of Evidence, 21 June 1995, p. 38

would delay the matters for some four to six weeks. This estimate proved to be accurate, for the lease was assigned to Uras in January 1988 and the agreed changes to the project, changes which all parties were aware of at the time of the assignment, were incorporated in a new Agreement for Lease in March 1988. In the circumstances under consideration, 9 months elapsed between the Authority's notice of breach to Uras and the new Agreement for Lease.

The Committee is, therefore, not swayed by this third DHA argument either.

To sum up, the Committee is not fully convinced by any of the three arguments put by the Authority for not seeking an alternative developer of the site. Ironically, the Authority now finds itself adopting this very approach in considering the assignment of the lease to Jacfun/Sega.

### **(iii) Negotiate a new arrangement with Uras**

The Authority continued to stress in correspondence that its "primary objective [was] to see Uras Holdings Pty Ltd meets its obligations under the existing agreements".<sup>95</sup> While the Authority was entitled to take possession of the site on 15 November 1990 (if no remedy was made), negotiations continued and the Memorandum of Understanding was signed on the 29 November and the Agreement for Lease on 3 July 1991.

The Authority attempted to find a solution which would resolve both its short-term and long-term problems with the site by renegotiating an agreement with Uras. Mr Graham explained the rationale for this at Committee hearings:

**Mr GRAHAM:** ... We expressed our concerns and we determined that the way to protect the interests of the authority was to set deadlines for performance. It was, in fact, the non-performance by the lessee that led us to say, "In those circumstances your rights to continue to develop this site in the way it has been anticipated will have to be terminated." We removed from the total site available to the lessee approximately one-third of the land area from its leasehold interest and left it with a residual right to come forward with a proposal to achieve the original master plan goal within Darling Harbour for an entertainment theme park in that area.<sup>96</sup>

The Authority formed the view that the best solution lay in negotiating a new agreement with Uras, based in part on a belief that the expenditure to date would ultimately force the project to completion:

**Mr GRAHAM:** I think we expected that a proposal would emerge driven by either the mortgagee or the lessee, because the mortgagee had indicated to us that it had advanced a substantial amount, I think possibly \$30 million-odd, on the basis of this

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<sup>95</sup> Letter dated 23 October 1990 from DHA to Uras financier

<sup>96</sup> Minutes of Evidence 21 June 1995, p. 9

## *Darling Harbour: Sports Facilities*

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site. We had just shrunk the site to approximately two-thirds of the land area it originally had at its disposal. It was our view that the mortgagee, which was a major Australian bank, would ensure that at some stage an attractive proposal would be able to be presented to the authority. However, I think the authority took a realistic view and said that the arrangements would have to go before the authority by June this year so that the authority would not be left with an open-ended situation with no certainty of outcome.<sup>97</sup>

The Committee raised with the Authority the rationale for continued negotiations with a developer whom the Authority had considered to be unlikely to complete the project:

**Mr GLACHAN:** Mr Graham, you said earlier that you had some doubts about the lessee's abilities to fulfil its promises. Why did you go ahead if you had some doubts?

**Mr GRAHAM:** The reality is that we did not go ahead with the proposal that the lessee had in mind. You will recall that the lessee was involved in Darling Harbour at more than just the site—the lessee for the Harbourside Festival Markets, an organisation related to the Hayson group. We had been concerned about some issues that were emerging regarding its overall financial capacity to embark upon such a substantial project, and we set the deadlines for the completion of the financing arrangements to bring the project to fruition. Mr Tom Hayson and Mr Ian Hayson continuously assured the authority that there would be no problems of any kind in bringing the project to fruition.<sup>98</sup>

The negotiating position taken by the Authority, in reaching agreement with Uras, was generally regarded as hard by both Haysons and Price Waterhouse. Mr Hayson told the Committee that “from a business point of view I think that the new board has been very hard-nosed all along the line”<sup>99</sup> and Price Waterhouse reported that the Hayson Group and its bank “saw the negotiated deal as being extremely tough, especially as the Stage 3 development (the area of the Darling Walk site that was considered to be the most financially attractive) had been removed from the site”<sup>100</sup>. This component of the new arrangement was regarded as particularly onerous. Tom Hayson told the Committee he was “hostile” over it<sup>101</sup> and Ian Hayson, chief executive of Merlin, called it an “unconscionable act”.<sup>102</sup>

It may, however, be simplistic to see the negotiations as one-sided. The Authority had always

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<sup>97</sup> Minutes of Evidence 21 June 1995, p. 9

<sup>98</sup> Minutes of Evidence June 21, pp. 8, 9

<sup>99</sup> Minutes of Evidence, 21 June 1995, p. 30

<sup>100</sup> Submission No5, DHA, Price Waterhouse Report, p. 14

<sup>101</sup> Transcripts of Evidence, 21 June 1995, p 26

<sup>102</sup> Letter dated 19 November 1990, from Ian Hayson, Chief Executive, Merlin International to Chairman, DHA



been very conscious of Hayson's long-term involvement in, and, therefore, importance to, the overall Darling Harbour project. Mention has been made above of the General Manager's view in late 1989, that an extension should be considered for the Darling Walk development "in view of Merlin's longstanding involvement in the Darling Harbour project" (see page 14) and the Chairman's desire to support Haysons in light of Haysons continued support for the Darling Harbour project (see page 14).

The Authority was also aware that the recession had the potential to place developers such as Haysons in difficult situations. As described by Price Waterhouse "The Hayson Group was involved in a number of the Authority's projects as well as other State developments such as Manly Wharf and Skygarden. There was concern that calling the default on the Darling Walk site would have caused a 'domino effect' on these other projects".<sup>103</sup> In evidence Mr Feely (Price Waterhouse) told the Committee that he was "sure" that the "collapse of the [Hayson] group would have been detrimental to Darling Harbour".<sup>104</sup> The Committee is of the view that Uras was then able to exercise some pressure in its negotiations with the Authority and, in fact, it was Hayson's financial weakness which was its strength in dealing with the Authority.

While the Committee does see some merit in this argument, it has not been generally convinced by the Authority's case for not pursuing another developer for the reasons outlined on pages 29-34 above.

## **B. INTERIM USE 1991 - 1995**

### **(i) General Aspects**

The agreement reached in 1991 included provision for the rehabilitation of the site and its interim use.

By 1990 much of the Darling Harbour project had been completed yet the Darling Walk site remained a construction area. Mr Jones described the site to the Committee:

**Mr JONES:** It was disgusting.

**Mr GLACHAN:** How disgusting?

**Mr JONES:** Firstly, Uras had commenced construction. It had dug the site over. It was a sandy-coloured clay. Foundations had been erratically placed all over it. Building material was scattered higgledy-piggledy all over the place. An old disused theatre, used by local vandals for dumping motor cars, was surrounded by a most unattractive hoarding. I can provide you with a photograph of the site, if you would like to see it.

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<sup>103</sup> Submission No5, DHA, Price Waterhouse Report, p. 13

<sup>104</sup> Minutes of Evidence 21 June 1995, p40

## *Darling Harbour: Sports Facilities*

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**Mr GLACHAN:** What would have happened had you left it like that?

**Mr JONES:** It would have been a disgrace.<sup>105</sup>

As a consequence the Authority negotiated an agreement which included an arrangement for the short term, interim use of the site. In fact, the rehabilitation of the site was the imperative which drove the 1991 agreement. This interim use of the site was a concept developed by the Authority to improve an unsightly construction area while at the same time providing the developer with time to raise the necessary capital to carry out the construction of the project at a future date. According to Mr Graham, the principle behind the interim use concept was the 1989 Board's overall objective in Darling Harbour of "optimising the utilisation of the site". In so doing the site "needed to be presented in a favourable way; namely, that it be clean, safe and attractive...". However, the Darling Walk site as inherited by the Board in 1989 "was totally inconsistent with meeting that objective because the strategic location and the site scale were such that it had an adverse impact on public presentation and the general atmosphere within the site as a whole".<sup>106</sup>

In keeping with this strategic approach, the Authority was focused on reducing the impact of the site on other operations at Darling Harbour:

**MR GRAHAM:** ....The purposes we were focused upon were the total wellbeing of Darling Harbour and overcoming what was clearly a major impediment in terms of the presentation of Darling Harbour to the city and to the State. With a major construction site sitting in a very unattractive fashion in the middle of Darling Harbour, our concern was to overcome that problem. For a period it would be a facility which would add to the public amenity .... it was seen as an important aspect in overcoming this eyesore, this fairly substantial area of the authority's land, so that other projects could be on-site activities and other development projects could be attractively pursued<sup>107</sup>

This goal, as described by Mr Jones in evidence, was achieved through negotiation of a financial contribution with Uras:

**Mr JONES:** I think the philosophy and the outlook of the board was as Mr Graham has enunciated in that it had a primary concern which was to be achieved. The method of achieving it was to negotiate with the potential lessee the amount of money available for rehabilitation or interim use and then to find an interim use that was affordable and appropriate for the site.<sup>108</sup>

In its submission to the Committee, Keys Young, masterplanners, urban designers and "architectural

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<sup>105</sup> Minutes of Evidence 21 June 1995, pp 10, 11

<sup>106</sup> Minutes of Evidence 21 June 1995, p. 17

<sup>107</sup> Minutes of Evidence 21 June 1995, pp. 6,7

<sup>108</sup> Minutes of Evidence June 21, p. 20

designers of the Sporting Facilities under review”, labelled the Darling Walk a “bomb-site” and argued that “it was entirely appropriate to provide short-term visual improvements to a dormant construction site that would otherwise remain an eyesore and an unpleasant barrier between Darling Harbour and the city”.<sup>109</sup>

In an article in *Designink*, the Authority’s interim development was described as “an economical, realistic and useful solution” which adopted a “highly innovative approach” to upgrade the site.<sup>110</sup>

The Committee is aware that such an interim use of sites is now being employed as a temporary solution to unsightly, undeveloped sites in the city. The City Council supports this approach and the Committee acknowledges the innovative approach taken by the Authority in this regard.

The article in *Designink* stresses the intentionally temporary nature of the design so that public expectations would not be dashed when the temporary use of the site was finished. This, however, has not been the case.<sup>111</sup> Although, according to Mr Jones, “the courts have never been fully utilised”<sup>112</sup>, the interim use of the site has been very successful, as suggested by the apparent community support and patronage the complex received. The Authority conceded that it did not emphasise enough the temporary nature of the site:

**Mr JONES:** I believe that the concept, the policy and the philosophy we pursued were correct. The thing that I did not do was to keep informing the community that what was there was temporary and interim. During the first six months that it was set up we constantly spoke about it. Whenever it was mentioned we referred to "interim, temporary and short-term use". We should have made sure that the community was fully aware of the fact that the facility was temporary, that it was not funded by the public sector and that at some time it would have to go. We failed that public relations test.<sup>113</sup>

The Committee notes that the use of the site as a sports facility did not comply with the Darling Harbour master plan current at the time of the construction of the sports facilities. However, the use of the Darling Walk site for sports facilities or a theme park complies with the current master plan objective of giving a high priority to increasing sporting and entertainment land uses within the Darling Harbour area.

Based on the evidence before it, the Committee has formed the view that, at the time Uras failed to meet its 30 September deadline, the Authority’s rehabilitation of the site for an interim (short-term) period was a reasonably sound, and in fact, innovative, solution, one that has been adopted on other failed sites in the CBD.

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<sup>109</sup> Submission No 2, Keys Young, p. 1

<sup>110</sup> *Designink*, No 11, December 1992, pp. 14 -17

<sup>111</sup> *Designink*, No 11, December 1992, p. 17

<sup>112</sup> Minutes of Evidence 21 June 1995, p. 23

<sup>113</sup> Minutes of Evidence 21 June 1995, p. 15

However, the failure of Uras to ultimately be able to complete the development, even with the extension in time the interim use provided, suggests that, without Segal, the Authority merely postponed rather than solved the problem.

In addition, the need to find this solution in the first place had arisen from the Authority's earlier strategy of persevering with Uras even when it had failed to meet a number of deadlines.

## **(ii) Financial Considerations**

### *(a) The Private Sector's \$5 million Contribution*

Under the terms of the 1991 agreement, the developers, or more precisely, the developers using funds borrowed from their bank, were to provide the Authority with \$5 million to be used specifically for the purpose of rehabilitating the site and developing it for an interim use. Anything unexpended was to be returned to the developer and any costs over \$5 million would have to be provided by the Authority (see page 19).

According to Mr Jones, the specific, conditional nature of the expenditure was an important factor in arriving at an agreement. In his submission to the inquiry he states that:

Uras' Director of Finance, Mr Ross Laurie, expressed strong concerns on this issue in the very final stages of negotiation, indicating that it was critical to Uras' considerations that the Authority was not intending to pay lip service to the interim use concept and subsequently retain the funds. I personally gave Laurie an undertaking that the Authority would convert the site for the interim use and that any money not expended would be returned to Uras.<sup>114</sup>

This view was reaffirmed in evidence:

**Mr JONES:** ...That started the train of thought that the money could have been used for anything or retained by the authority. In fact, that was not the deal. The last agreement I came to with Mr Laurie was followed by a handshake, and this is the only handshake deal I have done since I have been with Darling Harbour. The money would be used only on interim use facilities, and any additional money would be given back.<sup>115</sup>

According to Price Waterhouse, it was pressure from Uras' bank which ensured that the \$5 million contribution was solely for the development of the interim use. "The Bank provided the funds" and held the view that the funds should be used to improve the site "to promote the

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<sup>114</sup> Submission No. 5, Darling Harbour Authority, p. 2

<sup>115</sup> Minutes of Evidence 21 June 1995, p. 17

community service aspect of the rehabilitation, especially if this were to increase the value of the site". Furthermore the bank was faced with "a credibility issue" of justifying further funds to an organisation with considerable exposure. "Enhancing the asset base", through the rehabilitation of the site, was seen to be such a justification. Accordingly, the Authority did not "vigorously pursue" the unconditional receipt of the funds.<sup>116</sup>

Haysons, on the other hand, were not concerned with how the funds were spent. According to Price Waterhouse, the Hayson Group was of the view that "the \$5 million could have been spent on anything the Authority wished".<sup>117</sup>

Mr Graham rejected Mr Tripodi's suggestion that the \$5 million was a payment to the Authority for allowing the developer to "start the project a lot later than initially planned". It was a matter of being pragmatic:

**Mr GRAHAM:** I do not think you can express it that way. The bank, rather than the lessee, really paid the \$5 million. The bank provided the cash to protect its position. It had the opportunity to create longer term value in a fashion which would be approved by the Darling Harbour Authority. This payment gave the bank a chance to wait until the economic cycle had improved to improve the commercial opportunities for the development on the site. One must be realistic. At the time it was possible that, during the period until the middle of this year, if the economic cycle had not improved the parties could have approached the authority and said, "We are unable to put before you a development which meets your strategic views regarding the use of this site. Can we renegotiate a continuation of these interim use facilities?" One has to be practical. At the time we made a decision which we thought put the authority into a very good commercial position and protected its long-term wellbeing by setting deadlines which appeared to be realistic at the time. Certainly, the deal met the strategic objectives of the authority about how it could present Darling Harbour for the benefit of the community.<sup>118</sup>

And later:

**Mr GRAHAM:** I do not think that there was ever a suggestion that what the lessees, with the support of their financiers, were providing was an amount of \$5 million as a fee; what they were providing was an ability for the authority to rehabilitate the site and establish an interim use facility, but that was to be done within a total cap of \$5 million.<sup>119</sup>

In correspondence to Uras' bank in January 1991, Mr Jones pointed out that the DHA was

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<sup>116</sup> Submission No 5, Darling Harbour Authority, Price Waterhouse Report, p. 14

<sup>117</sup> Submission No 5, Darling Harbour Authority, Price Waterhouse Report, p. 14

<sup>118</sup> Minutes of Evidence 21 June 1995, p. 18

<sup>119</sup> Minutes of Evidence 21 June 1995 p. 21

## *Darling Harbour: Sports Facilities*

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“keen to pursue the rehabilitation of the Darling Walk site as soon as possible as a means of partially compensating for the income not received because the site has not been developed”.<sup>120</sup> The Authority in evidence, however, claimed that it was not some form of compensation:

**Mr GLACHAN:** Did you take that \$5 million believing that it would never be able to exercise that right?

**Mr GRAHAM:** No.

**Mr GLACHAN:** Hoping that you would get the \$5 million?

**Mr GRAHAM:** No. The \$5 million was the financial cost to the lessee, but from the authority's point of view it was always seen as benefiting from a total change in the quality and value of that area at no cost to the authority, to which we ascribed a monetary cost of up to \$5 million.

**Mr GLACHAN:** Did you think you would get that \$5 million and that the lessee would not be able to exercise its option?

**Mr GRAHAM:** No, not necessarily. I do not think we had that in mind at all. You must recall that at the time these negotiations were taking place the whole of the Australian financial market and the property market were increasingly under distress and there were concerns—

**Mr GLACHAN:** That being the case, did you ever think the lessee would never be able to exercise its option?

**Mr GRAHAM:** It was certainly not a primary objective. One has to be practical in these circumstances.<sup>121</sup>

Mr Jones told the Committee that Uras, even though it was in default, wanted to “remain on the site and were willing to pay for it”.<sup>122</sup>

Legal advice to the Authority in June 1990 had raised the issue of damages, Sly and Weigall having advised that

in addition to any termination of the Agreement to Lease, a breach by Merlin will also give rise to a claim for damages by the Authority against Merlin. It would appear that Merlin's breaches have resulted in a delay of around two years in the development of the Darling Walk site and have effectively delayed obtaining rent ...Consequently, it is our opinion that appropriate damages in respect of Merlin's breach would be something in excess of two years rent on the entire Darling Walk site.<sup>123</sup>

In evaluating the approach taken by the Authority to the application of the developer's

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<sup>120</sup> Letter dated 25 January 1991, from Terry Jones, to Uras' bank

<sup>121</sup> Minutes of Evidence 21 June 1995, p. 9

<sup>122</sup> Minutes of Evidence 21 June 1995, p. 12

<sup>123</sup> Letter dated 15 June 1990, from Sly and Weigall to Darling Harbour Authority, p. 4

contribution to the rehabilitation of the site, the Committee has considered the rehabilitation in two components parts - passive and active. These components can be identified as part of the evolution of negotiations which culminated in the 3 July 1991 agreement.

At the Memorandum of Understanding stage, it would seem that the use of the site on an interim basis was to be passive in nature - that is, the site was to be rehabilitated to a state suitable for passive recreation or, simply, "grassing the site", in the words of Mr Graham<sup>124</sup>. It was agreed in the Memorandum of Understanding that Uras' bank would provide up to \$5 million "to reinstate and landscape the Stage II site, as required by the DHA.... Expenditure would be limited to that initially required to remove or conceal works not required during the interim period, rehabilitate those works which remain, landscape the site and increase public safety in the vicinity of the lake as directed by the DHA".<sup>125</sup>

However, this concept quickly expanded into a more active use of the site. The Committee has received no evidence or documentation giving the reasons behind this significant change.

The Authority sought expressions of interest for the short-term use of the site in January 1991. This approach was ratified in the Agreement for Lease signed on 3 July 1991, which states that the Lessee would pay the Lessor up to, but not exceeding, \$5 million for "the costs of improving the Land by converting the Land from its current condition to a condition acceptable to the Lessor (in the Lessors absolute discretion) for use by the public and/or the Interim User".<sup>126</sup>

According to Price Waterhouse, the cost of rehabilitating the site for passive recreation alone was estimated at \$2.5 million, and the cost of the development of the sporting facilities a further \$2.5 million.<sup>127</sup>, figures with which the Authority agreed.<sup>128</sup> These two components represent the total \$5 million contribution made by the developer. It should be noted, however, that the total rehabilitation of the site cost \$5,238,000, (see page 13) and as \$5 million was the maximum contribution from the developer, the Authority provided the balance.<sup>129</sup> (This is further discussed below by the Committee, see pages 48-49)

This breakdown of the project for analysis into these two components is not considered by the Authority as the appropriate method of assessing the issue. In evidence the Chairman

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<sup>124</sup> Minutes of Evidence, 21 June 1995, p. 7

<sup>125</sup> Memorandum of Understanding, November 1990, p. 2

<sup>126</sup> Lease of Agreement, 3 July 1991, p. 6

<sup>127</sup> Submission No 5, DHA, Price Waterhouse Report, p. 14

<sup>128</sup> Minutes of Evidence, 21 June 1995, p. 4

<sup>129</sup> Letter dated 15 April 1995, from General Manager to Minister Knight

explained

**Mr GRAHAM:** My position is different to that I am afraid, in that it was never a \$2.5 million project from the position of the board of the authority. It was one \$5 million project of a total integrated capital nature. That \$5 million was to be spent in order to transform the land area from an unattractive construction site to a useful interim sporting facility at a cost of \$5 million. The important thing from the perspective of the board of the authority was that it would not be called upon to make material financial contributions to achieve that increase in the quality of Darling Harbour and to allow the Darling Harbour Authority to continue to meet broader objectives. The differentiation of the component part of \$2.5 million, which you have foreshadowed in approximate terms, was the cost of grassing the site. The other part of the \$2.5 million in approximate terms was the cost of capital improvements on the site, which may well be true as a matter of fact. The intention of the authority at the time was that it was a \$5 million project from which there would be no net cash return.<sup>130</sup>

The Committee, however, is of the view that this two-step approach can be useful in evaluating the appropriateness of the financing.

The Authority's view that the \$5 million was a single, "integrated" payment leads it to the conclusion that it had no discretion in using the \$5 million contribution, as Mr Graham told the Committee in evidence:

**Mr GRAHAM:** ....what they were providing was an ability for the authority to rehabilitate the site and establish an interim use facility, but that was to be done within a total cap of \$5 million. I do not think it was discretionally available for the authority to say, "Here is \$5 million available for such purposes as the authority thinks fit." It was negotiated exclusively on the understanding that that would be the purpose to which the moneys were put, and it was to be up to \$5 million.<sup>131</sup>

The Committee agrees the rehabilitation of site (in a passive sense) at a cost of \$2.5 million was not discretionary. The Authority was obliged to carry out this work and, indeed, was very much determined to do so, ensuring in the process that the it was financed by Uras. However, the provision of an interim use, following the basic rehabilitation, was discretionary. The Authority could have stopped the rehabilitation at the passive stage, for the 1991 Agreement provided the Authority with the discretion to further develop the site "for the use by the public and/or the Interim User".

Thus the Authority did have the discretion to proceed with the active development of the site for the use of an "Interim User" and had \$2.5 million available from the developer for such a project and, having decided to proceed, the Authority had absolute discretion on the nature of

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<sup>130</sup> Minutes of Evidence 21 June 1995, p. 7

<sup>131</sup> Minutes of Evidence 21 June 1995, p. 21



the interim use. As Mr Graham told the Committee, the bank provided the money “to rehabilitate the site and create the interim use amenity which we as an authority determined”.<sup>132</sup>

From this it can be seen that the Authority’s discretion was limited to the nature of any active development on the site. If no development took place, the Authority would not have received the (second) \$2.5 million. Clearly the arrangement entered into in July 1991 created an incentive for the Authority to spend the entire \$5 million.

While the Committee understands that Uras’ bank was reluctant to ratify any agreement which would have meant handing over \$5 million to the Authority, without some say in how it was used, the Committee is reservations about this aspect of the option arrangement, which greatly reduced the discretion of the Authority in determining the optimal use of the contribution. Furthermore, it suggests that the Authority was not in as powerful a bargaining position as has been argued before the Committee.

In the end, the Authority determined to develop as a commercial operation, a proposal for a sports complex put to it by GamePlan Leisure Concepts at a cost of \$2.5 million and funded by the developer.

*(b) Actual vs Projected Returns*

In selecting GamePlan from the five short listed proposals, the Authority considered a number of factors, particularly affordability and appropriateness:

**Mr JONES:** I think the philosophy and the outlook of the board was as Mr Graham has enunciated in that it had a primary concern which was to be achieved. The method of achieving it was to negotiate with the potential lessee the amount of money available for rehabilitation or interim use and then to find an interim use that was affordable and appropriate for the site. I mentioned earlier that we had about 10 proposals. The most prosperous of those was in fact go-karts, which were put down because, although they would have provided money, they were not an appropriate development. The development we chose was a modified version of that put forward by GamePlan. I was the person involved in negotiating that and looked forward to improving the authority's financial position as it progressed. Unfortunately, tennis lost its popularity, and a various range of other things came along and we did not get the money. But it was not the primary concern of the board.<sup>133</sup>

In fact, the return from the proposal was not considered to be an issue by the Authority. The

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<sup>132</sup> Minutes of Evidence 21 June 1995, p. 21

<sup>133</sup> Minutes of Evidence 21 June 1995, pp. 21, 22

Chairman stressed this point a number of times to the Committee in evidence:

**Mr GRAHAM:** Could I make the point that the view of the board of the authority at the time the assessment was made was that it should not have a net cost to the authority for the operation of the interim use facility. Certainly I never anticipated that we would be receiving a net cash contribution to the affairs of the authority. It would be a self-funded structure; self-funded in the sense that all of the capital cost for putting the interim use facility there in the first place would be met by the lessee. Secondly, the interim use selected by the authority should be self-funding. It was never expected in my view, or in the view of the board as a whole, that it would be a profit-making enterprise in its own right.<sup>134</sup>

and later

**Mr GRAHAM:** ....For a period it would be a facility which would add to the public amenity, but it was not to be a profit-making exercise in its own right. Having said that, I would like to think that every part of the authority's area of operation is conducted with a view to maximising the financial efficiency of all its component parts to the extent that there was an opportunity to create revenue. Obviously we would place a high priority upon that. It was not fundamental or an important assessment in terms of the decision taken that there be a profit arising from the operation of this site.<sup>135</sup>

As part of its proposal to the Authority, GamePlan projected a *Total Net Operating Profit* for the Darling Harbour Sports Venue for Year 1 as \$684,950 and Year 2 as \$827,020 and with "an expected return" to the Authority "over the three years" of "approximate[ly] \$2.5 million".<sup>136</sup>

However, these returns did not materialise. In fact, as the Authority told the Committee in evidence, "the return from the operations of the sports facilities on a net basis has been a negative return of approximately \$50,000".<sup>137</sup> This was confirmed by Mr Feely from Price Waterhouse, who told the Committee that "it may be fair to say that with the benefit of hindsight the expectation with which these financial forecasts were put together - admittedly by the tenderer - were overly optimistic".<sup>138</sup> The Authority has provided a more detailed breakdown of the returns from the interim operations. These are summarised below:

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<sup>134</sup> Minutes of Evidence 21 June 1995, p. 5

<sup>135</sup> Minutes of Evidence 21 June 1995, p. 7

<sup>136</sup> Submission No 5, Darling Harbour Authority, Price Waterhouse Report, p. 15

<sup>137</sup> Minutes of Evidence 21 June 1995, p. 4

<sup>138</sup> Minutes of Evidence 21 June 1995, p. 35

*Public Accounts Committee*

	December 1991 - June 1992	1992/93	1993/94	1 July 1994 - 31 May 1995	TOTAL
Income	\$210,716	\$1,143,160	\$1,341,915	\$824,593	\$3,520,384
Expenditure	\$304,739	\$1,222,751	\$1,268,010	\$844,025	\$3,639,525
Profit (Loss)	\$(94,023)	\$(79,591)	\$73,905	\$(19,432) *	\$(119,141)

\* The Authority noted that “patronage declined rapidly following the announcement in January 1995 of the decision to close the Centre, resulting in a loss of \$41,000 over the last five months”.<sup>139</sup>

Based on these Authority figures, the total loss to the Authority for the operation of the sports complex is \$119,141.

The Chairman pursued the matter of the return on the operations with the Authority at the hearings:

**CHAIRMAN:** I have with me the financial projections for the different sections with the sports venue; .... I have done a rough check through those different categories, and the expected revenue was about \$8.2 million and the expected profit was about \$3 million. That virtually settles the issue of the \$2.5 million being regarded as revenue—the revenue indicated in these figures was \$8 million. By excluding the advertising and depreciation, would the \$3 million not be reduced to the \$2.5 million?

**Mr JONES:** If I provide an answer, I would be guessing.

**CHAIRMAN:** This would explain the \$2.5 million which Price Waterhouse indicates was the expected profit, not expected revenue.

**Mr JONES:** It sounded like it is talking about a return to the authority.

**CHAIRMAN:** As I said earlier, the expected return of \$2.5 million did not materialise and you now expect an approximate break-even result.

**Mr JONES:** Yes.

**CHAIRMAN:** As chairman of the board would you say that anticipating a \$2.5 million profit and ending up with nothing is a prudent financial investment?

**Mr GRAHAM:** As I sought to make the point earlier, as chairman of the board I did

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<sup>139</sup> Letter dated 6 July 1995, from Terry Jones, to Public Accounts Committee p. 2

*Darling Harbour: Sports Facilities*

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not anticipate a profit of material amount on this interim use development at all....<sup>140</sup>

The Committee queried the Authority on its assessment of these financial projections for the interim use of the site, which according to the Authority, “would have been evaluated by the staff of the Authority at the time”.<sup>141</sup> Mr Jones told the Committee:

**Mr JONES:** ....The one selected as the most appropriate—not necessarily the one with the highest return—was the proposal by GamePlan. My way of checking out, or attempting to make sure the proposal was valid, was to contact other people that GamePlan had been associated with. They ran tennis courts in Lane Cove and Double Bay. I rang the town clerk in Double Bay and had a discussion with him about what he expected the return from tennis courts to be, the performance of a particular company, and the arrangements that we were contemplating. I received a reasonable amount of assurance from him that the direction in which we were going was appropriate.

**CHAIRMAN:** Have you any qualified accountants on your staff?

**Mr JONES:** Yes.

**CHAIRMAN:** Qualified accountants would have checked these financial projections?

**Mr JONES:** Yes.<sup>142</sup>

However, no business plan was prepared.<sup>143</sup>

While the Authority expected to obtain a return from the sale of the gym equipment, “which would have a residual value to the Authority at the end of the Interim Period” ... [which] cost could exceed the \$0.2 million contributed by DHA”,<sup>144</sup> it did not expect to recover any of the capital cost of the facilities:

**Mr GRAHAM:** As far as the board of the authority is concerned I do not believe there was any expectation that the capital investment would have a residual value other than a very small residual value which could be attached to gymnasium equipment. With that exception it was not expected that there would be any residual value.<sup>145</sup>

The Authority was also adamant that as long as it did not lose on this commercial operation it

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<sup>140</sup> Minutes of Evidence 21 June 1995, pp. 19, 20

<sup>141</sup> Minutes of Evidence 21 June 1995, p. 6

<sup>142</sup> Minutes of Evidence 21 June 1995, p. 8

<sup>143</sup> Minutes of Evidence 21 June 1995, p. 17

<sup>144</sup> Submission No 5, Darling Harbour Authority, Price Waterhouse Report, p. 16

<sup>145</sup> Minutes of Evidence 21 June 1995, p. 7

was not concerned. The Authority did not see the interim use facility as being part of the financial operation of the Authority, according to Mr Graham:

**Mr GRAHAM:** Could I make the point that the view of the board of the authority at the time the assessment was made was that it should not have a net cost to the authority for the operation of the interim use facility. Certainly I never anticipated that we would be receiving a net cash contribution to the affairs of the authority. It would be a self-funded structure; self-funded in the sense that all of the capital cost for putting the interim use facility there in the first place would be met by the lessee. Secondly, the interim use selected by the authority should be self-funding. It was never expected in my view, or in the view of the board as a whole, that it would be a profit-making enterprise in its own right.<sup>146</sup>

Although the Authority claims that a return from the operation of the sports facility was not a priority, the failure of the Authority to generate a profit ( in fact it incurred a loss) from what was in essence a discretionary commercial operation stands in contrast to Mr Graham's comment to the Committee that he "would like to think that every part of the authority's area of operation is conducted with a view to maximising the financial efficiency of all its component parts to the extent that there was an opportunity to create revenue. Obviously we would place a high priority upon that".<sup>147</sup>

*(c) The Authority's Own \$238,000 Contribution*

The Committee discussed at length the issue of the Authority's \$238,000 contribution to the interim use and sought further information. The Authority informed the Committee that \$206,000 was spent on gymnasium equipment, with \$6,000 on computers and the balance of \$25,000 on various items "considered necessary for improved operation of the centre". According to the Authority, the expenditure on the gymnasium was "discretionary" and was a result of a change to the development in 1992 from an aerobics centre to a gymnasium. This change was adopted because it was considered it would "increase the utility of the Centre" because the new usage (as a gymnasium) "indicated an attractive return". Mr Jones advised the Committee that this amount "was within the General Manager's delegated authority". Thus the expenditure was not referred to the Board for approval, although the Board would have been informed "as part of normal practice".<sup>148</sup>

This is a matter for some concern to the Committee. On a number of occasions during his evidence, the Chairman of the Board stressed that the Authority was more concerned that no DHA contribution be made to the interim use than with generating any return from its operations. For example:

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<sup>146</sup> Minutes of Evidence 21 June 1995, pp. 5, 6

<sup>147</sup> Minutes of Evidence 21 June 1995, p. 7

<sup>148</sup> Letter dated 6 July 1995, from Terry Jones, to Public Accounts Committee p. 1

### *Darling Harbour: Sports Facilities*

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**Mr GRAHAM:** . . . I certainly recall that the concern of the Board was that this be a project funded entirely by the mortgagee and the lessee in terms of its improvements.<sup>149</sup>

Yet the General Manager told the Committee that the expenditure was to “increase the utility of the Centre” and to capture a potentially “attractive return”, which would seem to represent a change in policy for the Authority in the interim use of the site. In other words, it appears that the General Manager was indeed interested in generating a return from the sports facilities. Thus, while the General Manager may have had the authority to approve the expenditure to supplement the developer’s \$5 million contribution, the Committee is of the view that the matter should have been referred to the Board prior to incurring the expenditure.

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<sup>149</sup> Minutes of Evidence 21 June 1995, p. 20.

**PART 4: CONCLUSION**

In determining the appropriateness of the Authority's 1991 decision to construct the sports facility and its method of financing the construction, the Committee has taken into consideration the factors as outlined above.

The Authority Board which concluded the agreement for lease with Uras in July 1991 had only been appointed in 1989, approximately one year before Uras missed its September 1990 deadline. This new board had provided Uras with only one, relatively short, extension from July 1990 to September 1990.

At a time of general economic downturn, the Authority was faced with the difficult problem of resolving how to ensure development of the Darling Walk while resolving the immediate, detrimental effects the incomplete construction site was having on the Darling Harbour area. The Authority's alternatives were to find a new developer or continue some form of contractual relationship with Uras.

The Authority resolved to continue with Uras as the developer, but with a substantially altered agreement. A solution was developed whereby Uras was to maintain its long-term interest in the project while providing, in the short-term, for the rehabilitation of the site upon which an interim use was developed. The Committee finds that, given the circumstances, the Authority's actions in developing an interim solution were appropriate, and commends it on its innovative solution. However, this conclusion is qualified in a number of respects, as follows.

#### **Authority's Relationship with Uras**

The need to find a solution to the problem of the Darling Walk development was caused, at least in part, by the Authority's own actions. The Committee is concerned that the history of the site shows a pattern on the part of the Authority of apparently accommodating the involvement of Uras on the site in preference to making what would have seemed to have been sound commercial judgements. It seemed to the Committee that the Authority was not able to be totally objective with Haysons, who have been so involved in the whole Darling Harbour project since its inception. In the end the Authority merely postponed the resolution of the problem and it has only been the appearance of Sega which has saved the Authority from having to again solve the problem of the Darling Walk site.

#### **Alternative Developer**

The Authority cited three reasons for not finding another developer to take over the site:

- the economic climate at the time, meant there was a shortage of potential developers for the site
- existing contractual arrangements with Uras prevented any public search for a developer
- potential delays which the transfer to a new developer might cause.



The Committee is not totally convinced that these factors would have prevented the Authority from finding a developer. The economic climate was difficult but the Authority had received overtures from at least one interested party. An international search might have identified a number of potential developers. The Authority's own legal advice suggested that the Authority was in a strong legal position and would seem to have had a case for damages.

Furthermore, time was not really the problem the Authority portrayed it as. The significant changes introduced to the development by Uras when it had taken over the site in 1988 had not materially held up the transfer. While the Committee accepts that it would not have been simple to locate a suitable, alternative developer, it is not convinced that the Authority pursued this alternative with real vigour and determination.

#### **Optimal Use of Developer's Contribution**

While the Authority was determined to rehabilitate the site, the Agreement did not compel the Authority to develop an interim use and it could well have been satisfied with the passive development for use by the public at a cost of \$2.5 million to the developer. On the other hand, the Authority entered into an arrangement which limited its discretion in determining the optimal use of the developer's contribution. If, subsequent to the rehabilitation of the site, the Authority did not develop the interim use (that is the sports facilities) it would not have received the remaining \$2.5 million developer contribution.

#### **Lack of Return to the Authority**

The Authority did, in accordance with the terms of the 1991 Agreement for Lease, exercise its option to develop the interim facility, the sports complex, at a cost of \$2.5 million to the developer, and ultimately, \$238,000 to the Authority, even though an important aspect of the interim arrangement for the Authority was that it would not have to make any contribution to this development.

The sports complex was a commercial operation and GamePlan, in its proposal, projected a return to the Authority of approximately \$2.5 million over 3 years. However, the forecast return did not eventuate and the Authority ultimately lost over \$119,000 on its operation. And, except for the gym equipment, the Authority will not recover anything from the capital expenditure on the complex

The fact that the capital for the interim use was provided by Uras does not remove the obligation of the Authority to use it prudently, to act with due diligence and act in a truly commercial way to maximise the returns on all its commercial operations. The Chairman told the Committee that he "would like to think that every part of the authority's area of operation is conducted with a view to maximising the financial efficiency of all its component parts to the extent that there was an opportunity to create revenue".<sup>150</sup> The Committee accepts the Authority's view that a return on the operation was not the "primary concern" in the

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<sup>150</sup> Minutes of Evidence 21 June 1995, p. 7

## *Darling Harbour: Sports Facilities*

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arrangement, as it was considering the overall Darling Harbour issue. However, the Committee believes that there was room to operate the facility in keeping with the principle as enunciated above by the Chairman. This was not applied in these circumstances as the Authority did not appear to adequately analyse GamePlan's projections, nor show any concern when the returns did not materialise.

The Authority sees itself as a commercial business, yet with regard to assessing and operating the commercial sports complex, it did not display the expected commercial expertise. By the end of 1991 the project was 3 years beyond its original completion date, today it is 7 years. To generate some revenue for the Authority in lieu of rent foregone on the site would seem to be sensible commercial approach, that should not have been incompatible with the Authority's primary objective of rehabilitating the site.

### **Summary**

The Committee concluded that, with regard to the July 1991 Agreement for Lease over the Darling Walk, the Authority, when faced with a difficult problem, acted in a determined fashion to achieve its objectives. However, the Committee felt that the Authority in some ways showed that it lacked genuine commercial expertise, particularly with regard to the return it received on the capital investment and operation of the sports complex and with regard to the ability of the Authority to be totally objective in dealing with Haysons.

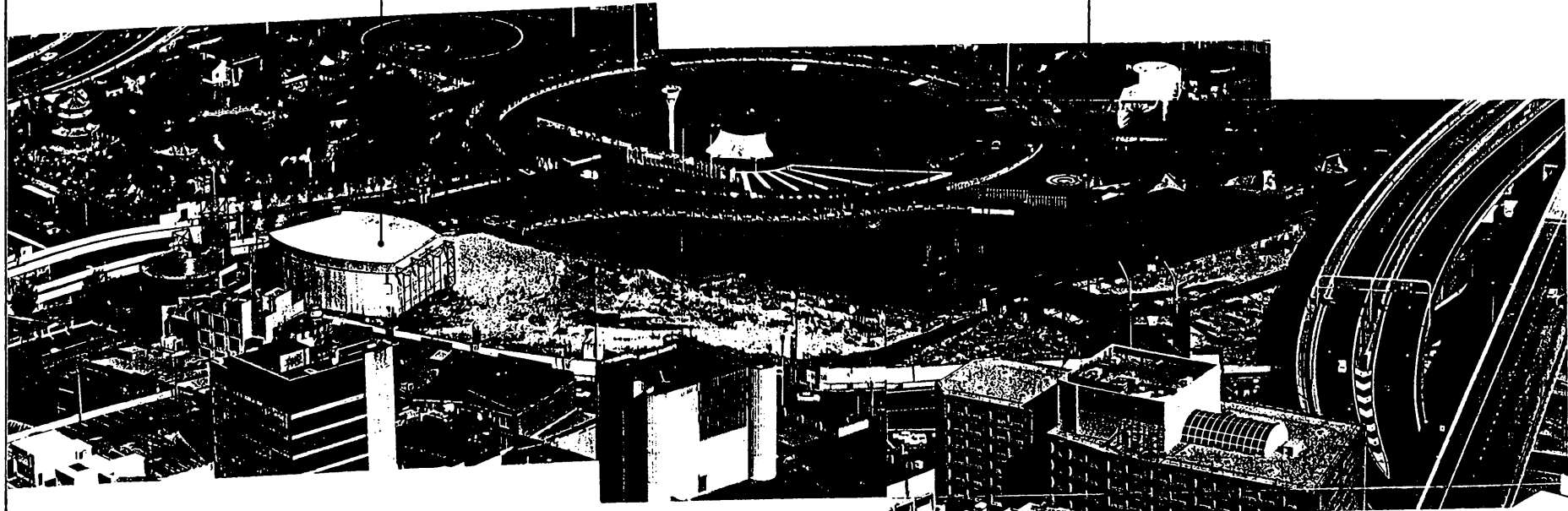
# **APPENDICES**

**Appendix I: Darling Walk Site (under construction)**

*Aerial view of dormant construction site*

*obsolete theatre*

*obsolete pedestrian bridge*



Photograph B

Photograph A



*incomplete and obsolete services installations*

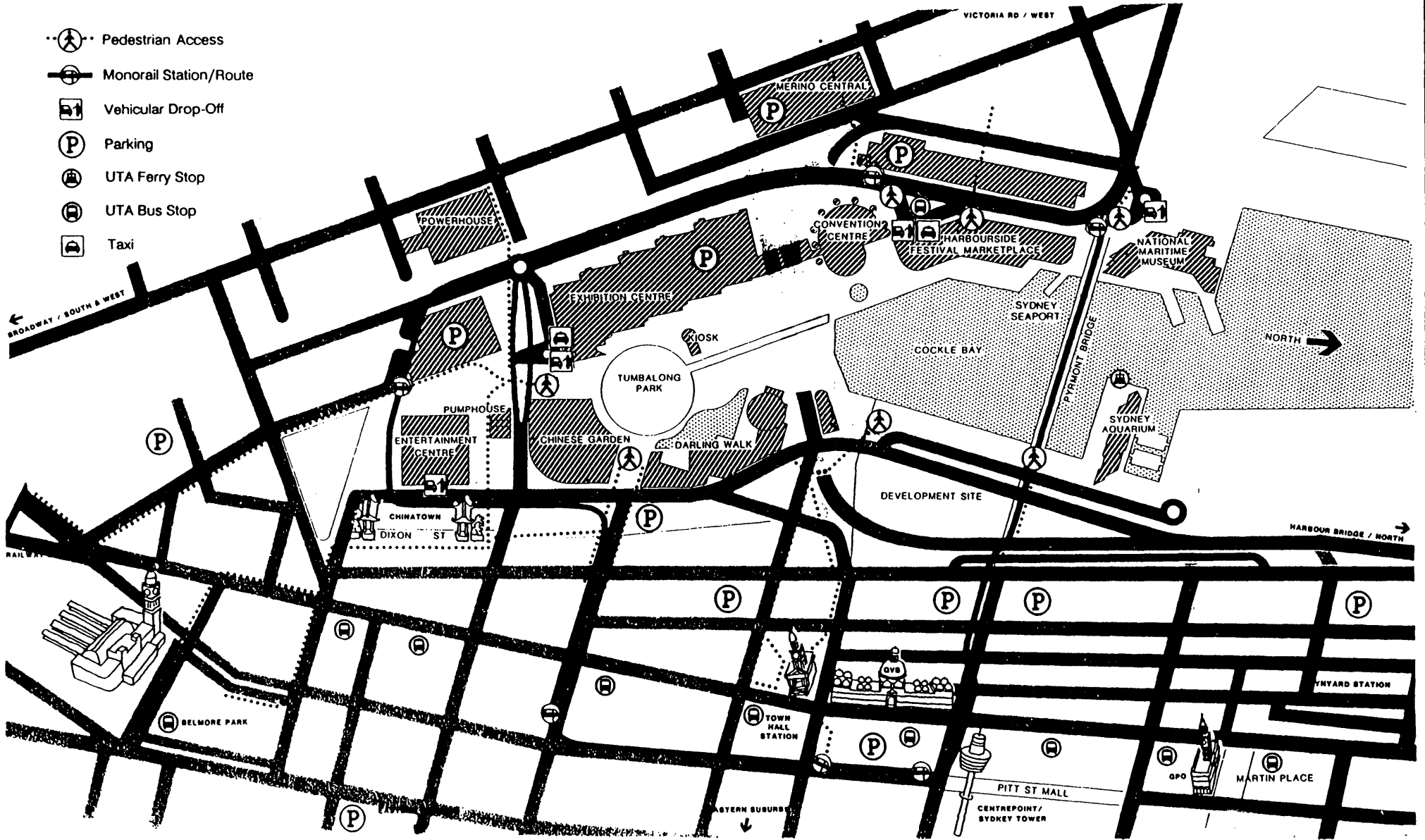
*Ground level view of dormant construction site*

## **Appendix II: Plan of Darling Harbour**



# DARLING HARBOUR

- Pedestrian Access
- Monorail Station/Route
- Vehicular Drop-Off
- Parking
- UTA Ferry Stop
- UTA Bus Stop
- Taxi



## Appendix III: Relevant Company Information

COMPANY	ACTIVITY	DIRECTOR(S)
Jacfun Pty Limited	Shelf Company	Kevin Bermeister Thomas Hayson John Leece John Landerer
Hayson Associates Pty Ltd	Nominee Company	<b>1990:</b> Thomas Hayson Ian Hayson Donald Skinner
Uras Holdings Pty Ltd	Trustee Company for Property Investment Unit Trust	<b>1990:</b> Warwick Condon Alan Eccles Patrick Gocher Peter Jevans Ross Laurie David Lennon Howard Mann Robert Pentecost Gary Vaughan Robert Versey  <b>1995:</b> Thomas Hayson Ian Hayson
Merlin International Properties (International) Pty Ltd		<b>1990:</b> Thomas Hayson Ian Hayson Roger Kohler



## Appendix IV: List of Witnesses

(21 June 1995)

<i>NAME, POSITION</i>	<i>ORGANISATION</i>	<i>PAGES</i>
James Graham (Chairman) Terry Jones (General Manager)	Darling Harbour Authority	2 -23
Tom Hayson (Chairman of Directors)	Uras Holdings Pty Ltd	24 - 23
John Feely (Partner)	Price Waterhouse	34 - 43
John Curtis (Director)	GamePlan Pty Ltd	44 - 48
Kevin Bermeister	Jacfun Pty Ltd/ Sega Ozisoft	49 - 56

## Appendix V: List of Submissions

NO	DATE RECE'D	NAME, POSITION	ORGANISATION
S1	14.6.95	Thomas C. Hayson, Chairman of Directors Uras Holdings Pty Limited	Hayson Group of Companies
S2	14.6.95	Barry Young, Managing Director	Keys Young
S3	16.6.95	Fabian Byrne Art & Design Dept	Staff & students of S.C.E.C.G.S. Redlands
S4	16.6.95	H. M. Saunders [REDACTED] [REDACTED] ay	
S5	16.6.95	T. W. Jones General Manager	Darling Harbour Authority
S6	19.6.95	Brad Drewett	GamePlan Sports & Leisure
S7	22.6.95	Peter Blaxland [REDACTED] [REDACTED]	



# Hayson Group of Companies

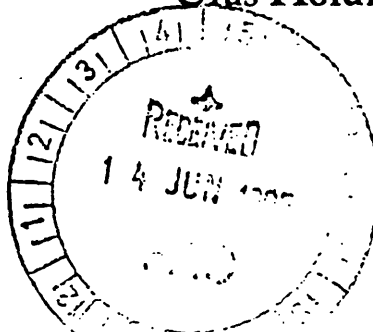
Uras Holdings Pty. Limited

ACN 003 415 094

Office of the Chairman

June 14, 1995

Ms. Patricia Azarias,  
Director,  
Public Accounts Committee,  
Legislative Assembly,  
Parliament House,  
Sydney, NSW, 2000



Fax: (02) 230.2831

Dear Ms. Azarias,

Re: PUBLIC ACCOUNTS COMMITTEE INQUIRY  
DARLING HARBOUR SPORTING FACILITIES

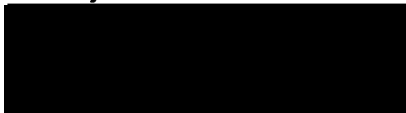
We thank you for your letter of 7 June 1995, stating that "the Committee has asked me to bring this matter to your attention so that you can make a submission should you wish to do so."

The commercial and legal arrangements between Uras and the Darling Harbour Authority are encompassed in the agreement dated 3 July 1991 and we are not aware of any information not contained in this agreement that would be relevant to your Committee.

Uras was not in a position in 1991 to dictate terms to the Authority either in relation to the future development of the site or its interim use.

Uras was not a party to the decision of the Authority to build sporting facilities on the site, nor do we have any knowledge of the agreements entered into by the Authority with the Interim User.

Yours sincerely,



Thomas C. Hayson, AM,  
Chairman of Directors  
Uras Holdings Pty. Limited

SZ.

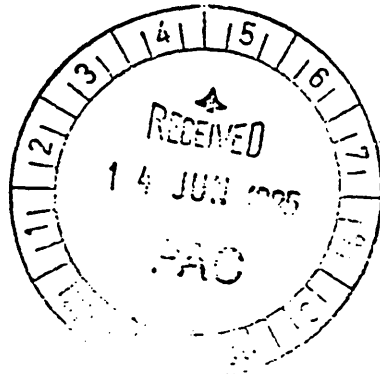
Keys Young Pty Ltd  
ACN 001 225 967

Level 5  
20 Alfred Street, Milsons Point  
NSW 2061 Australia

Postal Address:  
PO Box 252, Milsons Point  
NSW 2061 Australia  
Telephone: (02) 956 7515  
Facsimile: (02) 956 7514

Directors  
Barry Young MCP (MIT), BA  
FRAP  
Susan Young MCP (MIT) MA BA  
Keith Houghton B Arch ARAIA  
MTCF  
John Schwartzkoff MA LLB BA

Associates  
Ian Napier BSc ARAIA RIBA  
DipPng (AA)  
Nick Hollo B Arch ARAIA  
Sue Spooner BA



14 June, 1995

The Director  
Public Accounts Committee  
Parliament House  
Macquarie Street  
SYDNEY NSW 2000

Dear Sir

**Re: Darling Harbour Sporting Facilities**

As masterplanners and urban designers of the Darling Harbour precinct and as architectural designers of the Sporting Facilities under review, we make the following comments and submit the article contained in the enclosed magazine Design Ink No. 11, December 1992 as corroboration of our comments.

We have no comments on contractual arrangements or financing; our comments are related to the end result - the beautification of a deserted site, the impact on the Darling Harbour precinct and the provision of well-liked and well-used sporting facilities in the inner city.

1. To refresh the Committee's memory, the city's "boom/bust" cycle of development in the 80's and 90's produced many abandoned sites. It is most likely that the site under review would have remained vacant from 1988 to at least 1995, as is the case with the nearby Darling Park area where two office towers and the eastern flank of Cockle Bay remain unbuilt. The decrepit Dixon Street (Gardenside) site overlooking the Chinese Garden is another unfortunate result of the development "bust". Hence it was entirely appropriate to provide short-term visual improvements to a dormant construction site that would otherwise remain an eyesore and an unpleasant barrier between Darling Harbour and the city. In fact this approach should be considered for some of the other "bomb-sites" in the city. (The attached photograph A shows the decrepit condition of the site as abandoned by the previous developer. Photograph B shows the importance of the site as the edge between Darling Harbour Park and the city.)

## Keys Young

2. The temporary use as a community sports centre is also appropriate and obviously much appreciated by those who use the facility. The facility has perhaps been too successful because now, nobody wants to give it up, even though it was designed to be and look like a temporary structure. The architecture of the Sports Facility is functional, matter-of-fact, and much from the previous on-site structures is recycled into the new facility.
  
3. In our view it is entirely appropriate to improve the public domain even for a relatively short time, with attractive low cost, usable, facilities rather than to leave a construction site as a desolate and sad reminder of what might have been ...

Thank you for this opportunity to comment.

Yours sincerely



Barry Young  
Managing Director  
Keys Young

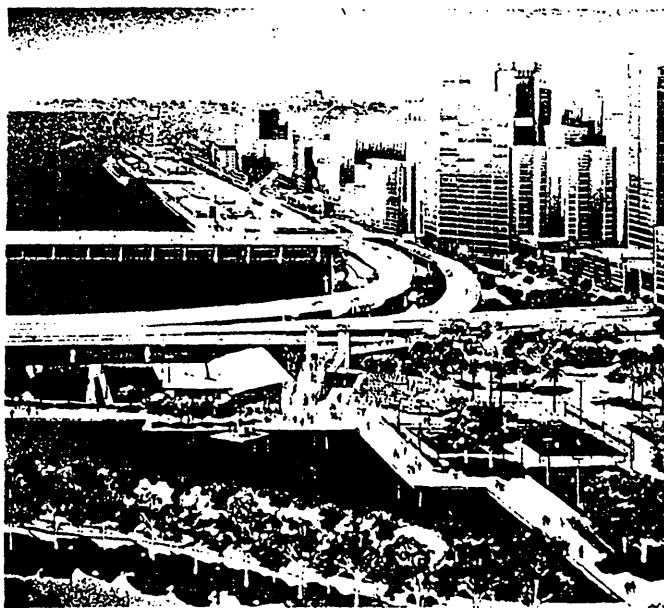
Please note that our Company name referred to in Design Ink was, in 1993, simplified from MSJ Keys Young Planners Pty Ltd to Keys Young Pty Ltd.

Recession architecture? Well it had to happen given today's economic climate. And it's a great turnaround in approach from four years ago when, during the country's Bicentenary celebrations, massive investments of public monies were poured into the design and development of many urban projects. Since then, the collapse of international markets along with the uncertain economies of our trading partners has brought the building industry to an all time low. Marie Geissler reports on the work of MSJ Keys Young on an economical, realistic and useful solution: the Sports Centre at Darling Harbour, a 'low cost' sports facility which is open to the public.

# IT'S FOR YOU, SPORT

Investors who purchased land in the boom years are now faced with the daunting prospect of owning properties they can't sell or afford to develop. The result—a swag of inner city plots abandoned and standing vacant—is leaving city

planners intensely aggravated and workers disillusioned, as well as contributing to the depression of local business and tourist operators. The recently completed sports complex at Darling Harbour, designed by MSJ Keys Young (who played a large part in the original project design for Sydney's fashionable Darling Harbour precinct), is a fascinating example of a new style of 'low cost' development. Their highly innovative approach has managed to meet the needs of the client and the consumer. For an investment of \$5 million, the developer has upgraded the site and has been given a five year option by the Darling Harbour Authority to come up with funding for further substantial development of the land. The site



of the Sports Complex, which was originally planned as a sort of high-tech 'Tivoli Garden' leisure park, is located on the city side of Darling Harbour on the corner block adjacent to the Chinese Gardens. The Authority's action to build

has meant that the land has been preserved for public leisure purposes, albeit for the short-term. Commenting on this, Peter Willett, Project Architect, said 'We wanted to extend the feel of the Darling Harbour parklands but at the same time introduce new activities beyond those of weekend visitors. The city workers during the week were our target market. The setting up of sporting facilities for tennis, basketball, volleyball, netball and gym was considered a good way to attract these people to the area. We felt that if we could establish a precedent for public sporting facilities in the initial phase of the development, then more than likely in future developments these would continue to be provided'.

## MATTER OF FACT, SO TO SPEAK

The building fulfils an intriguing concept. Not being designed for permanency, it announces its tentative status in what could be hallmarked as the language of 'recession' architecture: a functional, matter-of-fact aesthetic using a modest steel-framed pavilion clad in glass, and capped with a cleated corrugated iron roof. Shed-like, it stands starkly against the monumental backdrop of city skyscrapers and muscular concrete motorways.

The deliberate rawness of the building is both its weakness and its strength. The architects wanted the structure to look temporary so that in five years there would be no difficulties in persuading the public to renovate, upgrade or restructure the complex. Of the total cost, \$1.2 million was used for the architectural construction, the rest for high quality sporting facilities. The building is essentially a rectangular box in shape, minimal in design and divided into three large spaces, two for gym and the third for a restaurant. These are supported by a ribbon of offices and change rooms to one side, and to the other a floor to ceiling glassed wall which looks out onto a visually striking conservatory-style lush rainforest garden landscape.

## COURTING THE PUBLIC

The dramatic sculptural focus for the interior is a circular module which functions as a pro-shop and divides the sporting areas from a lakeside restaurant.

The honey-coloured plywood panelling of the shop and the curvilinear juxtapositions of its design act as humanising elements in the interior and are taken up in the colour and line of the amphitheatre nearby. In direct contrast to these organic elements is the hard skeletal framework supporting the interior walls.

For the landscaping, recycling was an obvious approach with many of the existing structures that remained on the site being incorporated into the new scheme. For example, the former hoarding and tower structures now stand as entrance gateways. The structure of the old Showscan theatre has been revitalised as seating for an open-air amphitheatre, while the theatre walls have been used as retaining walls for the terrace courts.

A major problem within the brief was to construct enough courts with the finance provided to make the 15,000 square metre site viable for the operator of the sporting complex. The development includes ten courts (six tennis and four multi-purpose courts), all equipped with state-of-the-art surfaces and facilities.

A unique feature of their design is the way the terracing has maximised the visual interest of the site. Courts have been raised, lowered and fenced in a variety of ways to create vertical relief from what was formerly a vast horizontal space. And extensive landscaping will ensure that in a few years the harshness of the wire cages that surround the courts will be well

screened by potato vines and native trees.

But how successful are these facilities? Initially business was very slow, and frightful mannequins sitting at tables were used to suggest from afar that the centre was occupied. However with summer on its way, it now seems the centre is beginning to take on a life of its own. Early morning work outs are catching on with patrons enjoying croissants and fruit salad for breakfast afterwards.

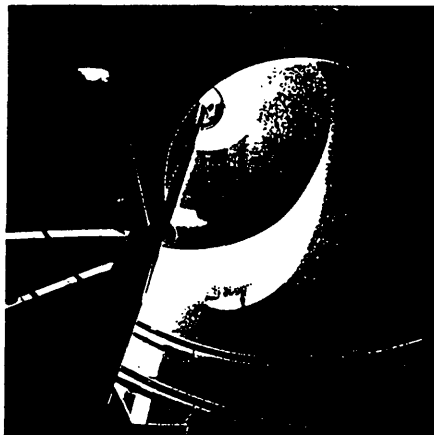
Throughout the week there are increasing numbers visiting, if not for sport then for the exquisite experience offered by the festive outdoor restaurant setting.

Brightly coloured umbrellas flag a sense of holiday, magically positioned on a wooden decked pontoon in a lake adjoining the restaurant.

Commenting on the design, Peter Willett says, 'The building, with its large glassed areas, is designed to work as a theatre where everyone becomes part of the visual landscape. This means that the more people, the more exciting it becomes'.

MSJ Keys Young are the master planners for the Olympic Games site at Homebush, Sydney. The site covers an area of 760 hectares, larger than the Sydney CBD and the dramatic focus of the plan is a central pedestrian spine linking the major sports stadium to the harbour at Homebush Bay.

Options within the plan has the large brick quarry converted to a music bowl and tennis centre, the existing native mangrove vegetation maintained and a spectacular foreshore development undertaken to maximise the impact of the vast harbourside frontage.



(above) View up spiral stair inside the restaurant with conical skylight above.

(below) From the mezzanine of the restaurant looking down to the pro shop.

(bottom) Pro shop interior features soft honey-coloured wood panelling and wooden floors.

## THE PROJECT BY ITS ARCHITECTS

The Darling Harbour Sports Centre was inspired by a combination of innovative concepts. Firstly, it is a response to the aim of providing a short-term facility on a dormant construction site. Secondly it is a new concept for a sporting venue, unique in its location as a lifestyle centre adjacent to the city. The centre includes tennis courts,

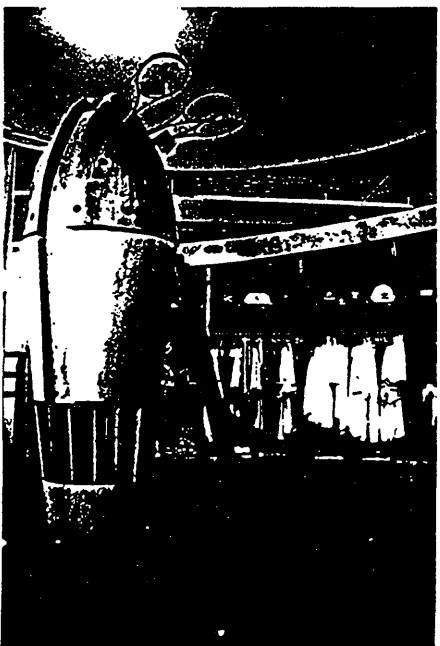
basketball/netball/volleyball courts, a gym, restaurant, bar, function room and an outdoor entertainment area.

This encourages a more active and varied use of Darling Harbour at night and on weekdays which were traditionally off-peak periods. Thirdly, in accordance with its role as a building of the '90s, many of the existing structures that remained on the site have been recycled into the new scheme. For example, existing hoarding and tower structures now stand as entrance gateways. The structure of the old Showscan theatre has been revitalised as seating for an open-air amphitheatre, while the theatre walls have been utilised as retaining walls for the terraced courts. The terracing of the courts complements the topography of the neighbouring Chinese Garden. The layout and use of levels maximises the opportunity to create interest and involvement for the promenading onlookers as well as players.

The main pavilion structure exploits a variety of outlooks: the lake, the city skyline and rainforest landscape. The focus of the site is where the more sculptural and fleshy form of the plywood pro-shop is juxtaposed within the pavilion's stark skeletal framework. This focal point stands consciously as an object on display, acting as a divider between the gymnasium and the restaurant. The dramatic contrast is enhanced by the use of raw steelwork which draws the remnant existing structures into the composition.

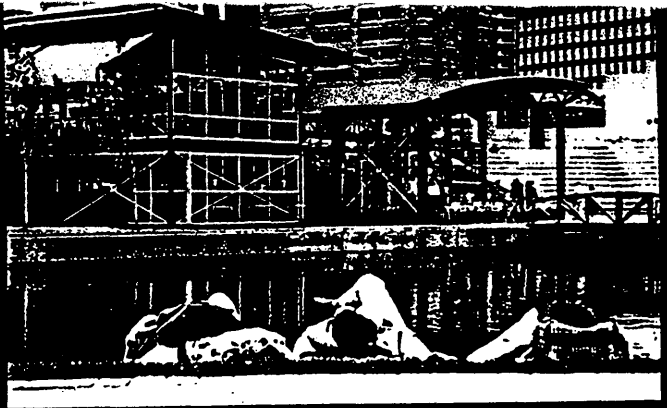
Keys Young's architectural involvement on the project began with the masterplanning stage and continued with landscaping interiors and graphics. The designers, Peter Willett and Nick Hollo, have been involved with Darling Harbour since its inception. This comprehensive background enabled them to integrate the project fully within the broader context of Darling Harbour.

The greening of the site and the continuation of landscape themes of Tumbalong Park extend Darling Harbour to the built edge of the city. The improved views and access strengthen the connections between Darling Harbour and the CBD.

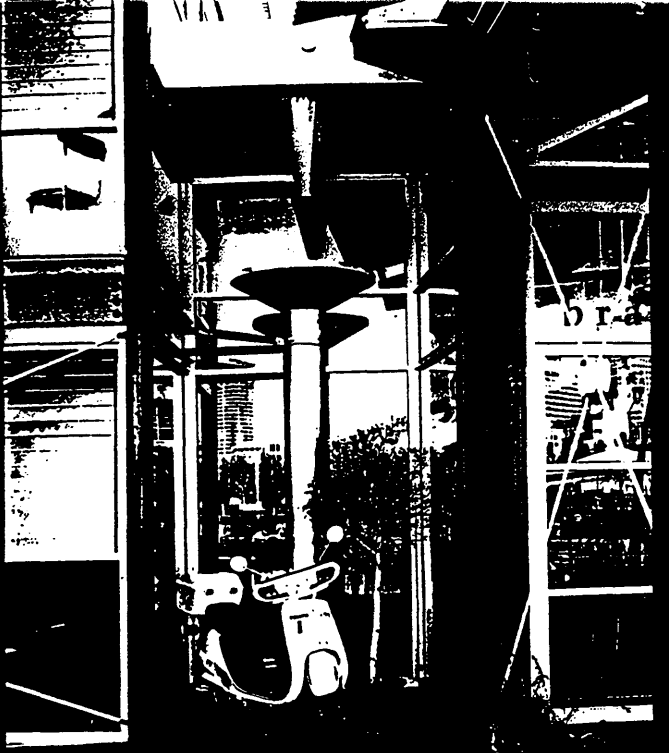




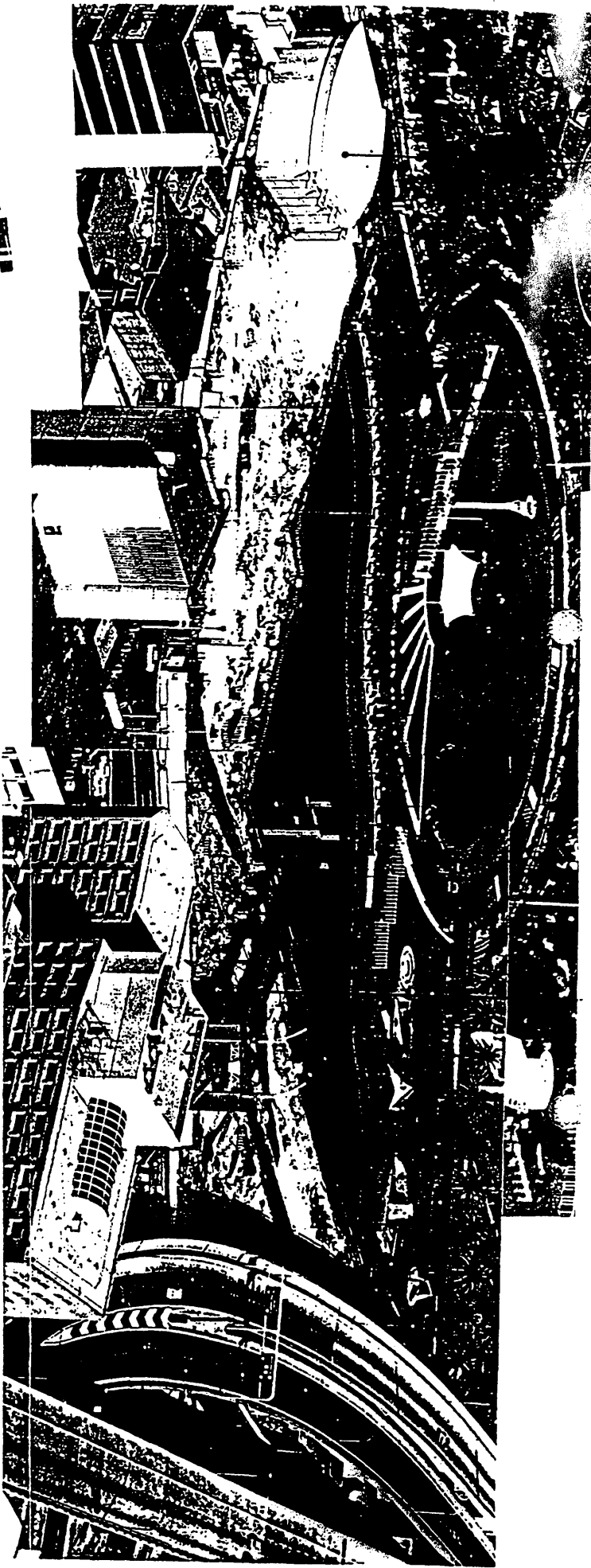




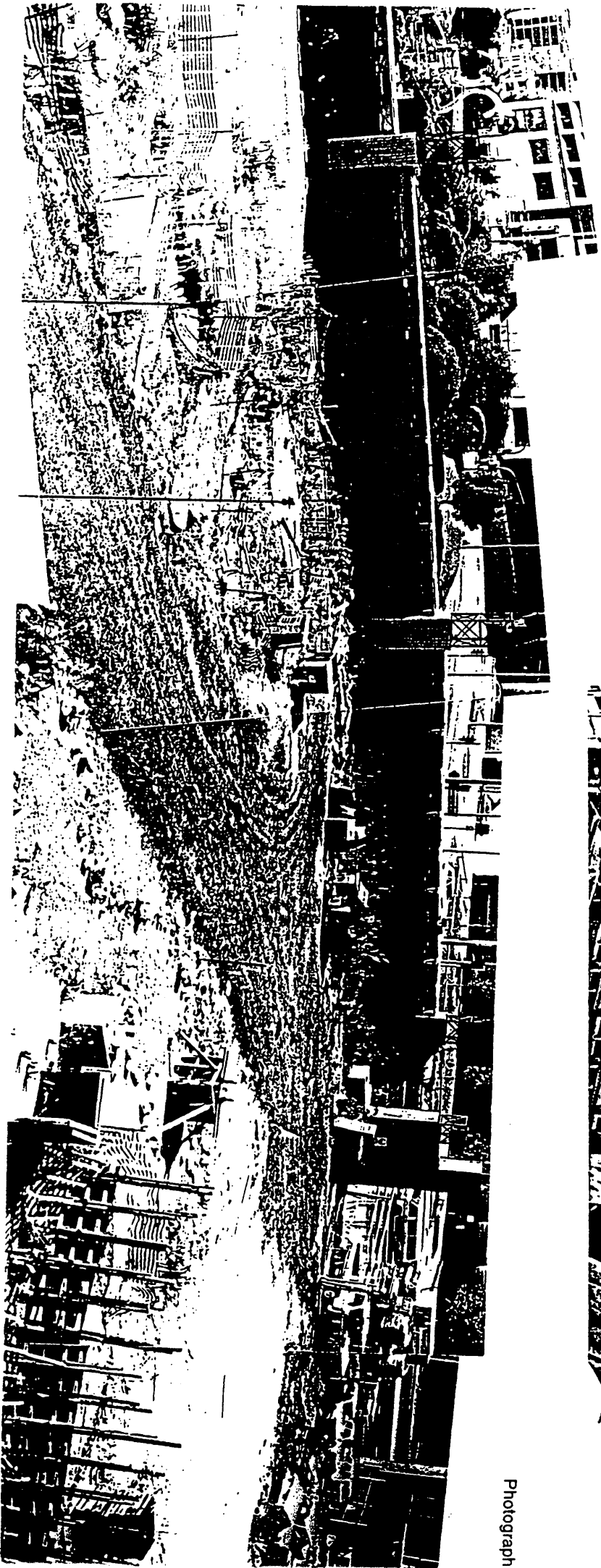
(above) The Darling Harbour Sports Pavilion. The bridge on the right leads to the pontoon restaurant.  
(left) View of water spout and tunnel for the downpipe, recess south elevation.



(left) View of bar stools.



Photograph

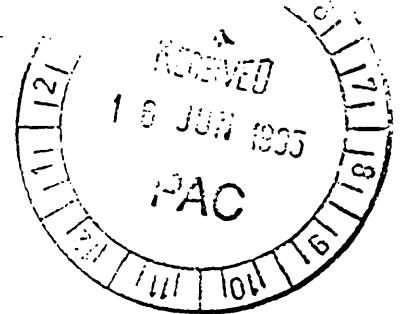


Photograph

15/6/95

Staff & students of 53  
S.C.E.C.G.S. Redlands,  
272 Military Road, Cremorne, 2090.

To,  
**Sandra Nori, M.P.,**  
Parliament House, Macquarie Street, Sydney, 2000  
&  
**The Director, Public Accounts Committee,**  
Parliament House, Macquarie Street, Sydney, 2000

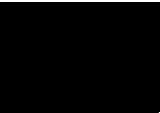


Dear Ms Nori/Director,

I write to you in reference to the attached petition, re Darling Harbour Sporting Facility. Our school and other schools have used this facility regularly and found it to be a most valuable sporting facility. We know that various contractual arrangements may limit the options the government has in terms of this facility but we could not let this facility be demolished without acknowledging the value of the facility to our school community and other school communities.

We are not inherently opposed to Sega Corp.'s development of a Sega World but would rather see it sited away from Darling Harbour, allowing the Darling Harbour Sporting Facility to remain for public and school use. Is it possible for the government to offer Sega Corp. an alternate site? We hope so!

Yours

  
Fabian Byrne,

Art & Design Dept.

on behalf of the undersigned

Staff & students of S.C.E.C.G.S. Redlands,









**Petition to**

**Sandra Nori, M.P.,**

Parliament House, Macquarie Street, Sydney, 2000

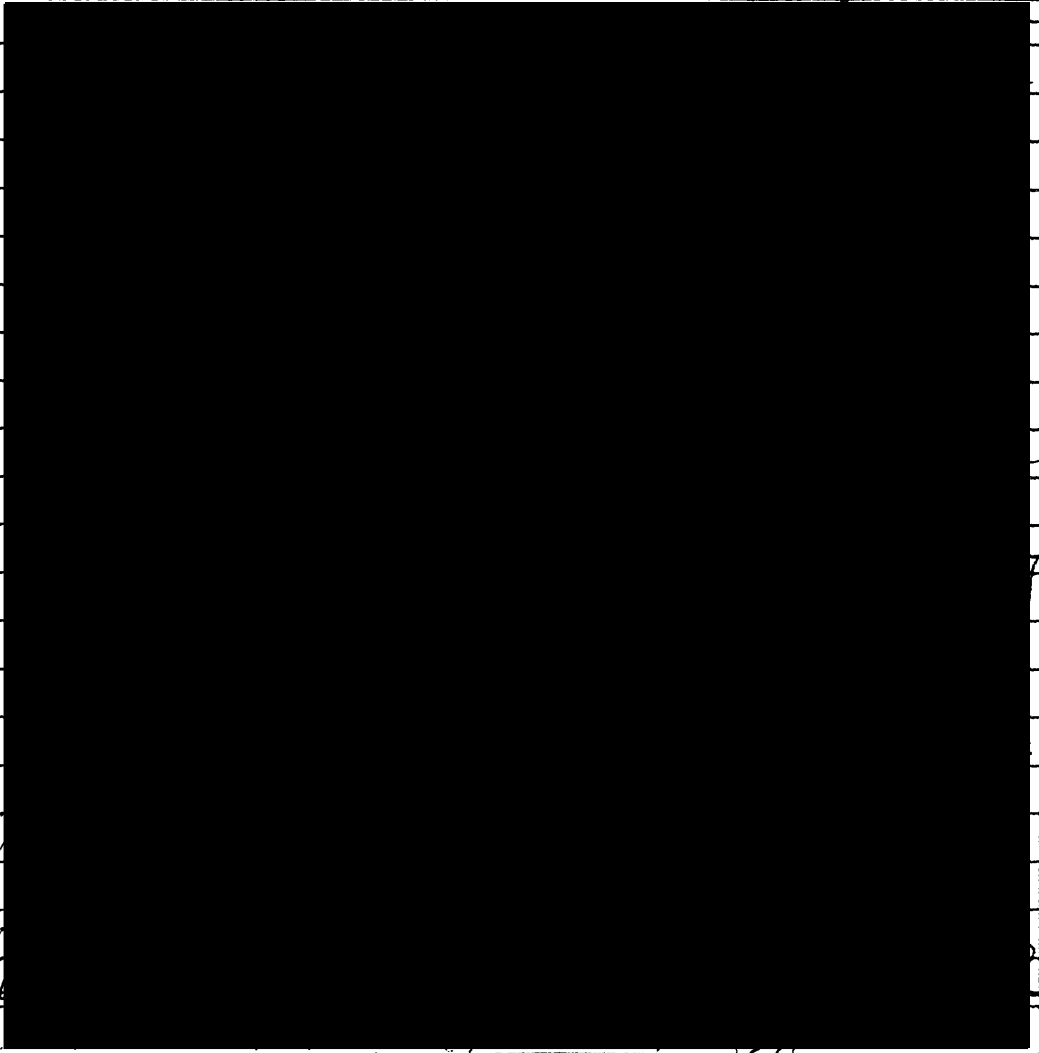
&

**The Director, Public Accounts Committee,**

Parliament House, Macquarie Street, Sydney, 2000

*We, the undersigned, hereby submit that the Darling Harbour Sporting Facilities should remain in their present format and location and remain available to the general public and school students for use as sporting facilities.*

Staff & students of S.C.E.C.G.S. Redlands,  
272 Military Road, Cremorne, 2090.

<u>Name</u>	<u>Address</u>	<u>Signature</u>
J. Gooding-Brown		
M. GRAY		
L. Furney		
i Vithanage		
G. Shanny		
L. Rupp		
Robert. Lysen		
Betty		
M. ...		
E. ...		
R. Elphick		
i Rowling		
M. Farrow		
V. Allman		
G. ...		
DELLH		
N. Taylor		
S. ...		
(P. ...)		
G. ...		
R. ...		
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# Petition to

**Sandra Nori, M.P.,**

Parliament House, Macquarie Street, Sydney, 2000

&

**The Director, Public Accounts Committee,**

Parliament House, Macquarie Street, Sydney, 2000

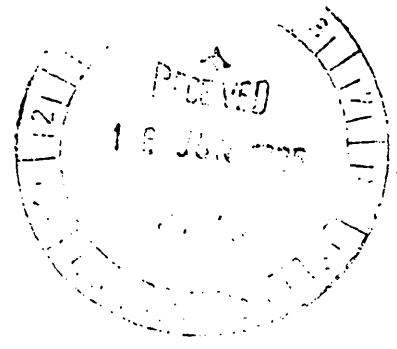
*We, the undersigned, hereby submit that the Darling Harbour Sporting Facilities should remain in their present format and location and remain available to the general public and school students for use as sporting facilities.*

Staff & students of S.C.E.C.G.S. Redlands,  
272 Military Road, Cremorne, 2090.

Name	Address	Signature
F. BYRNE		
P. LANGDALE		
M. PAYOR		
J. BOLTON		
M. TAYLOR		
C. GRZESIK		
K. TRULIN		
T. THAKURAN		
E. HADKOWICZ		
A. KONARSKI		
S.A. CURTIS		
D. J. JOHN		
J. J. J. J. J.		
J. M. RYAN		
K. MULLER		
R. SMITH		
A. LAMONTAGNA		
W. SMITH		
R. SCOTT		
S. WORKMAN		
M. HERAGHTY		
A. d. V. L.		
M. J. J. J.		
C. LAURIE		
K. M. CANN		
B. Hunter		
		continued/...

16 June 1995  
Ref: HMS.2

The Director  
Public Accounts Committee  
Parliament House  
Macquarie Street  
SYDNEY NSW 2000



Dear Sir,

**Re: Public Accounts Committee - Darling Harbour - Sporting Facilities**

I refer to the recent notification of the enquiry which has been initiated by the Minister for Public Works and Services in respect of the sporting facilities on the Darling Walk site at Darling Harbour. I note from the wording of the terms of the enquiry, as set out in the notice, that the focus of the Public Accounts Committee's deliberations relate to the decision to construct the sporting facilities, in the context of the contractual arrangements for the future use of the site, and the method used to finance the sporting facilities.

However, as you will be aware, the significant public interest that has generated by this matter relates to the fact that the sporting facilities in question are to close rather than to the contractual arrangements that appear to be the focus of the enquiry. This would suggest that there are other important aspects of this matter which should appropriately be vented in an enquiry of this nature, namely, the question of the retention of the sporting facilities.

As I understand the position, the contractual arrangements concerning the future use of the site, and, in particular the proposal to use it as an indoor electronic leisure centre, as recently described in the press reports on this matter, relate back to the early concept plans for the use of the Darling Harbour area.

It is clear whilst many of the underlying principles which determined the original Concept Plan for the Darling Harbour area have remained the same, there have also been many changes in public opinion, community expectations, and, not the least, the physical planning of the area. In this latter respect I refer particularly to the fact that the Casino is now in the process of being built on the other side of Darling Harbour within the Pyrmont area; its location in the original Concept Plan being on the City side of Darling Harbour.

Whilst I acknowledge that there may well be contractual arrangements which have been entered into regarding the development of the Darling Walk site, there would however, be no reason why such contractual arrangements could not be re-visited and re-negotiated. The parties involved, one of which is an agency of the State Government, could reconsider their respective positions in the light of the changed circumstances to which I have just referred and with the broader public interest in mind.

There are many reasons why the sporting facilities which have been constructed should remain as a facility for workers and residents in the City area. Whatever the circumstances around their initial provision and whatever the circumstances around their financing, the fact of the matter is that they provide a much needed recreational and sporting facility. This is an entirely appropriate use for the locality and complements the recreational, cultural, social and other facilities which are available within the City Centre and its immediate surroundings. Their loss, to whatever other use, would clearly not be in the public interest and would clearly be inconsistent with the proper planning of the area.

I would therefore submit that it would be entirely appropriate for the Committee to consider whether the terms and conditions of the contractual arrangements in relation to the development of this land should be reviewed, and that, further, it would be appropriate for the Committee to consider whether the sporting facilities in question should be retained. Indeed, it may, with respect, be considered irresponsible if the Committee did not explore these aspects of the matter.

For your information, my interest in this matter stems from my work as a town planning consultant with a particular interest in the planning and development of the Sydney City area.

I look forward to hearing your response to the matters raised in this letter.

Yours faithfully,

H M Sanders

35



16 June 1995

The Chairman  
Parliamentary Accounts Committee  
Parliament House  
Macquarie Street  
SYDNEY NSW 2000

Dear Sir,

**Re: Darling Walk Site - Interim Use - Sports Facilities**

After receipt of advice from the Hon Michael Knight, Minister for Public Works and Services, that he intended to refer this matter to the Public Accounts Committee, the issue was discussed at some length by the Finance Sub-committee of this Authority.

As the relevant decisions had been made in 1991 and there has subsequently been a 50% turnover of Part-time Members of the Authority, it appeared appropriate to that Sub-committee that the Authority's management of this project should be reviewed by an independent body and that the outcome of the review should be made available to the Board. This task was assigned to the Authority's internal auditors, Price Waterhouse, and is the subject of the enclosed report dated May 1995.

I have also sought advice from Clayton Utz that the report contains no matters of legal sensitivity should it be made public, whilst also inviting Clayton Utz to review the Board's procedures from a legal perspective. A copy of Clayton Utz' letter in this regard is also enclosed. You will note that Clayton Utz did not represent the Authority in the negotiations with Uras.

Price Waterhouse, as a result of its research, (and Clayton Utz to a lesser degree) has summarised relevant events from the time of the original decision to build a high-tech entertainment centre in 1985/86 to the contractual position reached in July 1991, which is the subject of your investigation.

Mr I Thackeray has also been given total access to the Authority's files and will therefore have the capacity to advise your Committee on Price Waterhouse's findings and summary.

There appears to be little point in providing the Committee with a further review of the documentation and therefore this submission is forwarded in the context that the background circumstance and chronology of the matter have been fairly well reviewed and analysed. It concentrates on the Committee's terms of reference and is intended to provide some insight into the events of 1990/91.

I have elected to make this submission personally because I conducted the majority of the negotiations, assisted on some occasions by the Chairman of the Authority, Mr James P Graham.

As Mr Graham is overseas at the time of writing and the other Members of the Authority have little detailed knowledge of this matter, and in view of the date you require submissions, I believe it to be more sensible to provide you with a personal submission at this time. I will refer this submission and the Price Waterhouse report to the next meeting of the Authority, which is scheduled for PM 20 June, 1995 and will advise you of the outcome of this meeting.

### **Contractual Arrangements for the Future of the Site**

In 1985, the Authority determined that the site (now) known as Darling Walk should be used for a high-tech theme park. For your information, this decision was reaffirmed in the recent review of the Darling Harbour Master Plan.

Over a period of four to five years, three private sector companies tried to establish the desired theme park but failed, predominantly because of the economic conditions at the time and, hindsight suggests, because the concept of a theme park totally independent of internationally established operations may have been a little idealistic.

When it was finally concluded that Uras could not be capable of meeting its contractual obligations, the Authority's long term aim remained the establishment of the theme park but, as it was fairly obvious that the concept would be very difficult to finance, a short term option which restored respectability to the site was also needed.

The best method of keeping the long term aim in focus was to continue with Uras, for a specified period, whilst at the same time taking advantage of Uras' continuing interest to meet our shorter term requirements.

At this time, there was growing concern within the City over the number of developments which had been started and not completed, leaving unsightly holes and scars. The Authority was very conscious of the overall impact of these sites, three of which were within Darling Harbour, and the adverse impression they generated.

We therefore set out to "rehabilitate" Darling Walk, which both Uras and its financiers agreed was an appropriate outcome, and as time progressed we conceived an "interim use" solution rather than a passive rehabilitation, with an associated increase in Uras' contribution.

Lease documentation was therefore raised which provided Uras with the capacity to return to the site and build the theme park under certain conditions within a specified time frame, subject to Uras providing up to \$5 million to prepare the site for an interim use.

These contractual arrangements are still in place and now give rise to the need to establish the theme park.

### **Appropriateness of Expenditure on Sporting Facilities**

At no stage during the relevant negotiations did the Authority seek to make a direct windfall profit at the expense of Uras. Uras' Director of Finance, Mr Ross Laurie, expressed strong concerns on this issue in the very final stages of negotiation, indicating that it was critical to Uras' considerations that the Authority was not intending to pay lip service to the interim use concept and subsequently retain the funds. I personally gave Laurie an undertaking that the Authority would convert the site for the interim use and that any money not expended would be returned to Uras.

Additionally, the sum to be provided by Uras was never considered to be an "option fee" in the classic form nor was it interpreted as a way of compensation for foregone rent.

From the outset, the agreed terms were that Uras would pay for site rehabilitation only and it was therefore appropriate that money received was spent on rehabilitation which, you will note from the Clayton Utz advice, was also a contractual obligation.

### **Decision to Construct Sporting Facilities**

The circumstances leading to the decision to construct sporting facilities are outlined in the Price Waterhouse report.

In the context of the decision making process, the type of facilities provided are, to a large degree, irrelevant. The Authority was aware in 1991 that whatever was provided in the way of either rehabilitation or interim use, the removal of those facilities from the public domain would result in public dismay. The Authority initially considered that some form of simple rehabilitation was better than leaving the site as an eyesore, particularly as the cost was to be borne by the private sector, but subsequently went on to seek an active interim use under the same financial arrangements.

Under the circumstances pertaining at the time, the Authority would have been considered derelict in its duty not to proceed with rehabilitation/interim use, despite the fact that it knew that eventual removal of the facilities would be unpopular.

### **Financial Method**

The method of financing the sporting facilities has already been discussed. It appeared totally appropriate at the time that the developer should fund an alternative use for the site pending establishment of the theme park. In this regard, I would like to point out that city residents have had access to excellent facilities over the last four years which would not have been available otherwise and that these facilities were provided at no cost to the State.

### **The Price Waterhouse Report**

I would like to make the following comments on the Price Waterhouse report.

1. It includes the names of Uras' financiers which are required for completeness of the report but should not, I believe, be made public unless this is considered essential by the Committee. (Similar comments apply to the Clayton Utz advice.)
2. The only person from the Hayson Group interviewed by Price Waterhouse was Mr Tom Hayson who was not directly involved in the negotiations. I believe that Mr Ross Laurie would be able to assist the Committee. Mr Laurie is currently living on the Queensland South Coast; his work telephone number is (075) 93 1666.
3. Page 15 (third paragraph) points out that the Authority anticipated a substantial profit from the operations of the sports facilities. Unfortunately this did not eventuate, but the prospect of revenue from the site during the interim period was a critical factor in the Authority's determination.

### **Other Financial/Commercial Issues**

Of the land originally available to Uras, approximately one third was excluded from the July 1991 documentation and has now been designated as a site for a high-tech movie theatre. This will produce a guaranteed minimum income in excess of \$300,000 per annum, with upside projected at an extra \$200,000 annually, which will come on-stream before the theme park is operational.

Prior to July 1991, the minimum guaranteed rent for the entire site was to be based on a percentage of land value. During negotiation of the July 1991 documentation, the opportunity was taken to stipulate that value in a way which is very advantageous to the Authority. Should the Sega proposal go ahead, the guaranteed return to the Authority will be substantially in excess of that which would have been guaranteed under any of the previous arrangements.

The benefits of the July 1991 arrangements were therefore anticipated to be:

- sporting facilities provided at no cost to the taxpayer over an interim period, which was characterised by a poor financial climate;
- removal of an eyesore with commensurate improvement of the presentation of the Darling Harbour precinct;
- better control of our land assets in that it provided the opportunity to develop and use the component parts of the original site to better effect.
- an income stream during the interim use period;
- substantially increased rent over the long term;
- resale value of equipment and fittings; and
- maintaining the opportunity to develop the theme park.

The disadvantage perceived at the time the decision was taken was the adverse public reaction to the eventual removal of the sporting facilities, or whatever was put in place during the interim period.


### Summary

The Price Waterhouse report, Clayton Utz' advice and Mr Thackerary's research will provide the Committee with a comprehensive understanding of the events which took place between 1985 and July 1991.

I believe that the Authority's activities in 1990/91 were commercially sound, well focused, conducted in an appropriate manner and provided the State with the most attractive option available at the time.

It is unfortunate that the sporting facilities did not generate the anticipated revenue and that they can no longer be retained, but these issues do not detract from the overall soundness of the Authority's decisions and actions.

Yours faithfully



T W Jones  
General Manager

# CLAYTON UTZ

SOLICITORS AND ATTORNEYS

Our Reference:  
236/136

Your Reference:

Partner/Solicitor Contact:  
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SYDNEY  
MELBOURNE  
BRISBANE  
PERTH  
CANBERRA

16 June 1995

Mr T Jones  
General Manager  
Darling Harbour Authority  
Level 16  
2 Market Street  
SYDNEY NSW 2000

Dear Sir

## DARLING HARBOUR SPORTING FACILITIES

### Executive Summary

The terms of reference of the Public Accounts Committee appointed to inquire into the construction of the Darling Harbour Sporting Facilities in the area known as Darling Walk are:

"To inquire into and report upon the circumstances and appropriateness of:

- the Darling Harbour Authority's 1991 decision to construct sporting facilities on the Darling Walk Site at Darling Harbour, given the contractual arrangements of the future use of the site; and
- the method used to finance the sporting facilities."

At the request of the Darling Harbour Authority ("DHA") we have reviewed the documents (specified below) relating to the construction of the Darling Harbour Sporting Facilities. Based on this review, we have also considered whether the actions of the DHA are in accordance with its statutory powers under the *Darling Harbour Authority Act 1984* (the "Act").

In summary our conclusion from this review of selected documents is that the DHA has acted in accordance with its objectives and powers under the Act, in obtaining from Uras Holdings Pty Limited ("Uras") the sum of \$5 million and using this sum to finance rehabilitation of, and construction of sporting facilities on, the Darling Walk Site.

### Extent of Review

Our review is based primarily on the Agreement for Lease entered into on 3 July 1991 ("Current Agreement"), which reflected the finalisation of discussions by the DHA with the parties involved

SYD1:236 261633.



in the development and financing of the site.

In preparing our advice we have also considered the terms of the report of Price Waterhouse dated May 1995 on the Darling Walk Interim Use Facility, which was prepared by Price Waterhouse after a review of the DHA's files. This report provides a history of the matter and considers issues such as why the DHA did not take possession of the site in 1990 and find an alternative developer for the site.

We have also considered the following legal documents (detailed in date order):

1. Agreement for Lease dated 12 December 1986 - DHA, Discovery Village (NSW) Pty. Limited, Parry Corporation Limited.
2. Deed of Assignment dated 27 January 1988 - DHA, Discovery Village, Parry, Uras, Merlin International Properties (Australia) Pty. Limited and Merlin International Properties Limited.
3. Agreement for Lease dated 17 March 1988 - DHA, Uras, Merlin. Incomplete copy sighted ("Previous Agreement").
4. Deed of Consent dated 21 December 1988 - DHA, Uras,
5. Deed of Variation dated 16 February 1989 - DHA, Uras, Merlin.
6. Deed of Consent dated 31 August 1989 - DHA, Uras,
7. Deed of Consent and Confirmation of Guarantee dated 15 December 1989 - DHA, Uras, Merlin.
8. Deed of Consent, Covenant and Guarantee dated 2 January 1990 - DHA, Uras, and 8 others.
9. Copy of Undated Memorandum of Understanding - DHA, Uras,
10. Agreement for Lease dated 3 July 1991 (and Minister's consent dated 3 July 1991) - DHA, Uras, Merlin, Thomas Clement Hayson, Ian Clement Hayson and Roger Norman Kohler.
11. Letter from \_\_\_\_\_ to DHA dated 3 July 1991 agreeing to pay the sum of up to \$5 million payable by Uras directly to DHA.
12. Deed of Consent dated 3 July 1991 - DHA, Uras,

We have not for the purposes of this review, considered the DHA's internal files, whether any necessary consents were obtained by the DHA, or if the DHA complied with internal procedures

for the obtaining of Board approval.

Terms of Current Agreement

The Current Agreement regulates the obligations of the parties following discussions arising from the failure of Uras to perform its obligations under the Previous Agreement to construct improvements on the site. The Price Waterhouse report provides a Chronological Summary of those events.

The Current Agreement:

1. Terminates the Previous Agreement and:
  - releases the parties from any obligations to pay damages;
  - provides for the bank guarantee for \$250,000 held by the DHA under the Previous Agreement (under the Deed of Variation dated 16 February 1989) to be returned and to be replaced by a \$500,000 bank guarantee, if Uras re-occupies the site.
2. Entitles the DHA to use the site for a period up to 30 June 1995.
3. Provides for Uras to pay for improvements to the site to improve it from a construction site and to enable it to be used by the public or an interim user of the site.
4. Subject to point 5, provides Uras has no rights to occupy the site.
5. Grants Uras an option, only exercisable up to 30 June 1995, to construct an entertainment complex and to lease the site subject to Uras satisfying conditions regarding financing and its capacity to carry out the development.
6. Reduces the size of the site the subject of the Previous Agreement by excluding the Stage 3 site.

Clause 4 of the Current Agreement provides:

Uras will pay to the DHA

- costs of improving the site; and
- any sum payable to an interim user on termination of an arrangement with the interim user,

up to \$5 million.

The DHA was entitled to improve the site to a condition acceptable to the DHA (in its absolute discretion) for use by the public and/or the interim user. The DHA used this discretion to rehabilitate the site and construct tennis courts and basketball courts on the site by using the total sum of \$5 million. An additional sum of \$200,000 was also spent by the DHA from its own funds on the sporting facilities, which in the view of Price Waterhouse, does not appear unreasonable given the benefit of the sporting facilities.

The history of the development of the site, and all of the circumstances involved in the grant of the option to Uras, (including those matters described in the Price Waterhouse report) should be considered when looking at the appropriateness of the \$5 million payment and its subsequent use. The payment is part of a total transaction, was not paid to the DHA unconditionally and was paid by \_\_\_\_\_ on behalf of Uras, for the specific purposes detailed in clause 4 of the Current Agreement. Its use to these purposes, potentially for a period expiring in 1995 should have been contemplated by each party as part of the overall commercial agreement. The DHA was able to negotiate the use of this sum of \$5 million, rather than simply holding the money (as is often the case with an option fee) until the option period expired on 30 June 1995 and having an undeveloped construction site in Darling Harbour for approximately four years.

#### Darling Harbour Authority Act, 1984

The DHA is constituted as a corporation under section 6(1) and its powers as a corporation are not limited by the Act (section 10(3)).

The objects of the DHA are to promote, encourage, facilitate, carry out and control the development of Darling Harbour, whether development is carried out by or on behalf of the DHA (section 9).

Section 11 specifically gives the DHA the right to organise and conduct recreational and commercial activities and to construct, establish, maintain and operate recreational and commercial facilities.

Section 14 gives the DHA powers in respect of land generally including powers to erect buildings and cause work to be done on land.

The letter of 13 April 1995 from Mr Terry Jones, General Manager, DHA to Mr Michael Knight, Minister for Public Works and Services, indicates that the concept, including the financial arrangements was approved and authorised by the DHA Board. The letter also refers to the previous Minister, Mr Webster, giving approval for the option, but not expenditure.

#### Conclusion

The DHA, Uras and \_\_\_\_\_ commercially negotiated the terms of the Current Agreement, following failure by Uras to comply with its obligations under the Previous Agreement.

Mr T Jones  
Darling Harbour Authority

**CLAYTON UTZ**

16 June 1995

5.

The DHA negotiated in its favour, payment of the sum of \$5 million for use on the terms of clause 4 of the Agreement for Lease dated 3 July 1991, to enable improvement of the site.

Based on the review of documents, detailed in this letter, we consider that the Authority has acted in accordance with its objectives and powers pursuant to the Act in obtaining payment of the sum of \$5 million and using it in accordance with clause 4 of the Current Agreement to finance rehabilitation and construction of sporting facilities, on the Darling Walk site.

For reasons of commercial sensitivity it would be preferable if the names of Uras's financiers were not made public unless such disclosure was considered essential.

Yours faithfully  
CLAYTON UTZ

A large black rectangular redaction box covers the signature area. Below the box, there are some faint, handwritten scribbles.

SYD1\236\261633.

*Price Waterhouse*



4 May 1995

Mr J Graham  
Chairman  
Darling Harbour Authority  
Level 16  
2 Market Street  
SYDNEY NSW 2000

Dear James

*Independent Review of the Darling Walk Site Lease  
Arrangement*

During discussions of the 1995 internal audit program for the Darling Harbour Authority (the Authority) with the Finance Sub Committee on Thursday 20 April 1995, we suggested that it may be appropriate for Price Waterhouse to conduct an independent review of the processes surrounding the Darling Walk site lease arrangement.

*Purpose of this review*

The purpose of this review is to gain an overall understanding of all of the major contractual and risk issues in the arrangements and to provide independent assurance to the Finance Sub Committee and the Chief Executive that due process has been followed and that the steps taken by management in the negotiations were consistent with the objectives of the Authority.

It is noted that the Authority considers that due process has been followed and that the Darling Walk site lease arrangement was completely consistent with the objectives of the Authority.

*Proposed work plan*

Our proposed approach involves 4 phases, as follows:

Phase 1      Initial overview, to be undertaken within 1 week from commencement



- Phase 2      Detailed review, to be undertaken within a further 2 weeks
- Phase 3      Investigation of any agreed matters.
- Phase 4      Reporting

Each Phase builds on the results of previous Phases. A decision will be made at the end of each Phase as to the need to continue with the next, or move to Phase 4.

Attached as appendix 1 to this letter is an initial work plan of steps to be performed by us in Phases 1 and 2.

In Phase 1, we will seek to gain a detailed understanding of the arrangement and the processes adopted the Authority. Interviews will be held with key Authority personnel and any advisers. Major reports and documents will be reviewed.

In Phase 2, we will extend the scope of Phase 1 to include detailed interviews with all appropriate Authority personnel and advisers and review of all relevant files and reports. In this phase we would seek to confirm our understanding from Phase 1 and ensure that the files of the Authority support the information presented to us in Phase 1.

We will report on findings and provide a submission of any further tasks that ought to be performed by Price Waterhouse, the Authority or other parties.

During the conduct of Phases 1 and 2 it is possible that we will identify areas which require detailed study or investigation either by ourselves or Authority management. If these are likely to involve extensive effort, rather than delaying the completion of Phases 1 and 2 we will report them in Phases 1 and 2 and perform such investigations as a separate Phase 3. Details of any such investigations will be agreed with Authority management prior to commencement.

Phase 4 will involve preparation of a report to the Authority summarising the results of our review.

### *Staffing*

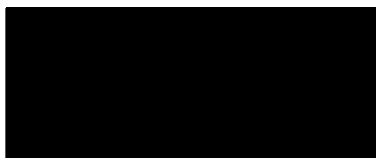
The review will be performed by myself and John Feely, assisted by a Price Waterhouse senior manager.

4 May 1995  
Mr J Graham  
Page 3



Please do not hesitate to contact John Feely or myself if you have any queries on the above.

Yours sincerely



JF Kropp  
Partner

## *Darling Walk Lease*



### *Proposed Work Plan*

#### **Phase 1**

1. Meet with key Authority personnel.
2. Review key internal files, minutes etc.
3. Prepare check list of key issues which should have been addressed during process and agree with Authority. Reference to be made to internal PW material and past external reports (eg Auditor-General, Public Accounts Committee, Treasury Guidelines etc).
4. Meet with any key external parties and advisers.
5. Review any key external reports.
6. Meeting with Authority management to consider initial impressions, issues identified, make any recommendations arising as a result of Phase 1 and consider the need to progress to Phase 2.

#### **Phase 2**

1. Interview all Authority personnel involved in project.
2. In depth review of all relevant Authority and adviser files.
3. Detailed analysis of information collected in Phases 1 and 2.
4. Meeting with Authority management to consider results of Phase 2 and report on any recommended actions for the Authority.



*Darling Harbour Authority*

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*Darling Walk Interim Use  
Facility*

*May 1995*

H:\DARLING\DARLI001.PMR

*Price Waterhouse*



6 June 1995

Mr J Graham  
Chairman  
Darling Harbour Authority  
Level 16  
12 Market Street  
SYDNEY NSW 2000

Dear Mr Graham

*Darling Walk Interim Use Facility*

We have completed our work concerning the development of the Darling Walk site by the Darling Harbour Authority ("DHA" or the "Authority") and the subsequent construction of the Interim Use Sports Facility and enclose a report on our findings.

The scope of our work is set out at Section 2 of the report and is broadly as outlined in our letter to you of 4 May 1995.

You should be aware that in undertaking our review we have had access to documentation supplied by the Authority supplemented by interviews with senior DHA personnel and only limited access to external parties.

Our report has been prepared for the sole use of the Darling Harbour Authority and the contents should not be disclosed to any other party without our prior consent.

Can we take this opportunity to thank DHA personnel for their assistance in the project.

Yours sincerely

JF Kropp  
Partner

JW Feely  
Partner

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# Table of contents

	<b>Appendices</b>	<b>2</b>
1	<b>Executive Summary</b>	<b>1</b>
	<b>Introduction/Background</b>	<b>1</b>
	<b>Financing of the Interim Use Facility</b>	<b>1</b>
	<b>Interim Use Facility</b>	<b>2</b>
	<b>Conclusions</b>	<b>2</b>
2	<b>Scope of Work and Approach</b>	<b>3</b>
	<b>Scope</b>	<b>3</b>
	<b>Approach</b>	<b>3</b>
3	<b>Chronological Summary of Events</b>	<b>5</b>
	The period under the old Board (1986 - February 1989)	5
	The New Board (February 1989 - June 1990)	6
	Negotiations with Uras/BAC (June 1990 - July 1991)	7
	The Interim Use Facility (January 1991 - April 1995)	10
4	<b>Summary of Issues</b>	<b>12</b>
5	<b>Conclusion</b>	<b>17</b>

## *Appendices*

1. Terms of reference (letter of 4 May 1995)
2. Letter from Mr Michael Knight to the Authority, dated 13 April 1995
3. DHA's reply to Mr Knight's letter, dated 13 April 1995
4. Media release from Mr Knight, dated 15 April
5. Letter re: Expressions of Interest for the Short Term Lease



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# *1 Executive Summary*

## *Introduction/Background*

As part of the development of Darling Harbour, expressions of interest were sought in 1985/86 for the development of an area on the eastern side of the Darling Harbour Development Area bounded by Cockle Bay to the North, the Chinese Garden to the South and Tumbalong Park to the West. The area became known as Darling Walk.

A proposal by Creative Design and Technologies (CDT) for a high tech. theme park was selected by the Darling Harbour Authority ("DHA" or the "Authority") as the most appropriate project for the Darling Walk site and an Agreement to Lease was entered into. The project suffered a number of setbacks, primarily arising from difficulties securing adequate financing at a time when the prevailing economic conditions made any form of property development extremely difficult.

During 1987 and 1988, there were two changes to the parties of the Agreement to Lease; firstly, the Parry Corporation replaced CDT and secondly, the Parry Corporation was in turn replaced by the Hayson Group (using a newly created subsidiary of a Hayson related company, Merlin, called Uras).

Progress on the project continued to be slow as Uras experienced a number of difficulties securing finance. This resulted in a number of amendments to the Agreement to Lease.

## *Financing of the Interim Use Facility*

When Uras failed to comply with the terms of a Deed of Variation dated 29 June 1990, which required the initial stage of the development to be complete by 30 September 1990, the Authority notified Uras that it was in breach. Under the terms of the Deed of Variation, the Authority was entitled to immediately terminate the Agreement to Lease or to consider alternate uses for the site.

In November 1990, after lengthy discussions, a Memorandum of Understanding was signed by the Authority, Uras and their financial backers. The Memorandum of Understanding stated that unless immediate financing was in place, Uras could only maintain an option to exercise the Lease if an amount of up to \$5 million was payable to the Authority to rehabilitate the Darling Walk site (\$1 million payable



upfront, the remainder payable as the rehabilitation work progressed). This rehabilitation became known as the Interim Use Facility. The option could only be exercised in a period from between 18-54 months from the date of the Memorandum of Understanding.

After further discussions, the principles of the Memorandum of Understanding were incorporated in an Agreement for Lease dated 3 July 1991. The option period was amended in the Agreement to 30 November 1992 - 30 June 1995. Notice to exercise the option was received in May 1995.

### *Interim Use Facility*

Expressions of interest were sought in January 1991 for alternate uses for the Darling Walk site. The submissions were shortlisted and through a series of interviews/discussions, the Authority opted to utilise the site with tennis/basketball courts and a Gymnasium/restaurant complex. The facility was completed in December 1991 at a total cost of \$5.2 million. \$5 million of this was funded by under the 3 July 1991 Agreement for lease arrangement.

### *Conclusions*

Based on our work, we are satisfied that the documentation we have reviewed and the interviews we have conducted support each other as well as the representations made by management of the Authority.

We believe that the key decisions made by the current Board and Senior Management in relation to the Darling Walk project have been made so as to eliminate the eyesore that existed and provide an additional recreational facility to the immediate neighbourhood of Darling Harbour at minimal cost to the New South Wales taxpayer. Further, the decisions are consistent with the overall objectives of the Authority. The deal negotiated by the DHA was commercial and at arms length and, in the opinion of Tom Hayson, "very tough". Further, based on the correspondence reviewed and the representations received we consider that it is unlikely the would have paid any higher amount either for the rehabilitation of the site or general use by the DHA.



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## ***2 Scope of Work and Approach***

### ***Scope***

On 13 April 1995, Mr Michael Knight, Minister for Public Works and Services sought clarification from the General Manager of DHA on a number of issues concerning the Darling Walk development and the Interim Use Facility. This letter is set out at Appendix 2 to the report. The Authority replied to Mr Knight's letter (Appendix 3) on 13 April 1995 providing some background to the project and answers to the Minister's questions.

On 15 April 1995 Mr Knight issued a media release (Appendix 4) stating that he would "request the New South Wales Parliament's bi-partisan Public Accounts Committee to inquire into the Darling Harbour Authority's 1991 decision to construct more than \$5 million of facilities on land that they had granted a developer on option to build on."

At the Finance Sub Committee meeting of the Authority on 20 April 1995, during the discussion of the internal audit plan for the DHA, it was decided that it would be appropriate for Price Waterhouse to conduct an independent review of the project. The scope of our work is set out in our letter to the Chairman of the Authority dated 4 May 1995, attached at Appendix 1 to this report. In summary, our scope was to gain an overall understanding of all of the major contractual and risk issues in the arrangements (concerning the interim use facility at Darling Walk) and to provide assurance to the Finance Sub Committee and the Chief Executive that due process has been followed and that steps taken by management in the negotiations were consistent with the objectives of DHA.

### ***Approach***

Our approach has been as follows:

1. Obtain a briefing on the background and current status of the project from key DHA personnel (Chairman, General Manager and Manager, Finance and Administration).
2. Review all files and legal documents presented to us by DHA taking copies of relevant extracts and preparing notes. The objective of this was to gain an understanding of the history of the project.



3. Prepare a list of areas to be covered in interviews with DHA personnel.
4. Interview relevant DHA personnel to confirm/expand on the information gained at 2. above. Interviews were conducted with the following:

Mr James Graham	-	Chairman
Mr Terry Jones	-	General Manager
Ms Diana Talty	-	Manager, Planning and Development
Mr Robert Garing	-	Manager, Maintenance and Operational Services.

5. Interview the following external party:

Mr Tom Hayson	-	Director, Uras Holdings
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6. Review of additional information arising from the results of the interviews at 4. and 5. above.

It should be noted that the interviews noted in 4 and 5 above were conducted without the interviewees having the benefit of referring to specific documentation, ie: it was purely their recollection of the process.

The results of the work undertaken are summarised in this report.



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### 3 *Chronological Summary of Events*

In gaining an understanding of the Darling Walk project as a whole, it is important to consider the relevant timings of events from the project's conception in 1986 to the present date. Set out below is a chronological summary of events. In order to simplify the history of the project it is possible to break the project life into 4 distinct chunks as follows:

- the period under the old Board (1986 - February 1989)
- the new Board (February 1989 - June 1990)
- negotiations with Uras/BAC (June 1990 - July 1991)
- the Interim Use Facility (July 1991 - April 1995)

Taking each of these time periods in turn.

#### *The period under the old Board (1986 - February 1989)*

Date	Event
February 1986	Expressions of interest called to develop the Darling Walk site. Two proposals were shortlisted. Discovery Village, a \$150 million high tech. entertainment complex forwarded by Mr Lugman Keele (through a company, Creative Designs and Technologies) and Tivoli Sydney, a European style pleasure garden based on an existing project in Copenhagen, Denmark.  Discovery Village was chosen as being the most attractive proposal.
Mid 1986	CDT tried to find financial backers for the project.
December 1986	CDT and Parry Corporation joined together to develop the site.  The development was to be in 3 phases with completion dates as follows: <ul style="list-style-type: none"><li>• phase 1, 1 January 1988;</li><li>• phase 2, 1 August 1988</li><li>• phase 3, 1 November 1988.</li></ul> An Agreement to Lease was signed on 12 December 1986.
Early 1987	Work commenced on the project.





Date	Event
August 1987	Organisational conflicts between CDT and Parry began to delay the project and Parry agreed to buy CDT out for an amount of up to \$10 million, dependant in part on the timely progression of the project.
September 1987	Parry proposed amendments to the original design to apparently enhance the commercial viability of the project.
November 1987	There was significant amount of press coverage on the weak financial condition of Parry.
December 1987	In light of financial difficulties, work on the Darling Walk project came to a halt before the amendments proposed in September 1987 were approved by the DHA.
January 1988	Parry proposed that the Agreement to Lease be assigned to Uras Holdings (a Company controlled by the Hayson Group via Merlin International).
	Uras proposed significant amendments to the project which converted it into a two stage development. Stage 1 to be completed by October 1989 and Stage 2, which would not commence until Stage 1 was complete, to be completed by May 1993.
	The Agreement to Lease was signed by Uras on 17 March 1988.

***The New Board (February 1989 - June 1990)***

Date	Event
February 1989	It became apparent that the Stage 1 development would not be complete by October 1989. Therefore, a Deed of Variation to the Agreement to Lease was entered into on 16 February 1989. This Deed of Variation set a number of conditions on Uras, including the condition that Uras was required to complete the initial part of the development by June 1990.
	Terry Jones appointed as general manager to the DHA.



Date	Event
July 1989	New Board appointed to DHA
Mid 1989	The New Board undertook a review to establish how much additional public money was needed to complete the whole Darling Harbour project. This review highlighted that an extra \$59.1 million was needed, to complete various contracts, although the budget in place at the time only allowed for \$12 million. The additional funds were sought from the State Government. None of the \$59.1 million related to the Darling Walk site as it was always viewed as a privately funded project. A small amount (estimated at approximately \$0.2 million) related to roads and areas surrounding the Darling Walk site.
Mid-late 1989	Further difficulties meant that it became unlikely that the June 1990 target would be met.
December 1989	Agreement reached in principle between Uras and the DHA that an extension of time would be granted.
June 1990	A Deed of Variation was entered into requiring Uras to arrange for the construction and completion of the initial stage of the project by September 1990. Under the terms of this Deed, if Uras failed to comply with the provisions, the DHA <ol style="list-style-type: none"> <li data-bbox="651 1176 1353 1245">1. had the right to any time, and for any reason, to serve a notice of immediate termination; and</li> <li data-bbox="651 1254 1382 1359">2. was entitled to examine and consider alternate uses of the land and discuss proposals with third parties in regard to its use by a third party.</li> </ol>

***Negotiations with Uras/BAC (June 1990 - July 1991)***

Date	Event
October 1990	When Uras failed to comply with the June 1990 Deed of Variation, letters were issued on 5 October 1990 to Uras and their guarantors, advising that the company was in breach.



<b>Date</b>	<b>Event</b>
November 1990	<p>After lengthy negotiations, a Memorandum of Understanding between the Authority, Uras and was signed relating to the Authority's alternate use for the Darling Walk site. The Memorandum of Understanding stated, in part that:</p> <p>"The Interim Use option involves the advance to Uras by of up to \$5 million to reinstate and landscape the Stage 1 site, (State 1 is the site of the present Interim Sporting Facility), as required by DHA, whilst maintaining the Agreement to Lease and rental provisions on foot, except that at any time between 18 months and 54 months from the commencement of the period Uras may give 6 months notice that it intends to construct Stage 1, in accordance with a schedule agreed with DHA, and that it has finance to proceed. In the event that Uras constructs Stage 1 under these circumstances the base rent as defined will commence on completion of Stage 1. Should Uras not be able to confirm its ability to proceed with Stage 1 within 54 months, the entire site will revert to the DHA".</p> <p>"It is agreed that the amount of up to \$5 million for the Interim Period is an indicative figure. Expenditure would be limited to that initially required to remove or conceal works not required during the Interim Period, rehabilitate those works which remain, landscape the site and increase public safety in the vicinity of the lake as directed by the DHA."</p> <p>The option to develop the site at a future date excluded the so called Stage 3 site. Stage 3 is the site at the head of Cockle Bay and was always expected to be the most financially lucrative part of the Darling Walk development. This site reverted to the DHA.</p>



<b>Date</b>	<b>Event</b>
July 1991	Further lengthy negotiations followed involving lawyers from both DHA and Uras/. An Agreement to Lease was finally signed on 3 July 1991 confirming the principles set out in the Memorandum of Understanding.

Clause 4 of the Agreement deals with the rehabilitation of the site and in part states that "the Lessee (Uras/ will pay the Lessor (DHA)

- (i) the costs of improving the Land by converting the Land from its current condition to a condition acceptable to the Lessor (in the Lessors absolute discretion) for use by the public and/or the Interim User; and
- (ii) any sum payable to the Interim User upon termination of the lease, licence or arrangement with the Interim User;
- (iii) all costs of the Lessor associated with this Agreement except legal costs;

provided that the total cost of the above payable by the Lessee shall not exceed five million dollars (A\$5,000,000). Such cost shall be paid by the Lessee paying to the Lessor:

- (a) on the date hereof, the sum of one million dollars (\$1,000,000) on account of such costs; and
- (b) on the date or dates of execution by the Lessor of any contract the cost of which is included in the costs to be paid pursuant to this clause
- (c) within 7 days of receipt of written notice by the Lessee from the Lessor, any cost incurred by the Lessor which is included in the costs to be paid pursuant to this clause.

PROVIDED that any of the funds paid to the Lessor pursuant to this clause in excess of the costs associated with the Land during the Interim Period shall be refunded to the Lessee within six months of the expiry



**Date****Event****Preservation of Existing Improvements**

Upon the Lessor permitting any building or landscaping on the Land during the Interim Period the Lessor will consult with the Lessee prior to the Lessor doing anything which would physically affect the improvements erected by the Lessee on the Land prior to the date hereof with a view to minimising any damage to such improvements. However, apart from such consultation, the Lessor is under no obligation to protect, maintain, not damage or not affect the said improvements in any way whatsoever.

***The Interim Use Facility (January 1991 - April 1995)*****Date****Event**

January 1991	Expressions of interest were sought for the alternate use of the Darling Walk site for short term use of up to 5 years (Appendix 5).
February 1991	Submissions were shortlisted and discussed further. In total 10 submissions were received, proposing a variety of uses for the site.
March 1991	Through discussions, the proposal from Brad Drewett and John Curtis for the development of tennis courts and a mini golf course was modified to exclude a golf course as originally proposed but to include basketball courts and a gymnasium / restaurant complex.  The total cost of rehabilitating the site and construction was estimated at \$4.6 million plus a \$0.4 million contingency.
Mid 1991	Construction/rehabilitation of the site commenced.  Expressions of interest were sought for the management of the restaurant facility.



Date	Event
December 1991	The project was largely complete and was officially opened, although some work did continue into early 1992. The total cost of the project was \$5.2 million, \$5 million of which was financed by Uras/. The increase over the estimated cost mainly related to equipment costs to fit out the gym.
March 1995	NSW State Government elections.
April 1995	A letter was received from Mr Michael Knight, Minister for Public Works and Services (Appendix 2) inquiring about the Darling Walk project. Mr Terry Jones, DHA General Manager replied to the letter (Appendix 3) on the same day.  On 15 April 1995 the Minister issued a press release (Appendix 4) on the subject.
May 1995	Option election notice served.



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## **4 Summary of Issues**

Our review has identified that, in broad terms, the documentation we have seen on the Darling Walk project is supportive of the comments made to us during interviews. Therefore, we consider "the substance and the legal form" of the arrangements to be consistent.

However, the sequence of events does raise key questions regarding the Authority's approach to the project. We have considered these below.

- 1. Why was strong action only taken against the developer in June 1990 when the project had been subject to numerous other delays over a considerable period of time?**

The project had consistently failed to meet deadlines set, primarily as a result of inadequate funding arrangements. However, at each stage the Authority had been reasonably accommodating in allowing changes to the project design.

A new Board to the DHA was appointed in July 1989, and while there were a number of other issues to be dealt with on the whole Darling Harbour project, it became apparent to the Board that the Hayson Group were unable to proceed with the project, principally because they were unable to secure any financial support. The DHA, therefore, began to seek alternative ways to develop the site. One last chance was given to Uras by extending the June 1990 deadline for completion of the initial phase of the project to September 1990. However, when this deadline was missed, the Authority had no real alternative but to notify the developer that it was in breach.

June 1990 represented the first opportunity for the new Board of the Authority to implement effective management of the project. This is consistent with the action taken by the Board on appointment in 1989 with all outstanding Darling Harbour contracts. It should also be noted that in the twelve months prior to June 1990, the primary focus was on completion of those contracts still open for developments that had been built. Darling Walk was a private development being constructed and, therefore, did not receive priority attention.

- 2. Why did the Authority not attempt to take possession of the Darling Walk site (as it was entitled to do) in 1990 and find alternative developers for the project?**



Three factors influenced the decision not to take possession of the site in 1990:

- the lack of alternate developers;
- the need for extensive rehabilitation and its associated cost; and
- the potential impact of the collapse of Hayson Group.

The economic climate in the late 1980's/early 1990's was such that it was exceedingly difficult to find alternate developers for the site. Hayson spent a number of years searching for partners and we have been informed that the Authority conducted its own search for alternate developers; all to no avail. Additionally, if a developer could have been located the time taken to go through the design process would have meant that another considerable length of time would have elapsed before construction was underway.

By mid 1990, a considerable amount of money had been spent on the project (estimated by Uras as up to \$35 million). However, little of this spend had resulted in the construction of any assets that would be of any real worth to the Authority. In fact, the partially developed site severely detracted from the overall aesthetic qualities of the whole Darling Harbour project and we are advised that an increasing number of complaints were being received from the public. The Authority was not in a position to fund any rehabilitation themselves, having just estimated that a further \$59.1 of public money million would be required to complete Darling Harbour where previous estimates were only \$12 million. Approximately \$0.2 million of the \$59.1 million related to areas surrounding the Darling Walk site. None related to the site itself as it was a private development project.

The Hayson Group was involved in a number of the Authority's projects as well as other State developments such as Manly Wharf and Skygarden. There was concern that calling the default on the Darling Walk site would have caused a "domino effect" on these other projects.

In light of these factors, the decision not to take possession appears to be well reasoned. Further, according to Tom Hayson it was consistent with the actions taken by other State governments faced with similar situations at that time. For example, the Flinders Street redevelopment in Victoria.

3. **Could the option have been structured in such a way that the amount of \$5 million was paid unconditionally to the DHA for it to use any way they desired?**

The 1991 Agreement for Lease specifies that the \$5 million payment was linked to the rehabilitation of the site and would not have been received had it not been spent on rehabilitation.





When considering whether it would have been possible to receive the \$5 million unconditionally, it should be noted that the Authority did not vigorously pursue this course of action; because, we are advised, it believed it would be fruitless and its primary aim was to rehabilitate the site so as to increase visitation rather than make a "money profit".

During their interview, the Hayson Group acknowledged that as far as they were concerned, the \$5 million could have been spent on anything the Authority wished. However, they did comment further that the Bank provided the funds and held a different view. Apparently, the Bank was keen to promote the community service aspect of the rehabilitation, especially if this were to increase the value of the site. Additionally, the Bank was faced with a credibility issue, to advance further funds to a group that was in financial difficulty and on which the bank had considerable exposure without enhancing the asset base of the Hayson Group would be hard to justify. Where as an increase in value may provide support for the ultimate recoverability of the loan without a provision.

According to Tom Hayson, the Hayson Group and the . saw the negotiated deal as being extremely tough, especially as the Stage 3 development (the area of the Darling Walk site that was considered to be the most financially attractive) had been removed from the option.

Should such an approach have been adopted, the Bank would have calculated the value to the option. These calculations would take into account the likelihood of ultimately being able to realise value from the option, the state of the property development market and the cost invested in the project to date. While we have not performed any detailed calculations it is unlikely, given the conditions outlined above, that the economic value of the option could be as high as \$5 million.

Even if some form of settlement could have been reached, the DHA would still have had to rehabilitate the site. A review of the costing suggests that this may have cost \$2.5 million for a relatively simple rehabilitation/landscaping of the site. It is unlikely that this basic form of rehabilitation would have been in keeping with the objectives of the Authority, principally to increase utilisation of the site.

We, therefore, question whether an unconditional settlement in return for the option to develop the site would have generated sufficient funds to cover the minimum cost of rehabilitating the site to standards acceptable by the Authority. It would appear that unconditional receipt for the option may have generated a risk in that it may have actually cost the New South Wales taxpayer money for the needed rehabilitation rather than generated a return.



**4. Why did the Authority decide to construct a sporting facility on the Darling Walk site that only had a 3-5 year life?**

As noted in 3 above, a simple form of rehabilitation/landscaping the Darling Walk site is estimated to have cost a minimum of \$2.5 million. However, this form of rehabilitation would do little to increase the utilisation of Darling Harbour, the key objective of the Authority.

DHA sought, through Expressions of Interest and negotiations, to identify a quality project that would meet its key objective. -

The proposal to develop a sports facility met the objective of increasing the utilisation of Darling Harbour and was also projected to generate an annual profit for the Authority for its duration. Initial broad projections prepared by the project managers in their proposal document estimated an operating profit (before advertising, depreciation and management fees) of \$0.7-\$0.8 million for the first two years.

A spend of an additional \$2.5 million (being the total project cost less the minimum cost of rehabilitation) on temporary sporting facilities does not appear unreasonable given:

- the expected return over the three years would approximate \$2.5m;
- that were to fund the project; and
- that the Authority currently spends approximately \$3 million per year on maintenance for the DHA area to help achieve its objective of increased utilisation.

**5. Why was a Gymnasium/restaurant Complex developed?**

We understand that approximately \$2 million was spent on the construction (\$1.25 million) and equipping (\$0.7 million) of the gym/restaurant complex.

Initially, \$2.7 million may seem a large amount to spend on what was always intended as a short term facility. It is the cost of the equipment that pushed the total project cost over \$5 million and resulted in the Authority being responsible for the additional \$0.2 million. However, there were a number of benefits from the adopted course of action including:

- a gym/restaurant complex would increase utilisation from workers in the city, a group of people who had not previously used the Darling Harbour facilities in great numbers;
- the complex was proposed to make an annual financial return to DHA and the gym/restaurant complex was integral to this;



- the equipment would have a residual value to the Authority at the end of the Interim Period. This residual cost could exceed the \$0.2 million contributed by DHA;
- by equipping the gym, savings on rental of equipment would be made (estimated at \$0.1 million per year); and
- if Uras were not to exercise the option, and the site were to revert permanently to DHA, the Complex and equipment would be suitably robust to provide good service for a number of years.

When the benefits of the complex were weighed against the cost to the Authority of \$0.2 million, the action taken does not appear unreasonable.



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## 5 *Conclusion*

Based on our review of the documentation presented to us and the interviews with DHA personnel and external parties we are of the view that:

1. The DHA negotiated a very tough, commercial, arms length deal that was in the best interests of the Authority (this is even more evident when a comparison is made to other deals negotiated in similiar circumstances by other State Governments at the time);
2. The DHA received \$5 million from Uras/ , in return for granting an option to develop the site at a future date, for the sole purpose of rehabilitating the Darling Walk site;
3. The DHA Spent \$5.2 million on an interim sporting facility developed in a manner consistent with the objectives of the current Board and recognising the benefits accruing to DHA; and
4. It is unlikely that the Authority could have obtained an alternate deal that would have provided better or equivalent benefits to the Authority and the community.





***Information to be supplied by the Authority***

1. List of all Authority personnel involved in project (either directly or indirectly) including:

Name

Title

Description of role in project

Extent of involvement

Contact details

2. List of all internal and external reports prepared during process
3. List of all files held and access details
4. Access to a document room.



Minister for Public Works and Services  
Minister for the Olympics  
and Minister for Roads

13 April 1995

Mr T W Jones  
General Manager  
Darling Harbour Authority  
Level 16, MMI Building  
2 Market Street  
SYDNEY NSW 2000

Dear Mr Jones,

I am writing to you to seek clarification of a number of matters raised in my meeting with you of Tuesday, 11 April 1995. Specifically, I would like the following questions answered in writing by 3.00 pm today:

1. On what date was the option taken out on the land for the proposed theme park at Darling Harbour?
2. What is the zoning of that land?
3. How much was paid for the option on that land and by whom?
4. What are the terms of that option?
5. When does it expire?
6. What happened to the money paid for the option?
7. What is the break-down by major items or groups of items (eg, tennis courts, basketball courts, gymnasium, etc) of all money spent on the site by the Darling Harbour Authority after the option was paid for?
8. Who approved that expenditure? Please specify whether the Minister, the Darling Harbour Authority Board and/or the General Manager of the Darling Harbour Authority approved the expenditure.

Yours sincerely,

**MICHAEL KNIGHT**  
Minister for Public Works and Services



13 April 1995

Mr Michael Knight  
Minister for Public Works and Services  
Level 22  
McKell Building  
2-24 Rawson Place  
SYDNEY 2000

Dear Minister,

I refer to your request for clarification of a number of matters regarding the Darling Walk project.

By way of background, Uras Pty Ltd had a contractual obligation to develop a high-tech theme park on this site. After some prompting, Uras approached the Authority in the early nineties to advise that in view of the recession the proposal could not be funded. Uras requested an extension of their contract until the economy improved.

The Authority was aware that any commercial development was unlikely in the prevailing economic climate and was also conscious of the fact that the site was an eyesore, as were many other failed inner-city development areas at that time.

After lengthy negotiations a Memorandum of Understanding between the Authority, Uras and Uras' financiers) was signed in November 1990 which stated, in part:

"The Interim Use option involves the advance to Uras by . . . of up to \$5M to reinstate and landscape the Stage II site, as required by the DHA, whilst maintaining the Agreement to Lease and rental provisions on foot, except that at any time between 18 months and 54 months from the commencement of the period Uras may give 6 months notice that it intends to construct Stage II, in accordance with a schedule agreed with the DHA, and that it has finance to proceed. In the event that Uras constructs Stage II under these circumstances the base rent as defined in (i) will commence on completion of Stage II. Should Uras not be able to confirm its ability to proceed with Stage II within 54 months, the entire site will revert to the DHA.

It is agreed that the amount of up to \$5M for the Interim Period is an indicative figure. Expenditure would be limited to that initially required to remove or conceal works not required during the Interim Period, rehabilitate those works which remain, landscape the site and increase public safety in the vicinity of the lake as directed by the DHA."

NB Stage II is the site of the present Sporting Facility.

Further negotiations took place between November 1990 and July 1991. During this period the Authority reasoned that any Interim Use was unlikely to be commercial but it should provide a community benefit, that Uras should pay for that use in the form of rehabilitation and that the Authority should determine the type of use whilst also controlling the necessary rehabilitation works and the site itself.

DHA accordingly called for expressions of interest for use of the land, stating a preference for entertainment, recreational, tourist or cultural uses. A proposal for tennis courts, mini golf and amusement cars was among the ten proposals received.

DHA in association with its design consultants MSJ Keys Young broadened this concept to incorporate more sporting facilities and eliminate the cars. This was adopted by the Authority at its Board meeting of 19 March 1991.

In July 1991 necessary documentation was finalised with Uras Holdings/ where by in exchange for an option to proceed with development at a future date Uras/ would fund the rehabilitation of the site to a maximum of \$5 million. The attached Board Paper dated 27 June 1991 outlines some of the negotiations.

Turning now to the specific questions raised in your letter:

1. An Agreement for Lease was entered into on 3 July 1991.
2. Traditional landuse zones do not apply to the Darling Harbour Development Area, instead land can be developed for the purposes of tourist, educational, recreational, entertainment, cultural or commercial facilities. The particular parcel of land in question was depicted on the original Master Plan for Darling Harbour as a family entertainment zone. The appropriateness of such a use was reaffirmed by the Darling Harbour Master Plan Review which was completed in December 1993.
3. \$5 million by Uras Pty Ltd financed by the
4. The terms of the option outlined in the Agreement for Lease are as follows:
  - (i) Uras was to pay the costs of improving the land by converting it from its derelict condition to a condition acceptable to DHA in DHA's absolute discretion;
  - (ii) Eighteen months after the signing of the Agreement for Lease (i.e. 30 November 1993) the Election Period commenced. After this date Uras could serve an Election Notice that it had obtained the funds to proceed with the project. DHA would then, as consent authority, consider a permit application and grant it provided it was of the opinion the project:
    - was commercially and financially viable and would permit the long term objectives of the site to be met;
    - was consistent with surrounding developments within the Development Area.



Once a satisfactory Election Notice was served and permit granted Uras would construct an Entertainment Complex and, on completion of construction, DHA would lease the land for up to 99 years.

The Entertainment Complex was defined in the Agreement for Lease as a high quality urban entertainment and amusement area in which the sale and consumption of food and beverages was permitted and which appealed to all age groups and sectors of the community, incorporating state of the art technology.

5. The Election Period expires at 4 p.m. 30 June 1995, the option expires on 30 December 1995.
6. The money paid for the option was to be applied to the restoration/rehabilitation of the site. It was paid to the Authority in instalments which mirrored the Authority's commitment to make progress payments for construction of the facilities and in such a way that the Authority was not out of pocket.
7. Set out hereunder is an indicative break-down of the costs of the major components of the project.

	<u>\$'000</u>
Preliminary/Temporary Works	623
Demolition, Site Clearance, Filling, Compacting	345
Roadworks, Walls, Paving	510
Site Services	370
Gymnasium, Restaurant & Pro-shop	1,250
Court Construction & Fencing	400
Amphitheatre/Bridge Works	190
Soil, Planting and Irrigation	250
Professional fees	586
Plant and Equipment	<u>714</u>
TOTAL	\$5,238

N.B. (1) This figure includes additional equipment funded by the Authority to ensure the gymnasium and restaurant were adequately equipped.

(2) Approximately 50% of these costs are attributable to the Sports Centre. The remainder would probably have been needed to convert the site into a public park of appropriate standard.

8. (a) The concept, including the financial arrangements, was approved and authorised to proceed by the Board of the Darling Harbour Authority.
- (b) The previous Minister, Mr Webster, agreed to the terms of the revised documentation. This included his approval for the option but not expenditure. Mr Webster was aware of the Authority's intentions.

Please note that as of this date:

- a) An application has been received for Uras' option to be assigned to Jacfun Pty Ltd as allowed by the lease. Mr Tom Hayson is a director of both companies. This application has not yet been approved.
- b) Jacfun have submitted a Permit Application for development of the site as a high tech theme park. This application is currently on public display before being considered by the Board of the Authority.
- c) The operators of the Sports Centre are on notice that their Management Agreement may be terminated on 31 May 1995.
- d) An Election Notice has not yet been received.

**T W JONES**  
General Manager

DT:12301/jp



Minister for Public Works and Services  
Minister for the Olympics  
and Minister for Roads

***MEDIA RELEASE***

The Minister for Public Works, Michael Knight, today announced that he would request the New South Wales Parliament's bi-partisan Public Accounts Committee to inquire into the Darling Harbour Authority's 1991 decision to construct more than \$ 5 million worth of facilities on land that they had granted a developer an option to build on.

"As a consequence of that decision, the sporting facilities built by the Authority at a cost of more than \$5 million now face demolition", Mr Knight said.

Mr Knight said that he was staggered when he recently learnt about the Authority's 1991 decision.

"It's appropriate for the Public Accounts Committee to investigate the circumstances surrounding DHA's decision on this matter.

"I was informed last week that the Authority had sold a four year option on a 99 year lease in 1991 for the Darling Walk site.

"The lessee who had a contractual agreement with the Authority to build a high-tech theme park on the site paid \$ 5 million for the option to take up the lease..

"The Darling Harbour Authority then used the money from the option to build sporting facilities on the site.

"It's amazing that the Authority has spent so much of taxpayer's money developing sporting facilities on the site - facilities which they knew would need to be demolished if the developer exercised his option to take up the lease.

"When Parliament resumes I will ask the Public Accounts Committee to inquire into all aspects of the decision including the role of the board of the Authority, the staff of the Authority and the role of the then Minister".

Mr Knight said that now that the developer was interested in exercising his option the sporting facilities on the site were at risk from the contract entered into by the previous Government.

However, the Minister said that he had commenced discussions with the Minister for Urban Affairs and the Lord Mayor of Sydney to seek an alternate site for outdoor sporting facilities in the City West precinct.

Contact: David Britton 228 3917 or 019 666 034

15 April 1995

**EXPRESSIONS OF INTEREST**  
**SHORT TERM LEASE OF SITES**  
**AT DARLING HARBOUR**

Two sites of 1.47 and 0.36 hectares within the Darling Harbour Authority area and adjacent to Day Street are available for short term use of up to 5 years. Proposals are invited for use of these sites either individually or together.

Preference will be given to proposals which utilise the sites for entertainment, recreational, tourist or cultural purposes on the basis of appropriate remuneration to the Authority. Proposals for use of the site are required by 1 February 1991.

The sites will be refurbished by the Authority but subsequent maintenance will be the responsibility of the successful licensee(s). The licensee(s) will also be required to maintain high quality security and cleanliness standards.

A location map and further information is available by phoning Mr. Adrian Hack on 02 2678088.

2782H/AH/jp

# GAMEPLAN

## SPORTS & LEISURE

SG

Mr. Ian Thackeray  
Senior Project Officer  
Public Accounts Committee  
Parliament House  
Macquarie Street  
Sydney 2001

16th June 1995

Dear Mr Thackeray

**Re: Darling Harbour Sports Centre**

Further to our discussions yesterday, as requested I have prepared a brief on GamePlans involvement with the initial planning of the Darling Harbour Sports Centre.

GamePlan was always aware of the possible short-term nature of the development, as the initial Expression of Interest advertisement by the Darling Harbour Authority specified short-term use only.

GamePlans' Management Agreement with the Darling Harbour Authority is based on a fixed annual Fee paid on a monthly basis. There is also an incentive arrangement for GamePlan by way of a minor percentage of any trading profits. Should your Committee require further detail on the Management Agreement, GamePlan would be happy to provide it on a confidential basis.

In response to the question regarding GamePlans' desire to continue its management role should the Sports Centre be retained, we would do so with great enthusiasm. Whilst the current uncertain environment has made trading difficult, GamePlan believes that by the end of 1994 the Sports Centre had firmly established itself in Sydney as a first-class facility. Should it be decided to retain the Sports Centre, GamePlan would firstly rebuild the momentum of the business, with the goal of then establishing further growth in the future.

I trust the above meets with your requirements and please don't hesitate to contact us if we can be of further assistance.

Yours Sincerely

Brad Drowett  
GAMEPLAN SPORTS & LEISURE PTY LTD ACN 054 621 411  
ONE DAY & BATHURST STREETS DARLING HARBOUR SYDNEY 2000  
C/O HARBOURSIDE PO BOX 41 DARLING HARBOUR SYDNEY 2000  
TELEPHONE (02) 212 1666 FACSIMILE (02) 212 2235

**January 1991**

Darling Harbour Authority advertises for Expressions of Interest for the short-term lease of sites at Darling Harbour.

**January 1991**

GamePlan submits a proposal for the development of the site. The proposal includes a number of alternatives incorporating different mixes of sport and leisure facilities.

**March 1991**

Darling Harbour Authority informs GamePlan it wishes to pursue the sporting and/or recreational use for the site. D.H.A. requests that GamePlan submit additional proposals based on this concept.

**April 1991**

After extensive research GamePlan submits a number of alternative proposals with a variety of sport and recreational uses.

**June 1991 (approx.)**

After numerous discussions, D.H.A. decides to pursue sporting facilities that include tennis, basketball, volleyball and acrobatics.

**July 1991**

D.H.A. and GamePlan begin negotiations regarding management of the sport facilities.

**July 1991**

GamePlan begins work with D.H.A. Architects (MSJ) and Project Managers (Progress Developments), assisting them on design and construction issues relating to sport facilities.

**September 1991**

Construction begins on the Darling Harbour Sports Centre.

**October 1991**

GamePlan begins preparation for the opening of Stage one operations

**December 1991**

Opening of Stage one - three tennis courts.

**April 1992**

Official opening of all facilities except the gymnasium.  
Legends restaurant also opens.

**January 1995**

D.H.A. advises GamePlan of a May 31st 1995 termination date for the Sports Centre to allow for the development of Sega World.

GamePlan has continued to manage the Sports Centre on a week to week basis since May 31st

S7.

The Director  
Parliamentary Public Accounts Committee  
NSW Parliament

Peter Blaxland  
[REDACTED]

**Re: The Sega Proposal for Darling Harbour**

Dear Madam

As a potential future customer of the Sega entertainment complex, I am not asking that your committee block this proposal, but rather that you consider recommending some enhancements which I believe will benefit all interested parties.

There is no doubt that Darling harbour could benefit from some new and innovative entertainment, however, I suggest that the type of entertainment offered in the Sega proposal is too narrowly focused and is not making the most of this prime location.

Some of the negative aspects of the Sega project as I see it are as follows:

- It will in effect become a casino for kids.
- For some it will become an addiction which inevitably leads to financial problems and perhaps behavioural ones also. An existing virtual reality entertainment complex is already causing problems for some of the younger visitors due to theft and intimidation.
- Sydney city's prime recreation site will be dominated by a facility which is not dissimilar to the number of virtual reality theme parks planned for suburban shopping centres.
- It becomes a place to generate a lot of steam and excitement but doesn't provide facilities to release that build up of energy.
- Relocating the existing sports facilities to an obscure out of the way location reduces the attraction of such facilities.
- People in general, but kids in particular, want to 'hang out' where the action is or where the crowds are. Moving the sports facilities will therefore, to a certain extent, redirect their focus away from sport towards the electronic entertainment.

After all those negatives you may well think that I really do want to block this proposal. The fact is however, that I want to illustrate how unbalanced this proposal is, and contrast it with an alternative which would dramatically boost Darling Harbour's appeal and impact on surrounding areas as well.

**AN ALTERNATIVE**

Instead of the electronic theme park being the dominant source of entertainment, I believe most people would like to see a broader range of leisure facilities. Below is a brief outline of a range complimentary facilities which if brought together under one roof in Darling Harbour, would become a more balanced, positive and powerful attraction.

**Adventure Sports** - the most common and rapidly growing activity in this category is indoor rock climbing. It's not only very popular as a participatory sport but can also

attract spectators who may then go on to make use of some of the other features outlined below. Another example would be a high ropes course which would not only be used by schools but also by businesses for team building exercises for example. This category in particular lends itself to a wide range of exhilarating and visually spectacular activities which challenge and expand the participants courage and skills.

**Traditional Sport and Fitness** - indoor sports halls and swimming pools have traditionally been provided by councils because of the perception that they are money pits where a return on the capital investment is nearly impossible. Fortunately that mode of thinking is starting to change.

To my knowledge, the best example of the new breed of sports and entertainment centres is called Lincoln Square in New York . It encompasses virtually all of the traditional indoor sports facilities including a 50m pool plus a whole host of other adventure and entertainment facilities. The format is so successful that the developers intend to build 15 of these centres around the world.

**Passive and Social Recreation** - after a hectic day in a sports and entertainment centre people are going to need to unwind relax and recuperate. In fact the CBD in general would also benefit from an indoor facility which provided a peaceful setting to escape to. An indoor rainforest setting for example could provide a soothing refuge for worn out visitors and stressed out office workers . If such a facility was integrated with a leisure library/bookshop and cafe for instance, it would significantly broaden the appeal to the non-sports person and generally bring a balance to the whole project.

### **SO WHAT IS MY POINT ?**

My point is, that Darling Harbour plus the CBD and surrounding areas would all benefit if we stopped to think about what is the best possible outcome for this site, rather than simply allow market forces dictate the direction. There is no doubt that the Sega proposal will attract visitors to the city, however , by excluding indoor and outdoor playgrounds from this site I believe we detract from its overall atmosphere and quality.

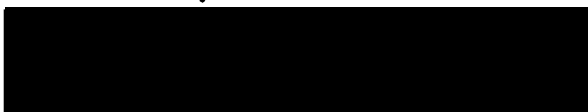
### **WHAT AM I ASKING FOR ?**

So far the governments role has primarily been to apply the brakes to the Sega proposal. What I would like to see is more of a planning and guiding role and ideally, bring the two lease holders, Jackfun and Lend Lease together to form a co-operative venture.

Uniting the Darling Walk site with Darling Park's water frontage into one integrated and balanced project will enhance Darling Harbour and perhaps even the whole image of Sydney.

I trust that the issues raised are of interest and look forward to your comments.

Yours sincerely





Sydney City council  
GPO Box 1591  
Sydney NSW 2001

Peter Blaxland  


Re : A Sports Centre For a Living City .

Dear councillor

The purpose of this letter is to highlight how Sydney City Council can potentially save \$10M to \$20M on the proposed multi-purpose indoor sports centre and how these funds can be re-directed in order to firmly establish Sydney as a vibrant and living city.

The feasibility study prepared by EDAW is a very thorough and business like analysis of the options available to the council, however I don't believe it provides a complete picture. It focuses on what is currently available in Australia and conducts the evaluation primarily from a business and technical perspective. This is clearly an essential component of the preparation, however I would like to present a fragment of what I believe is missing from the full picture.

**A GROWING EMPHASIS ON FUN AND ENTERTAINMENT**

Right now there is growing evidence primarily overseas, of a shift in emphasis in the design of new sporting venues. This includes both spectator and participatory based venues such as stadia and the type of facility now under consideration by the council.

Some of these new sports and leisure centres have re-interpreted the word 'leisure' and sought to attract far more than just those who are already active or interested in hardcourt team sports or strength and fitness. This increased emphasis on the leisure component is evident in centres such as the Reebok Sports Club New York and Chelsea Piers Sports and Entertainment Complex also in New York.

Leading sports facilities designers such as Hellmuth, Obata and Kassabaum's Sports Facilities Group in the USA believe that more and more the focus will be on making facilities fun. Passive and social recreation is also becoming a prominent component thereby creating high profile regional meeting places for all age groups including non sports people.

Examples of features being included in these new sport and entertainment centres include the following:

- in-line skating / jogging tracks
- rock climbing walls
- wide screen golf simulator
- downhill ski simulator
- restaurant and lounge
- kayaking
- sailing school
- library
- plus all the traditional features such as gymnasium and pool etc.

**ADVENTURE ACTIVITIES**

Already, in some centres the highlight attractions are the adventure activities designed to challenge participant's co-ordination and balance. Rock climbing walls are a well known example of this type of feature. The better ones can reach heights of 5 floors and resemble natural cliff faces.

Another example of an adventure activity which has been implemented in a sports centre is a rope course situated above part of a swimming pool. This type of facility is used by schools as well as hired out for corporate team building exercises.

Both of these examples act not only as a draw cards to participants but to spectators as well, particularly if located adjoining the passive recreation areas. This adventure theme is only in its infant stage of development and yet is showing great potential as a key to attracting the broader community.

In view of the above, I am concerned that the direction Sydney City Council is taking with regard to the building of a conventional aquatic / sports centre is falling well short of the full potential for such an important project.

### **AN ALTERNATIVE SITE**

The two sites recommended for consideration in the feasibility study, namely the AML & F site in Harris St Ultimo and the Entertainment Centre car park are handicapped to varying degrees by their unattractive surroundings. This would have a detrimental impact on the draw card potential of what could be one of Sydney's major man made attractions.

As an alternative, I would suggest that Darling harbour is the obvious choice for this type of development. In particular, the areas known as Darling Walk, The Southern Promenade as well as the foreshore of Darling Park should be seriously considered for this project for the following reasons:

- DH is already an attractive and popular site with 16 million visitors per year
- it is close to the 170,000 strong CBD workforce
- the CBD needs more than the Andrew 'Boy' Charlton Pool as it is not only inadequate in its range of facilities, it's in a relatively isolated and inconvenient location.
- users of the existing sports facilities in Darling Park could be comprehensively catered for with not only improved facilities but also greater diversity
- the high tech entertainment proposed by Sega could still be accommodated and perhaps even enhanced if they were to introduce a sporting theme
- the lack of entertainment facilities has always left the impression that something was missing from the full picture, and so too will the absence of any sports facilities if they are removed.
- it is one of a few sites in Sydney where an investor could make a return on the construction costs of a sports centre as opposed to only on the operating costs
- it is one of the few sites in Sydney that could generate considerable private investor interest to fund the full construction costs
- it is one of the few sites that could justify having a light rail line built for it so as to vastly enlarge the catchment area.

This brings me to perhaps most important issues related to creating a living city of Sydney

### **TRANSPORTATION AND THE PEDESTRIANISATION OF OPEN SPACES.**

The last point in the above list of advantages addresses a problem raised in the feasibility study regarding the preference for the two Ultimo sites; both students' and office workers in Ultimo need to have close proximity to any new sports facility.

A light rail network, apart from enhancing the city centre, would improve the profitability of a sports and entertainment centre in Darling Harbour. It would also justify providing a facility superior to the conventional concept now under consideration and conveniently cater for both the CBD and Ultimo.

### **SUCCESS STORIES**

Overseas examples clearly prove that light rail, cycleways plus more space for pedestrians can provide a win win solution for business, commuters, shoppers and visitors. The following examples help illustrate the point:

- Nuremburg, a city approximately the size of Brisbane dedicated 5 kilometres of pedestrian mall within its CBD. The predicted traffic chaos never eventuated because a large part of the traffic simply disappeared.

- Copenhagen banned cars from its first shopping street in 1962. Retailers initially objected fearing economic ruin. Within three years however, trade had increased by 30 % .
- In 1989 a survey of 400 towns in the UK clearly showed that rents in pedestrianised streets were not only consistently higher than trafficked streets but they also increased at a faster rate.

The attached report provides further evidence of the commercial benefits of pedestrianisation.

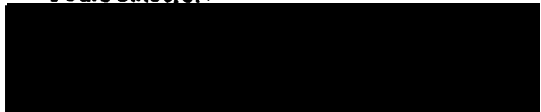
Freeing up road space for pedestrians, cyclists and perhaps even in-line skaters ,apart from providing commercial benefits, would be a positive step in promoting Sydney as a living city. The reduced noise, air pollution and congestion could well prove to be the catalyst needed to fundamentally widen the focus of the CBD from primarily being a place to earn a living , to also include living and playing . In the lead up to the Olympics, this would be like a breath of fresh air for Sydney's image in both senses of the term .

#### **FURTHER EVIDENCE**

Despite providing what I feel are powerful arguments for the sports and transport issues, I realise that this letter by itself is not enough to create change. Therefore in order to present a more compelling picture on these issues I ask that I be given the opportunity to organise a presentation by a panel of experts. Ideally I would like to see all the councillors, the relevant council planners as well as members of the business community attend, to more clearly see how Sydney can change for the better.

I look forward to hearing your views on these issues plus an indication of the level of interest in the proposed presentation.

Yours sincerely



Peter Blaxland