



COMMONWEALTH OF AUSTRALIA

# Official Committee Hansard

## SENATE

FINANCE AND PUBLIC ADMINISTRATION REFERENCES  
COMMITTEE

**Reference: Inquiry into a funding matter under the Dairy Regional Assistance  
Program**

THURSDAY, 8 MAY 2003

CANBERRA

BY AUTHORITY OF THE SENATE

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**SENATE**

**FINANCE AND PUBLIC ADMINISTRATION REFERENCES COMMITTEE**

**Thursday, 8 May 2003**

**Members:** Senator Forshaw (Chair), Senator Watson (Deputy Chair), Senators Heffernan, Marshall, Ridgeway and Wong

**Substitute members:** Senator O'Brien for Senator Marshall

**Participating members:** Senators Abetz, Brandis, Carr, Chapman, Conroy, Coonan, Crossin, Eggleston, Chris Evans, Faulkner, Ferguson, Ferris, Harradine, Harris, Knowles, Lees, Lunday, Mason, McGauran, Murphy, Murray, Payne, Sherry, Tchen and Tierney

**Senators in attendance:** Senators Forshaw, Heffernan and O'Brien

**Terms of reference for the inquiry:**

To inquire into and report on:

The circumstances surrounding the application, approval and expenditure of funding under the Dairy Regional Assistance Program (DRAP) for the construction of a new building and the installation of additional machinery at the Moruya Steel Profiling Plant in New South Wales in 2001-2002.

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**Committee met at 9.12 a.m.**

**CHAIR**—I declare open this public hearing of the Senate Finance and Public Administration References Committee. At the outset, as well as welcoming all participants and others here today, I particularly note the attendance of Mr Chen Peng and Mr Zhou Zibin who are members of the Budget Affairs Commission of the Standing Committee of the National People's Congress of China. They are in Australia at the moment examining the workings of our parliamentary committees and they are most welcome here today to observe the proceedings. I hope you learn something and enjoy your stay here in Australia.

The hearing today is part of the committee's inquiry into a funding matter under the Dairy Regional Assistance Program. On 27 March 2003 the Senate referred to the committee for inquiry the following reference: the circumstances surrounding the application, approval and expenditure of funding under the Dairy Regional Assistance Program—commonly referred to as DRAP—for the construction of a new building and the installation of additional machinery at the Moruya Steel Profiling Plant in New South Wales in 2001-02.

Submissions were called for with a deadline of 28 April 2003. The committee received four submissions, all of which have now been published. Today's hearing will begin with hearing evidence from witnesses from the Department of Transport and Regional Services and the Department of Agriculture, Fisheries and Forestry, to be followed by the Eurobodalla Shire Council and then the South-East New South Wales Area Consultative Committee. We will probably hear evidence from Mordek after the lunch break today. We hope to be able to finish all questions by 3.30, as we do have to conclude the hearing today at four o'clock.

I remind officers that the Senate has resolved that there are no areas in connection with the expenditure of public funds where any person has a discretion to withhold details or explanations from the parliament or its committees unless the parliament has expressly provided otherwise. I further remind officers that an officer of a department of the Commonwealth or of a state shall not be asked to give opinions on matters of policy and shall be given reasonable opportunity to refer questions asked of the officer to superior officers or to a minister.

Evidence given to the committee is protected by parliamentary privilege. This means that witnesses are given broad protection from action arising from what they say and that the Senate has the power to protect them from any action which disadvantages them on account of the evidence given before the committee. I also remind you that the giving of false or misleading evidence to the committee may constitute a contempt of the Senate.

The committee prefers to conduct its hearings in public. However, if there are any matters which you—and I address this to all witnesses appearing today who are present at this time—wish to discuss with the committee in private, we will consider any such request at that time. I also draw to the attention of witnesses the Senate's rules concerning adverse comment. Where a committee has reason to believe that evidence about to be given may reflect adversely on a person, the committee shall consider whether to hear that evidence in private session. Where evidence is given which reflects adversely on a person the committee may consider expunging that evidence from the transcript of evidence. Alternatively, in the event that the evidence is published, the committee shall provide reasonable opportunity for the person to have access to the evidence and to respond to it in writing and by appearing before the committee if necessary.

[9.14 a.m.]

**OEHM, Mr Greg, Programs Manager, Southern New South Wales Regional Office, Department of Transport and Regional Services**

**PRESTIPINO, Mr David, Manager, Dairy Regional Assistance Program, Department of Transport and Regional Services**

**RIGGS, Ms Leslie, First Assistant Secretary, Regional Programs Division, Department of Transport and Regional Services**

**TOPP, Mr Vernon Arthur, Senior Economist, Australian Bureau of Agricultural and Resource Economics**

**WILLIAMSON, Mr Gregory John, General Manager, Meat, Wool and Dairy, Department of Agriculture, Fisheries and Forestry**

**CHAIR**—I welcome representatives from the Department of Transport and Regional Services and the Department of Agriculture, Fisheries and Forestry as our first witnesses this morning. Before you proceed to make an opening statement, are there any amendments or additions to the submission and material you have provided to the committee that you wish to make at this point?

**Ms Riggs**—No, Senator.

**CHAIR**—The committee notes that in addition to the submission we have received additional information. The committee received that information in the last day or so. It is quite voluminous material and I have no doubt that there may be some comment about that in due course. In the letter accompanying that additional information there was a request that certain material be kept in camera—that is the material we have in the separate volume, and your letter identifies which items they are.

The committee met this morning and determined that at this stage we will continue to treat that evidence as in camera evidence. I say that, firstly, because we have simply not had enough time to consider what is in that evidence and whether or not the request that it remain in camera is justified. I think you understand the way Senate committees work. It may well be that at some time, either today or subsequently, we may wish to revisit that decision in the light of what transpires.

**Ms Riggs**—Certainly.

**CHAIR**—Ms Riggs, do you wish to make a statement?

**Ms Riggs**—I am conscious that a large quantity of material came to the committee only recently. I might note for the record that we were asked to provide that by the 6th and we did indeed provide it by the 6th. We were some hours later than Alistair's request, but we provided it in as timely a way as possible.

**CHAIR**—That may become a matter for discussion when we get into questions and evidence. I invite representatives to make an opening statement and then we will proceed to questions.

**Ms Riggs**—Thank you, Chair. We do not wish to make an opening statement.

**CHAIR**—Mr Williamson, do you wish to make any opening remarks?

**Mr Williamson**—No. I will wait for questions.

**CHAIR**—I will now invite questions from members of the committee.

**Senator HEFFERNAN**—I am unaware whether the scriptwriter from *Grass Roots* is in the audience, but my first question is: there have been allegations of corruption and money laundering but has anyone in the department found any evidence of that?

**Ms Riggs**—I do not believe that questions asked of this department have necessarily led us to the conclusion of allegations of corruption and money laundering in quite such frank terms. But, in terms of the matters that Senator O'Brien raised during the Transport and Regional Services estimates hearing in February and our investigations subsequently, if I can use those terms in the generic way in which I believe you used them, I would have to say that, no, we do not believe that we have found evidence of such actions.

**Senator O'BRIEN**—With Senator Forshaw's indulgence I want to place on record some of the background material in relation to this inquiry. You have referred to part of it, Ms Riggs, but not all of it. On 11 July last year the *Coastal Sun* newspaper ran a front page story containing serious allegations about a Dairy RAP grant to a company called Mordek. The story implicated the Eurobodalla Shire Council and representatives of the federal government in a premeditated strategy to use a building grant to fund a sewerage project at the North Moruya Industrial Estate. Following the publication of that story I asked the Minister representing the Minister for Transport and Regional Services a series of questions on notice about the Dairy RAP grant. The answers to those questions did not sit comfortably alongside the program guidelines, development approval dates obtained from the Eurobodalla Shire Council and the council's own minutes. On 11 February this year I sought advice on these matters at the Senate estimates hearing that you referred to, Ms Riggs.

Senator Ian Macdonald sought and subsequently obtained a number of documents from me. The minister indicated that the Department of Transport and Regional Services would review the matters I raised and advice would be provided on 14 February. On 14 February the minister said that an answer would be provided by 21 February. On 26 March, there was still no answer from the minister, and I advised the Senate that I would seek to refer the matter of the Mordek grant to this committee. On 27 March this matter was referred.

It was not until 23 April that the Department of Transport and Regional Services provided a response to the matters I raised on 11 February. It did so in a brief and, I might say, unsatisfactory review that constitutes the basis of its submission to this inquiry. Last night at about 6 p.m. 500 pages of departmental documents relating to this grant were provided to my office and I thank the department for that information. Despite seeking a review of this matter by

the department on 11 February, the department did not respond with detailed information until yesterday.

My office received this information just 16 hours before the commencement of today's hearing and neither I nor the committee have had an opportunity to examine these documents with the care they deserve. I will seek advice based on the department's submission on some of these documents but I foreshadow my intention to recall the department, should the need arise, upon closer examination.

The department has not made an original written submission to this inquiry but has instead submitted a review of matters raised at the Rural and Regional Affairs and Transport Legislation Committee's estimates in February. A copy of that review was provided to that committee on 23 April this year. By submitting that document to this committee, the department has, in my view, failed to address some elements of this inquiry's terms of reference—that is, the application, project chronology and involvement of stakeholders. I want to ask who made the decision that this unsatisfactory submission previously provided to the Rural and Regional Affairs and Transport Legislation Committee is an adequate response to the terms of reference of this inquiry?

**Ms Riggs**—It was a decision made within the department.

**Senator O'BRIEN**—It was a decision of officers of the department, Ms Riggs?

**Ms Riggs**—To the best of my recollection, yes.

**Senator O'BRIEN**—The Dairy Regional Assistance Program is designed to assist dairy dependent communities adversely affected by the removal of market milk price regulation on 1 July 2000. What are its principal objectives?

**Ms Riggs**—I believe we have provided you with copies of the guidelines for the program. They set out the program objectives. At the time the program was established, they were set out. Would you like me to read them into the record?

**Senator O'BRIEN**—Yes, please.

**Ms Riggs**—The objectives were defined in the context of the program, when it was first established, in these terms:

The primary objectives of the program are to:

- supplement investment by businesses in dairy affected regions to create long-term employment in these regions; and
- support the provision of community infrastructure and community access to training and counselling services that facilitate economic and social adjustment leading to ongoing regional benefits in the affected regions.



**Senator O'BRIEN**—Interesting. The last round of funding has been announced in recent days. Has the whole of the \$65 million budget been expended? I did say 'expended', but 'committed' might be a better term.

**Ms Riggs**—Without wishing to be cute, of course some of the funds will not be committed until they are formally under contract. With the announcements as recently as that, not all of those funds are committed. Within the context of the program, it is as committed as it can be, allowing for the normal effluxion of contract management.

**Senator O'BRIEN**—You would expect that, if there has been approval of an application, a contract would follow.

**Ms Riggs**—That is normal. There are cases where, when we work through the contracting issues, contracts do fail to eventuate—in this program, as in many others.

**Senator O'BRIEN**—Was there an attempt in this latest round 9 to fund regions that missed out in the previous eight rounds?

**Mr Prestipino**—There was an attempt to look closely at applications from priority areas where there had not been many prior commitments, although the overriding criteria still applied. We gave particular attention to applications from those areas where there had not been many or any previous approvals, but this was within the broader context of the guidelines. They still had to meet the guidelines for the program.

**Senator O'BRIEN**—Bit of a last minute catch-up, was it?

**Mr Prestipino**—No. It was simply a case that, at the end of any funding program, there is a rush of last-minute applications which come in to try and take advantage of the last opportunity to get a grant.

**Senator O'BRIEN**—Allocating to priority areas, as you put it, that had not been successful in previous rounds, I would see as a bit of an attempt to catch up and to spread wider the funds that had not been so widely spread.

**Ms Riggs**—You are entitled to your opinion about that.

**Senator O'BRIEN**—Can you tell me the number and total value of the Dairy RAP grants made to the Eurobodalla region?

**Mr Prestipino**—I do not have this material available to me at the moment, but we can certainly provide it.

**Senator O'BRIEN**—Can you tell me when applications for round 6 of Dairy RAP opened and closed?

**Mr Prestipino**—I cannot give you the exact date in 2001. The applications opened immediately after round 5 had been announced. I will have to check the exact date that the

applications for round 6 closed. This application actually started in round 5, was not completed for consideration in that time period and was carried over for consideration in round 6.

**Senator O'BRIEN**—Approximately, what would have been the cut-off date going from round 5 to round 6.

**Mr Prestipino**—Very approximately, I would have to say, mid-2001.

**Senator O'BRIEN**—I see that some of the documents are dated June and July. The ACC approval is dated 26 June in all of the documents that I can see. The first application is marked 2 July, I think. It is not dated.

**Mr Prestipino**—Indeed. The documents indicate that, at the time we were closing off for round 5, we did not have sufficient information to make a studied judgment as to the quality of that project and it was carried over for consideration in the following round. This is not an unusual event.

**Senator O'BRIEN**—Twenty-six Dairy RAP grants were announced in round 6. How many were received?

**Mr Prestipino**—Could you clarify that?

**Senator O'BRIEN**—How many applications were received in round 6?

**Mr Prestipino**—I will have to get back to you on that one. I do not have those statistics with me.

**Senator O'BRIEN**—How many applications were received from the Eurobodalla region?

**Mr Prestipino**—Equally, I do not have that information with me.

**Senator O'BRIEN**—You will provide that, will you?

**Mr Prestipino**—Yes.

**Senator O'BRIEN**—Like all elements of the Dairy Industry Adjustment Package, Dairy RAP is funded from the 11c per litre tax on domestic milk, is it?

**Mr Prestipino**—It is funded through that levy.

**Senator O'BRIEN**—The Dairy Adjustment Authority has recommended that the dairy adjustment levy be extended until 2010?

**Mr Williamson**—That is not quite correct. They have provided an estimate of how long the levy will need to run to meet all costs associated with the Dairy Structural Adjustment Package.

**Senator O'BRIEN**—They estimate it will be 2010?

**Mr Williamson**—That is correct.

**Senator O'BRIEN**—What is required to continue the levy until 2010?

**Mr Williamson**—Nothing—no changes.

**Senator O'BRIEN**—There has to actually be a decision to stop it?

**Mr Williamson**—That is correct.

**CHAIR**—Could you clarify for me whether it is the beginning or end of 2010?

**Mr Williamson**—The beginning.

**Senator O'BRIEN**—As estimated currently?

**Mr Williamson**—Yes.

**Senator O'BRIEN**—Accompanying the department's submission is the January 2001 ABARE report on the regional impact of market milk deregulation. The regional impact data in the report was revised in September 2001 but no amendment was made to the Eurobodalla Shire's rating. Is that right, Mr Williamson?

**Mr Williamson**—I will pass that question to my colleague from the Australian Bureau of Agriculture and Resource Economics, Mr Vernon Topp.

**Mr Topp**—The revisions that were made to the report were based on a number of SLAs that did not appear in the original analysis. The Eurobodalla Shire was not one of those.

**Senator O'BRIEN**—Dr Dobes told the Rural and Regional Affairs and Transport Legislation Committee in February this year that the ABARE report has been absolutely critical to the assessment of Dairy RAP applications. The report uses three descriptors of regional dependence on dairy sector—high, low and medium—and describes Eurobodalla's regional dependence as low. What does this mean?

**Mr Topp**—The regional dependence variable is based on the estimated employment share in that shire's total employment which is on dairy farms or related to the dairy industry. The low definition simply means that, having ranked all of the shires in the analysis according to the ratio of their dairy related employment to their total employment, we divided them up into three equal groups: the first group is defined as low, the second group is medium and the third group is high.

**Senator O'BRIEN**—On my reckoning, Eurobodalla region ranks 109 out of 157 on ABARE's list of regions affected by dairy deregulation. The lower the number in that score, the higher the impact of deregulation. Would that be a fair assessment?

**Mr Topp**—I am not quite sure I follow that, Senator.

**Senator O'BRIEN**—Can you tell me how did the ranking—and I believe ABARE did effectively rank in that order—impact on the assessment of Dairy RAP applications from Eurobodalla's region?

**Mr Topp**—The analysis presented in the original report, as you said before, is based on two variables: one is the estimated farm level impact of the change to dairy marketing arrangements; the other was simply an attempt to provide some estimate of the likely regional dependence on the dairy industry overall. A region could be ranked relatively low in terms of its regional dependence in employment, but farms in that region could be severely affected by dairy deregulation.

**Senator O'BRIEN**—Is it not possible, with ABARE's list of regions, to rank regions in terms of the impact of deregulation—that is, those that are worst affected and those that are least affected? In terms of worst to least—1 to 157—Eurobodalla region ranked 109.

**Mr Topp**—In relation to that particular variable?

**Senator O'BRIEN**—Yes.

**Mr Topp**—Yes.

**Senator O'BRIEN**—The former Department of Employment, Workplace Relations and Small Business was responsible for Dairy RAPs when Mordek's original application was lodged in mid-2001, but responsibility transferred to the Department of Transport and Regional Services after the November 2001 election, as I understand it.

**Mr Topp**—That is correct.

**Senator O'BRIEN**—What date did DOTARS formally assume responsibility?

**Ms Riggs**—The machinery of government changes was announced in November 2001 and the staff formally transferred to DOTARS—and neither Mr Prestipino nor I were part of DOTARS at the time—from January 2002.

**Senator O'BRIEN**—When did the files and staff relevant to this inquiry transfer to DOTARS?

**Ms Riggs**—There is no single date on which those things happened. This happened at different times over a period of time, consistent with moving people around, accommodation and so on. DOTARS assumed responsibility for this program in January 2002.

**Senator O'BRIEN**—January and further on into 2002?

**Ms Riggs**—Yes, that is right.

**Senator O'BRIEN**—Were all the staff and files relevant to the application transferred to the department?

**Ms Riggs**—In respect of the documentary record, the IT system, which was part of the management support for this program, was transferred to the department complete with its loaded database. Files relevant to what were then projects either in management or applications under active consideration were transferred. Staff equivalent to the resources which the previous department had devoted to this program, and which were now subject to the transfer, were transferred.

In many of the regional offices—what had been the state offices and regional offices of DEWR and were to become the regional offices of DOTARS—there had to be some decisions made about which individual human beings moved. It was not the case in all offices that people with detailed knowledge of every project, for example, were transferred.

**Senator O'BRIEN**—Are there any difficulties, in this department's knowledge, of this particular application from its inception?

**Ms Riggs**—There are no officers currently employed by this department who were involved in the early stages of the development, assessment, approval and contracting of this project, Senator.

**Senator O'BRIEN**—Are they with other departments, or not with the Commonwealth, or do you not know?

**Ms Riggs**—Some of them have left the Public Service.

**Senator O'BRIEN**—This department told the estimates committee in February that there have been two sets of Dairy RAP guidelines. On the basis of that evidence, I assume the guidelines provided to the committee by the department are the original guidelines and those currently published on the department's web sites are the first and only revision. Is that correct?

**Mr Prestipino**—Both sets of guidelines were provided to the secretariat—the ones that were current at the time, which are a published booklet, and a print-off of the guidelines which are currently on the web site. To my knowledge those are the only two versions that have ever been used.

**Senator O'BRIEN**—Which version is relevant to the assessment and approval on the valuation of the Mordek application?

**Ms Riggs**—This one, Senator; the first one.

**Senator O'BRIEN**—What is the difference between the two sets?

**Ms Riggs**—Broadly, the differences are that in this one, for example, there is a description of the Dairy Industry Adjustment Package and Dairy RAP's role in it, on page 1 of the guidelines. In the DOTARS version it is an attachment to the guidelines. There is very little change in substance. There is no difference in the wording of the guidance to proponents.

**Senator O'BRIEN**—Thank you for that. I wanted to discuss the chronology of the Mordek application. Last night the department provided a copy of a Dairy RAP application from Mordek

which is marked 2 July 2001. It appears on page 277 of the department's additional information book.

**Ms Riggs**—We did not provide it in that form; that is a decision the committee's secretariat has made. We actually provided these as a series of numbered documents and so I will not be able to quickly identify your page numbers.

**CHAIR**—The material you provided has to be reproduced for all members of the committee and it was put into the two volumes that we have. That in part goes to the issue of when we were able to get the documents because the committee's secretariat had a rather large task in reproducing and collating them for the members of the committee.

**Senator O'BRIEN**—The South-East New South Wales Area Consultative Committee submission says that the ACC forwarded a draft Mordek Dairy RAP application to DEWRSB on 25 June 2001. Is that the same application?

**Ms Riggs**—I cannot comment on that, Senator, but if something left that organisation on 25 June and our records mark it as being dated 2 July, while I could not be absolutely clear, it is probably fair to say that they are the same document.

**Senator O'BRIEN**—Unfortunately, we have the additional complication of going through these numbers because there are a number of other applications provided in our booklet, obviously, and in your sheaf or ream, or however you describe it, there are documents you have in your folder. The first question is: have all variations to Mordek application been provided to the committee?

**Ms Riggs**—To the extent that our paper and electronic records represent a full collection of all applications received from Mordek in respect of this project, yes, we have provided you with a copy of each one of them.

**Senator O'BRIEN**—Can you identify the applications provided by lodgment date and tell the committee how each variation differed from the one that preceded it.

**Ms Riggs**—I can attempt that, Senator. It is not a question I came prepared to answer in precisely that form. If you will just bear with me, I will do my very best to identify them for you. I have, as my next variant or revision to the application, the document that we numbered 6 in providing it to the committee. My records show that it is dated 13 July.

**Senator O'BRIEN**—Yes, page 259.

**Ms Riggs**—In broad terms, the change between the original application and this one is that this first revision includes more information on employment outcomes, the need for assistance, more detail in the project plan and in relation to the proposal for reporting, and total project costs and the budget—revised details in respect of those. I believe that the next one is the document that we provided numbered 10. It is dated 27 August.

**Senator O'BRIEN**—Page 233.

**Ms Riggs**—This one changes the nature of the proposal. This is the one that changes the original application for support with sewerage works, which was rejected, to being support for the construction of a new factory, including some elements of that factory's fit-out with plant. It continues to have a contribution towards the sewerage works.

**Senator O'BRIEN**—Can you identify the clauses in the application that are the subject of change?

**Ms Riggs**—That would take us longer. We have not come equipped to do that, but if you would—

**Senator O'BRIEN**—I did not come equipped when I got up last night but I was looking at various clauses. I have seen a number of changes. For example, clause 1.6 changes through a number of the applications. Is that a key clause in terms of defining what is being applied for?

**Ms Riggs**—Yes, it is.

**Senator O'BRIEN**—So between 13 July and 27 August, the words 'the grant applied for will be paid as a contribution to Eurobodalla Shire Council, which have undertaken to install the sewer as soon as possible', have been deleted. There have been some other words added.

**Ms Riggs**—Those words have certainly been deleted.

**Senator O'BRIEN**—The words 'part of the proposed contribution will pay for the provision of sewerage headworks for the industrial site' have been included.

**Ms Riggs**—That is true.

**Senator O'BRIEN**—In each of these documents there is a date in the top right-hand corner of the first page. Is that the date it was received? Is that the date it was submitted?

**CHAIR**—Would the officer like to take a seat at the table?

**Ms Riggs**—With your indulgence, the normal courtesy extended by committees is that we make arrangements for how we manage our provision of the response.

**CHAIR**—That is true, but the normal courtesy extended, also, is not to have witnesses or officers standing at the table for lengthy periods of time providing advice.

**Ms Riggs**—I accept that. I will invite Mr Oehm to join me.

**CHAIR**—Ms Riggs, I was just trying to make it easier for you and for your officer.

**Ms Riggs**—Thank you very much, Chair. That is the date on which it was received in the department's regional office, yes.

**Senator O'BRIEN**—Would that be the Wollongong office?

**Ms Riggs**—For this project, yes.

**Senator O'BRIEN**—According to your minister's answer to question on notice 507, the first communication between the proponent and the Department of Transport and Regional Services was 3 July 2001. That cannot be right, can it? It has to have been DEWRSB, doesn't it?

**Ms Riggs**—It has to have been with what was then DEWRSB, yes.

**Senator O'BRIEN**—Do you know the nature of the communication on 3 July 2001?

**Ms Riggs**—In brief terms, my understanding is that that is a letter from the then responsible department to the proponent seeking the authorisation paperwork in respect of the financial viability assessment that was undertaken by that department or sought by that department.

**Senator O'BRIEN**—Your minister's answer to question on notice 505 and also your department's response to a question on notice taken at estimates in February this year says:

Mordek lodged an application for the provision of a sewerage system in July 2001. The application was assessed and found not to meet program guidelines that prohibit the provision of funding that duplicates responsible Commonwealth, state and local government funding.

That is a correct statement of the response in relation to that application, isn't it?

**Ms Riggs**—Yes, Senator.

**Senator O'BRIEN**—When was it determined that the application did not meet the guidelines and who made that decision?

**Ms Riggs**—That was determined on 21 August 2001 by responsible officers in the department and the applicant was advised of that on 21 August 2001.

**Senator O'BRIEN**—Do I understand the departmental email dated 3 September 2001, which is reproduced at page—

**Ms Riggs**—At document 12, I believe, Senator.

**Senator O'BRIEN**—It would mean that the department and not the proponent amended the application in relation to the request for building funds? Mr Burnes says:

John could you please ring me back and let me know if it is okay to proceed with the application as I have amended.'

**Ms Riggs**—On its face, that appears to be what that says, and I have to say that in my summary a similar form of words is used.

**Senator O'BRIEN**—On whose authority did the officer make that decision?

**Ms Riggs**—I cannot answer that question.



**CHAIR**—Could you take it on notice?

**Ms Riggs**—I can do my best to find out the answer, but, as I explained at the start of this hearing, many of the officers involved in this project in its early days no longer work with the department.

**CHAIR**—Endeavour to ascertain the answer, if you could.

**Ms Riggs**—Yes, I will.

**Senator O'BRIEN**—Document 13, which is an email requesting an external assessment of the Mordek application, also dated 3 September, appearing at page 227 of the folder we have, says:

The proponent has accepted the National Office suggestion that they pay for the sewerage headworks costs and DRAP funds will be used to supplement the building costs associated with the factory relocation and expansion.

Can you tell the committee when this suggestion was made to the proponent?

**Ms Riggs**—I believe that that is the suggestion that was made to the proponent on 3 September. The email we have just discussed, you will note, had attachments to it. I believe that it was through that that the department conveyed a proposal that a project in these terms would be more likely to meet the guidelines. But the advice was given, as I have already said, on 21 August, that if it remained in the form of support for the sewerage works it would not be approved.

**Senator O'BRIEN**—'The proponent accepted the National Office suggestion' is the reference. Mr Burnes is in the Wollongong district office. That doesn't place him in the national office, does it?

**Ms Riggs**—I think I can assist. Mr Burnes worked in the Wollongong office and he had been aware of the conversation which had happened on 21 August that gave rise to the advice to the proponent that if it included the sewerage works it would not be approved. He has chosen, therefore, to remove that and to emphasise the building and equipping of the relocated factory by using the term 'the National Office suggestion'. At the end of the day, national office is where the delegate for this program resided.

**Senator O'BRIEN**—You are saying that the national office was in the Wollongong office in that sense, are you?

**Ms Riggs**—National office is what both DEWR and now the Department of Transport and Regional Services call their Canberra headquarters.

**Senator O'BRIEN**—Have you tracked down where this national office suggestion appears on the files and in the computer records?

**Ms Riggs**—There is a record of a conversation—it was called a roundtable—in our Sydney office, which was under the then construction of DEWRSB, which is where the regional office in

Wollongong and staff from national office reported to, in which the lack of capacity to approve the application if it included funding for the sewerage works was discussed and this alternative was first contemplated. That is the decision or the event that I have already made note of having occurred on 21 August, following which the proponent was advised on the same day.

**Senator HEFFERNAN**—There would be nothing extraordinary about any of that, would there?

**Ms Riggs**—No, there is nothing extraordinary about any of that. This program has been run very much in terms of providing the best possible assistance to proponents to produce projects which are likely to be funded for the benefit of their communities.

**Senator O'BRIEN**—The member for Eden-Monaro issued a media statement on 17 July 2001 advising that he had written to the Minister for Agriculture, Fisheries and Forestry about his strong support for the Mordek project. Was that letter forwarded by Mr Truss to Mr Abbott in his department?

**Ms Riggs**—There is no record of it appearing on our files and it is news to me that such a media release was made at the time.

**Senator O'BRIEN**—You were not in AFFA at the time, if he sent it to Mr Truss.

**Ms Riggs**—Exactly.

**Senator O'BRIEN**—What about you, Mr Williamson?

**Mr Williamson**—I am not aware of such a letter.

**Senator O'BRIEN**—Could you find out and advise the committee if such a letter was sent to Mr Truss and whether it was forwarded to Mr Abbott.

**Mr Williamson**—We can check our records, Senator.

**Senator O'BRIEN**—He was the minister it possibly should have gone to in the circumstances.

**Ms Riggs**—Yes, Minister Abbott, I guess. Maybe Minister Brough. Minister Abbott, I would have thought.

**Senator O'BRIEN**—Did DEWRSB and its minister receive any direct communication from Mr Nairn relating to the Mordek application?

**Ms Riggs**—Our examination of the files in both our regional office and our national office has failed to identify any such supportive statement.

**Senator O'BRIEN**—If such a statement was made, it would be on the files, I presume?

**Ms Riggs**—If it was made in writing.

**Senator O'BRIEN**—I accept that.

**Ms Riggs**—If it was made otherwise, there would be less certainty.

**Senator O'BRIEN**—It is just that the press release said that he had written to the minister, so I am assuming that if there is written communication you would have it on file. And, Mr Williamson, the same would apply for AFFA.

**Mr Williamson**—That is correct.

**Senator O'BRIEN**—If it went to the minister, would it be conveyed to the file or would it sit with the minister? If the letter went to your minister, what would happen to it?

**Mr Williamson**—In the case of Dairy Regional Assistance Program it should have gone down to DEWRSB, not to Agriculture, Fisheries and Forestry.

**Senator O'BRIEN**—He would have forwarded it on?

**Mr Williamson**—No. It would have gone directly to DEWRSB.

**Ms Riggs**—In a very quirky arrangement, which continues now for DOTARS, this part of the department reports in respect of the operation of the Dairy Regional Assistance Program to the minister for agriculture rather than through one of the two portfolio ministers.

**Senator O'BRIEN**—There are lots of quirky things about this one, then.

**CHAIR**—That has been noted at previous estimates hearings.

**Ms Riggs**—Indeed.

**CHAIR**—When trying to figure out who to ask the question.

**Senator O'BRIEN**—The relevant guidelines note a dual role for the Minister for Agriculture, Fisheries and Forestry and Dairy RAP, and we have just been discussing it. The minister has a role in determining eligibility criteria, and the responsible department reports to the minister, as we have just discussed. A media statement issued by Mr Truss on 30 January 2001 said that he would be asking Dairy RAP officers to visit dairy regions to ensure program benefits were maximised. On 28 May 2001 the Department of Agriculture, Fisheries and Forestry told an estimates hearing that DEWRSB was working with Mr Truss on the actual final allocations for projects in the current round. Can you outline Mr Truss's role in the Mordek application and in the Dairy RAP program more generally?

**Ms Riggs**—I have not been involved for a particularly long time, nor has Mr Prestipino, but I would characterise it in these terms. Minister Truss was responsible initially, and subsequently when DOTARS assumed responsibility and revised the guidelines, for determining the terms of the guidelines, which broadly are about the criteria for assistance. He is advised of the delegates'

decisions in respect of applications as we process each round and is responsible for arranging for the making of public announcements in respect of each of the projects successfully funded. As minister responsible for the program, it would be normal for questions in respect of how it is running and matters of that kind to be directed to him, and for the department to support him and his office in providing answers.

**Senator O'BRIEN**—In relation to the Mordek application more specifically, those principles apply to the Mordek application. It would be directed to him. Is that what you are saying?

**Ms Riggs**—No. Applications came to the department through the network of area consultative committees. Minister Truss, who would have been the minister at the time—and, indeed, is still, for the most recent round—advised of the outcome of this application and was responsible for arranging its public announcement. But the legislation that underpins this program is quite explicit in saying that the decision-making function, if not in quite these terms, rests with the department.

**Senator O'BRIEN**—With Transport and Regional Services?

**Ms Riggs**—It says the Department of Employment, Workplace Relations and Small Business. But I am absolutely confident there is legal advice around saying when you do a machinery of government changes, names are read to mean what they now mean.

**Senator O'BRIEN**—I hope our visitors are learning something from this. According to the minutes of—

**Ms Riggs**—I am sure other parliaments have quirks, too, Senator.

**Senator O'BRIEN**—I am sure they have. So Mr Abbott and Mr Anderson did not play any role in the administration of Dairy RAP. It was Mr Truss and DEWRSB.

**Ms Riggs**—Yes.

**Senator O'BRIEN**—According to the minutes of the Eurobodalla Shire Council Works and Facilities Committee meeting on 11 September 2001, DEWRSB and council communicated about sewerage farming between July and September of that year. The department has provided letters from the Eurobodalla Shire Council to the department dated 7 September and 12 September, which are numbered 15 and 16.

**Ms Riggs**—They are documents 15 and 16 in your folder.

**Senator O'BRIEN**—Pages 223 and 225. Both these letters are wholly concerned with the sewerage project. Can you tell me why the sewerage project was so important to the council?

**Ms Riggs**—No, Senator, I cannot tell you why the council might have considered sewage at the estate to be so important.

**Senator O'BRIEN**—Did the department request either of these letters from the council?

**Ms Riggs**—I take you to the first paragraph of the letter of 7 September and its wording:

I understand the Department of Employment, workplace Relations & Small Business have requested that the Eurobodalla Shire Council provide a letter ...

Again, I cannot find on the record any written request that that happened, but it is common, indeed necessary, in cases where shire or other local government council approval of some form is needed before a project can proceed. It is necessary in many of our regional programs to get formal advice from council about its agreement to a project, the building application or whatever. It is not uncommon for councils to be asked to indicate their attitudes or their decisions about such matters.

**CHAIR**—That would, I imagine, in many cases mean that the council had not actually formally determined. They may not even have a DA with them.

**Senator O'BRIEN**—They certainly did.

**CHAIR**—But I am saying as a general proposition.

**Ms Riggs**—That is absolutely right. It is certainly true that in many of these instances such letters of support come to the Commonwealth bureaucrats from the local government bureaucrats and they are not necessarily indicative that the council itself has formally considered the matter in session.

**CHAIR**—Which is what we said earlier: funds may be committed but it does not necessarily mean that they have been formally committed.

**Ms Riggs**—That is right.

**Senator O'BRIEN**—This was, of course, conveying a decision of the Works and Facilities Committee of the council—the letter marked 16 on page 23.

**Ms Riggs**—Yes, I can read that letter.

**Senator O'BRIEN**—The council's submission refers to a Regional Solutions application for funds to sewer the North Moruya Industrial Estate and, according to the copy of the application provided by council, that was lodged in November 2000 and sought a grant of \$302,220. Are you aware of that application?

**Ms Riggs**—I am sorry, Senator. I will ask my staff to tell me if there was such an application, but that is the first time it has come to light, to my knowledge. Let us assume that there was such an application. It would have been rejected under the guidelines for that program on the same basis that, under the guidelines for Dairy RAP, anything that sought funding for what was regarded as a local government or state government function would not have met the guidelines for a Regional Solutions program. A number of those sorts of guidelines are common across the Regional Assistance programs.

**Senator O'BRIEN**—Yes. Their submission says that the Regional Solutions application was rejected on the grounds the development would eventually assist private enterprise, principally the owner of the land.

**Ms Riggs**—That, too, would have been a failing condition for that program, which does not fund private enterprise.

**Senator O'BRIEN**—Can you find out if there was such an application?

**Ms Riggs**—I will confirm that for you, Senator.

**Senator O'BRIEN**—Also, when the decision was made to reject it, and when the proponent, in this case the council, was informed. The answer to question on notice 507 says:

Mordek's final Dairy RAP application was lodged on 12 December 2001.

In respect to assessment, the answer to question on notice 506 says that this was completed on 12 December 2001, whereas the department's submission indicates that the project gained approval from the program delegate on 17 December 2001. Which is correct?

**Ms Riggs**—The delegate approved this project on 17 December 2001.

**Senator O'BRIEN**—It was not received on the 12th and approved on the 12th, as the minister's answer to question on notice 506 appears to say?

**Ms Riggs**—The final revised RAP application was received on 12 December 2001. It is document 29 in your white bundle.

**Senator O'BRIEN**—The bundle which is not marked confidential?

**Ms Riggs**—The bundle which we have not sought the committee's agreement to treat as in camera.

**Senator O'BRIEN**—Which the committee has agreed to do at this stage, you have been advised. Page 137.

**Ms Riggs**—Senator, we did not ever finish our trawling through the various forms of applications, but I think we might be close to the end of it, having identified that document.

**Senator O'BRIEN**—Yes. There are a couple of other versions.

**Ms Riggs**—The version of 3 December?

**Senator O'BRIEN**—What is that marked?

**Ms Riggs**—As document 25.

**Senator O'BRIEN**—At page 161.

**Ms Riggs**—There is a document dated 18 September 2001.

**Senator O'BRIEN**—Yes.

**Ms Riggs**—Document 17 in your package.

**Senator O'BRIEN**—Page 207. Are there any more?

**Ms Riggs**—I am just examining this listing, Senator. No, I think that completes the set.

**Senator O'BRIEN**—Other than the copy of the final one that is appended to the contract which is signed and dated 5 March, which I would accept is an error by the proponent in signing the contract and dating it the day he was signing the contract.

**Ms Riggs**—That is my understanding, Senator.

**Senator O'BRIEN**—The declaration in the final application, document 29, does not show Mr Nader signing it off or dating it.

**Ms Riggs**—I believe that would have been because this was received electronically.

**Senator O'BRIEN**—But did he sign a form of it off? That is the question for you to consider.

**Ms Riggs**—I understand, Senator. I do not have a copy of such a signed document in front of me. I will have to ask that officers examine the record to find out what form of verification was obtained that this did in fact represent the Naders' final application.

**Senator O'BRIEN**—Yes. I would like to know if you have a signed copy of a final application. It appears that document 25 has a signature on it, dated 4 December. Is that the right one? I am confused.

**Ms Riggs**—Of 3 December. As I say, Senator, we will check.

**Senator O'BRIEN**—It is dated 4 December 2001—document 26, page 160.

**Ms Riggs**—Yes, that one does have a signature on it.

**Senator O'BRIEN**—Yes, but the final one does not.

**Mr Prestipino**—In the final application, from our notes, the only significant difference is a more detailed breakdown of their contribution, so it does not change the substantive details of what they are applying for, or the amount they are applying for. We will search for a signed copy of that.

**Senator O'BRIEN**—Who made the assessment to give the approval to the project on 17 December 2001? Who was the program's delegate on that date?

**Ms Riggs**—I will check, but my recollection is that Michelle Patterson was the relevant assistant secretary in DEWRSB at the time. Unless she was otherwise on a period out of her position I believe it would have been her. We will check the record.

**Senator O'BRIEN**—Can you tell me whether the external assessment of the proponent was limited to the financial position of Mordek, or whether it encompassed Moruya Industrial Estate Pty Ltd as well?

**Mr Prestipino**—Senator, we have not had a chance to read through all those documents either and we would have to look at it more closely. My understanding is that one of the concerns raised by the external consultants early on was a lack of clarity in the financial arrangements between the interlocking and cross-ownerships in those privately held entities. My deduction is that they did look beyond just the applicant to have a look at the financial details of the broader group, but we will confirm that for you. My understanding from my reading of the documents is that they did. We will confirm it.

**Senator O'BRIEN**—Can you tell me when the proponent and the ACC were informed of the approval of the grant?

**Mr Prestipino**—I can only refer to the normal process, where the minister is briefed and provided with the delegate's decisions. The minister chooses a time at which he wishes to provide that information to his colleagues for them to publicly announce it. To that extent, the day the public announcement is made is the day the ACC and the proponents are also informed. I would have to go back to the exact date that it was publicly announced, but I cannot go any further than that at the moment. The normal process is that they are not informed prior to the public announcement.

**Senator O'BRIEN**—Would Mr Nairn have been informed prior to the public announcement?

**Mr Prestipino**—My understanding is that Mr Nairn effectively made the public announcement in January.

**Senator O'BRIEN**—On 31 January. Is that the announcement you are talking about?

**Ms Riggs**—My record shows it is the 30th, but, yes, the end of January 2002.

**Senator O'BRIEN**—Where he handed over a cheque.

**Mr Prestipino**—No, that was a public event at a later date.

**Senator O'BRIEN**—He was informed some time between 17 December and 30 January?

**Mr Prestipino**—Yes.

**Senator O'BRIEN**—But you are not sure when.



**Mr Prestipino**—I cannot give you the date at this moment.

**Senator O'BRIEN**—Can you find out?

**Mr Prestipino**—We can, yes.

**Ms Riggs**—Chair, may I go back to one of Senator O'Brien's previous questions. You asked, Senator, if the financials of the Moruya Industrial Estate were also examined as part of the external financial viability assessment. Mr Oehm has been able to point to documents relating to the financial circumstances of Moruya Industrial Estate which were included in those that went to the external assessors. That would probably be in your yellow bundle, Senator. That supports Mr Prestipino's summary for you of the fact that ultimately there is evidence that the department went back and sought further advice about the separation of those two entities for the purpose of contracting here.

**Senator O'BRIEN**—One of the inquiry's terms of reference relates to the role of stakeholders in the application, approval and expenditure of this grant. The South-East New South Wales Area Consultative Committee states that, once it forwarded the Mordek submission to DEWRSB on 12 July 2001, it had nothing more to do with it. The submission states:

From this time onwards the application was handled by DEWRSB.

Do you know if advice was sought from the ACC after 12 July 2001, or is its submission accurate and the ACC had nothing more to do with the Mordek application?

**Ms Riggs**—Our examination of the documentary record of this application would support what the ACC has said to you.

**Senator O'BRIEN**—In relation to the various application forms held by the department in this matter, all appear to have been agreed by the ACC on 12 June 2001, which is clearly not possible. Why was the original endorsement relied upon when the application varied again and again?

**Ms Riggs**—I cannot answer that question, Senator.

**Senator O'BRIEN**—Are you saying that there is no-one in the department who would know?

**Ms Riggs**—There is not anyone in the department who could answer that question for you at this time.

**Senator O'BRIEN**—Dairy RAP guidelines state:

Funding is not available retrospectively. Proponents should not plan to begin a project dependent on Dairy RAP funding before receiving formal notification of approval.

What is the public policy rationale for this condition?

**Ms Riggs**—Chair, I seek your guidance on this. We are here to discuss the administration of a program, not the policy which underpins it. Could I have your guidance on how I might approach this?

**CHAIR**—Ms Riggs, if you feel that you are unable to answer the question because it requires a statement or a reflection upon government policy then you can make that point.

**Senator O'BRIEN**—I am trying to find out merely how important the guideline is. Presumably it is important in terms of public policy that you should not be funding something for which funding has already been provided.

**CHAIR**—You could certainly explain the rationale as to the guidelines of the scheme, including what it will not be funded for.

**Ms Riggs**—Thank you, Chair. Senator, I believe that this guideline exists in order to prevent a situation where something has been completely undertaken—particularly in a case where we are dealing with private enterprise—and been funded through other sources and, in effect, then the government is asked to reimburse the proponent. I do not believe that it exists to stop businesses from taking normal commercial risks.

**Senator O'BRIEN**—Normal commercial risks, okay. The guidelines also provide:

Only projects that meet the assessment criteria and are consistent with the guidelines and general principles as set out in this document will be considered for funding.

In February Senator Macdonald was asked at an estimates hearing what the rule, which provided 'funding is not available retrospectively', should be understood to mean. He said, 'It means what it says, obviously.' The department's submission to this inquiry confirms that funding is not available retrospectively but goes on to say:

The spending prior to approval appears to have been due to a combination of reasons that include commercial pressures and the opportunities to undertake the project provided by the impending Christmas-New Year break and associated traditional January shutdown by the building industry. The proponents would appear to have undertaken the expenditure in good faith and without any understanding that it might, and with no intention to, deliberately breach Dairy RAP guidelines.

I am intrigued that in the space of five paragraphs the department confirms the ban on retrospective funding but reveals that the project commenced prior to approval. Is the basis of this assessment the report of the national office visit on 27 February 2003, 15 months after the grant was approved?

**Ms Riggs**—I have two parts in my response to that. With the best will in the world, even excellent public servants cannot know everything. At the time approvals were given for this project, it was not known that some of the work associated with the application had been undertaken. It was not known that there might have been an element of retrospectivity. Secondly, I will remind you of the wording of the guideline that relates to retrospectivity, Senator. I think it is important. I make the point that it is not a prohibition on retrospectivity without other context. The condition of assistance in full reads:

Funding is not available retrospectively. Proponents should not plan to begin a project dependent—

the emphasis on the word ‘dependent’ is my emphasis—

on Dairy RAP funding before receiving formal notification of approval.

**Senator O’BRIEN**—Yes, I did read that.

**Ms Riggs**—Those two sentences have to be taken together. It is fair to say that the then Department of Employment, Workplace Relations and Small Business may have taken projects on a case by case basis as to how it brought the first sentence together with the notion of commercial risk.

**Senator O’BRIEN**—Surely the second sentence is a warning. Firstly, you say, ‘Funding is not available retrospectively.’

**Ms Riggs**—Yes.

**Senator O’BRIEN**—It is pretty clear. Secondly, you give a warning to applicants, ‘Don’t begin your project before receiving formal notification of approval’—unwritten caveat—‘because you cannot be guaranteed funding and we are not allowed to fund you retrospectively.’

**Ms Riggs**—This is to prevent anyone from having a recourse to the Commonwealth saying, ‘But I expected to get funding from you and I didn’t get it.’

**Senator O’BRIEN**—Yes, and ‘We had an understanding we would be funded, so we started the project.’

**Ms Riggs**—You will have to ask the Naders whether they undertook the preliminary work on the understanding that they would get funding or whether they would have proceeded with the project in the absence of funding; hence my comment about normal commercial risk.

**Senator O’BRIEN**—This report says:

On the basis of a conversation with the proponent on this day—

that is 27 February—

the department was able to establish that, prior to approval, the slab was poured, the gantry frame commissioned and the framework commenced.

It also notes:

The proponent was unable to provide any primary documents to support the claims it made.

Is this the only investigation undertaken by the department to establish the state of construction when funding was approved?

**Mr Prestipino**—This was part of a range of inquiries. This is merely the record of a field visit. We made a number of telephone inquiries. In February of this year we asked for copies of documents to support statements that had been made, but it was felt that some questions had to be put to the proponents and I went down to actually ask them questions straight. This formed part of the review; it was not the only part that contributed to the final decision.

**Senator O'BRIEN**—Your officers visited Mr Bowman at the council on the same day. Did anyone think of asking the planning and development people what the project looked like in 2001?

**Mr Prestipino**—At that stage the department had the benefit of the documents that you had tabled. It was clear in our mind that there had been construction work on some of the concrete foundations for the building that had been approved.

**Senator O'BRIEN**—Some of the foundations?

**Mr Prestipino**—Obviously the approvals can be done many years in advance of construction. That is not an unusual commercial activity. The documents that you tabled also indicated to us—and we were not going to doubt the veracity of them—that some of the cement foundations had been poured and were inspected at various times, which to us indicated that, as the proponent had cash available, he poured a bit more cement and had it approved. Indeed, this process continued on into the new year, where there was more foundation and cement pour work done for various parts of the site.

**Senator O'BRIEN**—The proponent would not have found out about approval until 30 January. Is that how I understand your earlier answer?

**Ms Riggs**—That is how the process should have worked. I have no evidence to suggest that it did not.

**Proceedings suspended from 10.30 a.m. to 10.46 a.m.**

**CHAIR**—The hearing is now reopened.

**Senator O'BRIEN**—I want to take you to document 19, the September 2001 analysis of the Mordek proposal by PricewaterhouseCoopers commissioned by DEWRSB. On page 5 of that analysis, it says:

The applicant has confirmed funding for the building and plant. However, it is unclear how they would fund the sewerage system should funding not be provided by the Commonwealth.

If the department knew the proponent had confirmed the funding for the building and plant in September 2001, why was the decision made to grant \$309,000 of public money to that project a few weeks later?

**Ms Riggs**—I do not believe there is anyone in the department at the moment who can answer that question for you. Sorry, Mr Oehm has assisted me again. Can I take you to document 22 in your package.

**CHAIR**—Can you give us a page reference, Senator O'Brien?

**Senator O'BRIEN**—When I find it I will give you a page reference. I have 23 and I have 20.

**Ms Riggs**—It is a PricewaterhouseCoopers document.

**Senator O'BRIEN**—That is in the other folder, the red folder or yellow folder, or however you describe it.

**CHAIR**—Is it one of the documents that you have requested confidentiality about?

**Ms Riggs**—Yes.

**Senator O'BRIEN**—I may have it. There are a number of versions of that.

**Ms Riggs**—That is precisely the point that I wanted to make: as this project went to and fro in terms of our advice to the proponent that we would not pay for sewerage, and it was further developed, there was supplementary information provided to PricewaterhouseCoopers and there were several supplementary reports—at least two—from them.

**Senator O'BRIEN**—Page 34 of that folder recites precisely the same passage that I quoted from document 19 in document 22 and indeed in document 30.

**CHAIR**—Which are documents that are not published.

**Senator O'BRIEN**—Have we published them but they are in camera? I do not seek to refer to them. You have drawn my attention to one of them, and I am looking at page 10 of that document.

**Ms Riggs**—I have to go back to my earlier position that in the to and fro the application was developed and moved away from being an application to fund the sewerage works to being one relating to the building and equipping of the replacement steel profiling plant and, as none of us was involved at the time, I cannot explain to you how that paragraph was considered in the assessment process.

**Senator HEFFERNAN**—Would it be reasonable to assume that, with the original application, the company would have got assistance from the area consultative committee? That was the normal way of doing it.

**Senator O'BRIEN**—No, not for these. These documents are post the ACC's role. We have already established that.

**Senator HEFFERNAN**—Yes, but the original application which was for sewerage was a flawed application. Was that put together with the assistance of the area consultative committee?

**Ms Riggs**—To understand in any given project precisely how much involvement the ACC had, you would have to talk to the ACC, and I know that they will be here. Our preference in all our programs is that the proponents engage with the ACC to best frame their proposals, but I

cannot personally tell you how much work this company did with the ACC before seeking the ACC's endorsement. All I can say on the formal record is that the ACC endorsed the initial proposal as it came to the department.

**CHAIR**—Can we go back to Senator O'Brien's original question.

**Senator O'BRIEN**—I was taking up the response referring me to the document in the in camera evidence, and I think the only fair thing I can say, because that has been raised on the record, is that precisely the same words appear in both of the subsequent PricewaterhouseCoopers reports—on page 10 of document 22 and on page 11 of document 30.

**Ms Riggs**—Yes.

**Senator O'BRIEN**—And there is no-one in the department now who can tell me why a grant was made to fund the building and the plant, when the proponent had confirmed funding for the building and the plant all the way through, apparently.

**Ms Riggs**—There is no-one in the department who can tell you how these reports were considered within the application process.

**Senator O'BRIEN**—In relation to retrospectivity, Ms Riggs, you said at the references committee on 11 February:

I think it would be pretty obvious to our staff on the ground that the thing for which funding was being sought already existed.

I put it to you that it was pretty obvious in September 2001 that the project did not need public money—that is, the project to build the building and install plant. It was already funded, and that is what the evidence that you have supplied to us shows, doesn't it?

**Ms Riggs**—I cannot answer for what was obvious in some period in 2001.

**Senator O'BRIEN**—Your own documentation—the PricewaterhouseCoopers documents—says that the applicant has confirmed funding for the building and plant.

**Ms Riggs**—I am aware of those words. I think I have said to you, and I will say it again, that I cannot respond to you about what account the officers then responsible for the assessment of this project took of these assessment reports in formulating their recommendations to the delegate.

**Senator O'BRIEN**—One of the matters proponents are asked to address in dealing with applications is the consequences for the project if Commonwealth funding is not made available. Presumably they are asked to address that for some reason. Do you know why they are asked to address that question?

**Ms Riggs**—I am sorry, Senator, I was distracted—and Mr Prestipino did not mean to do that. Could you ask me the question again.

**Senator O'BRIEN**—Yes. One of the matters proponents are asked to address in Dairy RAP applications is the consequences for the project if Commonwealth funding is not made available. I wanted to know if you could tell us why that matter is required to be addressed in the DRAP applications.

**Ms Riggs**—My understanding of that is that that is one way of the department being able to make some judgment as to whether this is likely to produce a sustainable outcome that has benefits to the community in which the proponent is located and, given the fundamental objectives of this program, I think that is a reasonable ask for the proponents.

**Senator O'BRIEN**—But surely one of the rationales is that the program should not fund projects that would be commercially viable without public funding, and by funding these projects the Commonwealth would deny funding to other projects that needed public funding to get off the ground.

**Ms Riggs**—In the guidelines that operated at the time there is not actually a statement that says that you can only come to the Commonwealth if you are desperate and need the money, but I think it is fair to characterise the Commonwealth's support under Dairy RAP as often having created opportunities whereby investment could be brought forward to the benefit of the local community. It is not that it was impossible to fund, just that this lets something happen sooner.

**Senator O'BRIEN**—In the circumstances where the project funded was already fully financed, how was it bringing anything forward?

**Ms Riggs**—I cannot comment on what the thoughts of officers involved in this project at the time were.

**Senator O'BRIEN**—Your submission says that \$157,100 GST exclusive was committed by the proponent prior to the project's approval. When you say 'committed', do you mean spent?

**Ms Riggs**—I do not know the answer to that question because I do not know precisely the date on which that company might have paid some bills but, having discussed it with the company, our understanding is that that is the value of the works that in retrospect we now know to have been completed in advance of approval.

**Senator O'BRIEN**—If they had not paid for it, they had to pay for it then?

**Ms Riggs**—That is correct.

**Senator O'BRIEN**—Or other consequences would follow. I am interested in the department's site visits. According to the answer to question on notice No. 756, the site was visited by the department once. Can you confirm when that visit occurred.

**Ms Riggs**—It was on 15 August 2002.

**Senator O'BRIEN**—Were any site visits proposed by the department later abandoned—in other words, you decided to go but then did not go?

**Ms Riggs**—I will consult with Mr Oehm. I am not aware of any. The current staff of the Wollongong office are not aware that there were any scheduled that were not subsequently carried out.

**Senator O'BRIEN**—You say in the submission that the expenditure was undertaken in good faith and without any understanding that it might breach program guidelines. How do you know that?

**Ms Riggs**—It is based on Mr Prestipino's interview with the Naders in February of this year.

**Senator O'BRIEN**—That is what they told you?

**Mr Prestipino**—That is what they told me.

**Senator O'BRIEN**—I want to take you to the Eurobodalla Shire Council's Regional Solutions application for funding which you may know about.

**Ms Riggs**—I am quite sure it is there and it is real but, given the terms of reference for this inquiry, you will appreciate that we focused our attentions around the application by Mordek under the Dairy Regional Assistance Program and so we have not brought details of an application under another program which ultimately was not approved.

**Senator O'BRIEN**—You may need to take these questions on notice. I believe they are relevant. In the section headed 'Background to the proposal' and then 'Project secured'—this is in the council's submission—council says the directors of Mordek had decided to expand their operation on the estate by constructing a large facility that, together with new machinery, represented an investment of over \$1.5 million. Council said that the expansion would create 11 full-time positions. Construction was expected to commence soon after the date of submission in November 2000 and the plant was expected to be fully operational by February 2001. Do you know whether the department took this advice from council into account when assessing the Mordek Dairy RAP application?

**Ms Riggs**—Can I point out that, at the time, these programs ran in two separate departments. Regional Solutions was part of the then Department of Transport and Regional Services. Dairy Regional Assistance was administered in the then Department of Employment, Workplace Relations and Small Business. Without being fully cognisant of it, my contention to you is that the two departments probably did not routinely share details of applications under all their regional assistance programs and it was probably not even known about.

**Senator O'BRIEN**—But given the council involvement in this and the fact that views were sought from council about the project, did no-one think to ask whether there were any other applications that had been made about this application?

**Ms Riggs**—Based on the record, I would have to say that the DEWR officers involved in the Mordek application were not aware of the application to DOTARS under RSP.

**Senator O'BRIEN**—According to Eurobodalla Shire Council the Mordek development application for construction of the steel profiling plant was lodged on 20 September 2000,



approved on 7 December 2000 and the construction certificate was issued on 26 February 2001. What inquiries has the department made of the council about the development application and approval process for the plant?

**Ms Riggs**—In considering applications that involve council approval, it is most common for us to seek documentary evidence from the proponent of the proposal that such approvals have been given, or at least in a preliminary sense they have been sought, and we can consider an application subject to confirmation of the approval. It is not normal for us to approach councils directly to ask for details of the kind that you are referring to.

**Senator O'BRIEN**—One might say that in this case it would have been prudent to know the history of the proponent's application, given the number of times the application was revisited.

**Ms Riggs**—It was not at all uncommon for applications to be revisited several times under this program and, indeed, under other programs in what is now the DOTARS Regional Assistance Program suite. It is common. The objective of the department is to aid proponents to develop projects that do meet the criteria.

**Senator O'BRIEN**—Perhaps someone should be looking at that in the context of what has happened with this application. The answer to question on notice 509 says that the Mordek project was not funded retrospectively. If the proponent had already committed \$157,100 and the steel framing for the building had gone up at least nine days prior to the submission of the final application, how can that be accurate?

**Ms Riggs**—At the time the department answered question 509 it answered it based on the information that it had available to it at the time. I have already acknowledged that there was some work associated with this project that we did not know the dates of until early this year. Question 509 was answered by the department based on what it understood at the time.

**Senator O'BRIEN**—So we should disregard that answer and rely upon the other evidence we have—to that extent at least.

**Ms Riggs**—Thank you, Senator.

**Senator O'BRIEN**—You agree with that?

**Ms Riggs**—In respect of that particular part of the answer I acknowledge we have since learnt that some parts of this project were constructed, and that might have constituted retrospectivity.

**Senator O'BRIEN**—I want to turn to the story that appeared on the front page of the *Coastal Sun* on 11 July 2002. Under the headline 'Dairy RAP dilemma' this story said:

The building was already constructed and being fitted out when the Dairy RAP application was made. It is said Mr Phil Herrick from Eurobodalla Shire Council and representatives of the federal government met and agreed to ask Mordek to apply for a building grant but used the funds for the sewerage system.

What action did the department take in July last year to investigate the serious allegations contained in this newspaper story?

**Ms Riggs**—I do not know. I was not part of the department at the time.

**Senator O'BRIEN**—Can you find out?

**Ms Riggs**—I will just consult with Mr Oehm and see what I can find out.

**Senator O'BRIEN**—Thank you.

**Ms Riggs**—The on-site inspection schedule for August of that year was already known to be scheduled and the department, recognising that there were some inaccuracies in the article from its perspective, concluded that it would undertake that inspection, which it did. I am advised at this stage that there was no further action in respect of that article.

**Senator O'BRIEN**—A decision was made not to further investigate.

**Ms Riggs**—There was already an inspection of this project scheduled for mid-August and the decision was taken to make that inspection; to confirm that that inspection would be carried out.

**Senator O'BRIEN**—Have officers of this department or DEWRSB been present at any meeting where a deliberate plan to seek Dairy RAP funds for one purpose, but to use those funds for another purpose, was hatched?

**Ms Riggs**—Certainly not to my knowledge, nor to the knowledge of any officer in this room.

**Senator O'BRIEN**—Can you check that? I do not know if you have. Are you saying there is no-one you can check that with?

**Ms Riggs**—Chair, if I may, I do not believe that I can possibly take on board going back to DEWRSB and asking them to engage with everybody who has ever been involved in Dairy RAP to put their hands on their hearts and say, 'I never sat in such a meeting.' To sit in such a meeting would be absolutely contrary to the Public Service Code of Ethics and the act under which we are all employed. It would be a huge job to do this. All I can say is that I find it highly improbable and that I certainly have no knowledge of officers working in the now Department of Transport and Regional Services involved in Dairy RAP who would contemplate such an action.

**Senator O'BRIEN**—If such a plan were hatched and discovered after the grant was paid, would the department ask for the money back?

**Ms Riggs**—If the department were to discover after the event that there had been, on the face of it, attempts to defraud the Commonwealth, it would take the normal steps that any responsible program administration department would take. It would seek investigation and consideration of the potential for action through the proper processes.

**Senator O'BRIEN**—If parties did contrive to gain Dairy RAP money for one purpose but intended to spend it on another, would that represent a corruption of the administration of this program?

**Ms Riggs**—If it were proven that parties had deliberately set out to do that and if it were proven through a proper process of investigation, examination and testing, I have to say I believe that would constitute prima facie a fraud against the Commonwealth.

**Senator O'BRIEN**—Would that sort of activity pose a threat to the proper administration of this program?

**Ms Riggs**—I believe that any deliberate attempt to defraud the Commonwealth poses a threat to the Commonwealth.

**Senator O'BRIEN**—The government needs to know why it is giving money away, doesn't it? In answer to question on notice 511, your minister said the building of the plant commenced on 24 December 2001 and the installation of equipment commenced in January 2002. I have made the point that this is a building schedule that would put an Amish construction firm to shame, but can we discount that answer in the same way we discounted that part of the answer to question on notice 511?

**Ms Riggs**—Again I would say to you that that answer was written and prepared by the department for the minister's consideration based on the best information available to it at the time.

**Senator O'BRIEN**—I understand the installation of equipment commenced in January 2002. If so, does that mean the building was up and the equipment was installed before Mr Nairn announced funding for the project on 30 January?

**Ms Riggs**—My understanding of the nature of some of the equipment involved here is that it is very large and you cannot build the building until you have put the equipment on the slab. Any notion that this plant was fully built before it was equipped is probably problematic from that point of view, as has been explained to me, but I am a layperson in these matters.

**Senator O'BRIEN**—Perhaps you would leave a wall open while you install large equipment, and probably under a roof, and then screw metal panels to the walls and install doors. I understand that answer, but it does mean that the building was at least substantially up and the equipment was installed before the—

**Ms Riggs**—I understand that it means that perhaps the floor was there and some things—

**Senator O'BRIEN**—No, more than that.

**Ms Riggs**—Senator, we did not understand as a department that there was anything untoward about this project and we scheduled a single site visit, as would be quite normal in this program. Moruya is one of the world's quite pleasant places on the South Coast of New South Wales, but it is not one that I have officers drive through routinely who could have made the observations that clearly give rise to some of your perspectives on this.

**Senator O'BRIEN**—The information was there but the department did not make itself aware of it. It is not a holiday drive-through we are talking about; it is a drive-through about a project that was attracting significant Commonwealth funds.

**Ms Riggs**—The department managed this consistent with its normal practice for managing grants under this program.

**Senator HEFFERNAN**—At the end of this long and winding road we are on, is it simply not going to come down to whether there is enough flexibility in the retrospective guideline?

**CHAIR**—Is that a question or a statement, Senator?

**Senator HEFFERNAN**—It is a question.

**CHAIR**—I thought it might have been a rhetorical one.

**Ms Riggs**—My perspective on this project is that it had a certain value in which the Commonwealth agreed to provide half of the anticipated value. In fact, the project ended up costing more than that, so the proponent's contribution was more than 50 per cent of the project. As I understand it, it has resulted in a substantially bigger new steel profiling plant in Moruya which has created a number of new jobs in that town.

**Senator HEFFERNAN**—And it is able to fulfil the criteria in all those respects.

**Ms Riggs**—That seems to me to have satisfied the requirements of the project.

**Senator O'BRIEN**—Even though the evidence before you tells you that the applicant confirmed funding for the building and the plant prior to receiving Commonwealth funding, do you still stick to that answer?

**Ms Riggs**—I am not aware that the program guidelines preclude from funding projects which might have other funding sources.

**CHAIR**—Since we are talking about retrospectivity, is that an assessment you make, Ms Riggs, now or is that an assessment that was made at the time?

**Ms Riggs**—Chair, I cannot answer—as I have said several times this morning—for what might have been the considerations of officers at the time.

**CHAIR**—Is it your assessment now, subsequent to this application being approved, that in your view it was appropriate to give the approval at that time?

**Ms Riggs**—No, that is actually not what I said.

**CHAIR**—What are you saying? If either you or any other officer is not able to say that, at the time the application was being considered and approved, an assessment was made that it fitted the guidelines on the basis you have now put to us, but you now say to us today that, looking back at it in answer to Senator Heffernan's question, it all seems to be in order, then it is an assessment that is made after the event, isn't it? And that is pretty much the crux of this issue.

**Ms Riggs**—My examination of what is on the department's records in relation to this program leads me to the conclusion that the processes that led to this project being approved were duly

carried out, were consistent with the then department's operations of the program and, based on what was known to the department through the application and so on, that it was a proper approval. We now know that the department may not have known some things that may have led it to either approve something different by way, for example, of budget or to have continued to negotiate with the proponents in order to frame a project which would have met the guidelines.

**CHAIR**—Or to have rejected it.

**Ms Riggs**—That is a possible consideration, but the evidence suggests to me that the department was working hard with these proponents to help them define a project that would meet the guidelines.

**CHAIR**—Were they looking to find a project or were they dealing with essentially the same project, but different aspects of the same project, namely plant and equipment as distinct from sewerage? Isn't that the point? This was not a different project, was it?

**Senator HEFFERNAN**—It would be fair to say—

**CHAIR**—Senator Heffernan, I have asked a question. It was not a totally new, different project? It was the same site.

**Ms Riggs**—The works which the Commonwealth approved for payment were quite different from the works for which the proponent first sought Commonwealth funding.

**CHAIR**—But, Ms Riggs, you used the term 'project'. I have sat in hearings in other committees, as Senator O'Brien has, where there is talk in terms of the Dairy RAP scheme about a project. We all have an understanding of what a project is. A project could be to build a plant, a different project might be to build a swimming pool, but we are not talking about a different project here, are we?

**Ms Riggs**—No.

**CHAIR**—You are talking about different aspects of a project which might have different companies or different entities involved, but it is the same project, is it not?

**Ms Riggs**—Chair, I have already, in answer to Senator O'Brien's questions, walked through a schedule of revised applications—not new applications but revisions to the applications. I think your contention must therefore be absolutely right that this is a project, but what changed significantly was the nature of the works that the Commonwealth was providing assistance towards.

**CHAIR**—Thank you, Ms Riggs.

**Senator HEFFERNAN**—If the department had known that whatever it commenced, it commenced, and the application had been reviewed, it would have been possible to apply for \$300,000 worth of landscaping, or other areas.

**Ms Riggs**—Yes, and that is what has happened in some other cases, although I would hasten to say we would be unlikely to fund landscaping.

**Senator HEFFERNAN**—You know what I mean.

**Senator O'BRIEN**—The photograph of Mr Nairn handing a Dairy RAP cheque to Mr and Mrs Nader appears on the front page of the Summer 2002 edition of the South-East New South Wales Area Consultative Committee newsletter. Do you know when that occurred? Is that the 30 January event?

**Mr Prestipino**—My understanding is that it was some time after that. It is probably something that needs to be confirmed with the area consultative committee. It was something arranged separately to the department.

**Senator O'BRIEN**—On what date was the Dairy RAP grant money paid to Mordek, or the first payment, if it came in more than one payment?

**Ms Riggs**—The first instalment was paid to Mordek on 26 March 2002.

**Senator O'BRIEN**—The Mordek submission says that every move the company took was closely monitored by DOTARS. Would you agree?

**Ms Riggs**—This project was monitored consistent with the arrangements that were used for monitoring projects under this program.

**Senator O'BRIEN**—The problem is that the Mordek submission says that every move the company took was closely monitored by DOTARS, but that cannot be correct on the evidence you have given, can it? You could not have closely monitored them when so many things were not known and you have had to effectively ditch answers to questions on notice as no longer being accurate.

**Ms Riggs**—There was an extensive toing and froing between the department and the proponents during 2001, up to the point of approval.

**Senator O'BRIEN**—But you did not know the expenditure on the building until after the event.

**Ms Riggs**—That is right, because the normal processes of the then DEWRSB did a lot of business on a desk basis.

**Senator O'BRIEN**—So it could not be correct to say that every move the company took was closely monitored by DEWRSB or DOTARS.

**Ms Riggs**—Perhaps to people working in private enterprise, any contact from the government makes them feel as though they are being closely monitored.

**Senator O'BRIEN**—That does not make that statement correct.

**Ms Riggs**—I am not able to comment on what value the Naders may have put on the word ‘closely’.

**Senator O’BRIEN**—Certainly not ‘every move’.

**Ms Riggs**—I have nothing further to add.

**Senator O’BRIEN**—According to the answer to question on notice 756, bimonthly progress reports were required and two were received—one on 30 April 2002 and one on 3 July 2002. And, according to the answer to question on notice 511, the installation of equipment was completed by 30 April. What progress was there to report on 3 July 2002?

**Ms Riggs**—My understanding is that the department’s interest at that time was to know whether or not people were employed, which was one of the outcomes sought from this project. It was not just a matter of a building and its equipment.

**Senator O’BRIEN**—It was reporting outcomes, not the expenditure of funds?

**Ms Riggs**—That is right.

**Senator O’BRIEN**—And with regard to the final audit, can you provide us with some advice: who commissioned the audit, who conducted the audit, and when did it commence and conclude?

**Ms Riggs**—The audit of this company’s use of the funds was carried out at our request. It is a requirement of the standard contract used under Dairy RAP by a company called Greg Jesson and Associates, a locally based accountant, I believe.

**Senator O’BRIEN**—Is this the proponent’s accountant?

**Ms Riggs**—Yes, it is, I understand.

**Senator O’BRIEN**—You commissioned them to conduct the audit.

**Ms Riggs**—We require that the proponent arrange for an audit of the use of their funds.

**Senator O’BRIEN**—And it is acceptable that they use their own commercial accountant to do that?

**Ms Riggs**—Yes.

**Senator O’BRIEN**—Is that common in other projects? It appears curious to me but I just wonder if it is common.

**Ms Riggs**—Accountants who carry out audit work are people whom many government agencies rely on to sign off on the validity of companies’ accounts. Using their own auditor and accountant to sign off on this subset of their accounts is not necessarily inappropriate at all.

**Senator O'BRIEN**—In your opinion. That is the department's view—is that what you are telling us?

**Ms Riggs**—It is not uncommon for the audit statement that the department accepts to have been prepared by an accountant of the company's choosing.

**Senator O'BRIEN**—Can you tell us when the audit commenced and when it concluded?

**Ms Riggs**—I am sorry, Senator, I will have to seek detailed advice about that.

**Senator O'BRIEN**—That is fine. When this matter was raised at estimates on 11 February, Senator Macdonald said a report will be provided to the estimates committee on 14 February. On 14 February you said a report would be provided by 21 February. A 1½-page review, the same review that forms the basis of the department's submission to this inquiry, was provided on 23 April. I understand that since 11 February the department has prepared briefing material and held at least one oral briefing with Mr Anderson, Senator Macdonald and other members of the government. Can you tell me what briefings have occurred and advise whether the 1½-page submission to this inquiry or a more comprehensive document formed the basis of the department's brief to the minister and Senator Macdonald.

**Ms Riggs**—It is not normal for us to canvass in such committees the nature of discussions and advice that we give to ministers, so I am happy to say that it is true that we have briefed ministers on this matter and it is fair to say that we have used appropriate documentation in order to underpin that briefing.

**Senator O'BRIEN**—More than a page and a half?

**Ms Riggs**—Yes, Senator.

**Senator O'BRIEN**—When did the department, if it did, first seek the approval from the minister to release the bundle of documents, the 500 pages that I saw for the first time at 6 o'clock last night?

**Ms Riggs**—I did not seek the approval of the minister to release those documents, Senator.

**Senator O'BRIEN**—I presume that means that no-one else in the department did either.

**Ms Riggs**—That is right.

**Senator O'BRIEN**—Has any officer of the department advised Eurobodalla Shire Council at any time—and I mean this department and DEWRSB—that the Dairy RAP grant to Mordek was a federal government contribution to the sewerage of the North Moruya Industrial Estate?

**Ms Riggs**—Not to my knowledge, and there is no evidence on the record to suggest that such communication ever occurred.



**CHAIR**—I thank the officers of the Department of Transport and Regional Services and AFFA for their appearance. There may be a need to recall you either later today or subsequently, depending upon what arises through the remainder of the hearing.

**Ms Riggs**—We will of course be happy to come back. Chair, I am sorry, I have some answers to Senator O'Brien's earlier questions. It has been a couple of hours, forgive me.

**Senator O'BRIEN**—I will try to be forgiving!

**CHAIR**—You have done pretty well compared to some previous hearings.

**Ms Riggs**—Thank you, Senator.

**CHAIR**—For time, I mean. I have no other comment about anything else. You have done well in getting out of here in two hours.

**Ms Riggs**—Dairy RAP round 5, Senator: the closing date for those applications was 29 June 2001. The closing date for Dairy RAP round 6 was 31 August 2001. Applications were considered as received at the time of the first receipt of application, irrespective of how many revisions they went through. In round 5, nationally 70 applications were received and 43 were approved. For Eurobodalla, three were received and two were approved in round 5. In round 6, nationally 63 projects were considered and 26 were approved. In Eurobodalla, three were received and one was approved.

**Senator O'BRIEN**—And that one is the Mordek one?

**Ms Riggs**—Yes, and I can confirm that Michelle Patterson was the delegate.

**Senator O'BRIEN**—Thank you.

**CHAIR**—Thank you, Ms Riggs, Mr Williamson and other officers of the departments.

[11.31 a.m.]

**GREEN, Mayor Pamela, Mayor, Eurobodalla Shire Council**

**LEVY, Mr James, General Manager, Eurobodalla Shire Council**

**CHAIR**—Good morning, Mayor Green, Mr Levy and Mr Marsden. I welcome you to this hearing of the committee’s inquiry into the Dairy Regional Assistance Program. I refer to the application that has been lodged that shire council representatives be accompanied by legal counsel. The committee has considered that application and has agreed that Mr Marsden can appear as legal counsel. As has been explained in correspondence from the committee’s secretary, Mr Marsden, you are able to appear. Your witnesses from the council can consult you to seek advice, but you are not able to address the committee as such.

**Mr Marsden**—I understand that, Mr Chairman. It is very hard for me to be quiet, but I understand it.

**CHAIR**—I think you were all here this morning when we commenced and I read the statements regarding the operations of the committee, parliamentary privilege and other relevant issues. I will not go over them again. Firstly, I should ask are there any corrections or additions that you wish to make to the written submission that the council has provided?

**Mr Levy**—No, Mr Chairman.

**CHAIR**—I now invite you to make an opening statement and we will proceed to questions.

**Mayor Green**—The Eurobodalla Shire has one of the highest unemployment rates in New South Wales—and in Australia, in fact—exceeding 22 per cent in recent years. Through the efforts of council and government funding of employment creation programs, a considerable reduction in this level has been achieved. I wish to make a statement today regarding matters raised by Senator O’Brien in the Senate on 26 March 2003 and also in respect of comments he made on an ABC Radio program thereafter. I ask that these comments be considered with the formal and written submission presented by the Eurobodalla Shire Council. In the Senate on 26 March 2003, the senator stated:

It therefore appears that funding provided for a building that had already been constructed was then used to meet sewerage costs—even though an early application for funds to pay for the sewerage system was rejected.

... ..

There was an attempt to fund the provision of the sewerage system through the Dairy Regional Assistance Program in July 2001.

... ..

And we now know—based on the Eurobodalla council minutes—the funding for the building and the building fit-out was actually used to fund part of the sewerage works.

There has never been an attempt by Eurobodalla Shire Council to fund the sewerage of the North Moruya Industrial Estate through the Dairy Regional Assistance Program. I refer you to the Dairy RAP application that stated:

Mordek is of the view that sewer is necessary for the proposed mill. Unfortunately, Mordek is not in a position to finance the new investment AND the sewer works as well.

The Dairy RAP funding was to facilitate the expansion of the steel rolling plant and the creation of jobs. It made no secret of the fact that Mordek was not in a position to fund the expansion of the steel rolling plant and the sewer works as well. Our information is that the Dairy RAP funds have been fully expended in accordance with the grant contract, the plant is operating in accordance with the project undertakings and the objectives regarding job creation have been achieved. The shire expects several hundred jobs to flow from this project and the ultimate sewerage of the estate.

The comments of the senator also seem to indicate that he had been led to believe that council had applied for Dairy RAP funding for the sewerage of the estate. This is not the case. Council did apply for funding under the Regional Solutions Program but this application was declined. Council has not received one cent from any government program towards the cost of sewerage of the estate, nor has construction commenced. I sincerely hope that this inquiry does not jeopardise council's ability to secure funds from other government programs.

Senator O'Brien further indicated that there had been 'a diversion of these funds and the laundering of some \$339,000 through the Dairy RAP system'. I refute categorically that there has been any diversion of funds or laundering through the Dairy RAP system to the Eurobodalla Shire Council. Again, council has not received one cent of the Dairy RAP funding or any other government funding for the sewerage of the North Moruya Industrial Estate. The senator in his address to the Senate also stated:

And now we have what could be described as a corruption in the use of the program.

Any suggestion of corruption in the use of the program by council is also refuted. There is no evidence whatsoever that money was laundered through the program and that council, councillors, general manager and staff have in any way corruptly used the program as alleged by the senator. The senator went on to say:

I have chosen to refer this matter to that committee because the information we have to date suggests that this is very much an issue that goes to the effective administration of a government program.

It is, to say the least, regrettable that Senator O'Brien appears to have relied on information provided to him that, in turn, has led to serious allegations of corruption and money laundering. A simple telephone call to the General Manager of the Eurobodalla Shire Council could have set the record straight as to the real outcome of all these discussions and avoided the need for this inquiry and its associated costs.

At the conclusion of this inquiry it is vital that the committee makes clear that council has not been involved in money laundering or corruption. Only then can the Eurobodalla Shire Council, with the federal and state governments, get on with creating opportunities for jobs to address the unacceptable unemployment levels which are still more than double the state and national average. Thank you.

**CHAIR**—Thank you, Mayor Green. Do you wish to add any comments, Mr Levy?

**Mr Levy**—Mr Chairman, I would also like to make a statement, if I may.

**CHAIR**—Sure.

**Mr Levy**—I would like to make the following statement for the purpose of correcting any view that my council, the councillors, the staff or myself were involved in money laundering or corruption in respect of the Dairy RAP funding for the expansion of the steel rolling plant in the North Moruya Industrial Estate. It is true that I, as general manager, and staff have often encouraged businesses to make applications to state and federal governments for grants that would lead to the creation of jobs in the shire. We have facilitated them doing so by introducing the persons interested in making applications to the relevant government offices.

It is also true that we have encouraged, assisted and facilitated local businesses in developing their businesses in order to achieve the creation of new jobs. In relation to the sewerage of the North Moruya Industrial Estate, Eurobodalla Shire Council has committed itself to this project and sought to achieve contributions from other governments and private sources in view of the economic potential. This included applications by council for assistance in sewerage of the North Moruya Industrial Estate under the Regional Solutions Program and under the Regional Economic Transition Scheme.

At the time of the Mordek Dairy RAP application, council was, and still is, facing major financial commitments for sewer and water works in the shire. These commitments will require funding of some \$300 million for works over the next 30 years, with the majority of expenditure to occur within the next 15 years.

In respect to the expansion of the steel rolling plant, it will have been noted that Moruya Decking and Cladding Pty Ltd, trading as Mordek, made the application. From the information provided, it would have also been observed that the company is not the owner of the North Moruya Industrial Estate. It is not denied that the Eurobodalla Shire Council, in encouraging the application for funding applied for by Mordek, did so on the basis of hoping to further stimulate the development of industrial facilities in the shire, thus improving employment opportunities. However, council never sought the diversion of Dairy RAP funding for the sewerage of the estate. The involvement of this council was support, introduction and encouragement.

The senator's comments in relation to retrospectivity are more properly addressed by the Department of Transport and Regional Services than by this council. Nevertheless, the application was found by the relevant department to meet the necessary criteria, and funding was approved. The resulting funding, as our inquiries reveal, was also audited by independent auditors. As will be appreciated, council sits outside of the determination process of the

application for Dairy RAP funding and the audit of the contractual obligations that arose from the approval.

There can be no doubt that the funding has resulted in job creation, and I have every reason to believe, from the information received, that there will be hundreds of jobs created over coming years, provided council achieves the sewerage of the estate. As will be evident from the information provided by council, there were discussions regarding a contribution to the sewerage of the estate from either Mordek or Moruya Industrial Estates. However, the records reveal that there was no agreement with either company at the time of the announcement of the grant in February 2002.

It was not until some seven months later, on 29 August 2002, that council entered into a memorandum of understanding with Moruya Industrial Estates Pty Ltd, whereupon council and MIE agreed to 'continue working towards the sewerage of the North Moruya Industrial Estate'. Tenders for the sewerage of the estate closed on 25 March 2003. The Department of Public Works and Services, now known as the Department of Commerce, awarded the contract on 23 April 2003, and the contract is scheduled to commence on site by mid-May. The only funds expended to date in respect of the sewerage of the North Moruya Industrial Estate are funds of the council for investigation of a detailed cost estimate. As of today, there is still no formal contractual obligation for any contribution to the sewerage of the North Moruya Industrial Estate.

The staff of council have always sought and valued the advice of the public officers associated with Dairy RAP and have acted accordingly. I trust that the inquiry will, after careful consideration of the evidence submitted, accept that neither I nor any of my staff have been involved in the corruption of the Dairy RAP process or the laundering of public funds. It would indeed be nice if the Senate committee would find that DOTARS and council have acted in a manner that will, within their individual sphere of operation, contribute to the reduction of unemployment in the Eurobodalla Shire. Thank you, Mr Chairman.

**CHAIR**—Thank you, Mr Levy.

**Senator O'BRIEN**—Mr Levy, when were you appointed as General Manager of the Eurobodalla Shire Council?

**Mr Levy**—On 1 January 1997.

**Senator O'BRIEN**—What experience in local government did you have before appointment to your current position? Did that include employment at Blacktown and Albury?

**Mr Levy**—Yes, it did. I was the deputy general manager at Eurobodalla for 10 years before successfully applying for the job at Eurobodalla—there being some 60 applications for the job at the time.

**Senator O'BRIEN**—An assessment of the regional impact of dairy deregulation is one of the factors that the Commonwealth is required to have regard to when assessing Dairy RAP projects. ABARE describes the regional impact of dairy deregulation on Eurobodalla as low. Do you

agree with ABARE's assessment that dairy deregulation has had a minimal impact on Eurobodalla's regional economy?

**Mr Levy**—Mr Chairman, I am not experienced enough to comment on that particular aspect. However, I indicate that it was not so long ago that we had unemployment in the shire at over 22 per cent. We have been fundamentally competing with Byron Shire Council for the unfortunate title of being the highest unemployment area in New South Wales. From where I sit I would have thought it reasonable for the Department of Transport and Regional Services to have had a look at the unemployment figures of Eurobodalla. I understood that Moruya itself lost 20 jobs from the restructuring of the timber industry in the not too distant past. These jobs, as small in numbers as they may seem to the outside world, are absolutely incredibly vital to the reduction in unemployment across the shire because they do have flow-on effects.

**Senator O'BRIEN**—I do not disagree with the idea that regional unemployment needs solutions, but this is in the context that this is the Dairy Regional Assistance Program and I am asking about the impact of dairy deregulation on the shire. ABARE says that the impact is low, and I am asking whether the council had a different view.

**Mr Levy**—As I indicated, I have no experience in the determination of how those statistics rank, but I would have thought because of the statistics that were provided before—109 out of 157—that the council should in fact be considered for Dairy RAP funding.

**Senator O'BRIEN**—I refer you to the administration report from your own council on 23 January 2001, about seven months after deregulation of market milk. This report discusses the structural change impact on Moruya and refers to the closing of the sawmill and the Telstra depot and the downsizing of the Great Southern Energy depot. Dairy deregulation does not get a mention. Was this an oversight or an accurate reflection of the impact of deregulation on Moruya?

**Mr Levy**—I think you need to look at the whole of the shire. From an uneducated person's point of view, the dairy deregulation had an effect on the South Coast and the Eurobodalla Shire, as evidenced by the independent study that found we were ranked 109 out of 157. But, again, I have no experience. Perhaps it was omitted because of the more specific issues related to those factors that you mentioned.

**Senator O'BRIEN**—In your submission you say the council supported Mordek's Dairy RAP application. Who makes the decision to support a Dairy RAP application? Is that a decision the general manager can make alone, or does it require the endorsement of elected councillors?

**Mr Levy**—In this particular case it was the endorsement of council. As you will have observed, the council was unanimous in committing itself to the sewerage of the estates and was fully informed of the issues that surrounded the application for Dairy RAP funding.

**Senator O'BRIEN**—For sewerage of the industrial estate?

**Mr Levy**—And the following need for the sewerage of the estate, bearing in mind that the sewerage will benefit not just Mordek but, indeed, many industries that will come after it. There is evidence of that right now.

**Senator O'BRIEN**—The sewerage will certainly benefit the owner of the estate and there may be benefits for others. It is true, isn't it, that the funding of the sewerage will facilitate expenditure that might otherwise have had to have been expended by the proponent or the council?

**Mr Levy**—That is a multifaceted question. The creation of jobs may well benefit a particular enterprise, but when you are at such high, unacceptable levels of unemployment, one job—no matter who creates it and no matter where it is created—is of benefit to the entire community. It is true that almost one-third of our population is receiving some form of social welfare payment. Therefore, one job, no matter who creates it, whether it be council, Mordek or some other company—bearing in mind that council has been in the job creation business for a long time—will benefit the shire as a whole. My council has set about, through strategic objectives, trying to reduce the unemployment figure. We have been quite successful to say the least. There are many projects that are afoot at the moment that will see several hundred more jobs come into being in the Eurobodalla Shire.

**Senator O'BRIEN**—How many times did council write to the department in relation to the Mordek application?

**Mr Levy**—I have no idea.

**Senator O'BRIEN**—Can you find out for us?

**Mr Levy**—I would have to research that information but I can provide it later if you wish.

**Senator O'BRIEN**—Thank you. Did officers engage in any telephone or face to face conversations in support of the application?

**Mr Levy**—I would imagine so. As you are aware from my comments earlier today, we certainly encouraged the application and assisted in referring the applicant—the proponent—to the DOTARS people.

**Senator O'BRIEN**—Can you find out when that occurred?

**Mr Levy**—There would have been quite a number of occasions, I am sure, where discussions were held with the various officers in terms of that particular facility.

**Senator O'BRIEN**—About this application or versions of this application. Is that what you are saying?

**Mr Levy**—Having had a look at the file, I am not sure that I can find a copy of or details of all the conversations that might have been held. What I can do is have a look at the correspondence that might have been exchanged between the Department of Transport and Regional Services and council.

**Senator O'BRIEN**—Is it common for the council to discuss a development application with the department because there is a funding application relating to it?

**Mr Levy**—I do not think it would be unusual to discuss things that are relevant to a Dairy RAP application with anybody that would seek information regarding it.

**Senator O'BRIEN**—Is the normal procedure to enter a file note when a conversation occurs relevant to a development application?

**Mr Levy**—Not all the time, no.

**Senator O'BRIEN**—Is it normal, when discussions are had with a funding entity about funding relevant to an application, that a file note is kept?

**Mr Levy**—Not at all times, no.

**Senator O'BRIEN**—What times? Are there any guidelines as to when those file notes should be kept?

**Mr Levy**—No, there are not.

**Senator O'BRIEN**—Would it be prudent to keep such records?

**Mr Levy**—The way it works in these types of matters is that what the staff say must be confirmed by the council; therefore, the reports that went before council which gained their support for the issues associated with Dairy RAP funding give credence to the discussions that took place.

**Senator O'BRIEN**—Did council officers send or receive emails from the department in relation to this matter?

**Mr Levy**—I have no knowledge.

**CHAIR**—Would there be details of that kept? One would think that, if emails were sent, there would be copies of them.

**Mr Levy**—I could research that, but we do not keep every piece of exchange of information with the various people because of the resources that would be taken up with trying to maintain that record base.

**CHAIR**—The question that was asked was about emails to and from the department.

**Mr Levy**—Yes, I understand. I could certainly have a look. The previous employee, Mr Herrick, is no longer working for the council, but I could certainly find out whether the emails that were perhaps transmitted backwards and forwards between the department are available.

**Senator O'BRIEN**—How many other Dairy RAP applications has the council supported?

**Mr Levy**—This one in particular.



**Senator O'BRIEN**—I know about this one. Are there others?

**Mr Levy**—It depends on whether you are asking about the council or whether you are asking about council officers.

**Senator O'BRIEN**—I am asking about the council.

**Mr Levy**—One. This one.

**Senator O'BRIEN**—This is the only one. Have councillors or council staff made application, received or enjoyed any personal benefit from Dairy RAP funds?

**Mr Levy**—Council staff have not made any applications that would result in personal benefit. I would defer that question to any other party that might be able to respond to it, as it does not fall within my province.

**Senator O'BRIEN**—I am asking you if you know whether there is such a situation occurring. It sounds as if you do know.

**Mr Levy**—Actually, I do not know, because I do not know who was the applicant and, therefore, if I comment I may be commenting incorrectly. Therefore, rather than commenting and perhaps misleading you, I prefer not to make a comment at all.

**Senator O'BRIEN**—So you are not aware of a councillor and his lolly packing factory?

**Mr Levy**—That is what I was referring to, Senator. I have no idea whether he was the applicant or whether some other person was the applicant. Therefore, without having seen the application, it would be far better for me not to comment. I am aware of other applications but I do not know whether any staff are involved. For instance, Yumaro in the North Moruya Industrial Estate is an applicant, but I do not know if any staff are involved in Yumaro.

**Senator O'BRIEN**—I thought you might have read an article in the local newspaper about the lolly packing business.

**Mr Levy**—Senator, I have learnt from many years of experience not to believe everything I read in newspapers.

**CHAIR**—He knows that, too! Everyone says that, particularly around this building: they still keep producing newspapers and we still keep reading them.

**Mr Levy**—I am glad I am not the first.

**Senator O'BRIEN**—Is it fair to say that the Eurobodalla Shire Council has identified the sewerage of the North Moruya Industrial Estate as essential to the future economic growth of the shire?

**Mr Levy**—No, not as essential, but certainly significant. I would like to add that council has been involved in the purchase of the Batemans Bay Public School and that involved the

reconstruction of another school, which was the purchase price of that site. We then tendered out the site that resulted from that sale. We now have something like a \$30 million development going onto that school site which will see several hundred jobs created and also a public car park with about 400 car parking spaces built at the cost of the developer, which is about a \$5 million cost. We have certainly been involved in economic development across the shire to create jobs, not just this project.

**Senator O'BRIEN**—I thought the administration report to the ordinary meeting of council held on 27 August said just that. It states:

Servicing the North Moruya Industrial Estate has long been recognised as essential to the future of the economic growth of the shire, specifically through underpinning the economy with a substantial and viable light manufacturing and commercial service sector.

That is the reason I thought I would see if you would confirm it. You do not confirm what your administration report to the ordinary meeting of 27 August apparently says.

**Mr Levy**—I can confirm it was essential, but so are many other things. What I am saying is that it is one significant factor that is essential in the overall wellbeing of the shire.

**Senator O'BRIEN**—I simply asked the question—whether you felt it was essential—and you seemed not to agree with that. But we have clarified that. Attachment A of your submission is a council application for sewerage funding from the Regional Solutions Program. It notes:

The North Moruya Industrial Estate was unsewered when it opened in the mid-1980s because environmental laws were not as rigorous then as now.

Who ought to take responsibility for the failure to sewer the estate—council or the private developer?

**Mr Levy**—I have no ability to answer that question, bearing in mind that I did not start work with Eurobodalla until some seven years later. Therefore, I cannot tell you whether it was on a staff recommendation or by the councillors' own decision, or how that decision was made.

**Senator O'BRIEN**—I thought you said you were there from about the mid-eighties.

**Mr Levy**—From 15 December 1986.

**Senator O'BRIEN**—It was possibly shortly after this development was approved?

**Mr Levy**—No. The estate existed, as far as I am aware, long before that.

**Senator O'BRIEN**—When did council decide that sewerage of the estate was necessary?

**Mr Levy**—It would be fair to say that the individual councillors who I have been associated with over many years would have seen the sewerage as an ultimate goal that would benefit the area.

**Senator O'BRIEN**—But when did the council decide that?

**Mr Levy**—There is in the papers we have presented to you—if I recall correctly—a unanimous decision of the council to support and commit itself to the sewerage of the estate. If you would like, I will have a look at my records and tell you the date of that council decision.

**Senator O'BRIEN**—As you can see, we have been given masses of paper.

**Mr Levy**—Yes, I understand.

**Senator O'BRIEN**—It is a lot easier if you can give me the answer or point me to the page.

**Mr Levy**—Let me see if I can find it for you. On 11 September 2001 it was resolved that council commits itself to the sewerage of the North Moruya Industrial Estate.

**Senator O'BRIEN**—That was after the Mordek application was first lodged?

**Mr Levy**—If that is what you are advising, yes.

**Senator O'BRIEN**—I think that is right. I do not think that is controversial. In the council's Regional Solutions application, it said that the total cost of sewerage of the estate was \$906,660. Council committed a third of the funding, said one-third would be provided by the New South Wales government and sought the other third from the Commonwealth, and the submission says:

It is simply not commercially viable for any developer to pay for this scheme and recover full costs from sales. To do so would put the price of land well outside what the market will pay.

Was the developer Moruya Industrial Estates Pty Ltd that you are talking about there?

**Mr Levy**—It would be logical to assume that the owner of the estate would not be in a position to finance the whole scheme. At the time of these issues first commencing, there were very few land sales occurring, so that for a developer to fund in toto that sort of money would have been quite difficult. You can say that the council has assisted many businesses, either directly or indirectly, by sewerage of other parts of the shire. To single this one out and say that this particular developer in his own right would benefit is not necessarily so because, for instance, council would get the benefit of the rates flowing from more lots being sold and the sewer rates being returned.

**Senator O'BRIEN**—Lest that be misunderstood, are you suggesting that the developer would not benefit or are you suggesting the developer would not be the sole beneficiary?

**Mr Levy**—I am suggesting to you that the developer would not be the sole beneficiary, because certainly there would be people who would gain employment and revenue streams coming out of it that would benefit council.

**Senator O'BRIEN**—What discussions did council have with the developer to establish that the company could not pay a proportion of the scheme costs?

**Mr Levy**—You will have to accept that I was not involved in all of those discussions; it was members of my staff. It is a matter of, I suppose, knowledge to myself that we took the view, based on the comments of the companies concerned and our assessment of the cost, that that would be an unreasonable financial burden for that company to carry in its own right. As I said, the council is responsible for sewerage virtually the whole of the Eurobodalla Shire. I have actually raised the question as to the logic of the decision made in the early eighties not to sewer the estate, which is the question you raised earlier. In fact, it is of surprise to me personally that council allowed in those days the creation of an industrial park without requiring the sewerage of it. To me that did not make a lot of sense.

**Senator O'BRIEN**—It is fortunate we are not inquiring into that decision.

**Mr Levy**—That is more than 20 years ago.

**Senator O'BRIEN**—Yes. Given the difficulty in getting information about council officers' discussions, it might be impossible. Part 2.6 of the council's industrial development guidelines provides:

All developments that lead to an increase in demand for public facilities and services, such as sewerage, attract conditions of development consent requiring financial contributions to council.

Was this rule set aside in respect of the council's Regional Solutions application?

**Mr Levy**—No. The North Moruya Industrial Estate is not the subject of what is called a section 64 development plan. In other words, we cannot seek the developer's contributions from that area—given that it is not sewerage—for the construction of headworks or any other facilities that relate to the provision of sewer to that estate. Where we have, for instance, a company that is pursuing a development in the Batemans Bay area that already has sewer on, we require a contribution to what is fundamentally known as headworks from the company that is seeking that development. That did not apply to this particular estate.

**Senator O'BRIEN**—Because it had already been approved. Is that what you are saying?

**Mr Levy**—No, because there was no sewer there.

**Senator O'BRIEN**—I want to be clear in my mind. The approval for the construction of the facility was given without regard to whether there was sewerage there or not. Is that right?

**Mr Levy**—Correct.

**Senator O'BRIEN**—The construction of the building, installation of plant and operation of the facility were not conditional on the provision of sewerage?

**Mr Levy**—Senator, I can find a condition within that development consent that talked about how they had to manage the sewage coming out of that development. The situation is that they have a pump-out system. Without referencing the particular development consent condition, I am sure I would find a condition that said, 'You have to dispose of effluent in a healthy manner.' Since the construction of the building there has been an increase in the size of the work force,

and whereas initially they were pumping out, I believe, on a fortnightly basis, the pump-out is now occurring on a weekly basis.

**Senator O'BRIEN**—But they could build the building and continue the operation without sewerage the estate.

**Mr Levy**—They could.

**Senator O'BRIEN**—When was the council informed by the Department of Employment, Workplace Relations and Small Business that the Regional Solutions application had failed?

**Mr Levy**—I could not find any formal correspondence in our files regarding that notification.

**Senator O'BRIEN**—The Business Development Board report to council on 27 February 2001 says that the application was rejected because it would assist private enterprise, namely the developer. I take it that is council's understanding of the reason for rejection.

**Mr Levy**—That is our understanding.

**Senator O'BRIEN**—I want to turn to the relationship between Moruya Decking and Cladding, trading as Mordek, and Moruya Industrial Estate Pty Ltd. On page 4 of your submission you say that Mordek is not the owner of the Moruya Industrial Estate. While technically that may be so, according to the Australian Securities and Investment Commission Mordek and Moruya Industrial Estate have identical directors, identical shareholders and the two companies are registered at the same address in the industrial estate. According to ASIC, John and Annette Nader are the sole directors and shareholders of both companies. I take it you are not submitting to this inquiry that the two companies share no interests.

**Mr Levy**—No.

**Senator O'BRIEN**—In your Regional Solutions application you say that New South Wales will provide funding of \$302,220 through the Regional Economic Transition Scheme. Can you confirm that the council lodged its Regional Economic Transition Scheme application in October 2000?

**Mr Levy**—I do not have knowledge of the date of that application.

**Senator O'BRIEN**—I say that because your administration report to the ordinary meeting of council held on 26 February 2002 says that an application was made to the state government through the Regional Economic Transition Scheme in October 2000 for a contribution of \$303,000 towards the cost of sewerage the estate. That would be accurate, would it not?

**Mr Levy**—I believe so.

**Senator O'BRIEN**—On page 14 of your Regional Solutions application the council confirmed that the state funding of \$302,220 is 'approved' and awaits final assessment. Can you confirm that the Regional Economic Transition Scheme application was rejected?

**Mr Levy**—I can.

**Senator O'BRIEN**—So it was not approved, as your application states?

**Mr Levy**—That was the belief at the time.

**Senator O'BRIEN**—Again, on the council's attempts to have other governments fund the sewerage works, you say in your Regional Solutions application that funding could not be sought from the New South Wales Country Towns Water Supply and Sewerage Program. Can you tell the committee why such an application would fall outside that program's guidelines?

**Mr Levy**—Because it was not for a town, as identified by the particular guidelines, as I understand it. It relates to towns of a certain number of persons—which is where you can seek contributions—so it fell outside the guidelines.

**Senator O'BRIEN**—Soon after lodging the Regional Solutions application, council's manager of water and waste reported to a special meeting of council that the New South Wales government had awarded an additional \$657,500 to Eurobodalla Shire for water and sewerage projects. The report said the additional grant resulted from a review of granting funding and was 'a very good outcome, given the unprecedented level of demand from other local government bodies for the limited funding available'. In light of this additional grant do you think it was ambitious to seek \$302,220 from the Regional Economic Transition Scheme for another sewerage project?

**Mr Levy**—No, not at all. A Regional Economic Transition Scheme grant is not easy to come by, in terms of the state government ascribing to that particular view. It is only those local government areas that have an exceptionally high unemployment rate that are recognised under what is known as RETS—the Regional Economic Transition Scheme. The funding I believe that you have referred to is a separate issue altogether. It relates to all of the other programs we seek funding for under government programs for subsidies. I would have to look to see what the \$600,000 was for, but it is quite likely it was for investigation and design into other sewerage schemes for other parts of the shire.

**Senator O'BRIEN**—Just investigation and design?

**Mr Levy**—It could have been for that, or it could have been construction. But \$600,000 does not suggest to me that it was towards construction because, for instance, the town of Mogo has some 300 people and the cost of the construction of the scheme was \$2½ million to \$3 million, from memory, so \$600,000 would not construct much of a sewerage scheme.

**Senator O'BRIEN**—It says that an additional \$600,000 is to be made available to complete South Head Sewerage.

**Mr Levy**—Right. Thank you for clarifying that.

**Senator O'BRIEN**—And it says that \$57,500 is to enable the undertaking of the integrated urban water strategy study. Most of it was for actual works.

**Mr Levy**—Yes, but you need to put that into the context of the South Head Sewerage Scheme, which was well over \$10 million.

**Senator O'BRIEN**—Yes.

**Mr Levy**—And we got, I think, over 50 per cent contribution from the state for it, so their contribution was significant. We get these sorts of subsidies all the time for extensions, or what they call augmentation, of sewerage schemes. That could apply, but \$600,000 is not for the construction of a sewerage scheme.

**Senator O'BRIEN**—No. Can you confirm the council's Business Development Board resolve to pursue Dairy RAP funding for the North Moruya Industrial Estate on 21 May 2001?

**Mr Levy**—That is my recollection.

**Senator O'BRIEN**—Were John and Annette Nader members at this time, or did they join the board later?

**Mr Levy**—I do not recall, I must admit, unless you have some information in front of you that can clarify it for me.

**Senator O'BRIEN**—They were not present and there was not an apology, according to the minutes of the Business Development Board meeting of 21 May. That does not tell me whether they were or they were not.

**Mr Levy**—If the minutes do not record their presence then they would not have been there, I would suggest.

**Senator O'BRIEN**—But the question was whether they were members of the board, not whether they were there.

**Mr Levy**—Yes. I do not have a recollection.

**Senator O'BRIEN**—Can you find out for me?

**Mr Levy**—I can, yes.

**Senator O'BRIEN**—Thanks. On 21 May the Business Development Board resolved that Councillor Laughler hold discussions with the mayor and general manager on the matter of obtaining Dairy RAP funds for the sewerage of the estate. Can you tell the committee what those discussions were about?

**Mr Levy**—I do not have an absolute recollection that I could call upon to give to you today.

**Senator O'BRIEN**—Can you find out? Do you keep minutes of that? Would you keep records of such a meeting?

**Mr Levy**—I do keep diary notes. It depends, for instance, whether or not there is a difference or it is at odds with the matter that is being submitted. In other words, if a report is going up and we are talking about the report, then it will be quite evident that we are talking about the contents of the report at hand.

**Senator O'BRIEN**—Do you remember that such a meeting took place?

**Mr Levy**—No, I do not.

**Senator O'BRIEN**—In terms of Mordek's grant of \$309,000 exclusive of Dairy RAP, you say on page 3 of your submission that the council referred Mordek to the relevant Dairy RAP officer in support of the application. Do I presume you referred Mordek to an employee of the South-East New South Wales Area Consultative Committee?

**Mr Levy**—No, my understanding is that an officer of the Department of Transport and Regional Services was assigned for these types of applications.

**Senator O'BRIEN**—What is the relationship between the council and the local ACC? Do councillors and senior officers meet on a regular basis?

**Mr Levy**—No, we do not, but we have a representative on them.

**Senator O'BRIEN**—You receive an update of what that body is doing, I take it, if you have a representative on it.

**Mr Levy**—We do, from time to time, yes. But they are their own body and make their own decisions.

**Senator O'BRIEN**—But you understand their role in such applications?

**Mr Levy**—We do.

**Senator O'BRIEN**—Mordek's first Dairy RAP application, the one lodged in early July 2001, sought funding for the sewerage of the North Moruya Industrial Estate. Did the council support that application and, if so, in what form?

**Mr Levy**—There was no formal resolution of council at that time supporting that application.

**Senator O'BRIEN**—On page 3 of your submission you say twice that Eurobodalla Shire Council never sought funding for the sewerage of the North Moruya Industrial Estate through Dairy RAP. On 26 June 2001 the administration report for the ordinary meeting of the Eurobodalla Shire Council notes 'Dairy RAP funds are available in the region' and those minutes say:

Council has initiated and is supporting an application for \$333,000 as one-third the cost of sewerage the North Moruya industrial area. The owner of the estate is an active participant in the process.



What does that report mean when it says ‘council has initiated’ a Dairy RAP application and describes the owner of the estate as a participant in the process?

**Mr Levy**—As I said in my opening statements, we encourage, support and actively assist the initiation of applications for government grants. It is not uncommon in local government, I am sure you will agree. Therefore it would be not unreasonable to suggest that we were initiating it, based on referencing them across to the relevant government officers.

**Senator O’BRIEN**—You wound them up to make the application? Is that what it is telling us?

**Mr Levy**—No, I am not telling you that at all.

**Senator O’BRIEN**—What does ‘initiated’ mean?

**Mr Levy**—Exactly what I said. We encourage all businesses to make applications for expanding their businesses.

**Senator HEFFERNAN**—We do that in Junee, too, you will be pleased to know.

**Senator O’BRIEN**—You told them where they might get some money to assist and pointed the way through the process. Is that what you are saying?

**Mr Levy**—What I am saying is that we go out of our way to take advantage of any government funded program that has job creation possibilities at the end of it, whether it be an Aboriginal employment program or a Landcare program or any other program. We are very active in trying to do something about the unemployment in Eurobodalla, which is more than double the national average. It is a fact.

**Senator O’BRIEN**—On 11 September 2001, Eurobodalla Shire Council Works and Facilities Committee discussed the sewerage of the North Moruya Industrial Estate and it resolved:

Council commits itself to the sewerage of the North Moruya Industrial Estate on the basis that adequate funding arrangements are secured from the estate owner, the Commonwealth Dairy Regional Assistance Program and the NSW government.

That resolution was ratified at the ordinary council meeting on 25 September 2001. Why did that resolution contain a specific reference to Dairy RAP in relation to sewerage of the estate if council never sought Dairy RAP funds for that purpose?

**Mr Levy**—We understood all the time that if Mordek was successful with its Dairy RAP funding, the money would go towards the expansion of the steel rolling plant. It certainly would not come to council. However, we were hopeful that that would free up funds from the estate owner or Mordek so that they could then make a contribution towards the sewerage of the estate, and that is what that infers.

**Senator O’BRIEN**—The estate owner is North Moruya Industrial Estate Pty Ltd, not Mordek?

**Mr Levy**—According to our knowledge, that is correct.

**Senator O'BRIEN**—And the resolution talks about North Moruya Industrial Estate, the Commonwealth Dairy Regional Assistance Program and the New South Wales government. At this stage were you aware of a specific Dairy RAP application?

**Mr Levy**—Yes.

**Senator O'BRIEN**—Do you know what the application was for and who made it?

**Mr Levy**—For the expansion of the steel rolling plant.

**Senator O'BRIEN**—And who told you that?

**Mr Levy**—I had seen the application.

**Senator O'BRIEN**—Who showed you the application?

**Mr Levy**—I cannot recall, I have to say, but it was probably either Greg Bowman or Phil Herrick.

**Senator O'BRIEN**—And they worked for?

**Mr Levy**—Council, at the time.

**Senator O'BRIEN**—So council had a copy of an application?

**Mr Levy**—That is right.

**Senator O'BRIEN**—How many forms of application has the council copies of?

**Mr Levy**—It seems that we do not have all of those that you referred to earlier in the day.

**Senator O'BRIEN**—No, but how many do you have?

**Mr Levy**—I have seen one.

**Senator O'BRIEN**—Do you know when that application was submitted?

**Mr Levy**—The one I have makes a statement in it that says:

Mordek is of the view that sewer is necessary for the proposed new mill. Unfortunately, Mordek is not in a position to finance the new investment AND the sewer works as well.

**Senator O'BRIEN**—That statement might appear in a number of applications. Has it got a date on it?

**Mr Levy**—Unfortunately, it does not appear to.

**Senator O'BRIEN**—Can you supply us with a copy of the application you have so that we can identify it from the range of versions we have?

**Mr Levy**—I can, yes, certainly.

**Senator O'BRIEN**—The report provided to the Works and Facilities Committee meeting by the mayor on 11 September 2001 says:

A cost estimate has been prepared by the Department of Public Works and Services for the sewerage of the estate. The total cost is \$900,000 and on the basis of this estimate Council has applied to both the State and Federal Governments for funds of \$300,000 each to the project.

Council will provide \$300,000 to the project and recover approximately \$250,000 (25% of the total project cost) from the developer as the blocks of land in the estate are sold. Payment will be made at \$10,000 per block.

The Federal funds are being sourced through the Dairy Regional Assistance Program and being channelled through the owner of the North Moruya Industrial Estate, Mr John Nader.

There is strong indication that the Federal funds will be made available and Mr Nader will pass these to Council at the appropriate time.

How do you explain that report to this committee?

**Mr Levy**—Senator, I believe that some of the words used in that report were unfortunate and that they did not reflect the true situation of what was occurring. You will have noted in the same report that that report was written without reference to me.

**Senator O'BRIEN**—The report was written without reference to you?

**Mr Levy**—As you will note, towards the back of the report you will find the comment. I have to say, however, that everybody was quite aware that the Dairy RAP funding was going to be spent on the expansion of the steel rolling plant. That was always known to be the fact.

**CHAIR**—Say that again, Mr Levy?

**Mr Levy**—Dairy RAP funding was always to be spent by Mordek on the expansion of the steel rolling plant.

**Senator O'BRIEN**—Not always.

**CHAIR**—Yes, but, Mr Levy, all of your discussion about what happened in the council was about sewerage.

**Senator O'BRIEN**—That is right.

**CHAIR**—The comments all talk about the connection between the Dairy RAP funding and council getting the sewerage completed. And yet at the same time you are now trying to tell us that there is no real connection, that it is just coincidental.

**Mr Levy**—No, I am not saying that at all.

**CHAIR**—What are you saying?

**Mr Levy**—As I have said today, as of today, neither Mordek nor MIE have to make a capital contribution towards the sewerage of the estate. What I am saying is that council has indicated by a unanimous resolution that it is committed to the sewerage of the estate. But it is a fact and, as I understand it from an independent audit process, the money has been spent by Mordek on the expansion of the plant. What I am saying is quite clearly that we are interested in Mordek or MIE, and, as you will note from the memorandum of understanding that we have with MIE, we are pursuing a contribution from them for the sewerage of the estate and we are hopeful of bringing that to fruition. It is true that we have not received one cent of government funds, nor will we. We are yet to achieve a contractual obligation from anyone towards the sewerage of the estate. I do not hide from the fact that the council is keen to get a contribution from the estate.

**CHAIR**—Mr Levy, I do not blame the council for wanting to get the sewerage work completed. That is your responsibility and that is the issue that the council would have to confront in terms of getting that done.

**Mr Levy**—Correct.

**CHAIR**—I understand that, and it does not really answer the questions that are being asked.

**Mr Levy**—As I have said, there is the potential that the entire cost could fall on the council, if that is its choice.

**CHAIR**—Do you have a works program for sewerage works?

**Mr Levy**—Absolutely.

**Senator O'BRIEN**—The report I was just referring to was delivered seven months after the Business Development Board told council its Regional Solutions application was rejected. Why does it make reference to a council application for \$300,000 from the federal government? Is it coincidental that this is the same quantum sought in Mordek's original Dairy RAP application?

**Mr Levy**—I think it is fair to say that the contribution we are seeking—and I cannot recall the exact figure—is up towards \$600,000.

**Senator O'BRIEN**—From government, state and federal?

**Mr Levy**—No, from the estate only, towards the sewerage of the estate. What we sought, and what the negotiations have involved, is a sum that is equivalent to the moneys received under a government program, and that was to be an up-front payment. The balance was to be financed over a period of time.

You referred before to finance being provided to council on a progressive basis if the land was sold. That has since changed, as have many things since discussions were first entered into a number of years ago. We are now looking at a different model of having the program financed, not necessarily related to the sale of individual parcels, because we found that that would make it very difficult in terms of any contract that might be drawn up. If we have a look at the MOU that we are currently looking at, it is still to be subject to a formal contract for any contribution to be made, and that will be contained within that documentation.

**Senator O'BRIEN**—The document I was referring to talks about \$300,000 each from the state and federal governments, with council providing \$300,000 to the project.

**Mr Levy**—That was certainly the starting point.

**Senator O'BRIEN**—Not \$600,000 from MIE or Mordek?

**Mr Levy**—No.

**Senator O'BRIEN**—I thought you just told us that you were requiring \$600,000 from them.

**Mr Levy**—You need to context to the time that all these things were occurring. When council first started off they said, 'We don't have the money to finance the sewerage of the North Moruya Industrial Estate. What we would like is a tripartite agreement between state, federal and owner,' so that there was no cost to the ratepayer, because we had many other sewerage schemes that we were financing. That was the starting point way back when. Many things have changed since those initial views were put to council, and we have never resiled from that, but the whole thing has changed emphasis as the years have rolled on.

**CHAIR**—The one thing that has not changed, Mr Levy, is that it was always contemplated from the outset getting funding through Dairy RAP.

**Mr Levy**—Not for sewerage.

**CHAIR**—Yes, for sewerage—that was in contemplation. What happened was that there was no funding forthcoming from any government program for that amount of money—

**Mr Levy**—As of today.

**CHAIR**—but Dairy RAP funding has been provided. I know what the application says, but all the way through this, as Senator O'Brien has just referred to, there is a constant reference to getting funding from Dairy RAP to assist in getting the sewerage undertaken and completed. You can say what you like about what is happening now, what has not yet been agreed to and what has not been signed, but the history shows that there has been this connection from the outset.

**Mr Levy**—I could not agree with you more. There has been a connection. However, it is not the case that we are going to get one cent of Dairy RAP funding. The Dairy RAP funding has been acquitted against expansion of the steel rolling plant, and it is other funds that we are seeking as a contribution to the sewerage scheme. That is our view. That is our position. We have always known that to be the case.

**Senator O'BRIEN**—You've always known that to be the case?

**Mr Levy**—That we were never going to get Dairy RAP funding, from the initial discussions with officers of the department who said that you could not get Dairy RAP funding for sewerage projects.

**Senator O'BRIEN**—You did not always know it, because on 11 September 2001 you did not know that.

**Mr Levy**—I have just qualified my statement by saying 'from those discussions with department officers who indicated it was not available for that purpose.'

**Senator O'BRIEN**—From whom did council gain a strong indication that federal funds would be made available?

**Mr Levy**—I cannot recall.

**Senator O'BRIEN**—This is something that was being reported. Surely there was some record of where you got that strong indication from. You would not make a statement like that without some basis for making it, would you?

**Mr Levy**—I personally cannot recall who provided that information to council.

**Senator O'BRIEN**—I see. When the report says that funds for the sewerage are being sourced from Dairy RAP but channelled through Mr Nader, wouldn't a reasonable person be entitled to think those funds were being laundered?

**Mr Levy**—It would be reasonable for a person to interpret that in an incorrect sense. However, I would not suggest for a minute, if a proper inquiry was made, that anybody would draw the conclusion that it was money laundering.

**Senator O'BRIEN**—Given that Dairy RAP money could not be used to fund sewerage works, that this report was delivered to a closed council meeting and that the report describes channelling money through Mr Nader, I am struggling to find any other explanation.

**Mr Levy**—I have no comment.

**Senator O'BRIEN**—Did councillors of Eurobodalla Shire and/or council staff communicate with the member for Eden-Monaro about Mordek's Dairy RAP application?

**Mr Levy**—I have no personal knowledge of communications between the local federal member and my staff.

**Senator O'BRIEN**—The application for funding you give us is the final application. That is the first one you had. Is that what you are telling us?

**Mr Levy**—That is the one that I have on the file.

**Senator O'BRIEN**—This is the application that was received by the department on 12 December. It is actually a copy of the annexure to the contract. A signed copy dated 5 March appears on the file we have, but it is identical. We established earlier today that it is the final contract which was, I think, received by the department on 12 December 2001 and approved. Are you saying the council saw no other application?

**Mr Levy**—No, I did not say that. I said it is the one that I have accessed. It is the only one that I have accessed from the file, bearing in mind we were not the proponent, we were not the applicant.

**Senator O'BRIEN**—It appears, from correspondence from the council dated 7 September 2001 to Mr Dallas Burnes—this is page 225—that the council was of the view that the application at that time was about the sewerage of the industrial estate.

**Mr Levy**—No, that is not correct.

**Senator O'BRIEN**—It was signed by the mayor.

**Mr Levy**—Yes, I am aware of that correspondence. As I have repeatedly said, the councillors always knew that the Dairy RAP application was for the expansion of the steel rolling plant, and the council always knew that it was putting itself in a position to seek funding from those companies that we have mentioned as a contribution. I repeat, we still have not received one cent from those companies. The suggestion by some that the construction of the sewerage scheme has already been completed is not true. It has not even started.

**Senator O'BRIEN**—You say in your submission that the suggestion that council's role in this matter has extended beyond support, introduction and encouragement has caused councillors and staff a great deal of stress and personal angst and has made individuals connected with the council the subject of derision in the local community. Is that correct?

**Mr Levy**—It is. Indeed, I can report to you that my daughter rang from Temora, spoke to my wife and said, 'What's this all about? Dad's corrupt and involved in money laundering?' That was a comment that was made by a person that had dropped into her residence in Temora and was inquiring as to, 'What in heaven's name is your father up to?' That is not the only source of concern that I have.

**Senator O'BRIEN**—You say, Mr Levy, that you are aware of a recent incident where a statement was uttered alleging your involvement in money laundering and corruption. Why did the council publish that statement in its submission to this committee?

**Mr Levy**—I think it is fair to say that I and my staff take our jobs very seriously. We know that we have major unemployment issues in Eurobodalla Shire. We know that the council has a strategic objective to do something about it. When somebody suggests that we are guilty of corruption and money laundering, we take that allegation very seriously. It is no wonder that public servants like me, who absolutely strive to do the best for their community, are offended by these allegations.

**Senator O'BRIEN**—Page 5 of the council's submission to this inquiry states that information provided to me by a person unknown leaves that person 'open to defamation proceedings by Officers of this Council and by some Councillors.' Mr Levy, I think you say:

I and Senior Officers would pursue such proceedings if the information as to who made those allegations was available.

Why did council publish that statement in its submission to this committee?

**Mr Levy**—Senator, the council considered and adopted the submission to the inquiry.

**Senator O'BRIEN**—Mayor Green, can you tell us?

**Mayor Green**—I need some legal advice to answer that. Mr Chairman, the solicitor drafted the advice and it was put in the submission by the solicitor and adopted by council.

**Senator O'BRIEN**—I presume someone provided instructions to the solicitor to provide that advice but I will not pursue that at this stage. The *Coastal Sun* newspaper is published in Batemans Bay within Eurobodalla Shire. The front page story published in that newspaper on 11 July says:

Prior to 2001, Council was faced with the problem of connecting the North Moruya Industrial Estate to the sewer. Its biggest hurdle was lack of funds.

According to Phil Herrick, the council staff person associated with the project, he, Dairy RAP members and representatives from the Federal Government met to discuss how to obtain the funds.

It was deemed possible for Mordek, the principal in the Estate, to apply for a grant to fund a building and machinery to house a business that would generate employment for the region. According to Mr Herrick, the principal of Mordek was not at this meeting but he would be asked if he was willing to put the money towards sewerage instead of applying it towards the cost of the building.

In 2001 the grant was approved.

The story goes on to say:

At approval time—

that is at the time of the grant—

the building was already up and in the process of being fitted out internally.

The story correctly states the proponents operating as commercial enterprises should contribute 50 per cent to the cost of Dairy RAP projects, but notes that Mordek have already 'contributed 100 per cent of the costs.' The *Coastal Sun* goes on to say:

But the grant is funding the sewerage connection, not the building.



What action did the council take to rebut the serious allegations contained in this article?

**Mr Levy**—I cannot recall if we took any specific action. I think it is fair to say that there was a telephone conversation with the editor prior to that being published, and I do not hold to all those facts that appear in that article.

**Senator O'BRIEN**—The first claim in the story is that council's Mr Herrick met with Dairy RAP officers and representatives of the federal government to discuss funding for the sewerage. If this is so, when did this meeting occur and who attended?

**Mr Levy**—I would have to seek files, if I may, in order to ascertain that.

**Senator O'BRIEN**—You have never inquired into that, given it was referred to in the article in the *Coastal Sun*?

**Mr Levy**—Senator, I have many meetings with staff, as you will appreciate. I do not keep a record of every single meeting they have with me to advise me of the latest information regarding the particular job creation initiative or anything else.

**Senator O'BRIEN**—Did you not expect that that matter would be raised today?

**Mr Levy**—I expected a whole raft of matters to be raised today.

**Senator O'BRIEN**—Did you refresh your memory about any matters before you came here?

**Mr Levy**—I certainly did.

**Senator O'BRIEN**—And you chose not to refresh your memory about the allegations in the *Coastal Sun*.

**Mr Levy**—There are many issues in the *Coastal Sun* that I have ignored over the past several years.

**Senator O'BRIEN**—The second claim in the story is that council developed a strategy to fund the sewerage, involving Mordek gaining a Dairy RAP grant for a building but applying that funding to sewerage. If this is so, which councillors or council officers developed that plan?

**Mr Levy**—As you have said, that is a claim of the newspaper. As you are aware, there is certainly encouragement from council officers to seek out funds. As you may also be aware, the guidelines related to numerous funds are very specific and very strict, and unless you comply with them to the letter of the law you do not get a green light to even be considered. We have found that on numerous occasions you have to go backwards and forwards repeatedly in order to ensure that the application meets the criteria being set by the departments. On many occasions we feel that some of the criteria are irrelevant and, indeed, we have found that the way we have interpreted the criteria has not been correct and we have had to revise applications. So it is fair to say that we were working through the criteria and trying to understand what it meant so that we could provide advice to the applicant—the proponent—about how best they could address the questions concerned. That is not unusual.

**Senator O'BRIEN**—There has been some discussion between the council and the proponent about how to get the funds and what they might be applied to?

**Mr Levy**—As I have indicated, there were discussions between the council and DOTARS people about how the application should be worded. DOTARS people, early in the day, have indicated the same thing. It is not uncommon for applications to be revised so they meet the guidelines.

**Senator O'BRIEN**—And council officers were involved in relation to this application with the proponent and the Commonwealth on an ongoing basis?

**Mr Levy**—Yes.

**CHAIR**—Mr Levy, just to go back to the article in the *Coastal Sun*, which appeared on the front page—it was obviously a prominent story—did you or any of the other officers, or did any member of council, or the mayor, write to the newspaper to seek to correct the article, given that you say that it was not a proper or correct report?

**Mr Levy**—Not to my knowledge.

**CHAIR**—Not to your knowledge—in other words, no. You would have read the paper, Mr Levy. Surely you would have seen if there was a correction.

**Mr Levy**—Mr Chair, I have found over many years that sometimes it is far better not to prolong the agony of a newspaper article, because all that does is give greater credence to the story that is printed. My council has indicated repeatedly that it would like to be in control of the newspaper releases, the media releases and the like. I pointedly try to stay out of the newspaper, as a general manager, because of the difficulty that it places me in when I have perhaps some councillors on one side of the article and other councillors on the other side of the article. It draws my administration into a difficult circumstance, so I ignore many articles. In fact, we have not followed up the article in the *Bay Post* that had a headline to the effect of 'Council accused of corruption and money laundering.' We have not responded to that.

**CHAIR**—Did you, Mayor Green, take any action such as writing to the newspaper to correct the article?

**Mayor Green**—Mr Chairman, there are many articles in the *Coastal Sun* that—

**CHAIR**—That is not what I am asking you, Mayor Green. I am asking about this article. Did you or did you not—

**Mayor Green**—I was not the mayor at the time. However, I remember discussing the matter and expressing my disappointment that that type of information, which was untrue, was being promulgated to the public.

**CHAIR**—I understand what you say about matters being printed in papers and then giving them greater currency—we know that better than most. But equally I am aware, particularly in areas where there are local newspapers which are widely read in the community, as I assume this

one is, that it is quite common and indeed quite regular, if a report in a newspaper that, according to the council or the mayor, incorrectly reflects what the council is doing, that they will very quickly seek to have that corrected through a letter to the editor. I make that comment. That is my experience and I am somewhat surprised, if you took offence to what was supposedly such an inaccurate report on the front page of the newspaper, that that did not occur.

**Mayor Green**—When the laundering comments et cetera were on the front page of the *Bay Post* I immediately did that when I was mayor. I was not mayor at the time of the first article.

**CHAIR**—I was not asking you about that, but you have answered it. But I make the point.

**Senator O'BRIEN**—In council's submission to this inquiry you suggest that questions of retrospective funding should be addressed to the Department of Transport and Regional Services, but as the local planning authority the approval of development applications and the granting of building permits is a matter for council, isn't it?

**Mr Levy**—The two are separate issues, Senator.

**Senator O'BRIEN**—What I say is correct, however, isn't it?

**Mr Levy**—It is correct that we are the assessing authority for development applications. It is also true that we sit outside of any determination process relating to Dairy RAP funding.

**Senator O'BRIEN**—On 1 October last year my office contacted council seeking planning details on Mordek's steel profiling plant at the North Moruya Industrial Estate. On 15 October council emailed my office with the relevant planning details. I was advised that the relevant development application was dated 20 September 2000 and indexed as 213/01 by council. I was told that the application was approved by the council delegate on 7 December 2000. The construction certificate was issued on 26 February 2001 and regular inspections were conducted during the construction period commencing on 14 March 2001. Subsequent to this advice, council provided the committee with a development application from the Naders dated 20 September 2000 and an approval letter dated 7 December 2000. Can you confirm that chronology just outlined?

**Mr Levy**—I believe what you have stated is correct.

**Senator O'BRIEN**—We are talking about the steel profiling plant development application?

**Mr Levy**—Yes.

**Senator O'BRIEN**—Were any objections received to that application?

**Mr Levy**—I have no knowledge of that.

**Senator O'BRIEN**—Can you check that?

**Mr Levy**—I can.

**Senator O'BRIEN**—At which meeting of council was the delegated approval of the development noted? Was it 23 January 2001?

**Mr Levy**—I do not have knowledge of that. I can check it for you.

**Senator O'BRIEN**—Regular inspections commenced on 14 March 2001. On what dates did they take place?

**Mr Levy**—I can get that record for you.

**Senator O'BRIEN**—When was the final inspection certificate issued?

**Mr Levy**—I can also get that for you.

**Senator O'BRIEN**—Would the council be aware of the state of construction of the facility as at 12 December 2001? It depends when you inspected it, I suppose.

**Mr Levy**—Yes, and what was inspected. We could check that for you.

**Senator O'BRIEN**—I suppose a council officer went there and there was nothing there, or there was a slab, or there was a frame up. They would at least know that, wouldn't they?

**Mr Levy**—Correct.

**Senator O'BRIEN**—On 5 June 2001, your director of environment, planning and administrative services reported to council that an order had been issued to Mr Nader for the removal of a slab in connection with the construction of a large display shed and display area at the North Moruya Industrial Estate. Does this report concern Mordek's steel profiling plant?

**Mr Levy**—I do not know. I will have to check that for you.

**Senator O'BRIEN**—On 1 April this year council issued a media statement concerning the Mordek Dairy RAP grant. In the statement, the mayor says:

If the grant had not been received, it is likely Mordek would have expanded the business in the ACT instead of the Eurobodalla Shire, losing the opportunity for many jobs and regional expansion.

Pages 24 and 25 of council's Regional Solutions application says:

The Moruya Decking and Cladding Company (Mordek) is expanding its operation in the Eurobodalla Shire as a result of the increased interest and developments in the North Moruya Industrial Estate. The Council has been advised that the Directors have decided to expand their operation here rather than at their other site in Canberra.

This has resulted in the decision to construct a new 2100 sq.m factory, which together with new manufacturing machinery represents an investment of over \$1.5 million dollars.

Can you explain the contradiction between these two statements?

**Mr Levy**—Certainly. I believe, from the information provided to me, that indeed was the case—that they were looking at going to Canberra at the time of publishing that particular media release.

**Senator O'BRIEN**—On 1 April 2003?

**Mr Levy**—That is the way it was presented to me.

**Senator O'BRIEN**—But they had built the factory.

**Mr Levy**—I understand that.

**Senator O'BRIEN**—And they were operating the factory, and they did not need to put any sewerage in to operate the factory, but you are suggesting it was correct to say on 1 April 2003 that that was all the subject of receiving the grant.

**Mr Levy**—I am also going to suggest to you that we had knowledge that this particular company was talking about going to Nowra as well. That is known to be the case of years ago. There was quite a degree of talk about the company relocating elsewhere; not just Canberra, but Nowra as well.

**Senator O'BRIEN**—You say in the Regional Solutions application that they decided to establish the plant in Moruya, not Canberra.

**Mr Levy**—True.

**Senator O'BRIEN**—So before the event it is going to be in Moruya, but, when it comes to seeking funding, there is a threat that it might go somewhere else.

**Mr Levy**—That could well be the case, if a company does not get the funding in a particular area. There have been many local government areas that have tried to subsidise the relocation of businesses. There is always the threat—as there has been in recent experiences of mine—of companies being sought by other areas and, unless you come up with the goods, there is the threat of them leaving. They may not intend to leave but they certainly do threaten the prospect of leaving.

**Senator O'BRIEN**—They put the squeeze on you a bit.

**CHAIR**—But that is before the decision is made.

**Mr Levy**—But it is not an uncommon thing. We talk about New South Wales and Victoria and the companies that have left New South Wales and gone to South Australia. It happens. What I am saying is that quite clearly there are companies that use the threat of relocation.

**CHAIR**—We all know that, Mr Levy. But when companies make a decision—after they have contemplated where they are going—and say, 'We're going to do this in Moruya,' and that happens, and then down the track a little later you say, 'Oh well, if they didn't get the grant they would have actually gone to Canberra,' the sequence is back to front.

**Mr Levy**—Yes, I accept the sequence is an issue.

**Senator O'BRIEN**—We can interpret your statement, Mr Chairman. Mr Levy, the minutes of the council's Environment, Planning and Administrative Services Committee meeting on 1 April 2003 recorded a report that you provided about this inquiry. You said:

The public should know that council sought advice from the South-East New South Wales Area Consultative Committee and had been advised the project had been fully audited. It then outlined a range of audit comments.

Is that what happened?

**Mr Levy**—That is my understanding. That was the information provided to me by my officer.

**Senator O'BRIEN**—Did you seek advice from the ACC about the auditor or did someone else?

**Mr Levy**—As I indicated, that was advice from my officer.

**Senator O'BRIEN**—Which one of your officers sought the advice? Was it your officer on the ACC?

**Mr Levy**—No, Mr Greg Bowman.

**Senator O'BRIEN**—He sought the advice from the ACC?

**Mr Levy**—Correct.

**Senator O'BRIEN**—Did you have access to the audit report?

**Mr Levy**—No. I would probably have access to it, if I wished, but I took the advice of my officer.

**Senator O'BRIEN**—Did he have access to that report?

**Mr Levy**—I am not sure. From my understanding of the issue—perhaps they will clarify the issue—the company engaged an independent auditor, independent of their accountant, to undertake the audit that was required by DOTARS. That is the information that has been provided to me by the company representative.

**Senator O'BRIEN**—That is what you have been told by Mordek?

**Mr Levy**—Indeed, by the accountant.

**Senator O'BRIEN**—By Mordek's accountant?

**Mr Levy**—Correct.

**Senator O'BRIEN**—Who we know did the audit on the project.

**Mr Levy**—No. As I indicated just a moment ago, it is my understanding that they engaged an independent auditor, that the accountant himself did not do it.

**Senator O'BRIEN**—The record of the council meeting held on 26 February 2002—also the mayor's media statement of 1 April this year and your submission—made reference to the member for Eden-Monaro in connection with this Dairy RAP grant. Have council officers or councillors communicated with Mr Nairn about this Dairy RAP application and grant?

**Mr Levy**—I have no specific knowledge of my officers communicating with Gary Nairn about the application as it was proceeding to be submitted to the Department of Transport and Regional Services.

**Senator O'BRIEN**—But there would be nothing extraordinary about it if he had?

**Mr Levy**—No, not at all.

**Senator O'BRIEN**—You do not know whether your council officers communicated or not. It was an application to DEWRSB actually. They were processing them.

**Mr Levy**—Yes.

**Senator O'BRIEN**—I cannot blame you for being confused; I am a bit confused with the unique nature—quirky, I think, was the description this morning—of the arrangement.

**Mr Levy**—It was.

**Senator O'BRIEN**—Can you find out if council officers or councillors communicated with Mr Nairn about this Dairy RAP application and grant?

**Mr Levy**—I can.

**Senator O'BRIEN**—Under section 375 of the New South Wales Local Government Act, Eurobodalla Shire Council is required to keep full and accurate minutes of proceedings of council, as I understand it. Is that correct?

**Mr Levy**—Correct.

**Senator O'BRIEN**—As general manager, it is your responsibility to ensure minutes of council minutes are accurately recorded?

**Mr Levy**—Correct.

**Senator O'BRIEN**—On 31 January, Mr Nairn issued a media release announcing a Dairy RAP grant to Mordek. On 26 February, the administration report to Eurobodalla Shire Council contained these words:

A grant of \$339,900 has been made available to assist in sewerage the North Moruya Industrial Estate. Detailed cost estimates now need to be prepared, costing \$30,000, to allow council to make an informed decision on the best way to proceed.

It also notes:

In late January the federal MP Gary Nairn announced a grant of \$339,900 to Mordek with those funds earmarked for a contribution from the federal government to the cost of sewerage the estate.

And:

A federal grant ... has been received by the owner of the North Moruya Industrial Estate that will be used to partly pay for the provision of a sewerage scheme to the estate.

The report says \$339,900 was made available for sewerage the estate. It is not consistent with the council's submission to this inquiry. How do you explain the inconsistency?

**Mr Levy**—I believe I have explained, as you suggest, an inconsistency, and that we have not received one cent of Dairy RAP funding, nor will we receive one cent of Dairy RAP funding. We have a memorandum of understanding with the Moruya Industrial Estate Pty Ltd, which did not receive any Dairy RAP funding, and we expect to enter into contractual arrangements with the Moruya Industrial Estate Pty Ltd regarding the funding of sewerage.

**Senator O'BRIEN**—Who presents the report to the ordinary meeting of council?

**Mr Levy**—It can be a number of officers. In other words, they have delegated authority to sign off reports in their own right, depending on the status of their position.

**Senator O'BRIEN**—This one appears to be presented by Mr Herrick. Page 23 of that document has his name and title at the end.

**Mr Levy**—That would be the case.

**Senator O'BRIEN**—Mr Herrick was of the understanding that that was what was being funded with the Dairy RAP application at that time. Isn't that what that means?

**Mr Levy**—No, it does not. Mr Herrick always knew that the Dairy RAP funding would go to the expansion of the steel rolling plant. Mr Herrick always knew that there was no contractual obligation from Mordek or Moruya Industrial Estate towards the sewerage of the estate. They were negotiations that had been continuing and still had not resolved the securing of a contribution. Mr Herrick knew that, the councillors knew it and I knew it.

**Senator O'BRIEN**—Do you say these minutes are an accurate reflection of what was said at the meeting?

**Mr Levy**—What we need to accept is the fact that a report of an officer—



**Senator O'BRIEN**—Will you answer my question? Do you accept that these are an accurate record? I do not need to go over the explanation you put before. I want to know whether these are an accurate record, in your view, of what took place at the meeting.

**Mr Levy**—A report is an accurate record of what was presented to the meeting. What I am charged with, as you pointed out, is recording the decision of the council. It is then confirmed by council. The report is not a part of the minutes.

**Senator O'BRIEN**—The minutes are reflective of what was reported. That is my question. Is that the case?

**Mr Levy**—The minutes stand alone. The council can resolve in any manner it sees fit.

**Senator O'BRIEN**—Of course it can, but are the minutes reflective of what was reported to the ordinary meeting of council held on 26 February, 2002?

**Mr Levy**—Yes.

**Senator O'BRIEN**—So it is true that Mr Herrick reported that the grant was made to assist in sewerage the North Moruya Industrial Estate?

**Mr Levy**—And, as I have indicated, the councillors were fully aware and fully briefed that the Dairy RAP funding was going to Mordek for the purpose of the expansion of the steel rolling plant. The councillors knew quite well that there was no agreement with anybody for a contribution to sewerage the estate.

**Senator O'BRIEN**—Is that what was reported?

**Mr Levy**—I am advising you of what the councillors knew, what Mr Herrick knew and what I knew. Yes, you could be forgiven for misinterpreting the report.

**Senator O'BRIEN**—Did Mr Herrick report what you have just stated was the situation?

**Mr Levy**—Mr Herrick reported in accordance with that document you obviously have in front of you.

**Senator O'BRIEN**—So he did not report that to councillors?

**Mr Levy**—He reported what is written in that report.

**Senator O'BRIEN**—Yes, and nothing else?

**Mr Levy**—When we present reports to council, it also involves verbal comment and discussion about the issues at hand.

**Senator O'BRIEN**—Yes.

**Mr Levy**—Therefore they can be supplemented by additional comment to make sure that councillors have a grasp of what is occurring in respect of those matters.

**Senator O'BRIEN**—Would those additional comments be noted in council minutes?

**Mr Levy**—No. We do not have a *Hansard*.

**Senator O'BRIEN**—No, but you have a recording?

**Mr Levy**—No, we do not. Council decided some years ago that tape recording of meetings should be disposed of because it was giving rise to cases for defamation.

**Senator O'BRIEN**—Council says in its submission that it did not enter into an agreement with Moruya Industrial Estate in respect of funding the sewerage works until 29 August 2002. Is that correct and is that a reference to a memorandum of understanding?

**Mr Levy**—Yes.

**Senator O'BRIEN**—I think you said earlier there is no actual contract.

**Mr Levy**—It is not a contract.

**Senator O'BRIEN**—No, I know, but you said earlier that there is no actual contract between the council and Moruya Industrial Estate with regard to a contribution to this sewerage work?

**Mr Levy**—That is absolutely correct. The MOU is not a contractual obligation.

**Senator O'BRIEN**—But the council understood in February 2002, according to that report, that there would be a contribution via Dairy RAP funds for the sewerage of the estate.

**Mr Levy**—No. Council knew that we were seeking a contribution from either Mordek or the owner of the estate towards the sewerage of the estate. They knew that we were involved in negotiations with those companies to secure that outcome. The councillors knew that, but it is true to say, as of today, that there is no contract for a contribution to the sewerage of the estate.

**Senator O'BRIEN**—What is the relevance, then, of the decision of the ordinary meeting of the Eurobodalla Shire Council on 25 June 2002 that the council loan in connection with sewerage of the estate be increased from \$540,000 to \$767,000, given that at the same time the meeting heard the total cost of the project was \$1.07 million?

**Mr Levy**—That was, as I recall it, on the basis that it appeared at that time that we were not going to get a contribution from the state government from any of their government funding programs and therefore it was put to the council, 'Do you wish to continue the negotiations with the companies associated with the North Moruya Industrial Estate regarding the sewerage of it?' Bearing in mind that council has yet to actually accept the tender in regard to the sewerage of that estate, and that council has yet to actually endorse any contract with either company, Mordek or MIE, for that project to proceed, therefore at that time council needed to be briefed on the fact that its contribution was likely to be a lot higher, and that was the case in point.

**Senator O'BRIEN**—But you had no agreement with the estate owner on its contribution to the project, yet in connection with the project, the minutes say:

We can only count on \$303,000, \$339,000 including GST, coming from grants, being Dairy RAP money via Mordek.

**Mr Levy**—Yes, the report does say that.

**Senator O'BRIEN**—The minutes say the council is counting on hundreds of thousands of dollars of Dairy RAP money via Mordek. If the Dairy RAP grant does not have anything to do with council, how could you rely on Mordek funds?

**Mr Levy**—As I have indicated to you, the application submitted was two-pronged and it clearly talked about the freeing up of funds of Mordek in that case, or, as it turned out in negotiations over the months and months and months that transpired, the negotiations ended up with MIE.

**Senator O'BRIEN**—Who always owned the estate.

**Mr Levy**—The application made it clear, and you will have noted that virtually all but one of the reports that went to council were in public, and we have never hidden from the fact of being publicly accountable, so it is not as if we tried to suggest that there was anything other than that this would free up funds of the companies concerned to make a contribution to sewer.

**Senator O'BRIEN**—On 27 August last year, an ordinary meeting of council received a report on the arrangements for sewerage the North Moruya Industrial Estate. In relation to the estate owner's contribution to the project, the minutes say:

Note that the initial payment of \$309,000 is federal Dairy RAP money (ex GST) granted to Mordek for the expansion of Mordek steel rolling operations and new jobs growth.

And the minutes say that funding for the expansion of Mordek's steel profiling operations will be used for the sewerage works. That clearly was the council's understanding at that time, wasn't it?

**Mr Levy**—I believe if you have a look at the first page of that report there is another paragraph that also makes a statement about freeing up funds, and therefore that put into context the balance of the report.

**Senator O'BRIEN**—I see that passage.

**Mr Levy**—May I ask you the date of that report?

**Senator O'BRIEN**—It is 27 August.

**Mr Levy**—On page 3 of the administration report to the ordinary meeting of council held on Tuesday, 27 August 2002 it said:

In January this year the federal Dairy Regional Assistance Program granted \$339,000 (incl GST) to Mordek to assist in the development of a steel profiling plant which created a number of new jobs. The grant was made as part of a government scheme to create new employment in regions affected by dairy deregulation. Those funds were freed-up capital of the owners of the estate who also owned Mordek, allowing them to make a contribution to the sewerage of the estate.

That is on the first page of the report.

**Senator O'BRIEN**—Where did you get the information that is contained in those minutes?

**Mr Levy**—I must admit, I do not understand the basis of the question. Where did we get that information from?

**Senator O'BRIEN**—Who told the council that this was the situation?

**Mr Levy**—The report was written by Mr Herrick, the business development manager. It had previously been reported to council that the intention was to assist and encourage Mordek to make an application for Dairy RAP funds. The application itself was quite clear that it was two-pronged. They would expand the steel rolling plant, and the view was held—the second part of that—that, in order to achieve regional benefit, the estate would be sewerage.

**Senator O'BRIEN**—So the grant was always about sewerage the estate?

**Mr Levy**—No.

**Senator O'BRIEN**—But the council would have been aware that the application had been approved and the construction was under way well before any grant was approved, unless you knew something that the department did not know.

**Mr Levy**—Not at all.

**Senator O'BRIEN**—You weren't aware that there were applications pending? Not only was there a development application approved but construction had commenced without any funding from the Commonwealth or commitment from the council for sewerage the estate. Is that what you are saying?

**Mr Levy**—What I am saying is that the council entered into negotiations with Mordek and MIE about the sewerage of the estate. It is still the case today that those negotiations have not borne fruit in terms of seeking the guarantee of a contribution. The company can walk away today from this room and make no contribution to the sewerage of the estate. That is still the fact, and the council, the councillors, the staff and everybody involved in this are quite aware of that issue.

**Senator O'BRIEN**—The 27 August report also notes that, over the last two years, estimates of the cost of the project have continued to inflate. Why has that been the case? Why has the cost of the project continued to increase?

**Mr Levy**—It would be a number of things. The original estimate was based on what might be suggested to be an engineering assessment, based on tables that they would have to refer to

about the condition of soils and all the rest of it. As you may be aware from the information we provided, we set aside \$30,000 to give us greater security about the cost of the sewerage of the estate. Until you get into greater design parameters and examine the full ramifications of providing sewerage, it is a best guess estimate, and a number of years have gone by since we first started looking at that scheme. As I said, we have engineers who provide the best estimate possible at the time, and then we refine it as we get closer to providing funds within the budget.

**Senator O'BRIEN**—The situation is that the ratepayers of Eurobodalla Shire are paying for the cost blow-out now, aren't they?

**Mr Levy**—I think it is fair to say that—given the MOU, if it comes to fruition, because there is a 25 per cent factor in there—there is a sharing of the increase in costs.

**Senator O'BRIEN**—But you have no contractual arrangements. You have already told us that there are no contractual arrangements and, at this stage, Mordek is not making any contribution.

**Mr Levy**—What I am also saying to you is that council has said, 'Unless there are contractual arrangements between the owner of the estate and council, we may not proceed to sewer the estate.' The council itself could still pull out of sewerage of the estate.

**Senator O'BRIEN**—Section 428 of the New South Wales Local Government Act requires Eurobodalla Shire Council to prepare an annual report within five months of the end of each financial year. When was the annual report for 2001-02 tabled?

**Mr Levy**—I would have to get that information for you.

**Senator O'BRIEN**—What is the process for signing off council's annual report?

**Mr Levy**—It is signed off by council itself.

**Senator O'BRIEN**—It is sent to the New South Wales minister?

**Mr Levy**—Correct.

**Senator O'BRIEN**—Eurobodalla Shire Council's annual report for 2001-02 says this:

Council is allocating approximately 47% of the cost of providing sewer to Nth Moruya Industrial Estate with 53% to come from the Federal Dairy Regional Assistance Program Grants and owners contributions.

Once again, that statement is not consistent with the submission you provided to this committee. Can you explain why?

**Mr Levy**—No, I cannot.

**Senator O'BRIEN**—The letter of understanding with Moruya Industrial Estates Pty Ltd, I take it, is not in any way binding on them or Mordek.

**Mr Levy**—That is my understanding.

**Senator O'BRIEN**—It actually forms part of the council's submission to this inquiry, and it says that the sum agreed to be paid by the estate was \$309,000. How was that sum arrived at?

**Mr Levy**—Through negotiations.

**Senator O'BRIEN**—Is it coincidental that it equals the amount of the Dairy RAP grant made to Mordek?

**Mr Levy**—As I have indicated to you, the application made it clear that it would free up funds of one company or the other to make a contribution.

**Senator O'BRIEN**—How much has the council spent to date on the sewerage project at the North Moruya Industrial Estate?

**Mr Levy**—I do not have the actual cost but, as I have indicated to you, we have allocated \$30,000 towards obtaining detailed estimates of costing.

**Senator O'BRIEN**—I think I have taken sufficient time with this witness, but there may be other factors that we need to consider further, subject to the documents we receive.

**CHAIR**—Thank you, Mr Levy and Mr Marsden. You have taken a range of questions on notice. If you could provide that material to the secretary as soon as possible, that would be appreciated.

**Mr Levy**—I understand you will provide me with a copy of those questions.

**CHAIR**—You will be forwarded a copy of the *Hansard*. As soon as that becomes available, it will be sent to you, and I am sure the committee will be able to assist in identifying the questions.

**Mr Levy**—I will undertake to assist with responding to those questions as soon as possible.

**Proceedings suspended from 1.15 p.m. to 2.01 p.m.**

**BROWN, Councillor Allan James, Councillor, Eurobodalla Shire Council**

**CAIRNEY, Councillor Peter, Councillor, Eurobodalla Shire Council**

**SMELLIN, Councillor John Charles, Councillor, Eurobodalla Shire Council**

**CHAIR**—We will resume the hearing. I invite Councillors Brown, Smellin and Cairney to come to the front table, please. You have not made a formal submission to the committee. I assume you were here this morning when I made the comments, before the other witnesses appeared, about the nature of the committee proceedings and parliamentary privilege et cetera. I do not need to repeat those, I expect. You understood what I said this morning, didn't you?

**Councillor Brown**—Yes.

**CHAIR**—Thank you. I would like to invite you to make some brief opening comments if you wish. Then we will proceed to questions from members of the committee.

**Councillor Brown**—Are you directing that at me first?

**CHAIR**—Each of you.

**Councillor Brown**—It makes no difference.

**CHAIR**—I will give you the opportunity to make some opening comments and to say whatever you wish to say to us and then we will go to questions.

**Councillor Brown**—I do not have a lot to say but I will answer questions if I can, if they are asked of me. What I will say initially is that I agree with what the general manager and the mayor said originally about the high unemployment and the need to create job opportunities in the area, but I also have a statement that goes with that: those job opportunities should be created in accordance with the rules and regulations of any persons or bodies we deal with that are open and accountable. That is really all I want to say at the moment.

**CHAIR**—Thank you. Councillor Smellin or Councillor Cairney do you wish to add anything?

**Councillor Smellin**—I do not wish to.

**CHAIR**—If not, I invite questions. Senator Heffernan.

**Senator HEFFERNAN**—Do I take it then that the three of you have a difference: you are seriously opposed to the position of the general manager and the mayor et cetera, otherwise you would have been sitting at the same table with them?

**Councillor Brown**—No, that is not quite right. I will just explain a little bit. Initially, when this proposition was put to council, we were briefed on it and I think we all agreed that it would be good for the community, good for the industrial area and good for job opportunities to expand

the industrial area. The minutes show that we voted in support of matters that came before us most of the time, except towards the end when the memorandum of understanding was being proposed. Even though there were no great details, it became obvious then—to me, at least—that the community was being asked to provide something for the benefit of business and I believed that should not have been the case.

**CHAIR**—Did either of the other two gentlemen wish to answer that question, which I think was directed at each of you?

**Councillor Smellin**—Yes. I fully supported the proposal to get Dairy RAP funding for the steel rolling plant because what has been said is true; it would create, and has created, employment for a shire that is on its knees, so to speak, with unemployment. But towards the latter part I became concerned at the public perception of the whole process and also I had uncertainties as to the actual costing and what it would end up costing the ratepayers and whether, in fact, we should be supporting that business to the extent that we were.

**Councillor Cairney**—Mr Chairman, I had similar problems to Councillor Smellin. My problems were the same. It was good for employment but there was something nagging. I work a lot on my gut feelings and something just did not sit right as it went on, especially when it switched over to the sewerage scheme. It did not feel right and the three of us obviously felt the same. My personal opinion was that the bloke was not broke; he was not doing it tough.

Even though I was voted mayor at the time, I knew very little about the Dairy RAP. I was not in the inner circle, even though I was the mayor, because by being elected mayor I upset certain people due to the politics of the day.

**CHAIR**—That happens.

**Councillor Cairney**—That does happen. You get sent to Coventry, so to speak. You could say I was not in the link for that. That did not worry me because I had other projects which, being mayor, I helped to get approved for the community and had success with. It did not overly worry me because all the groundwork was set by the previous mayor and the executive—who have been named here and who have talked here today—and Mr Herrick and the Business Development Board and SEACC. It was all in hand, so I had virtually no knowledge of it while I was mayor at all, except at the end when the cheque was presented. There was a publicity shot and I was requested, as mayor, to be up there when Mr Nairn handed the cheque over. That was really it.

But I did not agree with the fact that the major beneficiary of the sewerage plant would have been the developer. What I knew about Dairy RAP was that it was formed to help battlers and people who were put out of work, lost privileges and money because of the dairy deregulation. In my mind it was not there to help wealthy businessmen sell their estates, even though I agreed at the time that possibly in the future—however long that future is—as he sold the blocks, it would eventually create jobs. We all agreed on that. but it just did not sit right with me. Something was not right.

**CHAIR**—Is the mayor's position in the council popularly elected or is it elected by the councillors?



**Councillor Cairney**—No, it is elected by the councillors, unfortunately.

**Senator HEFFERNAN**—If you came to disagree with the scheme—because I think Councillor Brown or Councillor Smellin said there was a change in the public perception of what it was all about—why did you agree to take the cheque?

**Councillor Cairney**—It was not a cheque being presented to me, it was being presented to Mr Nader.

**Senator HEFFERNAN**—Yes, but why did you agree to be part of the cheque presentation ceremony?

**Councillor Cairney**—The handing over was part of the mayoral duties. May I, through you, Mr Chair, explain. Whatever the issue is, you could be opposed to it, but if through majority of council it becomes a council policy you are obliged to abide by that council policy.

**Senator HEFFERNAN**—At some stage of the game did you fellows vote disapproval in the council of what was going on?

**Councillor Cairney**—Yes, we did.

**Senator HEFFERNAN**—Councillor Brown, as I understand it you were opposed to the idea that this money does not actually go to dairy farmers for a good while.

**Councillor Brown**—No.

**Senator HEFFERNAN**—When did you have the conversion to what it is now? You did not understand it, as I understood you.

**Councillor Brown**—I understood it all right. I was a dairy farmer, too.

**Senator HEFFERNAN**—But you disagreed with the principle.

**Councillor Brown**—I will go back. Eurobodalla Shire is not reliant to a very large degree on dairy farmers and the money that is generated through that industry in the shire. Our main industry is tourism and most of the efforts and millions of dollars over the years have been spent on promoting tourism.

In the dairy industry it was a minority thing as the percentage figures came out earlier, 109 or whatever it was, and I have looked them up, too. I just thought that it was really a manipulation of the ability to put your hand in another bucket of money.

**Senator HEFFERNAN**—You are entitled to think that way but, at the same time, you do acknowledge that it brought a lot of potential employment to the area.

**Councillor Brown**—You might say that. Potential is just that; that is just a word. To my mind, there was no meaningful outcome in the short term to be gained for the benefit of the local economy.

**Senator HEFFERNAN**—To this point you think there has been no gain?

**Councillor Brown**—Yes, that is how I think, pretty much.

**Councillor Cairney**—No major gain.

**Senator O'BRIEN**—How long have each of you been on the shire council?

**Councillor Cairney**—Sixteen years.

**Councillor Brown**—Eight years in September. But, I might add, I was a keen observer for four years prior to that.

**Councillor Smellin**—Four years this September.

**Senator O'BRIEN**—Do any of you have any knowledge of any attempt by council to obtain funds for sewerage infrastructure at the North Moruya Industrial Estate by channelling Dairy RAP funds through the estate owner?

**Councillor Smellin**—I have no knowledge of that, Senator O'Brien, but my point, quite simply, is that it has been proved here today: there is a perception that that is what it appears to be.

**Senator O'BRIEN**—But that is what the minutes show.

**Councillor Smellin**—That is right.

**Senator O'BRIEN**—And you and other councillors voted to approve the minutes of the council that are available on the Internet.

**Councillor Smellin**—That is quite correct.

**Senator HEFFERNAN**—But do you say you do not actually have direct evidence of it, even though you ticked it off? You just said you did not.

**Councillor Smellin**—Yes, I guess perhaps a bit of naivety as a councillor could perhaps come into play here. If I have supported something that has been incorrect, then obviously I am as guilty as anyone else.

**Senator O'BRIEN**—In terms of the references that you heard today about minutes that talk about channelling Dairy RAP funds through the estate owner, you say you were not aware of that? That was reported to council, clearly.

**Councillor Smellin**—To be quite honest, Senator, I was not exactly sure. It has come out quite a bit, and in fact the article that really alerted me was the *Sun* newspaper article, and that is why I say maybe my naivety came into play, but I was not exactly a 100 per cent sure that Dairy RAP funding could not have been used for the sewerage until that time.

**Senator O'BRIEN**—Yes. I am not saying that you needed to be an expert on what the guidelines were.

**Councillor Smellin**—But I will still stand by this: that I saw that this was an opportunity for employment schemes. That is where I differ perhaps from some of my colleagues here, because I believe there has been employment created, and it will continue to be created.

**Senator O'BRIEN**—But the minutes are accurate so far as you are concerned?

**Councillor Smellin**—As far as I know, they are accurate, yes.

**Senator O'BRIEN**—They are a reflection of what was actually reported to meetings and the decisions of council?

**Councillor Smellin**—I would say so, yes.

**CHAIR**—On the technical detail, you would rely on the advice in the reports from council officers, would you not, in terms of what you just said about the guidelines for the Dairy RAP scheme and any other schemes and other things? What you are saying, I think, is that you do not know all of the technical details yourself, but you would be presumably relying upon—

**Councillor Cairney**—What the professionals tell us.

**CHAIR**—If it is in a report that you read that comes to council—

**Councillor Cairney**—That is right. You are advised, I have been in the council 16 years. They are the professionals, they handle these things. Who are we to doubt their word?

**Senator O'BRIEN**—Did any of you have a different understanding of the nature of the proposal than that which is reflected in the minutes of the council?

**Councillor Cairney**—No, I do not think so.

**Councillor Brown**—No, not at all.

**Senator O'BRIEN**—Each of you opposed the resolution on 27 August last year, authorising the general manager to sign the letter of understanding with Moruya Industrial Estate Pty Ltd in relation to sewerage funding. Did you do that for any reason related to the administration of the Dairy Regional Assistance Program?

**Councillor Brown**—The answer to that is: it is perhaps partly right and partly not right. Although it has not been agreed to yet, it would have seemed—though I have not touched on it before—that the proponent was to obtain some financial benefit from the general ratepayers, and that was the big concern; in my mind at least, anyway.

**Councillor Smellin**—I am pretty well of the same view. In fact, the reason I voted mainly against it was that I was worried about the actual cost to the council and how in the end the sums

were going to work out. It started out, as far as I was concerned, on 26 July 2000 at a meeting of council, when we were told by the then mayor it was going to cost about \$605,000.

**Senator HEFFERNAN**—Who was the then mayor?

**Councillor Smellin**—Mayor Chris Vardon. But we also were told at that stage that the owner of the estate was prepared to contribute to the costs; was willing to financially assist the project. Then as we moved through—if you will allow me some indulgence—on 11 September 2001 the confidential report at the Works and Facilities Committee meeting told us that the total cost was \$900,000 and council needed to borrow \$390,000. I am sorry, I missed one, because there was one in between, another mayoral minute that told us that the bottom line to council was going to be between \$50,000 and \$60,000.

**CHAIR**—It never goes down.

**Senator HEFFERNAN**—At the meeting on 11 September, was the council discussion on this around trying to get some money for the sewerage?

**Councillor Smellin**—I am sorry, Senator?

**Senator HEFFERNAN**—You say there was a meeting on 11 September.

**Councillor Smellin**—Yes, that was the Works and Facilities meeting.

**Senator HEFFERNAN**—What was discussed there?

**Councillor Smellin**—The sewerage of the Moruya Industrial Estate.

**Senator HEFFERNAN**—And what came out of that?

**Councillor Smellin**—All councillors agreed that we would, and that is what went later to the August council meeting.

**Senator HEFFERNAN**—That was in September.

**Councillor Smellin**—Yes.

**Senator HEFFERNAN**—It went to the next year's August meeting?

**Councillor Smellin**—Sorry, I was wrong. I was getting ahead of myself. At the September 2001 meeting there was the confidential report of Works and Facilities. That is where I meant to say that our overall commitment, we were told, would be \$50,000 to \$60,000 plus interest for a sewerage scheme that had then been increased in value to \$900,000. Then we get to the final meeting, 27 August 2002; our contribution changed to needing to be at least \$508,500, so that was my concern. Then I also placed a lot of emphasis on what the finance manager had reported in that report.

**Senator HEFFERNAN**—How much emphasis in the discussions that you had in council was put on freeing up the money from the Dairy RAP, as opposed to applying the Dairy RAP to the sewerage? The letter earlier says: if \$300,000 comes along for the Dairy RAP subsidy, that will free up \$300,000 from the guy who is doing the development. How much emphasis did you put on the freeing up? Did you think that was a fair argument? You can put all sorts of spin on it, but did you think that was a reasonable way of coming at it?

**Councillor Smellin**—In coming to the bottom line, no, I did not believe it was. That was one of my considerations as well. If you are saying something is going to cost \$1 million, someone is going to put in 25 per cent of their money and then they are going to put in another amount of \$309,000—which, sure, was their money but money they would have had to spend on something else—then you cannot really count that, in my book.

**Senator HEFFERNAN**—Does anyone else have a different view?

**Councillor Brown**—I pondered over it for a long time. It is really in my opinion a manipulation of a government agency for an outcome and benefits to the general community that, at this present time, could be questionable. That is where I sit.

**Senator HEFFERNAN**—That is a question that you can look at from either side; either freeing up or as you put your version. Did it trouble you that the building had begun before the application was approved? Did that cross your mind?

**Councillor Brown**—There are some things that happen in the council—planning matters et cetera—that we do not really know about. Applications go in and work is processed and you have a lot of delegated authority. You know it is happening but you do not necessarily drive to wherever it is happening if it is a long way from where you live. If you drove all over the shire, that is all you would be doing every day of the week—it is something like 140 kilometres long by 60 or 80 kilometres wide. You believe that what you are being advised is correct at the time.

**Senator HEFFERNAN**—You did not know that building had started when the approval for the Dairy RAP—

**Councillor Brown**—Not at that particular time, no.

**Senator O'BRIEN**—Were any of you briefed by council staff about the process of Dairy RAP funds going to the building and then on to the sewerage project?

**Councillor Smellin**—Only along the lines that you have just mentioned—it would have enabled the owner of the estate to have funds freed up for assisting the council with the sewerage.

**Senator O'BRIEN**—When did that briefing occur?

**Councillor Smellin**—I could not even hazard a guess, Senator. We have been briefed on a myriad of things.

**Councillor Brown**—We used to often have a problem with briefings—used to have, more so than now—because they were verbal and there was no written material to back them up. I do not know if that was one of those occasions. Now we have briefings on a bit of paper by different departments.

**Senator O'BRIEN**—I would like to follow that up, please. The point that I wish to raise with you is: where the minutes do not reflect that, does that mean you were not briefed at that time?

**Councillor Brown**—Most likely, yes.

**Senator O'BRIEN**—You do not recall being briefed about a process of funding the building and then transferring the money to the sewerage project during the time of the minutes that I referred to in 2001?

**Councillor Brown**—Not in particular, no.

**Councillor Smellin**—I cannot recall it, no. It does not come to mind.

**CHAIR**—This phrase 'freeing up' is being used a fair bit. What do you understand by that? What do you think that means in the context of this arrangement?

**Councillor Cairney**—The way I look at it is that funds are tight these days for all but very wealthy people. If that money came in, it would free up money that he could put towards another project—that is, the sewerage plant.

**CHAIR**—Because you had extra money that you did not necessarily think you were going to have. How long has this project—the development of this industrial estate—been contemplated?

**Councillor Brown**—Do you mean developing for selling the blocks for industry or for sewerage?

**CHAIR**—No, for selling as blocks.

**Councillor Brown**—I am not sure how many years ago it was available.

**Councillor Cairney**—Probably 20 years.

**CHAIR**—This is what I am getting at. This concept, this development project, has been around for a while. Is that correct?

**Councillor Cairney**—I think it was there before I was on council. It would be 20 years.

**CHAIR**—Then a decision is made by the owner to start to proceed with developing it.

**Councillor Brown**—I have lived in the shire since 1989. The industrial estate was there then because that is where we ordered bricks from at one point in time—from one of the blocks that

were sold. It is not a new project. There was a substantial amount of it already marketed and developed with other industries and units. They were operating without a sewer.

**CHAIR**—This is what I am trying to ascertain. This is not something that, one, had not been in contemplation for some time and, two, was not in the process of being brought to fruition. Certain work had already been done on developing the estate, had it?

**Councillor Brown**—Yes, it is an expanding estate. It is being done in stages.

**CHAIR**—It is a significant project.

**Councillor Brown**—Yes. The new building is in another stage.

**CHAIR**—Then we come to the building and plant and equipment, which was the subject of the Dairy RAP application. You may have heard earlier in evidence that it was said—I am paraphrasing—that all of this was already funded, or sufficient funding was available to complete that. Do you recall that?

**Councillor Brown**—Yes. I would like to comment on that. There was a suggestion at one point in time that, whether he had the funding or not to build the shed, it would not affect his operations. He could fund that anyway. Even if the sewer were put on tomorrow, it still will not affect the operations of the estate. There are some people in the estate who are complaining about pump-outs. When they bought the block, they knew they had to pump their sewer out. It is as simple as that really.

**CHAIR**—Prior to this issue arising—where there was an application made by the council to the Regional Solutions Program which was rejected and then the application to Dairy RAP for the plant, building and equipment—had there ever been any proposal brought to council by the owner or the developer seeking assistance for funding to advance the development of the estate?

**Councillor Brown**—I do not know about the funding. I am aware—by accident—that he had discussions with certain staff members, and perhaps some councillors, in regard to having the estate sewered after or at about the time of the last election.

**CHAIR**—Yes, that is sewered. I am not asking you about that. If there is no sewerage, it is natural to expect that anybody associated with the project, or a future tenant or purchaser, would want the sewer connected and, indeed, the council obviously would like to have the sewerage installed at some stage. Was this a project whereby the developer or owner was looking for financial assistance from council or from other government departments to get it up and running or to move it along?

**Councillor Brown**—I am not aware of that.

**CHAIR**—That arose around the same time or after the council's application for the sewerage funding was rejected. We get this application to Dairy RAP. Just say yes or no. That is all I want to know.

**Councillor Cairney**—Mr Chairman, on 26 July 2000, council received a request from the Business Development Board to help pursue the sewerage of the North Moruya Industrial Estate. That is as early as I am aware of any request. That is taken out of council's minutes.

**Senator O'BRIEN**—On 27 August, when each of you voted against the motion giving Mr Levy the authority to sign a memorandum of understanding with Mr Nader, did you think that the \$309,000 Mr Nader had agreed to pay was Mr Nader's money or Dairy RAP money?

**Councillor Smellin**—My belief was that it was money freed up by Dairy RAP funding—because of Dairy RAP.

**Senator HEFFERNAN**—We have been led to believe that there was a direct correlation; and there might even have been a newspaper headline that said there was some sort of money laundering operation going on. Was it always your understanding that, if they were successful in the Dairy RAP application that actually freed up the money rather than passed over it, there was some sort of direct connection between the Dairy RAP money and the sewer?

**Councillor Cairney**—That is how it was virtually put to us. If that money was freed up, it would then be able to be used for the sewerage.

**Senator HEFFERNAN**—Other money?

**Councillor Cairney**—Other money would be freed up, yes.

**Senator HEFFERNAN**—Fifty per cent. It is even money, actually.

**Councillor Cairney**—The same as putting money through a bank account.

**Senator HEFFERNAN**—Could I clarify that? There are mentions in the minutes of the Dairy RAP money being applied to the sewer, but it was always on the basis of the freeing up.

**Councillor Brown**—I would not be sure that that is the case. I think that it was fairly clear that it was going to go into one bank account and come out again. In other words, it was just a rewriting of the cheque. I think that was clear.

**Senator HEFFERNAN**—But was there a discussion about that?

**Councillor Brown**—No, but I think that was what was always intended.

**Senator HEFFERNAN**—There is no evidence that that was discussed?

**Councillor Brown**—I reckon today you have the evidence, through some of the answers you have been given.

**Senator O'BRIEN**—You're not wrong!



**Councillor Cairney**—Through you, Mr Chairman, could I make one last comment? Following on from what Councillor Brown was just saying, as I said, my first knowledge of it was on 26 July when a request came from the Business Development Board for council to help pursue the sewerage of the estate. From that point on, the majority of the councillors had very little knowledge of the proceedings at all, even though it is documented here. I know I did not. As I said, it was handled mainly by senior executives, including Phil Herrick, whom you have heard of. He was then the media officer cum business development officer of the Business Development Board. Very rarely did the elected members—council, if you like—get a look in. They got very short briefings, if any at all. I came here, sat and listened. I learned more today about what went on. It fitted in with what was being asked by you in your questioning and, to me, it fits the picture pretty well—more than I was ever able to put together.

**Councillor Brown**—I will make one more comment in relation to the Business Development Board. When the Business Development Board was first operating after the last election in 1999, the minutes were not even presented to councillors. It was a confidential committee, and most councillors were not even aware of what was going on in there. I put a motion to council that their agendas and minutes be provided to all councillors, and it was not long after that that the whole thing virtually folded.

**Senator HEFFERNAN**—Councillor Brown, do you still think this money really should go to dairy farmers and not to these sorts of projects?

**Councillor Brown**—Priority ought to be given to real rural areas. We are not a rural area, so to speak, in our shire. There are plenty of them out here. We could go to the Great Divide or up towards the top of New South Wales, where the people are doing it really tough, where they could—during this drought—use some of that money to survive on in the short term. I think the process and the rules that apply to it and the regions that it applies to are wrong.

**Senator HEFFERNAN**—You disagree with the guidelines?

**Councillor Brown**—I have read the guidelines. I do not agree with them, no. I think they need serious change for the future so that this sort of stuff does not go on, and those who are really in need in the areas where they are really feeding the nation—because this is what it is all about—ought to be given a bit more consideration.

**CHAIR**—The latest estimate for the cost of sewerage was around \$900,000.

**Councillor Smellin**—\$1.07 million.

**CHAIR**—That is \$1 million in round figures. Wasn't it said that the expected contribution was 25 per cent?

**Councillor Smellin**—Yes, 25 per cent overall; 53 per cent counting the \$300,000.

**CHAIR**—But if that money had not been forthcoming, the contribution was going to be 25 per cent. Is that right?

**Councillor Smellin**—Yes.

**CHAIR**—Now that the money is forthcoming, the contribution is expected to be—if it is negotiated—over half a million dollars or 53 per cent.

**Councillor Brown**—That is right.

**CHAIR**—The difference is the amount of money—

**Councillor Brown**—In essence, financed by council with their interest rates, which is another questionable way of doing it.

**CHAIR**—Thank you for your appearance today, councillors.

[2.38 p.m.]

**MALAVEY, Mr Greg, Chair, South-East New South Wales Area Consultative Committee**

**CHAIR**—Welcome. Do I need to read to you the details regarding operational committees?

**Mr Malavey**—No.

**CHAIR**—You have lodged a submission to the inquiry, which has been made public. Are there any amendments or additions that you wish to make to that written submission?

**Mr Malavey**—No, that is a true and reasonable submission.

**CHAIR**—I invite you to make a brief opening statement, if you so desire, and then we will proceed to questions.

**Mr Malavey**—I had initially decided not to make an opening statement but, listening to the process today, I sit here before you a little shocked that the committee believes that council has anything to do with Dairy RAP funding. I have been chairing this committee for going on seven years now, dealing with funding consistently throughout the whole of that period, and my main contact with council over that period has been as a funding submission organisation. We have five shires in our area, not only Eurobodalla Council, and we deal largely with councils as applicants. On our committee we have council representatives—or had at that time—from the Eurobodalla Shire, the Bega Valley Shire and Bombala Shire. We are used to dealing with and working with council, but they have absolutely no part in the process of application, other than as one of the bodies that we discuss. If I look at the Mordek project, I would not have gone any further than that unless we knew the DA was approved, for a start. We do not have dealings with council in terms of the process.

**Senator HEFFERNAN**—In the original application by Mordek, why did you get it so wrong?

**Mr Malavey**—We did not get it so wrong.

**Senator HEFFERNAN**—You applied for something that you were not eligible to apply for.

**Mr Malavey**—That is right. What happens in funding, especially when the funding is quite early in the process, is that you never quite know what the full boundaries of the opportunities are. I would say for the average funding program that we handle we would go back and have discussions with the department in one way or another, probably two, three or four times, to get it into the shape to meet the funding opportunity. You guys probably have a lot more experience with government talk than a small business person out at Moruya, but it is not easy to understand.

**Senator HEFFERNAN**—Were you surprised when the application was successful for the building side of the program?

**Mr Malavey**—Not at all.

**Senator HEFFERNAN**—Were you surprised at the success in view of the fact that the building had already started?

**Mr Malavey**—No, not at all.

**Senator HEFFERNAN**—Was there enough scope in the guidelines, in your view, for some sort of retrospective application to tick all that off?

**Mr Malavey**—How we approached it, based on that funding program, was that it was only retrospective if he had spent the money and finished the whole of the project. He still had in excess of \$300,000 to spend on the project at the time of the funding. People in regional Australia who develop and grow out their businesses very rarely have the capital required to do it in one bank. It would have been a fair estimate by me, with the experience I have in local business, that people would have spent capital as they acquired it. If they had a spare \$50,000 they would go to the next stage and again when they freed up another \$20,000 or \$30,000. A project like that might have taken three to four years to finalise and have operational, based on access to cash.

**Senator O'BRIEN**—Mr Malavey, you were appointed Chair of the South East New South Wales Area Consultative Committee in June 1998, as I understand it. Can you advise the committee if any ACC members or employees have gained any pecuniary benefit from the grant of any Dairy RAP moneys in the Eurobodalla region.

**Mr Malavey**—That has two answers. In terms of the applicants, like every other organisation, before our board or committee meetings that we have every two months if there is a pecuniary interest or a conflict of interest we need to put through a conflict of interest point and leave the room. If there is no conflict of interest we carry on our meeting. In the case of Dairy RAP, there is no member of our committee that has had direct benefit from the Dairy RAP funding process.

**Senator O'BRIEN**—No member of the ACC or employee has gained any direct benefit. Does that mean that something they are associated with has received benefits?

**Mr Malavey**—That could be the case. Would you like to pinpoint that question further so that I can answer it in one go? You seem to be beating around the bush about something, Senator.

**CHAIR**—Excuse me, Mr Malavey, just answer the questions. Do not make comments.

**Senator O'BRIEN**—I understand what you are saying; I am just asking if you are aware of any. You phrased your answer in a way that said they did not get any 'direct' benefits and that led me to ask whether there were indirect benefits applied.

**Mr Malavey**—To any Dairy RAP funding?

**Senator O'BRIEN**—For any ACC member or employee.

**Mr Malavey**—No.

**Senator O'BRIEN**—You say in your opening statement that you were shocked to learn that the committee thinks the Eurobodalla Shire Council had a role in this process and, in your words, you say it had absolutely no role, yet the original submission lodged in July 2001 says:

The grant funds will be paid to Eurobodalla Shire Council.

You signed that off, didn't you?

**Mr Malavey**—I did.

**Senator O'BRIEN**—Didn't you shock yourself when you signed that off?

**Mr Malavey**—No.

**Senator O'BRIEN**—So they had no role in the process; they were just going to get the money?

**Mr Malavey**—You are talking about the original submission.

**Senator O'BRIEN**—Yes.

**Mr Malavey**—When a private organisation makes an initial application for funding they have to meet a certain set of criteria and filters, one coming through the ACC, which initially takes on an expression of interest. We look at it with the experts in our organisation. We have an executive officer and, at that time, we had two fellows who were experts in funding. Our organisation looks at the EOI and assesses whether there is potential to go on to a full-blown submission. When a full-blown submission comes in, we take the submission as an offer in terms that there has been advertising put in the press or some other media release that informs people that funding is available. We normally then take, as a response to that, phone calls or whatever and we do an EOI. When the funding role starts, we assess it based on the outcomes. The whole role of the Dairy RAP funding was to create employment and to stimulate economic activity. I believe that funding activity in the first application met all of those guidelines.

**Senator O'BRIEN**—And the money was going to the council.

**Mr Malavey**—Based on the fact that the money was going to the council for the development of a sewerage line out to North Moruya.

**Senator O'BRIEN**—That is what the application was all about as far as ACC was concerned.

**Mr Malavey**—It was all about employment, not about sewerage.

**Senator O'BRIEN**—It was going to fund a sewerage project.

**Mr Malavey**—No, it was about employment and employment opportunities; whether that funding was going to create economic stimulus that would create employment.

**Senator O'BRIEN**—You knew at that time the company could fund a building but it needed money to fund the sewerage works?

**Mr Malavey**—I had no idea about the company's capacity to fund the building in the short term, but I had no doubt in the long term that the building might have been well managed by the company.

**Senator O'BRIEN**—How did Mordek come to the ACC's attention? What officer was involved in the early development of the project and when did those discussions begin?

**Mr Malavey**—The first time I was given a prod from the local community was via a Chamber of Commerce meeting. The chamber had had discussions about the benefit to Moruya of having the Moruya industrial centre in a position to expand. We live in a very small community here in terms of our shire; there are only 30,000 people. There are a lot of networks there that funnel information in to me as an individual and also as the chairman of the ACC. The initial contact to me came via the Chamber of Commerce.

**Senator O'BRIEN**—Who was directly involved with Mordek, if anyone, from ACC?

**Mr Malavey**—My records and the records of the ACC show that in June 2001 there was a meeting between the Dairy RAP officer Brad Pym, who operated through the ACC administrative centre, and Phil Herrick and Greg Bowman, to discuss opportunities with regard to Dairy RAP. This was a regular meeting that would have taken place. I have had a lot to do with Phil Herrick and Greg Bowman in their present roles. Anybody who works in economic stimulation that does not have some sort of regular contact with the shire's business development officer would probably not be doing their job.

**Senator O'BRIEN**—You heard about it from the council. Your first discussion of this—when you met Mordek—was with the council. Is that what you are saying?

**Mr Malavey**—No. I said it was through the Chamber of Commerce.

**Senator O'BRIEN**—Yes, you heard about it. You are telling me about Mr Herrick and Mr Bowman. I asked you when you first were involved with Mordek, the company.

**Mr Malavey**—As a proponent?

**Senator O'BRIEN**—Yes.

**Mr Malavey**—I have just said to you, Senator, that it was in June 2001.

**Senator O'BRIEN**—With the council.

**Mr Malavey**—It was a discussion between the council officers—people who were holding positions there to deal with business development—and the Dairy RAP officer, Braddon Pym.

**Senator O'BRIEN**—Who set that meeting up?

**Mr Malavey**—I will just have a look at my notes. The meeting initially was, it seems to me, a general meeting between Brad Pym and the people on the council that might be involved in Dairy RAP applications, and Mordek was one of the potential businesses that might have been able to utilise Dairy RAP funding.

**Senator O'BRIEN**—You say in your submission that the Mordek project gained ACC support on 12 June 2001 when your project subcommittee reviewed the proposal. Is it fair to say that the actual project supported on 12 June was the sewerage works?

**Mr Malavey**—You are right. The initial application was far more focused on sewerage than it was on the building.

**Senator O'BRIEN**—Who was present at that meeting?

**Mr Malavey**—It was a telephone meeting.

**Senator O'BRIEN**—Perhaps I should have asked who was connected at that meeting.

**Mr Malavey**—We had a meeting on 12 June that started at 11 am. It was a teleconference. The people present were myself, on line; Dallas Burnes from the department; Michael Beashel, the RAP funding officer; John Dedman; Gwen Prendergast, the deputy chair; Brad Pym; and Steve Farkas.

**Senator O'BRIEN**—Were any site visits undertaken before the ACC determined its support for the project?

**Mr Malavey**—Were there any site visits?

**Senator O'BRIEN**—To the North Moruya Industrial Estate; the site of the proposed works.

**Mr Malavey**—I would be a regular visitor to the Moruya Industrial Estate, for one reason or another, consistently throughout the year. In terms of being a site visit based on my role as chair, no. The Dairy RAP officer, at some time in that period, certainly would have had discussions with the owners of Mordek.

**Senator O'BRIEN**—We do not know whether there was any visit by them at that time?

**Mr Malavey**—There were discussions with John Nader and his advisers at Mordek in June.

**Senator O'BRIEN**—By?

**Mr Malavey**—Brad Pym.

**Senator O'BRIEN**—Where were those discussions held, do you know?

**Mr Malavey**—I am not sure, but I could find out if you would like me to.

**Senator O'BRIEN**—If you can, that would be useful. I presume that Mr Pym would not have been looking at what was happening with the building if the project was about the sewerage system. Is that a fair conclusion?

**Mr Malavey**—No, that is not a fair conclusion at all.

**Senator O'BRIEN**—Someone who went to that site would have been observing what was happening in terms of the building project?

**Mr Malavey**—The meetings that Brad Pym would initially have had with John Nader would have been in the old factory. Any meeting in the old factory would not guarantee that he would have any view at all over the new factory, as it is set up behind that particular building. Unless they took a decision to walk to the site, no, Brad probably would not have seen anything from his meeting location.

**Senator O'BRIEN**—You say in your submission that a draft submission was forwarded to the Department of Employment, Workplace Relations and Small Business on 25 June 2001 and a further draft submission was forwarded on 12 July 2001. What were the variations made to the application between 12 June and 25 June, firstly?

**Mr Malavey**—Are you talking line by line or generally?

**Senator O'BRIEN**—You can tell us generally. I do not know that we have all of these forms to go through it line by line.

**Mr Malavey**—There was an expansion of point 1.10. The question is:

What are the project objectives and expected outcomes, including employment outcomes from business investment, ongoing regional benefit and any notes?

That was expanded. Do you want me to read it all out?

**Senator O'BRIEN**—No, I do not. Would you mind supplying us with copies of the various drafts of the application?

**Mr Malavey**—Not a problem at all. Do you need it done today or would you like it emailed?

**Senator O'BRIEN**—I am sure, if you have them there, the staff can copy them for us today and save you the trouble of doing that.

**Mr Malavey**—With pleasure. I might need them before this is finished, though.

**Senator O'BRIEN**—That is fine. We will be able to assess what changes were made. Has the ACC a copy of the application that was made that they signed off on 12 June 2001?

**Mr Malavey**—No.



**Senator O'BRIEN**—You have the drafts up to that point, but not that one?

**Mr Malavey**—That is correct.

**Senator O'BRIEN**—Was there communication with the member for Eden-Monaro about the Mordek proposal at any time before 12 July 2001 by ACC officers or staff?

**Mr Malavey**—General communication, not written?

**Senator O'BRIEN**—Yes, general communication with the member for Eden-Monaro about the Mordek proposal.

**Mr Malavey**—I could not tell you. I speak with Gary Nairn, who is our local member, as chair of the ACC consistently, but whether Mordek was raised or not I could not tell you.

**Senator O'BRIEN**—What formal or informal discussions with Eurobodalla Shire Council were undertaken in 2001 in relation to the Mordek application?

**Mr Malavey**—We, as an organisation, and via Brad Pym, who was the Dairy RAP officer? There was only ever one noted meeting. That was on 5 June 2001, though I would like to bring to your attention that Phil Herrick often sat in on ACC meetings as a representative of Chris Vardon, so he would have been privy to general discussion at any of our bimonthly meetings.

**Senator O'BRIEN**—You say in your submission that once the further revised application was lodged on 12 July 2001—which I understand the ACC signed off on, but you do not have a copy of it—the Department of Employment, Workplace Relations and Small Business handled the matter from then on.

**Mr Malavey**—That is correct.

**Senator O'BRIEN**—Are you telling the committee that, once the application was lodged, the ACC had no role whatsoever in its further variation and approval?

**Mr Malavey**—The ACC only plays a conduit role in all funding. We help filter the funding process. ACCs sign off on a funding application because it has a good and positive potential outcome, meeting the guidelines of a funding focus. We do not make the decision about the funding. In the final stages of this, as you are well aware, it was DOTARS, not DEWRSB. Contact between the proponent and the government department is not an irregular process, because we only actually get them through the funnel.

**Senator O'BRIEN**—You put them in the starting gates and, after that, they are on their own.

**Mr Malavey**—That is right. We help them develop a proper funding process.

**Senator O'BRIEN**—You did not have any involvement in the application for it in that time?

**Mr Malavey**—No, because at that stage we had already given the detail of the funding for the Mordek organisation, and what they had in mind with the development—their process plant—

was an excellent opportunity to bring forward employment opportunities in our area. That was our primary focus.

**Senator O'BRIEN**—The front of the ACC Summer 2002 newsletter features a photograph of Mr Nairn presenting a \$339,900 cheque to John and Annette Nader.

**Mr Malavey**—Yes.

**Senator O'BRIEN**—When was that published?

**Mr Malavey**—I am not sure but I think it was March when the photo was taken, from the best of my recollection.

**Senator O'BRIEN**—Can you check that?

**Mr Malavey**—We might have a record of it. I could check that, yes.

**Senator O'BRIEN**—Did the ACC organise the presentation ceremony or was it organised by the department?

**Mr Malavey**—It would have been the ACC.

**Senator O'BRIEN**—You, Mr Beashel and Mr Pym are featured in the photograph. None of those officers would have had a role, including you, on what you have told us, in the project after 12 July?

**Mr Malavey**—I would be very surprised if there was not consistent verbal communication between Brad Pym and the department, if they wanted things checked or whatever, and then also come November-December 2002 Michael Beashel was certainly part of the committee that was formed to review the project outcomes, so, yes, there would have been other contacts with the department.

**Senator O'BRIEN**—After approval of the project, ACC had a role in the ongoing monitoring and evaluation of the project.

**Mr Malavey**—Yes, in a general sense.

**Senator O'BRIEN**—You say in your submission that the ACC understands the department conducted an evaluation of the project late in 2002. The minutes of the Eurobodalla Shire Council Environment, Planning and Administrative Services Committee meeting on 1 April 2003 record a report by the general manager in these terms:

In spite of our intentions to seek legal advice and conduct inquiries, the public should know that the South-East Area Consultative Committee Dairy RAP officer has advised that the project has been fully audited by independent auditors.

The minutes then proceed to detail findings of the audit. What advice has the ACC provided council about that audit?

**Mr Malavey**—Probably nothing, I would recommend.

**Senator O'BRIEN**—You do not think that you told them about it?

**Mr Malavey**—We might have expressed the information that the audit had been carried out but the audit normally goes directly to the department. We might get involved in the review and the project outcomes, but the audit is normally carried out by somebody with that particular skill. It is not the job of the ACC to take on an auditing role.

**Senator O'BRIEN**—Have your informal communications with Mr Nairn included discussion of the Mordek grant since the cheque presentation in early 2002?

**Mr Malavey**—Certainly we would have spoken about that, as we would have spoken about any other projects that might have been topical at the time, yes.

**Senator O'BRIEN**—Has any ACC member or employee advised the Eurobodalla Shire Council that the grant for the steel profiling plant represented a Commonwealth contribution to the sewerage works on the North Moruya Industrial Estate?

**Mr Malavey**—On what date?

**Senator O'BRIEN**—At any time.

**Mr Malavey**—I would doubt it, though it was part of the secondary outcomes in the initial program.

**Senator O'BRIEN**—What do you mean by that?

**Mr Malavey**—What happens when all applications are put forward is that the stronger the secondary outcomes on any government funding process, the better the funding is. If the development of, say, Mordek were double or triple its present size, it gives the guy in the steel business across the road more business, and if it creates better opportunities in the garage building activity, it is a very strong secondary outcome. The sewerage at the same stage would have been a good, strong secondary outcome, because we were well aware that there were businesses that would have liked to develop and offer very good employment opportunities in our region that were limited by industrial land at a reasonable cost that was seweraged, and that was a general view.

**Senator O'BRIEN**—You say in your submission that the South-East Area Consultative Committee is unaware of any problems regarding guidelines et cetera. I wanted to refer you to part 4 of the guidelines that form part of the submission from the Department of Transport and Regional Services, which say:

Only projects that meet the assessment criteria and are consistent with the guidelines and general principles as set out in this document will be considered for funding.

Would you agree that as a body with the obligation to endorse suitable project proposals, the South-East New South Wales Area Consultative Committee is required to understand this rule when considering project proposals?

**Mr Malavey**—Yes, as much as we possibly can.

**Senator O'BRIEN**—Part 5 of the guidelines says:

Project proposals will not be approved in areas where Commonwealth funding through Dairy RAP is or could be perceived as substituting or duplicating funding through the responsible Commonwealth, state, territory or local government agency.

How do you understand that rule?

**Mr Malavey**—I would have to really take that question on notice and answer it.

**Senator O'BRIEN**—Clearly the original application was to fund sewerage works.

**Mr Malavey**—No, it was not. Sewerage works were part of it.

**Senator O'BRIEN**—The original application that was signed off? You are saying it was not about funding sewerage works?

**Mr Malavey**—It was. It was part of a complete application, that is correct.

**Senator O'BRIEN**—You actually saw what was signed off on on 12 July?

**Mr Malavey**—I have the project summary. The description I have here is:

The company wishes to expand its Moruya operations by constructing a new building, installing additional machinery, including machinery of a type not yet used in Moruya, and increasing both the quantity and variety of products. The suggested site at North Moruya is not yet sewered. The grant applied for will be paid as a contribution to the Eurobodalla Shire, who have undertaken to install the sewer as soon as possible. Without the sewer in place, the company will almost certainly have to locate the new equipment in Canberra.

**Senator O'BRIEN**—The key words there are, of course:

The grant applied for will be paid as a contribution to the Eurobodalla Shire Council, who have undertaken to install the sewer as soon as possible.

There could not be any clearer connection that the funding was going towards the cost of a sewer, could there?

**Mr Malavey**—Senator, I did not see the application in the same frame as you have. I saw it as an application by a local business to broadly expand their business opportunities in the area and create employment, but that involved also involvement in the sewerage development and was fine by me.

**Senator O'BRIEN**—Yes, but it was not fine by the guidelines, was it?

**Mr Malavey**—That is right.

**Senator O'BRIEN**—The guidelines were very specific about duplicating funding through the responsible local government agency.

**Mr Malavey**—Senator, you are well aware—we have been here for many hours—that there was a third application and, on advice from experts from the department, the funding focus changed.

**Senator O'BRIEN**—But you signed off the 12 July one, which did not change the focus. That is the point that I am making.

**Mr Malavey**—That is right.

**CHAIR**—Why didn't the application say, Mr Malavey, that the funds would be used to expand the business?

**Mr Malavey**—The final application did.

**CHAIR**—No, the one that was signed off on 12 July.

**Mr Malavey**—Because at that time they had a different focus on their funding application.

**CHAIR**—Yes, they wanted it for the sewerage.

**Mr Malavey**—Sewerage was part of the outcome, yes.

**CHAIR**—I do not know whether this is a retrospective pedantic point you are trying to make. The application that you signed off on 12 July says nothing about seeking funds for the expansion of the business, does it? It talks about the business in its total context and then says that it needs the sewerage, and the funds will go to that.

**Mr Malavey**—We could sit here and argue all day.

**CHAIR**—I am not arguing. I am asking you a question.

**Mr Malavey**—Yes, and I am saying I have answered it already to Senator O'Brien.

**CHAIR**—I know exactly why I have asked you again.

**Mr Malavey**—I am saying exactly the same thing to you. We saw it as an economic activity that would generate employment opportunities in that area.

**CHAIR**—You may have seen the project like that, Mr Malavey, but these things have to be specific with funding. You know that; you have been around a while. If you are going to seek

government funds under a program, you have to be specific about what you want to use those funds for.

**Senator HEFFERNAN**—But that application—

**CHAIR**—Excuse me, Senator Heffernan. That comment in the application clearly identifies that all of the funds would be used for the sewerage. The sewerage was not going to be constructed by the developer, or installed by the developer, was it? It was going to be put in by the council. Isn't that the case?

**Mr Malavey**—I have no idea. I do not think the council is the only organisation in south-eastern Australia to put sewerage in.

**CHAIR**—Mr Malavey, do not try and avoid answering the question. As to the comment in the application, which you signed off on, that the funds would go towards—what were the exact words, Senator O'Brien?

**Senator HEFFERNAN**—Just read them out. I am not aware of them.

**CHAIR**—Senator Heffernan, do not interrupt me while I am asking a question. Who was going to be responsible for putting that sewerage in?

**Mr Malavey**—I would say the council probably would have been.

**CHAIR**—Thank you.

**Senator HEFFERNAN**—But the application failed.

**Mr Malavey**—The application failed.

**CHAIR**—We all know that, Senator Heffernan.

**Senator O'BRIEN**—The questions were about why you signed it off.

**Senator HEFFERNAN**—That was my first question today, for God's sake.

**CHAIR**—We know it failed, Senator Heffernan. I fail to understand why people are going to such lengths to avoid acknowledging that the application was made for the sewerage.

**Mr Malavey**—I am not avoiding it.

**CHAIR**—That is what you have been doing.

**Mr Malavey**—I am not avoiding it. What I am saying to you is that the whole aim of the application was to generate employment outcomes. Whether the employment outcomes came via one stream or the other in terms of the outcomes aimed at by the Dairy RAP funding is neither here nor there.

**CHAIR**—We could argue about this all day but we do not have the time. You could say to me, Mr Malavey, that the whole purpose of it was to improve the economy of the entire shire and to improve the economy and employment of the whole of the South Coast of New South Wales or Australia. We could take that ad infinitum. We are dealing here with the application for public funds through a government program.

**Senator HEFFERNAN**—Which is, at the end of the winding road, the first question I asked you. It failed.

**Mr Malavey**—That is right. Could I make one comment? Earlier I was asked about direct benefit out of Dairy RAP funds. I would like to make it clear to the committee that a successful Dairy RAP applicant, since receiving the funding, has rented space in a building that my wife owns. I would like to make that a clear response to whatever the questions might have been earlier. I would like that to be held on record.

**CHAIR**—It is on the record, Mr Malavey.

**Mr Malavey**—Thank you very much.

**CHAIR**—Thank you for your appearance today. You have undertaken to provide some further information to the committee, which you can discuss with officers of the secretariat.

[3.17 p.m.]

**JESSON, Mr Gregory John, External Accountant, Moruya Decking and Cladding Pty Ltd (Mordek)**

**NADER, Mrs Annette Mary, Director, Moruya Decking and Cladding Pty Ltd (Mordek)**

**NADER, Mr John, Director, Moruya Decking and Cladding Pty Ltd (Mordek)**

**CHAIR**—I now welcome representatives of the company Mordek. Evidence given to the committee is protected by parliamentary privilege. This means that witnesses are given broad protection from action arising from what they say and that the Senate has the power to protect them from any action which disadvantages them on account of the evidence given before the committee. I also remind you that the giving of false or misleading evidence to the committee may constitute a contempt of the Senate. We prefer to conduct our hearings in public, which we have been doing throughout the day. However, if there are any matters which you wish to discuss with the committee in private, we will consider any such request at that time.

I also draw to the attention of the witnesses the Senate's rules concerning adverse comment. Where a committee has a reason to believe that evidence about to be given may reflect adversely on a person, the committee shall consider whether to hear that evidence in private session. If such evidence is given and reflects adversely on another person, the committee may consider expunging that evidence from the transcript of evidence or, alternatively, provide reasonable opportunity for such person to have access to the evidence, respond to it in writing and appear before the committee. I now invite you to make an opening comment, following which we will proceed to some questions.

**Mr Jesson**—At this stage we have nothing more to add to what has already been submitted. I would like to point out the fact that the money has been spent in relation to building the Mordek factory. We have met the guidelines of DOTARS in relation to that. It has been fully acquitted and, from our point of view, we feel that there is no point for this hearing.

**CHAIR**—Thank you for that.

**Senator O'BRIEN**—I would like some clarification. I understand both Mr and Mrs Nader are directors of Moruya Decking and Cladding Pty Ltd, trading as Mordek, and Moruya Industrial Estate Pty Ltd; that they are common directors and the sole common shareholders of that company.

**Mr Jesson**—That is right.

**Senator O'BRIEN**—The registered address of both companies is the same address in the North Moruya Industrial Estate?

**Mr Nader**—That is right.



**Senator O'BRIEN**—Can you describe the business activities of these two companies?

**Mr Nader**—Mordek is a roll forming company that roll forms metal. We do specialised work, such as brick rail which is exported to Japan; we roll gutter, fascia, every variety of decking that goes onto a roof or commercial building; we do structural purlins; anything that can be rolled by steel, we do.

**Senator O'BRIEN**—And Moruya Industrial Estate Pty Ltd?

**Mr Nader**—Moruya Industrial Estate is an area of land that we purchased. Our business started in town in a building that was not zoned as industrial and council allowed us to remain where we were, but that business was not really registered, so we had to find somewhere to open up. The areas in the town were not suitable because the infrastructure and the roads were not able to carry the heavy traffic we would demand, so we made an application to council to take over 150 acres, of which 65 acres are zoned industrial at the moment, four kilometres out of town. A company of four of us took that job on. My other three partners were bought out over a period of time and I ended up with it on my own.

It did not have water. It did not have roads. It was just a paddock, an old farm. We had to develop it into what it is today. I understood that one day the area would require such an industrial area. I needed it; surely to goodness there was going to be someone else who needed it. It just started from there. I had to pay \$73,000 to get the water out there. My understanding—and there was no promise to me—was that when businesses started out there the sewerage would come. It did not come. I have been pushing for it ever since I started out there.

**Senator HEFFERNAN**—How long were you in town?

**Mr Nader**—How long?

**Senator HEFFERNAN**—For how long did you have the business in town.

**Mrs Nader**—Sorry, my husband is deaf.

**Senator HEFFERNAN**—So am I.

**Mrs Nader**—You can understand then.

**Mr Nader**—I started in 1979. I completed a very large building in an area they call the Capital Coast Commercial Centre, which was a swamp of two acres, where I developed little shops over a period of 10 years. By the early eighties I had one little block of land that I put one enormous building on but it was too big for anyone to lease. I had a trip to New Zealand, visiting a friend of mine over there. He was an inventor. He introduced me to Hays roll forming at Rotorua. Between the two of them they talked me into buying a roll forming machine. I did not know what the hell it did at the time but I needed something to put in this shed and this machine was producing corrugated iron, which everyone had, so I thought, 'This is good, let's give it a go.'

In 1980 I started the company—or December 1979—and it just grew and grew until, around 1982-83, I got messages from council saying, ‘Your next-door neighbours are not complaining. In fact, they have an industry across the road from you that is timber cutting and supplying mine props. We are not particularly worried about you, but you have to do something about this. You are getting too big. You are going to have to find yourself an industrial block.’ I said, ‘You guys find me an industrial block and I will buy it and I will shift my shed.’

They could not find me an industrial block but they did help me to acquire the land out along the highway, suggesting that it was, at that time, set aside as possible industrial land. So they did help me to get onto that industrial land. By 1984 I had built a 1,000 square metre building out there, bought some more machines, and we continued on from there.

**Senator O’BRIEN**—What role did either of those companies or yourselves have in the Eurobodalla Shire Council’s Regional Solutions application in 2000 to gain funding for sewerage works at the North Moruya Industrial Estate?

**Mr Nader**—That industrial estate developed very slowly, incredibly slowly. Even the developments we did out there, in my opinion, should not have been there, because we did not have sewerage. We had pump-out systems and people do not use pump-out systems the way they are supposed to be used. There is sewage lapping all over the place out there. Even our own building, the one that we have completed this year and shifted into, has a pump-out system. We were just so desperate to get into a new building. We said, ‘Look, if the sewerage doesn’t come, we’ve got to have a new building.’ We built the building and we have a pump-out system. Twice that system has blocked up and sewage has seeped out all over the side of our building. We can only get pumped out once a week and every now and again we have an influx of people there, extra staff and the system is not good enough. The whole thing is not good enough.

I have been saying, ‘The next thing we’ve got to do is get sewerage out here.’ So many people have said to me, ‘If you had sewerage I’d buy a block of land. We would shift from Bateman’s Bay because the area out there is too small. They do not have an industrial area as such.’ The area is growing so quickly that we need bigger buildings. Can I diversify and tell you what has happened since we had the promise of industrial—

**Senator O’BRIEN**—I was really asking about your role in the Eurobodalla Shire Council’s Regional Solutions application to get funding for the sewerage. Were you part of that? Did you know about it?

**Mr Nader**—There are two different things happening here. There is my endeavour to put sewerage on to the industrial area for the benefit of the industrial area and the people who want to come into the South Coast with their little industries. That is happening. The other thing is my developing my company Mordek, which is also happening. The two of them have crossed over and, at this stage, both things are happening. What more can I tell you?

**Senator O’BRIEN**—You could tell me whether you were involved in any way in the decision of the Eurobodalla Shire Council to apply for funding under the Regional Solutions Program in the year 2000.

**Mr Nader**—For Mordek?

**Senator O'BRIEN**—For the North Moruya Industrial Estate.

**Mr Nader**—We made an application. I believe the council, on my behalf, asked the federal and state governments to go us 25 per cent in putting sewerage onto the Moruya Industrial Estate. I was not surprised when we were knocked back. It did not surprise me at all. I said to them, 'Somehow we've got to get sewerage.' This is to Phil Herrick. 'We've got to get sewerage out there because I'm now preparing to travel to Canberra.' The only reason I did not build my building up here was because I could not get a block of land. I do have a business up here but it is far too small. I have been going to build for three years up here but I cannot get a block of land where I want it, out at Mitchell, so I decided to build the building there and put these new purlin machines that I was getting into that building, instead of bringing it up here.

**Senator O'BRIEN**—And then you were persuaded, I take it, to apply for funding to sewer the industrial estate?

**Mr Nader**—We did, as I said. I believe the council—Phil Herrick—made an application to federal-state for 25 per cent. I was going to give 25 per cent and the council were going to find 25 per cent. That was knocked back.

**Senator O'BRIEN**—That is the Regional Solutions application you are talking about, is it?

**Mr Nader**—I could not tell you what it is called.

**Senator O'BRIEN**—Do you recall signing an application on 12 July 2001 for the Dairy RAP?

**Mr Nader**—I do not recall signing anything that long ago. I probably did. I would not know. I am sure there is someone who could tell you.

**Mr Jesson**—Yes, there was an application signed on that day.

**Senator O'BRIEN**—Do you have Mr Nader's copy of that application?

**Mr Jesson**—I do not have that copy, no.

**Senator O'BRIEN**—So far we have not seen a signed copy. That is why I am asking whether you signed one.

**Mr Nader**—Quite honestly, Senator, I sign a lot of things.

**Senator O'BRIEN**—As do I; as do a lot of us.

**Mr Nader**—And I never, ever read them. As soon as my wife puts them on my desk, I go scribble, scribble. I do not know what is there.

**Senator O'BRIEN**—Perhaps I should ask Mrs Nader whether she put that application in front of you to sign.

**Mr Nader**—I am sure she could tell you. She knows more about my business than I do.

**Mrs Nader**—I have no recollection.

**Senator O'BRIEN**—You have to get it past Mrs Nader.

**Mr Jesson**—We might be able to search back at the office to see whether we can dig up that application, but I do not have a copy. I know it was lodged at that time with the Dairy Board, with DOTARS, and obviously that was lodged on the basis of the grant for the sewerage, which obviously was not acceptable and did not meet their guidelines.

**Senator O'BRIEN**—Who advised Mordek to lodge the application?

**Mr Nader**—Phil Herrick and my real estate agent. Actually, it was my real estate agent who had sole rights to selling the blocks, had not sold anything in many years, and said, 'You've just got to get sewerage,' and I said, 'When I get a few bob in my pocket I'll put it in.' Phil Herrick had said to me that maybe Mordek can get some money through Dairy RAP by making an application to build the new factory in Moruya, so I said, 'If you guys can get some money for me, the quicker I get some money, the quicker I can put sewerage on.' I allowed Annette to do the necessary applications, which were approved by the council. It went through and then, much to my surprise, the money came forward. I was going to continue on to construction whether it came forward or not, but I thought, 'Well, okay, let's get this sewerage on.' Although the sewerage is not complete, we are writing up people coming into that industrial area. An unbelievable number of people are coming in.

**Senator HEFFERNAN**—It freed up a bit of money for you for sewerage.

**CHAIR**—Senator Heffernan, we do not apply rules of evidence strictly in this place, but leading witnesses to that extent is a bit beyond the pale.

**Mr Jesson**—Can I make the point that the sewerage and the building of the factory were all part of the general development of that area and obviously the initial application, with support of council, was in relation to the sewerage which MIE, which is the land development company, was going to contribute 25 per cent of. I make the point, too, that that particular company has not made a profit from the sale of land since I have been their accountant—a period of nine years. That particular company, without presenting a tax return, has actually made a loss during the 2002 financial year. The purpose of the money was to build the factory. That is where the money was actually spent; it has been acquitted. The reason was to generate employment in the area, a fairly depressed area, and the actual expectations have been doubled. That is the whole point of the Dairy grant: to generate employment.

**Senator O'BRIEN**—PricewaterhouseCoopers produced three reports to this application and certainly, as far as I can see, they were of the view that Mordek had finance to construct the building at all times.

**Mr Nader**—That is correct.

**Senator O'BRIEN**—And that the Dairy RAP funds therefore were not needed for the construction to go ahead.

**Mr Jesson**—They were not needed? I beg your pardon?

**Senator O'BRIEN**—For the construction of the building to go ahead.

**Mr Jesson**—Are you saying they were not needed?

**Senator O'BRIEN**—Were not needed.

**Mr Jesson**—Any businessperson has a right to apply for grants in relation to the overall expansion of the business. Obviously, it does release funds to then go ahead with the sewerage project. Without showing balance sheets, profit and losses and things of that nature, I can tell you that Mordek has sold its old factory and MIE has sold a number of factory units to generate money to go into development. That is only part of the funding of Mordek to eventually put into the cost of the sewerage. And at this stage it is only an understanding; there is no formal contract signed for the sewerage development. We can say, 'That money is not to go in. We can't afford to put that money in.'

**Mr Nader**—I would not do that, though. If you guys took this money away from me today, I would find some money from somewhere to put in its place.

**Mr Jesson**—I suppose if you are talking about the fact that you did not need that money, I will say that perhaps we could have financed it somewhere else, but we have had to actually sell some assets to realise funds to go into the development of the estate, which at the moment is not showing a profit.

**Senator O'BRIEN**—The industrial estate?

**Mr Jesson**—Yes.

**Senator O'BRIEN**—I do not propose to ask about the profitability or otherwise of Mordek or Moruya Industrial Estate. I made the point about the financing, because that is what PricewaterhouseCoopers found, not because of the financial position of the company.

**Mr Jesson**—What did they look at to come to that conclusion?

**Senator O'BRIEN**—They were assessing the proposed project, as I understand it, and they were assessing the financial position of Mordek, which was the proponent of the project, and I understand they also took into account Moruya Industrial Estate Pty Ltd in their later reports. That is who they were assessing, but at that time their statement in their report says:

The applicant has confirmed funding for the building and plant. However, it is unclear how they would fund the sewerage system should funding not be provided by the Commonwealth.

That is what they found.

**Mr Jesson**—They could come to that conclusion, but then again, I wonder how far they have looked ahead in relation to the overall expansion of the industrial area. It is going to release funds to go into that particular site and for future expansion. Any good businessperson would apply for grants in relation to any building or any right they have to that to promote their business, and in this situation also to promote employment in the area and as a stimulus for the Moruya area, which obviously is going to benefit Mordek and MIE as well.

**Senator O'BRIEN**—Mr Jesson, did you conduct the negotiations with the Commonwealth about the variations to the Mordek application for funding under Dairy RAP?

**Mr Jesson**—I had put a few submissions to the Dairy Board in relation to explaining a couple of points, and that is why I suppose there was a delay in the approval of the funding.

**Senator O'BRIEN**—I am trying to find out who was handling these variations. According to the evidence we received this morning, there were a number of variations to the proposal before it was finally resubmitted on 12 December and approved. Did you handle that or did Mr and Mrs Nader handle it?

**Mr Jesson**—I was involved in providing figures in relation to the changes and in providing a submission in relation to some direction that they were taking to clarify some points to DOTARS, but it is all in writing, and they have all those papers.

**Senator O'BRIEN**—You were the agent, effectively, for Mordek to process the pursuit of these funds through DRAP?

**Mr Jesson**—I would say so, yes. After the initial application was lodged, that is right, it was all up to Mordek to push it through and get the approval.

**Senator O'BRIEN**—The Eurobodalla Shire Council's submission says council referred Mordek to a Dairy RAP officer and supported Mordek's application. Do you know when that occurred?

**Mr Jesson**—No, I cannot answer that one, I am sorry. I have no idea.

**Senator O'BRIEN**—What additional discussions were had with council as the application was revised during the second half of 2001?

**Mr Jesson**—I had no discussion with council. The only discussions we had were on the sewerage development in the sense of the letter of understanding and things of that nature. I reviewed that and passed comments in relation to that. Basically, that is all it boiled down to.

**Senator O'BRIEN**—They were not discussing your application; they were discussing the sewerage project?

**Mr Jesson**—Yes.

**Senator O'BRIEN**—Did you tell them that funds would be available through Dairy RAP for the sewerage project?

**Mr Jesson**—No, I did not.

**Senator O'BRIEN**—If they were told that, someone else told them that?

**Mr Jesson**—From the point of view that we never categorically—

**Mr Nader**—They came up with that figure, because I thought it was going to be an extra sum that I would have after my construction. I thought, 'Well, if someone's going to give me sixpence, I've got sixpence extra to give to someone else.' I need, for the benefit of the Moruya Industrial Estate, to get sewerage onto it for several reasons. I have to live there and smell the stench that comes out of my own septic. I have to try to bring people into town, but they will not come because we do not have sewerage. If you see the applications we have today that depend on that sewerage being completed, you will understand why I would go to any length at all to get enough money to get sewerage on there as quickly as possible. Surely you can understand that.

**CHAIR**—We understand that precisely, Mr Nader.

**Mr Nader**—That has absolutely nothing to do with Mordek getting money from somewhere else. Mordek is putting all its profits at the moment into this sewerage scheme in one way or another. That sewerage scheme is only going to go into the buildings that are already there. I believe that is the duty of the council, but I have to find extra money—which Mordek is going to do and is able to do because it is a successful business—to put sewerage on the rest of the industrial area so these eight people who want to come in will have sewerage by 1 September. I have sold those blocks of land on the condition that sewerage will be there in September.

**CHAIR**—I understand.

**Mr Nader**—Surely to goodness that is easy enough to understand.

**CHAIR**—We do not have any trouble understanding that.

**Mr Nader**—Mordek is a business organisation. It has been very successful. It has expanded to Canberra and Nowra. It has very big operations in both towns. It is making good money. It is a small fish in a very big pond and yet we are very successful. At the moment we have excess money to put into the industrial area to extend that sewerage after it is brought in to the people who are already necessarily wanting to hook up.

**Senator O'BRIEN**—Did you, Mr Nader, or you, Mr Jesson, have any discussions with the member for Eden-Monaro about the application?

**Mr Jesson**—No, I did not.

**Mr Nader**—Gary Nairn, the minister? No, definitely. Never.

**Senator O'BRIEN**—In your submission you say that the preliminary work for the building of the factory commenced well before the date that the project should have commenced. Between this date and the end of the funding period, steel framing for the construction of the new factory

commenced on 3 December 2001. I understand that submission to mean the steel framing went up on 3 December 2001. Clearly other work had to be done before the steel framing went up.

**Mr Jesson**—That is correct.

**Mr Nader**—Yes. During the year I believed that I had sufficient finance to put down the piers. We put the piers down, then a bit more money came to hand and I laid the slab down. Then I decided that I would just keep going. The bank at the time were, through the help of my accountant, offering me money to continue building. I said to them, ‘Let’s just do a part at a time. We’ll just finish it when the money is available.’ The business was growing to the extent that we just had to push it on, and we were going to push it on and finish it whether we got a grant or not. To hell with the grant. It was the worst thing we ever did, quite frankly.

**Mr Jesson**—In the original application the starting date was September, with completion in January.

**Senator O’BRIEN**—September 2000, wasn’t it?

**Mr Jesson**—It was 2001, with completion in January 2002.

**Senator O’BRIEN**—Sorry, I meant the original DRAP application, not the application to council for approval.

**Mr Jesson**—With the actual delays in that approval it was not approved until 1 March, with proposed completion on 31 August. But as a business there was no way—because of preliminary work that was done—that we could delay the construction any longer than 3 December, when it was commenced.

**Senator O’BRIEN**—Mr Jesson, you clearly would have read the paperwork, including the guidelines for projects to be funded under Dairy RAP. What did you think the guideline meant that said you were not entitled to be funded retrospectively?

**Mr Jesson**—That was clarified with DOTARS. Obviously, we should not have commenced, but is that a total breach of the guidelines? This was clarified: it was provided the funding was expended between 12 December and another date. However, while the agreement was reached on 12 December to approve the funding, it took another three months for the approval to go through.

**Senator O’BRIEN**—That is not what we were told.

**Mr Jesson**—That is what I was told. The fact of providing the funding was after that date and the money was expended between those dates. I think \$722,000 was the dollar figure, which was well in excess of the actual grant. That was the advice we got.

**Senator O’BRIEN**—When were you told the project had been approved? Was it when Mr Nairn announced it?



**Mr Jesson**—In December we were told it had been approved, but the actual approval letter did not come through. This is my understanding, and I am not quite clear on this.

**Senator O'BRIEN**—Who told you the application had been approved?

**Mr Jesson**—It would have been Dallas Burnes or Greg Oehm from DOTARS. Can you hold on for one second? I might have a note of that.

**Senator O'BRIEN**—Perhaps you could supply that on notice. We have time constraints today. When did you clarify the issue of retrospective funding with the Department of Transport and Regional Services?

**Mr Jesson**—I think it was prior to the audit. Greg Oehm was the officer I spoke to. I do have a note somewhere on that, but it may be in another folder.

**Senator O'BRIEN**—Greg Oehm was the person you spoke to, was he?

**Mr Jesson**—Yes, at that time. With the audit being done, we had to make sure that the period of the audit and also the funding were in accordance with the requirements to satisfy their guidelines, which we did satisfy, and it was acquitted.

**Senator O'BRIEN**—The evidence of the department this morning was that you would not have been told before 30 January 2002. That is not your recollection about the approval of the project?

**Mr Jesson**—That is not mine, but I have seen it written somewhere. I cannot put my fingers on it at this point in time. That might have been the official advice in writing. Again, what I am saying is that I was personally advised in July-August that that was the case, but I do not know when the official advice was written and issued.

**Senator O'BRIEN**—Who told you that in July-August?

**Mr Jesson**—Greg Oehm, from DOTARS.

**Senator O'BRIEN**—July-August 2002?

**Mr Jesson**—Yes.

**Senator O'BRIEN**—I am sorry, I thought you were referring to July-August 2001 in the process.

**Mr Jesson**—No.

**Senator O'BRIEN**—You say in your submission that every move the company took was closely monitored by DOTARS. What do you mean?

**Mr Jesson**—We had to acquit the expenditure on a monthly basis and meet the guidelines. Also, if we were concerned about a particular issue, we would speak to them to ensure that we were meeting the correct guidelines.

**Senator O'BRIEN**—But the building was basically built and the machinery installed by the time the contract was signed for the funding, wasn't it—by 5 March?

**Mr Jesson**—No, it was opened in May. It was actually completed on 6 May, so we were well ahead of the August deadline.

**Senator O'BRIEN**—The frame was up in December?

**Mr Jesson**—It was commenced in December.

**Senator O'BRIEN**—The machinery was installed during January?

**Mr Nader**—The machinery was installed a section at a time. One group of machines was installed each month, finishing in May. We started shifting over the Christmas period, I think it was. Construction was over the Christmas holidays. Some of my people are Jehovah's Witnesses, and they do not accept the Christmas break. I said, 'How about we do some work on the building?' so they came to work and we started Christmas 2001. We finished in 2002.

We started shifting from the old factory, in the storage units, our gutter machinery probably in January. In February we shifted the roll forming roofing machinery from the old factory. In March we had the folding machines come down from the old factory and, by the time we brought the stuff down from the Nowra factory, our new factory was full. We left the purlin machines up in the old factory, where they still are today. We celebrate our birthday in that factory on 6 May. It took us from January until May to get into that factory.

**Senator O'BRIEN**—When you moved the machines in, did they not operate until May?

**Mr Nader**—No, they had to be moved in one at a time, connected and operated. We did not lose a moment of business through shifting.

**Senator O'BRIEN**—Was some machinery operating on the site in January?

**Mr Nader**—We had three sites.

**Senator O'BRIEN**—I meant the new building in January 2002.

**Mr Nader**—It could have been February. I do not think there was anything operating in January. I think we had trouble getting someone to do something over Christmas.

**CHAIR**—Mrs Nader, you can answer a question if you desire.

**Mrs Nader**—I did not have a lot to do with the machinery. I know that in December they started the frame. It was clad and everything was done in January, and I know that they did one section and moved that machine, along with the person who used it—they took the employee as

well—and that was then set up. The rest of us were in the old factory. Each month we moved, until 6 May, when the rest of us moved.

**Senator O'BRIEN**—Going back a step, when did the work on the foundations—the piers—commence?

**Mrs Nader**—He was probably digging holes in about November 2001, because it was hot.

**Mr Jesson**—In November there were a few bills for concrete and so on, so that would have been the time.

**Senator O'BRIEN**—Was that for the foundations, the piers and the slab?

**Mr Jesson**—Yes.

**Mrs Nader**—Digging holes, getting water out and filling it with cement. That went on and on, yes.

**Senator O'BRIEN**—And reinforcing steel et cetera.

**Mrs Nader**—Yes.

**Senator O'BRIEN**—They are the necessities for any building. That is the major engineering thing, isn't it? You have to get the slab in and it has to be engineered correctly to take the weights and the size of the building that you are putting in. All that was done before December.

**Mr Jesson**—Yes.

**Mr Nader**—The slab was completed before December, that is right.

**Senator O'BRIEN**—There was a slab that you had to take out early in the year. Was that connected with the project?

**Mr Nader**—No, that was a misunderstanding between council employees and myself. Some employees in council told me I could put the slab there and then others said I could not. Of course, I was wrong. So I had to rip it up, and it cost me \$10,000 to carry on. In the meantime, I had a two-week stop notice. It did not worry me, because I did not have the money to carry on in any case.

**Senator HEFFERNAN**—By this stage of the game, you were pretty keen on the bureaucracy, I take it.

**CHAIR**—That's another one of those leading questions!

**Mr Nader**—It offends me that I have to be here explaining to you why I am doing so much of benefit to the—

**CHAIR**—Mr Nader, I appreciate your views. We do need to finish this. I point out that there is over \$300,000 of public money involved in this matter that has been granted to your company. I am not making any other comment. We have a responsibility, as a Senate committee, to examine any issues that might arise.

**Mr Nader**—I am trying to understand that, Senator.

**CHAIR**—I understand what you are saying, but you should understand that we would not be here unless we thought this was an important issue. We are certainly not trying to waste your time.

**Senator O'BRIEN**—I refer to the memorandum of understanding between the council and Moruya Industrial Estate which you include with your submission, which the council says is not binding. I note that the council has said that you do not have any contractual commitment to the council to make a contribution for the sewerage, but that it may not go ahead if you do not make a contribution. What is your comment about that?

**Mr Nader**—It is going to go ahead, regardless of how much I have to pay for it, because I have a commitment to nine people.

**Senator O'BRIEN**—Selling the blocks of land, with you having to pay for the sewerage, is financially viable?

**Mr Nader**—If I had known that the urgency was as it is, I would have done this years ago. I did not realise how urgent it was.

**Senator O'BRIEN**—Without government assistance?

**Mr Nader**—Without government assistance. The government are not assisting me in any case with the sewerage. They assisted Mordek to get up and going. They did not assist the Moruya Industrial Estate.

**Senator O'BRIEN**—Thank you for that.

**Mrs Nader**—Can I say something?

**CHAIR**—Yes, you can make a comment.

**Mrs Nader**—It will be very succinct. I felt the money that was given to Mordek was to build this new building and to bring work to people who were unemployed in the shire. We really have done that. We have put people on. We are still putting people on. Looking at some of the people we have put on who were unemployed, I feel that we have done, in a little way, a great benefit to the community, to the shire, not just to Moruya. If that little grant did that, I think it did what it was supposed to do. I am sorry about the sewerage and everything else. That is what you are talking about, but I just had to say that. Thank you.

**CHAIR**—Thank you very much. There are no further questions. Thank you for coming along today, and thank you to all the other witnesses who participated. I declare this public hearing adjourned. I thank Hansard for their work as well.

**Committee adjourned at 4.01 p.m.**