

REPUBLIC OF SOUTH AFRICA COMPETITION COMMISSION

Competition Act, 89 of 1998

MEETING WITH RESILIENT PROPERTIES

DATE: 2017-10-31

VENUE: CSIR - PRETORIA

CHAIRPERSON: Ms L Mtanga

COMMISSION MEMBERS

Ms S Grimbeek : Principal Economist

Mr T Khumalo : Senior Legal Counsel

Prof Halton Cheadle : Apology

ON BEHALF OF RESILIENT PROPERTIES:

Mr J Kriek : Director of Resilient REIT

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In the hearing of

COMPETITION COMMISSION AND RESILIENT REIT

Date of Hearing	31 October 2017
Stenographer	Lepelle Scribes
Account Ref	Not Provided
Sound System	MP3 Audio Files
Date of Completion	31 October 2017
Total Number of Pages	

TRANSCRIBER'S NOTES

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PROCEEDINGS ON 31 OCTOBER 2017

CHAIRPERSON: Good afternoon ladies and gentlemen. My name is Lulama Mtanga. I am a panellist at this inquiry, but I will be chairing these public hearings for the session of public hearings due to the fact that Halton Cheadle, she helped until, as I have it, been unable to make it due to circumstances beyond his control and the control of the commission.

I am assisted by the two colleagues and whom I will ask to introduce themselves. Before I ask you to introduce yourself as well.

MS GRIMBEECK: Good afternoon, my name is Sunel Grimbeek. I am Principal Economist at the Commission and I am also leading the technical team that is working on the grocery retail inquiry.

MR KHUMALO: Good afternoon, my name is Thabo Khumalo. I am the Senior Legal Counsel, part of the technical team.

CHAIRPERSON: Okay, can I just ask how you intend to proceed and then we can sort of fit ourselves according to your plan because stakeholders came with different ideas. Others came in and presented. Others just waited for us to ask questions. So, I am not sure how you would like us to proceed.

MR COETZEE: Okay. We basically prepared answers to the questions.

CHAIRPERSON: Yes.

MR COETZEE: So, if it is acceptable, I do not know if that is the way that you would like to proceed.

CHAIRPERSON: Okay.

MR COETZEE: Maybe if we can just introduce ourselves. My name is Johan Coetzee. I am Fasken Attorneys. Sitting with this matter today, Resilient.

MR GREEN: Good afternoon. I am Dolf Green. I am the in-house Legal Counsel for Resilient.

MR KRIEK: Good afternoon ladies and gentlemen. I am Johan

Kriek. I am a Director of Resilient REIT. Sorry, I will be the one who will do most of the talking.

CHAIRPERSON: Thank you. You may proceed, sir.

MR KRIEK: Thank you. Chair, if you will forgive my nervousness from time to time because this is not my strength in public forums but in terms of the questions that had been posed to us, we have prepared answers. So, if you are comfortable with us proceeding on that basis and then I ja, I would imagine if you ask questions, or interject or so, I am quite comfortable.

10 CHAIRPERSON: Okay.

MR KRIEK: So if you.... [Intervened].

CHAIRPERSON: You may proceed sir. I will then if we feel maybe we have questions for certain sections of what you have covered, we will then maybe interject and just. It is basically clarification questions not even questions.

MR KRIEK: Sure.

CHAIRPERSON: I will not call them questions. It is for us to understand what it is that you are saying. So that at times, we tend to find that parties come with their own concepts.

20 MR KRIEK: Yes.

CHAIRPERSON: That they are used to, that we do not quite understand. So we basically loose the meaning of the essence of the rest of your submission, if you do not get those things right in the beginning.

MR KRIEK: Yes.

CHAIRPERSON: But you may proceed.

30 MR KRIEK: Many thanks. Maybe just as an opening statement, our broad view, before I go into the individual questions. Some of them are more relevant to the way that we operate and the space that we occupy in the market and some of them less relevant etcetera. So, I will deal with them as such and maybe as we go a long explain a little bit of methodology potentially, if necessary but

broadly speaking, the space that we occupy in the market, we are not property developers by the definition of developing on behalf of clients and answering. Our approach is a long term approach. So the sustainability of the shopping centres on a long term, is what is at most important. So, we develop only for our own account. We do not manage on behalf of people. We only work on our product. So, you know it is not a fee model or a profitability model but anything other than the profitability of the actual developments.

10 Alright, so the first question on the selection of the development area. The consideration is taken into account when you decide on a particular area or a location to establish a new shopping centre or a mall and then on the question of whether we employ experts to advice and what are the various considerations that are taken into account when we decide on a particular area. Broken up in urban townships, semi-urban and rural areas. From a broad strategy, we try and develop or acquire. We do acquire a lot of properties. So a lot of these properties that we own, would have a historic leases, the leases are the leases and as you know the legal principal *huur gaat voor koop*, is always present. So you
20 know, we sometimes are phased with the product of what we had purchase. The criteria, the consideration taking into account is really in our view the success of a shopping centre, is really if you supplying what the market needs. So the first approach is research and for that we employed external and not internal research companies that give us a very good idea of the market, the size of the market, the various demographics or the demographic groupings that make up the market. We then obviously look at, we go further down the line in terms of the town planning side but I think that question we will answer just now But it really starts off
30 with the size of the market and doing developments that are sustainable at the hand of that.

The second question, apart from the selection of a particular area

or what other requirements should be met by the location, from a micro perspective issues like, accessibility are very important. You would know from your own reference, you would not drive 17 blocks to buy bread and milk, if you can drive two blocks and it is on your way home on the left hand side. Much like a filling station. So there is micro criteria that obviously that makes one side more attractive than the other.

The availability of services also talks to the feasibility because if there is no electricity available in a particular area and there is no
10 water available, sewage etcetera. Then you have to factor the cost of creating all of that in, on a stand-alone basis.

If you ask what role the proximity of other competitors in a specific area play and in making our decision, on whether to develop a shopping centre or not. I think it comes back to one of my opening comments about the size of the market and being market appropriate in terms of the offering that you are providing. It is not so that you build a shopping centre and the people will come and you will make good money.

I think the point is, the better we reflect the market's needs, the
20 more secure our development going into the future.

So, if there are an oversupply of grocery or so already in the market, we would be careful to venture there and once again, it comes down to the size of the available market. So, the research is typical quite extensive in that it is not just a demographic makeup but it is to an extent propensity of spending etcetera but the size of market in the various categories.

So from the census data and all the other data at the disposal of the research companies, they would tell you that you could anticipate to do, as an example R300 million a year in groceries,
30 R150 million a year in fashion, etcetera, etcetera and you would look at your mix at the end of as how you understand the market to be.

How far away from your location should a competitor be, in order to be considered a competitor? It is a very difficult question to answer, obviously. There is a hierarchy of shopping centres. I think we will touch on it a little bit later again but convenience centres typically find themselves much closer to each other than regional shopping centres or super regional shopping centres.

You know if there are a hundred shopping centres in the greater Tshwane, there are four or three super regionals, only. You know and you know maybe as a bit of an okay, I have been reminded to
10 explain the difference.

There is a shopping centre classification that the council of shopping centres use and it has been established over years that a convenience centre has very little impact on a major regional shopping centre because they are fundamentally different in nature and have different visitation profiles, etcetera.

So, if you are building a convenience centre and there is a convenience centre directly opposite the road from you, which has got a more favourable access, then you need to be more careful than if building a regional shopping centre directly across the road
20 from a convenience centre.

So those are the classifications, the sizes, the existing offering obviously, does play a role. Once again, it comes back to the size and what the market really needs and the current supply in that market, whether there is excess market available.

To what extent does the type of development contribute to establishing whether or not a shopping centre or mall is a competitor? Once again, I think I have answered that question a little bit in the previous question. The different types of shopping centres, generally do not affect each other.

30 Once again a small regional or a regional shopping centre on one side of the road and a convenient centre on the other side of the road, generally the two do not really compete or an neighbourhood

centre, et cetera.

What role does the average household income or LSM groups in a particular area play in determining or deciding the size of the form of outlet you wish to establish? In essentially everything because if you are developing a Hyde Park Shopping Centre. [Intervened].

CHAIRPERSON: Excuse me Mr Kriek.

MR KRIEK: Yes.

CHAIRPERSON: Just for our understanding so that we, as we move along with you. Can you explain or can you try and explain to us what is a convenience centre? Especially in the context where you say, a convenience centre would not compete with a regional centre, even when they are opposite one another? Can you tell us what it is and what would you likely or typically be found in a convenience centre?

MR KRIEK: Yes.

CHAIRPERSON: And what would be typically found in a mix store centre and what would be found in the regional centre?

MR KRIEK: *Ja*. So, typically a convenient centre would focus mostly on higher order needs. So, you would talk food, pharmaceuticals, and etcetera. The nature of a mall, is which is, let us call it a regional shopping centre mall that is a far broader mix of tenants and very often you will have two or three of the same type of tenant.

Fashion as an example requires mass. Otherwise it is not attractive as the destination. So, functionally the one would try and serve the very regular needs and the other one serves a far broader service. Entertainment would be a component as well that in fact lately is becoming increasingly more important in shopping centres.

I think I will try and rather use the word mall than shopping centre because shopping centre, I think is a broadly all incumbency type of reference. So, if you all me to do that I think that is the... and

our focus is on malls because within the group we do malls.

MS GRIMBEECK: And in terms of size?

MR KRIEK: A convenience centre would be five, six, seven, eight thousand square metres. Typically it should only have one food anchor. Just from an economical feasibility perspective, we would battle to make a convenience centre work with two, three thousand square metre groceries and only a thousand square metres of additional offering in between.

10 Does that answer your question? A regional shopping centre would be thirty or forty. A larger regional fifty, eighty, ninety. A super regional, a hundred thousand square metres plus.

CHAIRPERSON: So, a regional would be a minimum thirty thousand square metres?

MR KRIEK: Thirty and forty thousand upward, yes and then... [Intervened].

CHAIRPERSON: In fact ninety and not forty.

MR KRIEK: Yes.

CHAIRPERSON: Okay.

20 MR KRIEK: Maybe the example is that Menlyn is a super regional shopping centre, just around the corner from or across the road there is a value mall, which is actually a very different animal. Just up the road there is a small shopping centre that has a Pick n Pay and then two or three other types of shops. I think we...

CHAIRPERSON: Yes.

MR KRIEK: Are you comfortable?

CHAIRPERSON: I had an idea of an example. Broadacres Mall shopping, is that a convenience centre in your view?

30 MR KRIEK: Broadacres in size is a little bit bigger than pure convenience. It has a slightly broader offering. The other types of developments as well, Lifestyle centres.

CHAIRPERSON: Yes.

MR KRIEK: Which really is a combination of more. You start

adding a bit more food. Dining type of food. Not grocery food. That as well obviously and deals a little bit more with experience. So Broadacres and Fourways Mall.

CHAIRPERSON: Yes.

MR KRIEK: Do not compete.

CHAIRPERSON: Okay.

MR KRIEK: Just around the corner, if you are familiar with Pineslopes?

CHAIRPERSON: Yes.

10 MR KRIEK: Okay. So, Pineslopes is a convenient shopping centre.

CHAIRPERSON: Yes.

MR KRIEK: You have got a pharmacy in there. You have got a couple of take-away places in the section where the Spar is or where the Checkers is.

CHAIRPERSON: And Cedar Square, what will that be?

MR KRIEK: Cedar Square starting a little bit bigger. It starting to get to a community centre. Personally I do not really like the classifications too much because sometimes the functionality is not necessarily directly linked to the size. It is more an offering type of discussion. But *ja*.

CHAIRPERSON: You may proceed.

MR KRIEK: Thank you. Item 3. In light of a new development in either a township or a rural area, are the requirements for zoning, what are the requirements for zoning and the process?

Maybe to just drawback to what we do. We really do not develop outside of areas where you can title and where there is a formal town planning regime in place. So and that is quite important for us. So, from a risk, a long term risk perspective and then you go and look at the local council and their specific zoning requirements. Generally it starts with you needing to show from the town planning perspective, need and desirability for a shopping centre and that is where the initial research comes in on the

demographics, the size, the market, etcetera, and etcetera. And then whether services are available and you go from there but it does start with need and desirability from a town planning perspective but does give us certainty in terms of the market you entering into.

I am not talking about economic certainty. That comes from the size, the market and what we building. I am talking about from a strategic perspective, the extra lease services, etcetera, and etcetera. And we would typically always appoint the town planner
10 in the process and the various engineers, to assist with determining the availability of services, etcetera.

MR KHUMALO: Sorry, before you closing. Maybe, what sort of areas are you likely not to get titled?

MR KRIEK: Fortunately, I think the picture is changing but if you could go maybe Mpumalanga and Limpopo. We started operating in many Thohoyandou many years ago. At that time in Thohoyandou, there was not a formal town planning process in place. We purchased an existing development and then worked from there and actually engaged the council on introducing, you
20 know the town planning regimes etcetera.

Title very often in the more rural areas, where you would need to go to secure permission from the Chief to operate on a particular piece of land. There is process to go to that and then even so you could then apply for title to be issued on that particular property but it is quite a lengthy process.

MR KHUMALO: Okay.

MR KRIEK: *Ja*.

CHAIRPERSON: Just on that point. What is your experience in terms of acquiring land in the townships? Will it be the same? Will
30 that be town planning?

MR KRIEK: Yes.

CHAIRPERSON: In existence at the end and the title issue

because the people living there, would not have titles?

MR KRIEK: No, I think most of the people do tend to have titled these days in the townships. I think we have come a long way in the last 10 odd years, in terms of that. As an example, we developed in Soshanguve. Title, town planning, everything in place. Quite a formal role out, if you go and look there. Hammanskraal, we developed there and all of these have had got title.

10 CHAIRPERSON: Okay. I am not sure if you will be comfortable to disclose this. I am just making an example of this Soshanguve one. Who would you have bought a land from, Soshanguve?

MR KRIEK: From a private owner.

CHAIRPERSON: A private owner, being a black person living in Soshanguve?

MR KRIEK: Yes, it was a local person. I seemed to recall that they had some shareholding with a group of people but it is a while ago that we acquired that piece of land.

CHAIRPERSON: Is it where the Soshanguve Mall is?

MR KRIEK: That is it, yes. Soshanguve Crossing is the name.

20 CHAIRPERSON: Okay.

MR KRIEK: *Ja* I think, I am reminded of an important component. Sometimes in these types of situations, it is actually very nice if the current owner remains in the.. [Intervened].

CHAIRPERSON: The local.... [Intervened].

MR KRIEK: Build a partnership when we develop Mafikeng Mall, we came in a little bit at the tail end of the initial part of the development process but there were local owners there and we kept them. In fact we support with some financing as well.

30 CHAIRPERSON: And just for You can comment on both Soshanguve and Mafikeng and your general experience. On the lands where you bought in the townships or the rural areas, will that be land where there were existing retailers or was it just a

piece of land, an empty piece of land there?

MR KRIEK: The land in question here, no existing retailers. It was a vacant piece of land.

CHAIRPERSON: Vacant.

MR KRIEK: In the instance of Soshanguve.

CHAIRPERSON: Yes.

MR KRIEK: We acquired a partnership, an existing centre in Mamelodi but that is an existing shopping centre and we will be expanding that hugely. But that existing is been incorporated into
10 the new development.

CHAIRPERSON: So that type of acquisition would be a private sale?

MR KRIEK: Yes.

CHAIRPERSON: That has got nothing to do where the municipality and has got no say whatsoever because it is privately owned land?

MR KRIEK: Correct.

CHAIRPERSON: Okay.

MR KRIEK: Correct. You see part of the thing, the issue with being
20 able to acquire something with title, is the Deeds Office is world class. There is lots of certainty. You need certainty if you going to spend R150 million or a billion rand of development. You cannot have somebody arriving next week and saying but he actually owns that piece of land and tie you up in legal proceedings for goodness knows how long.

CHAIRPERSON: Yes.

MR KRIEK So, once in South Africa, if you buying a piece land with title, you will have to be relatively certain that nobody else is going to arrive, laying claim to that land. I am sure if you read the
30 press, you will see. In Nigeria there is an example, there is a comment about people producing different titles for the same property.

CHAIRPERSON: Yes and then you caught up in the middle of that.

MR KRIEK: Yes and from our perspective, when you acquired title, there is certainty.

CHAIRPERSON: Yes.

MR KRIEK: Okay. I have lost my place here.

CHAIRPERSON: Four.

MR KRIEK: Number 4. Thank you. Are all shopping centres or mall the same or is the bases on which they maybe distinguished? I think we spoke quite broadly about that. So, the next question. Are
10 malls suitable for grocery retail activity? And once again, the term mall, does signify that it is a combination offering. It is not a standalone type of development.

So it is a combination and we do know that groceries being the highest order need, does bring you regular visitation and it does obviously be on an ongoing basis. It helps establish that habitual use. You know, which does aid the development from a feasibility perspective and from an attraction to the other tenants.

So, I would say, definitely it is suitable. I think it is a base requirement for a mall to have a grocery anchor in or more for that
20 matter. Once again market dependent.

Why do retailers choose to operate from a mall, instead of from an open standalone store? What attracts line shop tenants to a shopping centre? Once again, it comes to that variety on offer and I think everybody, at a risk of being quoted and aligned. I have an internal discussion with our people and I say, retail if you do it well, it is a case of one plus one becomes three because you add to the offering and there is an exponential value to a broader offering.

CHAIRPERSON: Okay. If you can just go back to question 6 and link it up to the point that you made about a convenience centre?

30 MR KRIEK: Yes.

CHAIRPERSON: Not competing with a mall and in an example of Pineslopes with Fourways mall and Fourways mall and

Broadacres? What do you mean when you say they do not compete and I will try to understand?

I unpack my question because from a retail point of view, to see the point of view. If there is a shopping, if there is a supermarket chain in Fourways Mall and there is another in Pineslopes and there is Pick n Pay, as you know and there is another.

MR KRIEK: Just around the corner.

CHAIRPERSON: And there is another one, I forgot the one that is there. There is Woollies and there is another one there.

10 MR KRIEK: Yes.

CHAIRPERSON: In Fourways and there down the road there is Pick n Pay and Woolies in Cedar.

MR KRIEK: Yes.

CHAIRPERSON: And then you go further down, less than 10 kilometres, about five at best, there is Spar and Woolworths. So when you say these centres cannot compete with Fourways Mall, from what perspective? In what way?

20 MR KRIEK: The nature of Fourways Mall is that it is a broad offering. It might not attract everybody, Monday to Friday for every occasion.

Otherwise there would be nothing else around it. I think the market also has a way of showing as that there is none of those stores had closed down.

CHAIRPERSON: Yes.

MR KRIEK: In fact Checkers has been introduced to the market with a second stall. Having one in Fourways. Having one in Leaping, what is that one?

CHAIRPERSON: Leaping Frog.

MR KRIEK: Leaping Frog.

30 CHAIRPERSON: Yes.

MR KRIEK: As well as in Pineslopes extension, if you will.

CHAIRPERSON: Yes.

MR KRIEK: You know those are quite literally a stone's throw. So the size of the available market, accessibility does, I think we never ignore the size of the available market.

CHAIRPERSON: Okay.

MR KRIEK: They also do their research.

CHAIRPERSON: Yes.

10 MR KRIEK: So maybe from the perspective of looking at the question on a narrow perspective. Why do retailers choose to operate from a mall, instead of certain retailers that are more suited to a mall?

CHAIRPERSON: Yes.

MR KRIEK: Not all retailers.

CHAIRPERSON: Yes.

MR KRIEK: So if you think about Builders Warehouse. It is not suited to a shopping centre. You know what I am saying. For certain retailers they are more reliant or more reliant is the correct word, on the variety of an offer.

20 It also has a function of expanding your trade boundary, your primary trade boundary, then it becomes a stronger destination but not necessarily for all of the needs because convenience will always factor if you are just looking for convenience items you are not going to go and shop at Fourways mall as an example unless you have other things to do there.

CHAIRPERSON: Okay. Can I ask you this question then, on this completion issue between a convenience centre and a mall? Do you, let's go back to that area the Fourways Cedar Square pan slope area, do you own any property there as resilient?

MR KRIEK: No.

30 CHAIRPERSON: You do not own any? If for example the commission wanted to establish, if a retailer, a grocery retailer from our perspective because that is what we focusing on and that is how you come in, competes with another in that space, whose

studies should prevail, should it be those of the property developer that is your market study of what the competition is because you just made a very important point here, saying that when you said you put Fourways mall with Woolworths and that other... I think Hyperama or whatever it is. But *ja*, and then you still have Pick n Pay about a kilometre or so away with Woolworths and then you go five kilometres where there is a Spar and Woolworths and all those shops have not closed and there is another Spar on the other side towards Fourways Garden towards ... and then there is *ja*, that
10 whole area, all those shops so when you find shopping centres sorry, supermarket area, supermarkets in those kind of shopping centres and there is a mall so your argument is that the shopping, the convenience centres cannot compete with a mall with the convenience centres compete with each other?

MR KRIEK: I think a mall would typically require a household, member of households of arguably thirty thousand to support it.

CHAIRPERSON: To support it.

MR KRIEK: A convenience centre could be five thousand or three thousand households. And once again when you ask whose
20 research, it is always a negotiation because I might believe we have a wonderful development and I would go to let's pick one, Checkers and say I think here is a good opportunity and they would say to me; 'Our research shows we have already got three shops in the area and there is no real net available market for groceries, thank you but good bye'.

Somebody else might look at it and say you know what there is excess market available if I do a better job then maybe I will be able to, so my research would never be able to tell them what their decision is. It could aid them but they would do their own research
30 in terms of making a decision based on their internal aids.

CHAIRPERSON: Oh, okay. Let me ask my last question now on this point, you know as you may be aware the commission did

conduct it, have an investigation on exclusive leases which it ended up not referring and those are, those issues are now before us in this inquiry.

I am just to understand the market definition and are deciding whether or not certain stores compete, who would you say, when that analysis needs to be done who would be the best expert to consider, instead to listening to the parties themselves because what you have just given us I have not seen anywhere in the documents that we have been given.

10 We have been told five kilometres away driving time or walking time, therefore we compete.

MR KRIEK: I ... [intervened]

CHAIRPERSON: Without, with no consideration of whether or not the supermarket is located in a mall or in a convenience centre. So who would be the expert to do that kind of analysis? It needed to be done.

MR KRIEK: I think probably one of each at least you know, referred to of each I would say somebody that does market study on behalf of landlords generally, somebody like Democon.

20 CHAIRPERSON: Okay Democon, yes.

MR KRIEK: On the retailer's side they use Lightstone I think that used to be Doug Parker, I am not sure. And have a look at how those two differ; they use the same data as base.

CHAIRPERSON: Yes, it is the interpretation.

MR KRIEK: It is the interpretation I think that does potentially differ and you know I think there will be an element of the retailer deciding whether they think they have a good opportunity or not in terms of potentially taking a bit of market share from, from somebody else.

30 But you know we do not sit on that side of the fence so you know we normally only able to conclude agreements with them if they believe there is sufficient market for that offering.

CHAIRPERSON: Okay. And then just to conclude this point, can the very facts of, can the very fact that despite the existence of these many other supermarkets or chains in the area, let's say within five kilometres of each or even less, not having one of them exiting the market be used as a point to say possibly these stores are not competing, are not competing and therefore each store where they are allocated they can be viewed as a market.

You can consider it a market or is it again going back to underlying size of the market?

10 MR KRIEK: I think it is the underlying size of the market to a very large extent. If you over supply we know that there are problems so I would honestly hesitate in saying that ... [intervened?]

CHAIRPERSON: There is no competition.

MR KRIEK: *Ja*.

CHAIRPERSON: Okay.

MR KRIEK: I think the mere fact that there is, I purposely chose that example just to illustrate the bit of a point. They have different functionalities so there is brand functionality or brand support as well, you know people always used to say there is a Pick n Pay shopper, there is a Checkers shopper and I am a this and I am a that and they focus on certain different categories of the market. So if you go and look at your Broad Acres Spar to use that example, that could service any wealthy market but I think a huge percentage of, if you go to Thohoyandou and you go and look at one of the biggest turnover supermarkets in the country from a Spar perspective to stay in their group, sits in Thohoyandou but it probably has a couple of thousand lines less than the one in Broad Acres but it would sell different products as well, more tailored to that market. So, there is a segmentation also in terms of which market they service.

Woolworths Food does not, I think attempt to supply your entire grocery need, you know so typically you buy some items from

Woolworths and some items from either Checkers or Pick n Pay or Shoprite depending what is convenient to you and your own brand preferences as well. Once again I am giving you my view and not theirs so you know. [Laughs]

10 MR GREEN: Sorry, just before we go from this point about the shopping centres, I [indistinct] decisions to our numerous cases as well so if it may be of assistance I can assist the panel with some information there, there was another layer there not just the centre as if it is classified as regional or whatever but convenience centres and other centres as well so I do not know if that may be of assistance to the panel, be aware of all those decisions.

CHAIRPERSON: Well it not for us, it is in the context of understanding the application of exclusivenesses which the tribunal has not really dealt with and.... [Intervened]

MR GREEN: Okay fair enough.

MR KHUMALO: Mr Kriek before you go, you mentioned that some stores are not suitable for operating in the mall, but in groceries which ones are more likely to profitable if they are operating in the mall as opposed to when they are ...[intervened].

20 MR KRIEK: Look we have got, I will try and answer that. Woolworths, I think they also appeared before you, you could ask them if they, they have a food store with us as an example in Jabulani in Soweto, but they have elected not to participate in our Mamelodi development because they do not see that as their market. The support is not sufficient for their, in other words they see the demographic as little bit lower down similarly if you engage Shoprite Checkers, they would make a decision and say this is more suitable to the Shoprite Profile because of the type of the make-up of the market ...[intervened].

30 CHAIRPERSON: The Allison categories

MR KRIEK: The Allison categories etcetera and the profiling of the, the profiling of the of the mix within the shop, there is a

question further about Pick n Pay, Pick n Pay has different grades of stores so they would attend to service this market with the product mix that they understand, to reflect that market's need and the product mix that reflects the other markets needs, you know, It is pointless to try and sell caviar in a market that actually cannot afford to consume that.

MR KHUMALO: So you are saying whether or not the store will chose to go in a mall depends on what they can offer?

10 MR KRIEK: It depends on what the market in terms of the research requires. So, Shoprite would potentially decide the market is more suitable for a Checkers and in Pick n Pay's instance they do not have a something else, they have Pick n Pay so they try and serve a deeper market. But once again I think they would also give you better answer to that than I would.

MR KHUMALO: I understand that but you mentioned that other stores are not suitable for a mall that is why I was ... [intervened].

20 MR KRIEK: Other stores for a mall, I think maybe we, I hope I did not confuse the picture there. From the perspective of reflecting the markets needs, we talking in the mall environment, if my demographic points to a combination of Shoprite with a Game and a Pick n Pay for that matter as opposed to a Checkers a Game and a Pick n Pay, then that is where I would head.

They would do their research, I would not say that the one is more suitable than the other one from a mall perspective, more specific that particular market. Well I think the example could potentially be PNA in Cape Town or Sandton City you which has a huge element of tourism, the mix there looks quite a bit different to their number of brands there.

30 I think there is a Louis Vuiton in Sandton and there is one in the Water Front I do not know of another one. But that particularly would not be suitable to Mamelodi because you know in all our discussion with higher end brands they say there is not sufficient

support for, for that product. I hope I am answering your question...
[Intervened].

MR KHUMALO: I understand that but you, when you made that statement you used Builders Warehouse for instance. So you said some stores are mall based and others ... [intervened].

MR KRIEK: O okay thank you. Now I understand a little bit better thank you for clarifying. Builders warehouse is by nature a type of business that attracts a truck to come and pick up five tons of bricks or crush and hundred and fifty bags of cement and not one
10 that you can put on a wheel barrow and go and put in a boot of a car.

Also the rental structures look very different because their land requirement is allot more than, than very often we can afford in a shopping centre environment. We have structured parking as an example, very different if you have to allow a thirty ton truck weight loading as apposed a five ton maximum car loading as an example, so the physical factors that affect whether it is suitable for one type of tenant as opposed to another.

MR KHUMALO: So in grocery there are stores which are capable
20 because from what we are trying to determine here is to check whether we say to a Pick n Pay for instance if they say we are excluded from say Madelaine or from your Mamelodi development, so *ja* but you are able to run quite as profitability as you would in the mall if you are a standalone store.

So that is what I was asking, I mean we need to determine what is it that, what is it about the mall that retailers want. So that is the primary thing, if somehow it affects the competitiveness that is what we need to determine, so if they are able to compete effectively when they are located say at the doorstep of the mall or
30 eight kilometres away, that is the basis of our question so we need to determine whether or not it matters that there is an exclusive list or not. So that is what I am trying to get to.

MR KRIEK: So perhaps the very nature of the mall once again is a broad offering, having spoken earlier about you have the Pick n Pay customer brand loyalty, you have the Checkers customer brand loyalty and the Shoprite customer brand loyalty so if we, I am using them as an example without their approval but I think.

But if there is excess market available the more will benefit if you can afford to do so to have a broader offering, so a Pick n Pay and Checkers combined with Woolworths food that serves a different area, potentially a Food Lovers and then you have Game that has
10 a smaller localised two department, I think it all adds to the offering and the attractiveness.

Some categories prefer more as in the instance of fashion where mass is very important, typically leases would say I am coming in but there has to be a, I am using names, Edgars, Woolworths, Foschini, Truworths, Mr Price go through the list and they would not participate unless there is enough of that because they recognise the value of mass.

From a grocers perspective they would determine on the size of the market whether they believe that there is sufficient market for
20 both of them. We by nature and this is why we prefer no exclusivities, the market changes.

Later on there is a question about the length of the leases and the requirements for exclusivities and that becomes a hugely inhibiting factor because if we remain true to everything that I have said then by nature we should be tailing ourselves to the markets requirements and needs as we go along.

Areas change in demographics; you know there was no tar roads in our vicinity in Jabulani when that development was done, now everything is tarred, it is fantastic the quality of the housing, so
30 that market is growing but it has also brought more cars so now we are forced to expand the parking to reflect the need of the market and I think from that perspective no exclusivity does allow us to

move with the market.

Because typically those exclusivities will be for the initial period plus four or five options so typically there could be a thirty year limitation on you to deal with the, and once again broadly as I am sure you would subscribe competition is a good thing for the market because it does focus your mind on what you need to do to remain relevant. Sorry I digress a little bit but ... [intervened].

MS GRIMBEECK: But just as an example of what you were saying ... [intervened].

10 CHAIRPERSON: Where a market develops, even the size of the market changes, if for example we, there is a situation where, I will go back to that note we spoke about, the Fourways Square area pan slope all the way towards Dainfern and you now have Steyn City and if for example in that, if amongst those stores there are supermarket stores there may be one with head, which had an exclusive, exclusiveness agreement, for example for this inquiry or even the commission when it analysis the market is saying this can no longer be justified given that this market has grown and then you look at the developments in the area adding for example the
20 Steyn City development in that, on that Dainfern ...[intervened]

MR KRIEK: I think first of all obviously ... [intervened].

CHAIRPERSON: I am asking this because I think the most difficult markets are actually the urban ones because of the concentration of all these stores in these areas.

MR KRIEK: I think from the very nature of individual title and property you can, there is an inherent filtering there because you can be directly adjoining and if it is a different owner you can develop your own development there and the retailer will make his decision based on his assessment of the market under various
30 conditions so I do not see it having any relevance in those types of instances because it will be for them to make the decision and nor should it be that one can ignore the existence of the other.

In liquor you have to go through a licence application, the liquor board goes through the various processes in pharmaceutical as well and there is quite a rigid, I find those more limiting because there is a higher power that decides you can have so many or not in the nature of the development and so forth.

10 With groceries I do not think that that is relevant, it comes straight down to the fact that if you are on the same earth, on the same shopping centre that is where I say it becomes inhibiting because it might preclude us from doing a Checkers in the market that shown us or demonstrated that it requires Checkers.

Checkers' market survey would support that and therefore you should be able to place Checkers. Seven. What factors made the shopping centre all more viable. Are you more into stores that guarantee rental over longer periods or those that will ensure the mall presents the most complete shopping experience and I think the question in many ways answers itself there from our perspective, the variety is important to us and the broad, the broad offering so if we are able to offer the market what it requires, reflect the markets needs in other words then the chance of
20 success in the shopping centre are far better than if we do not reflect the markets needs.

So it is also a combination, so if you have a tenant that can exercise control over you for the next thirty years it is far more limiting so typically it is a balance of leases, the long term lease with great the lease covenant gives you the financial security on the one side and very important to consider thereby ability that the shorter leases on some of the others, those allow you to, nobody is going to stay in a shop where he is losing money, he is going to either ask me to exit or he is going to just close down and liquidate
30 or whatever the case might be.

That does bring the opportunity of then, you know we always say the market has a way of telling you whether it likes your product or

not, it does not support you if it does not so it is incumbent on us to make sure that we keep on reflecting the markets needs.

Item eight; do you consider small and independent retailers in and around these potential areas of development as competition? Not for the shopping centre per se but potentially for individual traders, yes because arguably there could be a hair salon that has been in existence in the market for a long time with its own following and the market is only of a certain size and a new hair salon trying to establish itself in the new development might find it difficult so I think there would be competition you know, direct type but whether that individual hair dresser is competition for the large, I do not see it as that. I hope I understood the drift of the question. \

CHAIRPERSON: Just to add, I think question nine does cover that a bit. That, question eight, if you are to apply it in the context of the mall in a township or a mall in a rural area, would your answer still be the same?

MR KRIEK: I think it would be the same, I think most of the rules generally apply, as I say it is more tailored to what the market requires from a demographic perspective and so forth. I do not see necessarily that the markets are that different, but ... [intervened].

CHAIRPERSON: Sorry in relation to groceries and, would your answer be that if you, if there is, if there are existing small and independent retailers in an area and the development is then, land as a development where you put a supermarket, would that supermarket be in competition with the small and independent retailers?

MR KRIEK: Where the independent supermarket potentially yes, but if it were an independent bakery or maybe not that directly anymore, that could be pricing benefits to the market and I think you know one of the big factors in so called townships maybe and some of the rural areas the socio economic benefits that formal

development brings, you know so there is all sorts of other I think, values that come into play with those.

So potentially what I am saying is that you would attract more market, people that it helps arrest the let's call it flight of turnovers. So if you are looking for clothes as an example and there are no clothing in a particular area, you are then obliged to leave that area and go acquire somewhere else.

10 Then money flows out of that local economy, whereas the development tends to stimulate the local economy because we typically creating three jobs per hundred square metres of retail area created. You know all the services on top of that the supply chain etcetera et cetera, but it does expand your parchment area so then more people that tend to come to that area which I think is also an indirect benefit to an independent retailer that is situated in close proximity to the shopping centre because there would be exposure to more customers.

CHAIRPERSON: Okay, you know on that point I am trying to think there was a, there was a butchery, a butchery owner that appeared before us in the Gauteng, in the Johannesburg hearings where they raised this as a concern, and they were in Sebokeng, 20 Sebokeng area where they identified the number of said shopping centres or malls, I think on the shopping centres actually but in the area and they specifically identified one centre that really came in and it crowd their business and I think that was about five kilometres away from them and, so I am trying to understand your answer then when, is it a asymmetric kind of competition where those, the shops that are located in the centre, a shopping centre for example may have an impact on that shop and the shop outside do not have an entrance on the shops in the centre, is that 30 possible?

MR KRIEK: The five kilometre distance is a strange one to me because typically you would have numbers of places with

butcheries and so forth, with a tighter radius.

The Fourways discussion maybe comes to mind, maybe it is a little bit different than Sebokeng, I am not that directly familiar with Sebokeng. What I do know is that a retail development does attract business.

What it does also it eventually focused everybody's mind on what items should cost, so you are trying to protect the market yourself against market forces, I think maybe that inherently should not be supported, and I am not saying that is the case there, I do not
10 know what the factors around that are but if somebody can supply meat at thirty rand a kilogram less than somebody else then I think the market should be offered that.

MR KHUMALO: I just want to go back to you, I think you called it flight of turnover. Is it necessarily true, or rural areas and townships, when we heard from this small and independence, they said that the money that they make is eventually spent in the township and they employed people whereas the formal retailers take that money out as opposed to head office, so it is not necessarily spent back?

20 MR KRIEK: I think the potential would differ from market to market but that very same retailer that you are referring to, where did he buy his pair of jeans?

MR KHUMALO: If we are talking food?

MR KRIEK: No, no I am talking my view with just to put it in context is in a mall context and the benefits that a mall brings to an area. There might be individual tenant to tenant competition, that I have conceded or individual operator to individual operator. I think that would be very difficult to try and force down specific legislation that because where do you force Checkers to buy lettuce to use an
30 example if there is nobody growing lettuce in that market.

You know I think as a broad policy from our side, from a property developer, from a property owner's perspective. We write into our

contracts with the service providers, you have to have minimum arguably 70% local employment etcetera, etcetera.

But by the very nature of that the grocer would employ potentially 800 people or 300 people or 400 people. Most of those would be coming out of the local market. So now all of those people have a job which previously did not have a job or worked elsewhere. Spend, what was the old principle 40 40 40 40 percent of your income on transport, 40 percent of, or 40 square metres of living area.

- 10 Those types of, you know this kind of breaks down those types of barriers so potentially there are individual negatives but I think there are huge economic benefits to, to this. As I say there must be pricing benefits obviously but also the fact that a lot more employment is created locally That has a huge benefit and those people also build up relationships I know people very often if I look at myself, if I have a relationship with an established retailer, even if I have got Pick 'n Pay on my doorstep selling meat I still drive two kilometres further to go to that guy for meat because I like his manner and I like that the way that he operates and sometimes
- 20 they would offer you credit potentially or whatever the case might be.

So it is a very difficult one to understand as I say from our perspective we can see that the benefit that a mall brings.

MR KHUMALO: Perhaps the question I would have is have you actually done a conducted A study to see what kind of, you know a study that makes up those claims because I can tell you now that we have heard from this.

MR KRIEK: Yes.

- MR KHUMALO: Many of this guys that in fact the retailers do not
- 30 even employ people from the areas. You know so, I mean it is not our place we can take the submissions but you know if you strongly believe that there are benefits I mean we would certainly

like to have benefit of those so that we can actually bring it to the attention of those who might not know.

MR KRIEK: So I think the same question posed to them would also be of value because they should also then be able to back up their statements. Sure, if you starting a shop and there is nobody in the local market with managerial experience I am sure you are going to send them an experienced manager there from another mall and have a training regime.

I am talking from a mall ownership perspective, I am not talking
10 from an individual retailer perspective. What we do is encourage the retailers to source locally and I think those questions if posed to them they would probably answer in the affirmative.

So I can give figures and answers in terms of what we have direct control over. So typically the shopping centre would employ five people in the management office, I am using a number. Five, six, seven, three depending on the size but the cleaning company we would have a clause in the contract that says at least X percentage needs to be local residents.

If somebody comes with a forged address that is very difficult to
20 verify obviously. But those are the requirements that we try but we cannot impose those on a retailer that I cannot do. But I think the retailers themselves are quite attuned to also supporting the local market. In Thohoyandou I can tell you that the Spar that I referred to as they have an exclusivity in that mall, or they had an exclusivity in that mall from my understanding.

But irrespective they do source from the local community because it is a more rural community and there are people that wrote the letters that I referred to and they buy from them and so and so.

So there are definite examples of that but I think it would be
30 difficult in a more metropolitan context. You know nobody is going to be able to plant any sufficient supply of cabbage or whatever it might be in a very small environment.

CHAIRPERSON: We have a bit of concern that we may be running out of your allocated time, however the stakeholder that was supposed to come after you has now been moved to Friday, where he has been moved to Friday. So if, we going to request if you do not have any time constraints on your part that you allow us to extend your time so that we address these questions. If that is okay, thank you.

MR KRIEK: Consider this is very important so whatever it takes to accommodate.

10 CHAIRPERSON: Thank you.

MR KRIEK: May I continue with 9?

CHAIRPERSON: Ja.

MR KRIEK: Because 9 and Chair, I think you referred to. it does link to the previous question and it does link to a lot of this discussion that we have had subsequently.

Inhibiting factors, so that very same butchery potentially could have benefited, if I use that example of going into the Sebokeng Shopping Centre. If there is an exclusive trade arrangement that keeps him out, that is a huge inhibiting factor. So I think we should not have issues where people are or traders are precluded from coming into a shopping centre.

20

Obviously there are commercial realities to it and that sort of thing but I do believe that if there is one factor that would be that we should not have and support exclusive trade arrangements. If there is a limited and maybe I am overstepping the ambit of the question but if from a feasibility perspective and the market is very tight and small there is a limited period that is one thing maybe, but I think the ideal would be absolutely no exclusive trade arrangements.

Because it does allow the market to operate in the most natural manner possible and that is supply and demand. May I?

30

CHAIRPERSON: Yes, you may proceed.

MR KRIEK: As a property developer you will view what is the

impact on the entry of large developments into township rural areas, small independent retailers in that area.

I think the previous discussion probably dealt quite significantly with all of those. We then go onto I think the role of financiers. The structure of resilient is question 11 is that we are a listed fund, so our sources are funding are various. We are not that reliant on banks in absolute totalities.

We play an internal treasury function. So typically we would develop net of any bonds on the property and then at a later stage
10 once the development is complete we would then place that development with a financial institution and then utilise that money so released elsewhere again.

I think that kind of answers that question. What is the process need to undergo in order to secure financing for a shopping centre or mall development from a financier should this be required, so my first answer is generally in our situation it is not required but from a financiers perspective I think the same rule apply if we place it with them at a later stage is that it needs to have at least a certain let percentage and they look at the nature of the shopping
20 centre to determine whether they believe it feasible.

But you know we do not go through their processes with them, they ask us questions and we deal but very largely it comes down to your balance sheet, your credit history and I think the sustainability of the shopping centre, Which is backed up by the leasers and the covenant of the lease.

CHAIRPERSON: And the size of the market?

MR KRIEK: And the size of the market and so forth. Item 13. What are the requirements from the financiers needs, sorry I think I dealt with that apology.

30 14. Has there been instances where you did not need the said requirements, specific answer no. I do not think I need to elaborate further.

Item 15. Are you aware of instances where financiers have demanded shares in the shopping centre, not in our instance? So I do not know if there is any different practise. If I can move on. The compilation of the tenant mix. As a developer how do you categorize anchor tenants and ancillary tenant, what is the difference.

I think the terminology itself tries to explain that the anchor is the one that attracts the business and the ancillary guys that kind of benefit from the fact that it is in proximity to that anchor. But once
10 again it is a combination of the various categories and you know we would, we would say that the anchor tenant is the clothing departmental store and the grocer and maybe somebody like Game which is a general merchandise, that type of trader now having entered into food and the general merchandise components and then the ancillary tenants are you know the fashion guys that support the departmental store and that sort of thing.

CHAIRPERSON: Would your ... the type of anchor tenant default depending on whether development is located for resilient for example?

20 MR KRIEK: The type of anchor tenant, yes.

CHAIRPERSON: You mentioned Mafikeng, you mentioned Soshanguve, who are your anchor tenants in those?

MR KRIEK: In Mafikeng it is Game and Checkers. It use to be a Spar, the Spar did not make it for some reason. Checkers we actually arranged for the purchase of the store by Checkers and the interesting thing is that Checkers does vastly better that at other instances where Game, where Spar does phenomenal turnovers.

30 So it might have been just been a local market idea synchrony and potentially also by the other offering in the area. It is difficult really to get to the bottom of that particular one.

CHAIRPERSON: And this would be Game in its current format

where it has got the fresh... [Intervened]

MR KRIEK: Game in its current format and in that particular shopping centre when we changed over from Spar to Checkers we specifically precluded them from the, exclusivity clause was removed.

CHAIRPERSON: So there was one?

MR KRIEK: In the previous lease with Spar.

CHAIRPERSON: With Spar.

10 MR KRIEK So when we did the Checkers we said absolutely no exclusivity so Game as elected as up until today not yet to bring food in, but they are aware of the fact that they can if they so wish and I think they look at the size of the market and decide whether they want to bring in that particular offering, or maybe there is a bit of pecking order, I do not know but at this point in time it is Checkers and Game and there is an Edgars and then mostly fashions surrounding that. Clicks, bank or two and fast food and that sort of thing.

20 CHAIRPERSON: And other anchor tenants such as Choppies Fruit and Veg City, Food Lovers Market. They also in the list of... for you would consider as anchor tenants?

MR KRIEK: Definitely. To a varying extent, you know a 1000 square metre Food Lovers if I can use that example does not fulfil the same role as an attraction as a 3000 square metre Food Lovers and one particular instance they might not be one of the anchor tenants and in another instance far more important because of the size of it.

30 CHAIRPERSON: Okay. Just on this point. We have also seen, I think historically with the existence of this exclusive leasers there was a decline of your speciality takeouts like butcheries and bakeries in centre, in this neighbourhood centres or convenience centres and we have now come to realise that there are new butcheries that have come up, one is Roots, there is OBC and then

do you have them in any of the malls that you own?

MR KRIEK: Yes, many of them.

CHAIRPERSON: Many of them. Okay.

MR KRIEK: Well I say many, it is a relative term but... [Intervened]

CHAIRPERSON: Can they have benefited from the absence of the exclusive leasers or is it, how did it come about that they became a tenant in your specific developments?

MR KRIEK: So in some instances, to use Food Lovers as an example we managed to get Pick 'n Pay to wave an exclusivity on a shopping centre that we bought.

CHAIRPERSON: Where is that?

MR KRIEK: Harbour town in Durban.

CHAIRPERSON: Okay.

MR KRIEK: Amanzimtoti.

CHAIRPERSON: Oh, ja.

MR KRIEK: We managed to get Pick 'n Pay to waive exclusive, talking historic leases as well because some of these buildings are thirty years old and so forth.

To agree to the entry of Clicks, because there was an exclusivity that spanned more than just groceries. Typically these exclusivities would have included the butchery, the baker more food related and then some of them extended as far as pharmaceutical and little bit broader.

But I think over time as the markets have developed and so forth, that approach has softened a little bit and I think potentially also as a result of all the enquiries I think to a good thing we managed to, we own Irene Mall. We managed to get Pick 'n Pay to wave their exclusivity.

If you drive past Irene today you will see the size of the earth works but one of the new entries will be Checkers. So we got them to waive that. We own the Grove Mall along Lynnwood Road in Pretoria. Are you familiar with Pretoria?

CHAIRPERSON: Yes, a little.

MR KRIEK: Further down to the east.

CHAIRPERSON: Yes, Pretoria East, I know.

MR KRIEK: Pick 'n Pay have agreed, so it is not developed yet. We are in the town planning process of the adjoining land that we acquired but Pick 'n Pay has waived that.

CHAIRPERSON: Whereabouts is that?

MR KRIEK: The Grove, down Lynnwood Road.

CHAIRPERSON: Okay.

10 MR KRIEK: If you know were, the Simon Vermooten intersection with Lynnwood.

CHAIRPERSON: Yes.

MR KRIEK: It is on that corner.

CHAIRPERSON: Okay.

MR KRIEK: And I think maybe the size of the extensions and so forth, had an impact on their decision or influenced their decision and there are some other examples. Richards Bay Board walk. We managed to get Pick 'n Pay to agree to the entry of Food Lovers or initially Fruit and Veg and then I managed to convince them to
20 allow the conversion to a Food Lovers on an extension of the premises. So it has not all been met with an absolute no, no.

CHAIRPERSON: Yes.

MR KRIEK: In some other instances one of the questions later on, I will deal with that now maybe because it is related, is where some guys have been like Game refused entry or expansion of product mix. Yes and the same player Pick 'n Pay do not wish to have Game add food to their product mix and Game wants to.

CHAIRPERSON: So they put a condition to the waiver?

30 MR KRIEK: There is the main issue they have not put a condition to the waiver.

CHAIRPERSON: Okay.

MR KRIEK: There is no waiver but having said that, you know we

managed to negotiate on other examples.

CHAIRPERSON: I just want to understand. You seem to have succeeded in convincing your anchor tenants to allow a second anchor tenant to come into your development. Is this the function of who you are as Resilient Properties or is it a function of market developments.

A development in the area and that could justify business case for another anchor tenant, what would you attribute your success to?

MR KRIEK: It is, I think probably a combination of the factors.

10 CHAIRPERSON: *Ja*.

MR KRIEK: I think we would like to think that we are respected landlords.

CHAIRPERSON: Yes.

MR KRIEK: That from the perspective that we do not develop and sell or you know we have a very long term strategy and I think the market has rewarded us with regards to our approach to property because we would not want to spend money on something that we do not think has a good chance of success and I think the tenants do see that and experience that so there must be an element of that.

20 I think the size of the market in Irene is a significant expansion. That will go from 30000 to 80000 square metres. In the instance of Grove the original Grove was 40000 square metres that will go close to 70, 75000 square metres. So an element of that must creep into it as well. As another example maybe I can use Langa Mall in Mbombela in Nelspruit.

CHAIRPERSON: In Mphumalanga.

MR KRIEK: In Mphumalanga where Pick 'n Pay had an exclusivity, we expanded the shopping centre, negotiated relocation of the Pick 'n Pay to suit the new development and the layout and at the same time got them to wave the exclusivity in favour of Game introducing food into the market.

CHAIRPERSON: Okay.

MR KRIEK: Ja, well I think just the point that we making is also obviously the absence of exclusivities would have made that amount of rent because we would have been able to tailor the market without any sort of negotiation. *Ja*.

CHAIRPERSON: Okay. We have also seen a situation, or instances where, where exclusivities waived and then there is restriction on size.

10 As a property developer do you have any understanding as to, as to what is the rational on the restriction on sizes of the other party that has brought in but was told you cannot exceed the size if you do operate?

MR KRIEK: I think, yes once again our approach from a property owners prospective as oppose to from retailers perspective.

Pick 'n Pay or Checkers or let us call it the grocer on deciding when to entrant to a particular development would have accessed the size of the market and I think there might be a concern that if Game introduces food today at 600 square metres and tomorrow it is the entire shopping centre or the entire shop which is a 6000 square metre shop as an example and Pick 'n Pay could be 4000 square metres and all of a sudden there is whole different ball came within that localised development.

20 So I would understand that to be the rational to say we agree but you should remain maybe a general merchandise and not a supermarket.

As I say, I am guessing a little bit on their rationale but that would be how I would understand it.

CHAIRPERSON: So you would have been partied to any of the restrictions in size or in their discussions ... [intervened]

30 MR KRIEK: At the time of developing Mall of the North in Polokwane, we were co-developers there.

CHAIRPERSON: With?

MR KRIEK: Moolman group and Flanagan and Gerard, two private groups. Game expressed their interest in coming into the shopping centre and we were asked to limit their offering in terms of broad food offering to a certain percentage, whatever.

CHAIRPERSON: Sorry.

MR KRIEK: That is my fault.

CHAIRPERSON: Saying?

MR KRIEK: Leaning on it. To limit that to a certain percentage I think of floor area. That goes back maybe seven years now.

10 CHAIRPERSON: Okay. You just mentioned that specific case, will that be, will that restriction or limitation be despite or not withstanding your market study as a developer have not shown that actually this developer, this development can carry two anchor tenants of?

MR KRIEK: There is a Checkers... [Intervened]

CHAIRPERSON: Of an equivalent size, of an equivalent size.

MR KRIEK: Yes, there is a Checkers and a Pick 'n Pay in the development. They are both 5000 square metres and there is a Woolworths, a large Woolworths 5000 square metres with a large
20 food component. So the offering in terms of food is relatively large.

Personally from a sustainability perspective I do not know if I was Game whether food would be a comfortable expanding the entire 6000 square metres just food because I am not sure that that size of the market is available.

CHAIRPERSON: Could take it. Okay.

MR KRIEK: Could handle it 18. Thank you. Do all shopping centres and malls require the same type of anchor tenants, will the mall remain viable regardless whether it is a grocery supermarket
30 or clothing. I must say everything that we believe around malls and the success of malls comes back to a broad offering. So would we develop a mall without a grocer, absolutely not. Absolutely not,

maybe somebody else but I cannot speak on behalf of others.

To what extent does the area in which shopping centre mall is located influence the tenant mix and the property development? Once again it reflects, the development needs to reflect the demographics of the area and the market size and so forth. What role, sorry. Am I not going back, I do apologise. I think we were further down the line, were we not?

CHAIRPERSON: No.

10 MR KRIEK: 19. Okay, what, alright. 20. What role does the financier play in the development of a tenant mix? Elaborate on the extent and influence financier has very little, I must say in our experience. I do not know why I am confusing myself because this is financier and we had already dealt with financier. But ja, none really in our experience.

I think once again if we engage with the financiers they understand who we are and you know the nature what we do. 21. To what extent do anchor tenants and ancillary tenants in the development influence the final tenant mix.

20 Once again if they come into a shopping centre environment they expect a certain, in fact you see the converse, where a number of the leasers I think alluded to that earlier, require at least the following type of mix. So you know, you would find that tenant X would not be comfortable in a shopping centre if it does not at least have ABC in.

CHAIRPERSON: I think the converse of that question is also where, sorry the converse of that question is also where the anchor tenant or the ancillary tenant tries to influence who comes in and who does not come in. In that, even without exclusivity.

30 If there is a discussion around who must come in they can also use that to decide who cannot come in even in the absence of exclusivity. So can you also comment on that, is that possible without exclusivity?

MR KRIEK: I have not seen that if I understand you correctly. What does happen is, certain tenants try and introduce lease cancellation clauses if what the developer puts on the table at the time of deciding is not what the developer delivers at the end of the day, because, you know, as I say they might require the cohabitation of a number of other tenants which they know the value of the mass.

In the event of a tenant's lease coming to an end and the lease is not renewed what would happen to the available space in the shopping centre? At the end of the day if a tenant fails, whatever the offering was probably not correct in terms of the market's requirements.

It could be the tenant's own business acumen or lack of funds or whatever the case might be, but what would happen is we would need to let it to another tenant, appropriate to the tenant mix.

Next one, 24, should you decide to appoint a new tenant what factors would be taken into account and what roll do existing tenants play in the choice of a new tenant?

I think once again it is the market needs, the balance of the offering, the mix that we supply. You know, some of the tenants have specific requirements, saying that the adjoining tenants also has to be fashion because of the value of the combined mass.

May I move on to ... [intervened]

CHAIRPERSON: May I ask, on that tenant's mix ... on the tenant mix issue, we have also seen these agreements where ... I do not know if those all continue to exist or are they will become less and less where there is a limitation on informal traders around the malls or being derma... Some will demarcate an area which is for them to trade.

MR KRIEK: Yes.

CHAIRPERSON: Others will just limit them from a certain store. What is the understanding around that with the developer when

that is done?

Is it because they are considered to be competing with the supermarket store?

MR KRIEK: Ja. I know what you are talking about, I do not think the intent is any fear of competition or anything, it is more you know shopping centres are also seen as aspirational, shopping centres are seen as safer environments.

There is a controlled use of the shopping centre, so where you have that situation then, from our perspective, what we try and do
10 is agree, which we have done in a number of places, created facilities for informal traders. It is also part of supporting the community and that sort of thing.

You know, typically if there is a transport node I am just talking broadly in terms of development. If there is a taxi rank it has a far larger, or bus rank, far larger chance of success than if you are building, you know, an arbitrary spot close to nothing, for obvious reasons.

And generally, you would find that those areas have already got established informal trade areas and so forth, so we would then, if
20 that is an identified piece of land, say let us rather embrace that, work together, create proper facilities and you know, carry on from there.

CHAIRPERSON: Okay. Could you provide us maybe with a list of those developments where that has been done? And how it has been done.

MR KRIEK: We did it in ... Burgersfort is a good example.

CHAIRPERSON: Where is Burgersfort?

MR KRIEK: Burgersfort in ... if you draw ... [intervened]

CHAIRPERSON: Free State.

30 MR KRIEK: Sorry?

CHAIRPERSON: In the Free State.

MR KRIEK: No-no, it is on the border between Mpumalanga and

Limpopo.

So, if you had to draw a line between Nelspruit and Polokwane, it is sort of midway between those two. Maybe an equal distance from Middelburg as well going down, sort of, eastern parts, north eastern parts of the country. We did a development there called Tubatse Mall, developed the whole taxi rank and facilities around that.

10 In Tzaneen we created facilities in Tzaneen Mall when we expanded the shopping centre around the transport node, buses and taxis, so there are a few examples of those. Polokwane in the CBD where we have had a longstanding relationship with informal traders, demarcated areas covered and so forth.

CHAIRPERSON: Okay, but you will provide us with a list and how it has been done, because it is something that has come up a lot in some of the, from the small and independent retailers especially in relation to malls that are being built in the townships and rural areas.

20 MR KRIEK: Okay. Lease agreements, how lease agreements are negotiated, anchor tenants and ancillary tenants on the same basis I think we go them with a development and say, are you interested?

Typically, we would start with the anchors because then ancillary tenant is not going to take space if there is no anchor presence, so there is a bit of an order in which you would approach these things. As a developer who directly negotiates terms and trade with tenants, WHO directly negotiates, and the answer is easy, it is ourselves. It is the leasing team that would go and engage the retailers. Who gives the final consent to the terms of trade?

30 The feasibility would determine the various required rentals etcetera, etcetera, so there is a broad mandate and if somebody wants the leasing team wishes to operate outside of that mandate then there is just an internal process for approval. Sometimes it is

agreed, sometimes not.

CHAIRPERSON: Sorry, can I ask, the manner in which you negotiate your lease agreements with anchor tenants, obviously you would first approach them and they would show ... they would indicate their interests in being part of that development and then, do you then give them a draft lease agreement with terms.

MR KRIEK: Yes, yes.

CHAIRPERSON: So that is basically, that kicks off your negotiation process and then typically what ... your lease agreements would not include exclusivity.

MR KRIEK: No. For the last five, six, seven years we have not entertained any discussions on exclusive trade arrangements in our portfolio.

CHAIRPERSON: And the rental ... what about the rental, the amount of rental. How do you then decide ... how would you decide the rental for an anchor tenant in that first draft?

MR KRIEK: Size, locality... [Intervened]

CHAIRPERSON: Or what is it based on.

MR KRIEK: Size, locality, perceived value of the tenant. You know, once again the anchor tenant, the terminology suggests that the development generally evolves from the presence of that particular tenant.

CHAIRPERSON: Ja.

MR KRIEK: So, those are mostly the factors.

CHAIRPERSON: Okay, but what I am trying to understand with regards to the rental amount is ... when you look at the local markets obviously then therefore the market related rental would your daft, that first draft lease that you put forward to the anchor tenant contain what would be the market related rental with no discount whatsoever offered to the anchor tenant.

MR KRIEK: The term, 'market related rental' differs from type of tenant to type of tenant. The size has in impact a five thousand

square metre store does carry a very different rental structure to a fifty-square metre store.

Typically, that 5000 square metre store will have the valuable space as the shopfront because that is what presents itself to the passing traffic. And it might be 50 metres deep, as an example, and it only has a 10 metre shopfront, that would be the four or five thousand square metre anchor. So, there are a number of factors that influence that.

10 The attraction that they bring to the market, you know, a typical grocer could do a hundred thousand transactions a month that is very attractive, so the rentals upfront take account of that.

CHAIRPERSON: When you say the anchor tenant's rental would take into account, would that first draft contain a rental that is lower than what a smaller retailer in that shopping mall would be renting for.

20 MR KRIEK: We would place on that what we think the market ...Yes, we would place required rental on the space in terms of what our understanding is the market value of those premises would be. So, it does take account, once again, of all the factors as we see them. The size, the locality in the mall, you use the anchors to draw business into the shopping centre obviously, and they understand that functionality as well.

CHAIRPERSON: Okay. And do you have a ... as a property developer when you, ... okay, when you have the ... when you decide on the rentals that must be ... obviously it is a revenue from your perspective and are you look ... and then you look at the gross lettable area and then having done that you know that per month this is what you need to achieve.

30 And then, and then you identify your tenants that you want, the anchor tenant will be there, and you know how much you allocating them, allocating ... what, how much space you are allocating to them and how much rental would be allocated to them. To what

extent would you say, this has been raised in some quarters with us, that the very fact that the anchor tenant gets this lower rentals, some people ... we have not sat down and calculated in Rand and Cents like what the benefit is of the anchor tenant, but the understanding by the competitors is that there ... it is close to nothing compared to what they are paying as smaller players and leaving a feeling that as a property developer you negotiate lower rental with anchor tenants which you then ... and then you recoup the difference from the smaller ones.

10 MR KRIEK: We use the anchor tenant to make the development more attractive, and I think that is an important distinction.

CHAIRPERSON: *Ja.*

MR KRIEK: A person that is able to generate a hundred thousand feet into a shopping centre on his own is very attractive to a shopping centre development, to a shopping centre *per se* period. And the rentals reflect the value that the various traders bring.

CHAIRPERSON: Okay.

20 MR KRIEK: So, yes, it is so that an independent line shop of fifty or thirty square metres or even three hundred or seven hundred square metres would have a different rental structure. There is an element on the other side of offer and acceptance. This is not a ... this is a proper arm's length negotiation.

The tenant would go and look at it and say, I am assuming so much turnover, I know what my costs are, I know what my gross profit line is and therefore I can anticipate to make so much nett profit at the end of the day, and as we know, the mark-ups in various categories differ hugely.

30 So, certain tenants by their very nature are able to afford a different rental structure, but they benefit from the fact that there is somebody that brings feet to their front door.

CHAIRPERSON: Would it be too much to ask a property developer, for example to have a far more transparent way of

setting out the components of that rental amount in that, for example, where you have that base amount that you started with, and then you indicate that because you bring the foot traffic to the ... due to the fact that you bring foot traffic to the mall, we are giving you so much discount, and then it is all set out in the lease, and it becomes clear to anyone reading it, instead of just getting these ballpark figures. Do you think it would be possible to ... [intervened].

10 MR KRIEK: I think fundamentally this goes against the confidentiality of lease agreements. These are not public documents.

CHAIRPERSON: No-no, no this can still be set out in the lease agreement with the anchor tenant but for, let us say if the Competition Commission is viewing that lease it can actually determine what components were considered in the rental, that actually brought down the rental amount that is being paid by specific tenant.

20 MR KRIEK: I think that to put a specific empirical value on how we place a value on the foot traffic or on the brand value. How do you value a brand? You know, how do I value the brand between one tenant and another tenant?

CHAIRPERSON: The function of negotiation.

MR KRIEK: It is a function of negotiation, exactly but that is why I am saying the... [Intervened]

CHAIRPERSON: Exactly, then you must renegotiate and come to a figure.

MR KRIEK: I am not able to ... what we are able to deal with is the base make-up of the cost.

CHAIRPERSON: Okay.

30 MR KRIEK: If we understand our rates and taxes up-front and we understand what our anticipated operating costs would be, then we understand that, you know, there is a base cost to that, and then

there is a yield requirement which then determines ... so, it is a balance, and once again, it comes down to the attractiveness. They run their own feasibility and tell you that, you know, we can pilot arguably ninety five rand in this development and another development, potentially hundred and five and another one, they would not even enter at sixty.

CHAIRPERSON: Okay.

MR KRIEK: I am sorry, I honestly do not understand that, that could be possible.

10 MR KHUMALO: But, how much more would the rental be though, I mean if the ... I think you mentioned some retailers, you know, leasing five thousand square metres and if I have a, you know, by some luck managed to get myself a fifty-square metre nut shop or biltong shop, how much more per square metre would I pay than a Pick and Pay. I mean, sorry, a large retailer, you know, we have been told that it is sometimes triple, I mean.

MR KRIEK: Yes.

20 MR KHUMALO: So, we would like to understand if the anchor can generate hundred thousand transactions per month and I am selling biltong or nuts and I generate, what ... a hundred transactions. How does it make sense for me to pay three times what the large store is paying?

MR KRIEK: I think the decision is in the hands of the retailer as well. So, if my asking rental is more that the market can bear, then I will sit with a vacancy on a perpetual basis.

I will sit with failing tenants on a perpetual basis so, and that is where the nature of the negotiation comes in.

30 The guy looks at the potential trade or a proposed trader, so they are not lucky enough to secure in my view. They look at the desirability of a particular development and decide, is it attractive enough for me to come in? I like it, I like what I see, I like the feet, this looks good, it feels good, it ticks all of my desirability boxes, I

will now go and engage the landlord. The landlord tells me that the rental is R300 a square metre, I go and put that into my model, I go back to the landlord and I say, on my basis I can offer you R200 a square metre, which could be double what the guide is, and the landlord could have been asking three times what the anchor tenant could be.

We would negotiate and find each other depending on the balance of the market forces. If there is a queue of tenants waiting for the same space, obviously the pressure is upwards on the rental, if
10 there is nobody, but that brings me back to the point that if our rentals are unachievable from a profitability perspective, then the tenant would not take the space.

Even if he takes the space, somewhere along the line I will pay, or we will pay the price, because if it is not sustainable, that tenant will exit the development. Then we sit with a vacancy again.

MR KHUMALO: So, what you are saying is if the mall is very desirable to the tenant and there is a queue ... [Intervened]

CHAIRPERSON: There is demand.

MR KRIEK: There is a demand that obviously has an impact, but I
20 think the desirability of the tenant also has a role here. And it differs from person to person or developer to developer, landlord to landlord, that question could be asked from a lot of tenants and I think you would have a similar response.

MR KHUMALO: So, in a mall like Jabulani for instance...

MR KRIEK: Yes.

MR KHUMALO: If we have a Khumalo Butchery sitting somewhere before this mall comes, and then it comes, of course the Pick n Pays and the Checkers of this world that are in there do not consider Khumalo a competitor as we have heard, but of
30 course everyone is going to the mall and they walking right past my butchery, right? And I now see this, as the mall is very desirable to me, because I will benefit from the foot traffic, the safety, the

convenience that, you know, my customers will get and all of that. And you have between me and, I do not know, some other speciality shop which would take up that space and they are a national tenant or international tenant and they can tolerate the triple rental.

There is never going to be a chance of a Khumalo Butcher, which was and very much loved by the community, you know, fair prices and everything, it is just I will never be able to get in the mall because... [Intervened].

10 MR KRIEK: If there is an exclusive trade arrangement, definitely.

MR KHUMALO: Well, if there is no exclusive trade... [Intervened]

MR KRIEK: Then the market forces,

MR KRIEK: No, I understand, that is why I am saying that is where the market forces will come in. If Khumalo Butchery is very much loved, and this is in our opinion, I am not talking on behalf of developers, and I am not talking on behalf of any other landlord, or any tenant, but to my mind the attractiveness of the shopping centre is a combination of what we are offering there.

So, a local flavour with a good operator is a very good thing for us.

20 So, I would not penalise him for the fact, I would probably rather incentivise it.

If there is a good trader, a local trader that does bring that element of diversification if you will of uniqueness so that, you know, there is a lot of comment about every mall looks the same, because largely it has got a combination of, you know, whatever the tenant mix is, the general type of tenant mix, but the ones that have got the more interesting, and that is where we see in a Jabulani context if Mr Khumalo approached us, or if we knew of Mr Khumalo's existence, we would also endeavour to go and find Mr Khumalo and have a discussion with him about entering the shopping centre.

30

MR KHUMALO: And if perhaps he could only tolerate the level of

rental that the big anchors do, would you still consider him as an...

[Intervened]

MR KRIEK: Yes, we would if there is sufficient value to it, but I do not think it would be appropriate to force it on somebody. I think the market still needs to determine, and it is the desirability of having Mr Khumalo in, that will determine...[intervened]

MR KHUMALO: [Intervened]

MR KRIEK: What element of, if it is called the discount or perceived value you would add would then open an arm's length negotiation. *Ja-ja that is the point.*

The point is we would be putting in a Mr Khumalo and not just a butchery. Because your reference was, much loved etcetera, he obviously adds value to the development.

MR KHUMALO: Ja, I guess the reason I am asking is this, you know because, I mean how would you determine that much loved? Would you take it from me as the owner of the butchery because, you will understand that we also looking at not only exclusively...
[Intervened]

MR KRIEK: Yes.

20 MR KHUMALO: But what happens when the mall comes to the township, right? Or the rural areas. So, as much as exclusive leases are a problem, but if we can get rid of that, do we still foresee a situation where these businesses are unable to get into the mall, because of rental?

MR KRIEK: I think rental is a factor of what people perceive the space to be value. What value they would put to the premises. How much business they think they can generate on the premises. Mr Khumalo, being well loved and how do we understand that? We would stand outside the shop and look, we would talk to people.
30 That is the function of the leasing agent, is go and find the best guys that you can for the space.

There is an economic side to that obviously but it is incumbent on

us to try and go out as well and find the better operators which bring a little bit of that local flavour so, we tend to encourage that rather than just turn a blind eye and say the budget rental is, whatever it might be and sorry you cannot come into it, but you know there is a definite value to a personality that has been operating in the market for a long, long time and so forth.

Potentially he does not see himself as being able to do better in the shopping centre, because if he is not paying a huge rental where he is because there is not all the peripheral cost around the shopping centre *per se* and the rates, and whatever the case might be.

He might perform better in his own individual locality, because he is the loved person in the area.

MR KHUMALO: Okay.

CHAIRPERSON: I just want to go back to the question that I ask. I still find it difficult to understand or even accept that it is not possible to have a lease agreement and a rental amount that speaks to the components that have been taken into account that benefited the various tenants and specifically your anchor tenants who actually benefit hugely from being anchor tenants in this development.

And this is not to say to you, I am ... someone would be coming to look at ... because we understand, every agreement is a function of a negotiation. Every lease agreement is an outcome of a negotiation.

If I know my brand and I am an anchor tenant, you come with that first draft, I would be able to say, you know I think we can come down, are you apportion this so much percentage because I know what my brand can do in this area, looking at the income, the market category that I supply to, looking at the market that we spoke about earlier on when you identify the development.

All those factors would come into play and you would know, and it

is relatively known in the out there which anchor tenants are fare well in certain markets. You have already indicated, for example, a Woolworths could not survive, or did not do well in one of the townships.

MR KRIEK: No, apologies I did not say that, just a matter of correction, I said they do not see that market necessarily and I cannot talk on behalf of Woolworths, it is just that if you walk into Sandton City, Woolworths has got a food shop that BIG, if you go to Jabulani the food shop is that big, if you go into Mamelodi there
10 IS no food shop. Sorry, I just... [Intervened]

CHAIRPERSON: Because the market does not, they cannot sufficiently, the market ... it is not their market it is the ... it is that ... [intervened]

MR KRIEK: That is their decision.

CHAIRPERSON: Exactly, so it is those factors so that is why I am trying to understand why is it not possible with rental agreements, with your lease agreements, especially on the rental aspect as property developers where you give this benefits to anchor tenants there are some clear factors that are set out there for someone to
20 understand how this rental has been agreed upon? What factors were taken into account 2.5%, 3.5%, 1.5% and then overall you get a 25% discount. We added up all those and then you came to this figure. From that market, what would be the market rental amount?

MR KRIEK: The market is not what I determined.

CHAIRPERSON: *Ja.*

MR KRIEK: The market is not what the tenant determines. The affordability is my threshold and the affordability on their side is what they are prepared to pay in how they see it. Yes, if they see
30 themselves as absolutely unique in a market and a stronger brand, they have a stronger negotiation. We would be in a weaker position to negotiate with them if there were no alternatives.

You know, so if you are trying and do a development in the face of all the other stuff existing, chances are, unless they really, desperately want to get in, that you would probably get a slightly lower rental than what you would like. If the feasibility works and you can still support it then you would continue, but to be able to apportion how much value we put to the brand is it R25.00 a square metre? We do not operate like that. Not in... [Intervened]

CHAIRPERSON: And you cannot operate like that?

MR KRIEK: I cannot operate like that because it might preclude
10 me, because I have got this rigid approach to ... it takes away the element of negotiation. I think the point that my colleague makes also it becomes a little bit, if you have now pre-apportioned components and they believe that they did not get a sufficient value out of that particular component then they far more able to attack THAT component and say but, we require a discount on that.

CHAIRPERSON: Ja, no, I hear you, but all I am saying is all of that can be an outcome of negotiations, as the rental that they pay. It is not like you walk in and say this is the amount.

MR KRIEK: No.

20 CHAIRPERSON: And it is not like they come to you and say, this is the amount. You sit down and negotiate every aspect and they tell you why they are.

MR KRIEK: We do not, we do not negotiate every individual aspect such as the value of their brand and the number of transactions, because there is a huge element of assumption.

CHAIRPERSON: Ja.

MR KRIEK: Because you entering into the market does not
30 guarantee that you are going to do turnover. It is how we operate on a continuous basis where we offer sufficient special on an ongoing basis, whether you are cheap enough, *et cetera*. There are so many elements so it is very, very difficult.

This morning I sat in a negotiation with an international tenant, and

I told him I am sorry, I cannot do that agreement at that level. As much as I like the brand value and the value you are bringing to the shopping centre, but it was just less than what was offered.

CHAIRPERSON: Okay.

MR KRIEK: Maybe he will come back to me, maybe not, but we get to, there is a point of cut-off at the end of the day but we are not able to break it up into the perceived brand value and the value of so many transactions, or whatever.

CHAIRPERSON: No, I am actually thinking you mentioned the
10 development where you had Spar with exclusivity in your development. Obviously they would have benefitted from a less rental, and yet they still exited that market which tells you that with the brand and everything, so it is these kind of things that you would look at.

You look at what the offering of this player, that is what I am thinking, that some of these things, depending on the market, it can be discussed; it can be agreed.

It is just a matter of you agreeing that you are portioning this, you are portioning this figure to that, and hence we are coming to this
20 lower figure of this amount together. It still comes to you, the figure that you are prepared to accept as a developer and it would still come to a figure that they are prepared to pay as an anchor tenant. All you are doing is just working on how you come down to that figure so that outsiders can come in and understand how that rental figure. Now we are kind of certain and look at this rental agreements, you are not even able to analyse what exactly, what does that amount mean; what does it mean; what is it intended to do; why this benefit; why, you know.

MR KRIEK: But sure that... [Intervenues]

30 CHAIRPERSON: How was it measured?

MR KRIEK: That talks to the brevity of contract between you and the party that you are contracting with.

CHAIRPERSON: Yes.

MR KRIEK: That is a firm principle in our law, my understanding of that.

CHAIRPERSON: Ja, ja.

MR KRIEK: So we respect that, and I think we will continue respecting that unless the law changes and forces us to make these clauses public, or these tenants public, and that sort of thing. When you sit in a negotiation, the tenant decides whether the proposed rental is palatable. More often than not they revert with a counter offer and there is negotiation this way and that way, and if you settle on a figure that you are both happy with, then you proceed. If you cannot find each other, then it is incumbent on the developer to find another party to enter the premises, and that is obviously where competition is healthy.

CHAIRPERSON: Okay. I cannot take this point any further, but I just want to emphasise one thing. We do understand that, that lease agreement is between the developer; it is a confidential document between the developer and the anchor tenant. However, you also need to recognise that in the context of the work that we are doing, we can have access to that document and we do review them and so can the Competition Commission ...[intervenes]

MR KRIEK: No, we are happy with that. What I am saying is, is if it is a negotiation with another tenant and these discussions would be uncomfortable.

CHAIRPERSON: Yes. We also need to kind of put ourselves in the shoes of, I want to understand the deliberations and the understanding and the rationale, what influence that rental to come down to be that low.

MR KRIEK: Yes.

CHAIRPERSON: That is what we are saying. It would be so much easier if that existed in these agreements that you are completing

as property developers.

MR KRIEK: I think madam, just a last word on that, I do not think that exists.

CHAIRPERSON: Okay.

MR KRIEK: So if you ask for that on any existing lease agreement, I do not think that information is available.

CHAIRPERSON: Okay.

MR KRIEK: Because it varies in every individual negotiation. It is really the point I am trying to make.

10 CHAIRPERSON: Okay, thank you. No, I understand that.

MR KRIEK: Thanks, madam.

CHAIRPERSON: You can proceed.

MR KRIEK: I think we are not on item 27. I think we dealt with 27. 28, the average duration of lease agreements, anchors, ancillary tenants. The combination is probably the initial base leads would be typically ten, maybe 15 years in an anchor tenant with a couple of options beyond that, and on the ancillary tenants a combination of three-year leases, five-year leases, sometimes with options; sometimes not.

20 CHAIRPERSON: Okay, on the ancillary tenants, what influences that minimum? We have come to understand what could be the determinant of the duration for the anchor tenant, but we still are at dark, we are still in the dark as to why three years, why five years, why not ten years for them as well; why that difference?

MR KRIEK: I think it cuts two ways there. You need a certain lease period within which to recruit your investments, so the internal you would requirements of the individual tenant would determine his base requirement.

30 Some tenants are more temporary in nature. We have one-year leases and we offer one-year lease as an example. If to somebody that is unsure about a market and you need to test the market and amongst each other listen, take this space for six months, take if

for month to month as a popup store.

If they are going to spend more on the installation then generally the tenant would say to you, three years is my minimum. Also from our perspective, it is good to have a little bit of a spread of lease expiries, otherwise you end up with a bullet in five years and a bullet in ten years you know, so it is nice to have a bit of a balance on lease term, on lease period.

On the smaller tenants very much so, it becomes a major liability if they, in your lease agreement. Imagine if a shop does not work.

10 CHAIRPERSON: There would be a performance clause; there will be a termination clause. Would that not be...? [Intervenues]

MR KRIEK: A performance clause and a termination would be related to whether they pay rental or not.

CHAIRPERSON: Yes, okay. But they would pay rent if they are performing.

MR KRIEK: Yes, correct.

CHAIRPERSON: They will not be able to pay rent if they are not performing.

20 MR KRIEK: Yes, correct, but typically a smaller independent tenant does not like a ten-year lease exposure.

CHAIRPERSON: Okay.

MR KHUMALO: I must have missed that. I mean, what is the reason that the anchors would get ten years or 15 years?

MR KRIEK: I think the payback period on their installation requires a longer period. Also it is a function of the value of the lease and the lease government.

30 If you are a financier or a property owner and you have the risk of your anchor tenant leaving after three years, you are in a desperate position compared to if you have at least a ten-year lease. Each one goes through the initial period where there is the holiday.

Everybody comes because it is new and then market reality set in

and then there is a period of consolidation and growth from there. So if you have a three-year period, very often you actually do not see the real potential of the shopping centre, so from a development side as well, it is important to have some longer leases, particularly the anchor tenants.

MR KHUMALO: So is...

MR KRIEK: It is a spreading of the risk, if you will.

MR KHUMALO: So you are saying for the anchors they need a longer period to recover what they put in for their fittings and installation, or what is that, what did they put in?

MR KRIEK: The shop fitting.

MR KHUMALO: You say they require ten years to recover that.

MR KRIEK: I am not speaking on their behalf. We know that from the negotiations they prefer longer leases because they have a longer horizon on where they see this.

They do not make a three-year decision, they make a 20-year decision, or a ten-year decision. We from our side require the longer lease to help us manage the risk in the development.

Because if my 50 000 square metres shopping centre comes up for expiry and it is a three-year lease, it is not going to work. So it is a combination of factors from both sides.

MR KHUMALO: We understand that anchors generally request their landlords to contribute towards that fitting. Do they also require that from Resilient?

MR KRIEK: Once again, it is a product of negotiation. Sometimes we need them potentially more than they need us to help making a development more attractive, then the pendulum sways against us and then they also do their feasibility in terms of where they see the potential turnover of that store would be, and as a calculation.

Moreover it is going to be is that much rental is obviously a very large component of that, and the profit lines translates into an affordability factor, which also has a retreatment of capital in the

larger picture from their side, so they, it is easier to obviously agree to something you hear the lesser exposure from a financial perspective.

Also you know, not to overburden the store. So yes, we have those agreements.

MR KHUMALO: Does it also happen that in case they want to refurbish that store you still find yourself in the position where you need them more than they need you to maintain the attractiveness of...

10 MR KRIEK: Very often the market reminds them with turnover whether its refurbishment is due. So there is a bit of a combination there. If the refurbishment is due in our opinion, we would approach them and suggest an upgrade.

If I do not have a lease that can force it, then there could be a negotiation, but then typically we would sit down and say okay, let us agree to refurbish the store. We might introduce an allowance and we do a new ten-year and you have got your new format and it might require a downsizing in the store; it might require an upsizing of the store, et cetera.

20 It depends on what the development actually calls for. It happens probably, not necessarily just Edgars.

MR KHUMALO: So it does happen for the smaller guys.

MR KRIEK: Yes.

MR KHUMALO: Then you do contribute.

MR KRIEK: It depends on the individual situation and individual need. And the market I think has a way of guiding, so if the availability of tenants becomes less because the economic environment that you find yourself in, locally or macro, then you will find that at the end of the day you would need to incentivise more, and that is where the nature of longer leases come in,
30 because if you are able to, if you have a longer lease period, you are able to amortise over a longer period.

CHAIRPERSON: How often does the market demand them to refurbish?

MR KRIEK: That is a very, very difficult question. You are going to a, very often competition reminds them maybe even before the market if there is no other offering in existence. You know, you can go look at the various conditions of various stores, but the same applies for shopping centres. If I think I am going to treat Jabulani in Soweto different to The Grove in eastern outskirts of Pretoria, the market might just not reward us for that approach.

10 CHAIRPERSON: But more or less, what would be the period?

MR KRIEK: I think typically maybe on the ten-year cycle the larger stores; maybe a five-year cycle on the smaller stores or a seven-year cycle.

CHAIRPERSON: Unless competition comes in.

MR KRIEK: I think, and then they will look at their current position and say you know what, we need to upsize in order to deal with competition, and let us revamp the store earlier than expected, or whatever. I think there are many market forces that determine these things, but if everything remains the same then I do not think
20 that they would refurbish a full loan, unless the concept changes and they you know, move off in a bit of a different direction with the group or so.

CHAIRPERSON: Just my last point on this tenants, anchor tenants leases. There is a perception that, or even a feeling that the dynamics between anchor tenants and the developer the lines are very blurred.

You have a situation where the tenant, the anchor tenant, tends to tell, there is a tendency on the part of the anchor tenants telling the developer this is what I want; this is how things are done, and
30 less so with the developer deciding what to do with the property, with its own property, so under what circumstances will you say that happens?

Where the anchor tenant is far more influenced or willed far more power in these, or negotiating all these aspects that you would discuss. The rentals, refurbishments, fittings, all of those things, and even keeping space that they do not need and subletting it, keeping it for future lease, all those kind of things, to what extent?

MR KRIEK: I will, I think start with just the last comment. We do not keep future space. What we do is, we would agree to, there is an expansion option in a lease, so you must know in terms of zoning that you are able to do that, that you are not maxed out, 10 where you know you have got to place a condition or impose a condition on that, and say that is subject to an extension of the rights.

If you have got 50 000 and building 50 000, I cannot give somebody the right to expand by a thousand, because then I will be outside of my legal perimeters. So those are dealt with in that sort of manner. We will typically not construct the space because it is there, unless physically the building would make sense to do that.

So that is an atypical situation. As far as us going to retailer with a 20 piece of land and saying here is the piece of land, what do you think we should do on that? We do not operate like that and I think in those types of instances you could find that that, you know, a developer could go to a particular tenant and say listen, I have got a piece of land, are you interested and they might say yes, we are interested. This is where we have not been subject to that.

CHAIRPERSON: Okay. You also mentioned that as a property developer, and I would assume as Resilient you will give in to the anchor tenant's demands if you need the anchor tenants probably more than they need you.

30 Just generally, under what circumstances would you need an anchor tenant more than they need you?

MR KRIEK: I think there is always the first deal and then it flows

from there. If you have ten shops signed up, the 11th shop is potentially easier than if you have zero shops and you are trying to sign the first guy.

Typically we would start with the anchor tenants, so in the context of a mall, if I want a grocer, a clothing or two clothing departmental stores, I would go to, and a general merchandiser, I would go to Game, I would go to Woolworths, I would go to Edgars and Pick 'n Pay or Checkers or Shoprite, depending on, and say to them, this is the scheme that we have, are you interested.

- 10 They will go back and do their market research. I will also present them with our market research, and then they would come back and say yes, we are interested, or it does not work for us. It could be that you get to a point where they do not find sufficient market on their analysis.

CHAIRPERSON: All of the anchor tenants.

MR KRIEK: All of them. If it so happens that only the grocer is interested, then you might be forced to change the nature or your intent of the development where you say okay, there is market for a convenience centre; later on I will do an extension.

- 20 If the market then materialises as arguably Edgars or Woolworths would like to see it.

CHAIRPERSON: Because I could not fathom under what circumstances would you need them more than they would need you, when there are so many anchor tenants you could choose from.

But then have you ever had a situation as Resilient where you had a development and all your prospective anchor tenants turned you down and you basically had to go back and renegotiate?

- 30 MR KRIEK: Not renegotiate, because that would seem to understand that there was an agreement. I cannot recall ...
[intervenes]

CHAIRPERSON: Convince them, persuade them.

MR KRIEK: In many instances, and that is part of the market forces where if they appear potentially too eager and I find they stand the market well enough, I would say to them okay, that is fine, are we agreed that you are not interested.

Then I will potentially go on to the next tenant.

CHAIRPERSON: Our suggestion is that you can skip the rest of the questions and maybe move to question 33 on the recruitment of investment.

10 MR KRIEK: Okay, thanks. Madam Chair, just maybe once again, the nature of exclusivity which is my understanding, is fundamental. A lot of those questions, a lot of what we said, I think we would be better off without the exclusivities than with the exclusivities.

The tenant can make his own decision whether he wants to enter into the development or not, based on potential competition arriving. To 33, apart from...

20 MR KHUMALO: So basically what we would like is to hear from, we know from what you have said earlier that you do not like exclusivity, but we would like to understand what, your view is it in relation to the purpose that they serve, so what purpose do they serve?

MR KRIEK: In our view, absolutely nothing.

CHAIRPERSON: Even for the retailer?

MR KRIEK: Apart from recruiting investments, so I am looking at it from that perspective.

CHAIRPERSON: Yes.

30 MR KRIEK: Value could be given to an element of recruitment. That is one discussion, but I do not think they hold any value. To the retailer, if they have exclusivity they have a certain form of certainty, if you will, potentially, and I am not speaking on their behalf.

I really do not understand from their side why they would want that

other than to try and at least have an element of certainty that they would be able to meet their projections.

But in our negotiations we will go up front and say, we would like to have both of you there if we are talking to them in the shopping centre, so up front they would know and take that into account with their, in terms of their research.

MR KHUMALO: Again we suggest that we leave all the exclusivity questions.

10 So I think we would like to maybe go into the rental questions again just for explanation purposes, what these terms are. We see them in the lease agreements they have been mentioned to us, but we would like to understand what they are and what, again if the beloved Butcher opposing to the mall, what you can expect to pay. What is the base rental, what is turnover rental, what are those?

MR KRIEK: There is a little bit, and I will deal with that a little bit more specifically, but essentially the base... [Intervenues]

CHAIRPERSON: So we are basically on question 46.

MR KRIEK: Fort...?

CHAIRPERSON: Six.

20 MR KRIEK: Six.

CHAIRPERSON: Sorry, 40.

MR KRIEK: 40, yes. Thanks madam.

CHAIRPERSON: And you can combine that with 46.

MR KRIEK: Okay. So the structure of the lease, and maybe I can combine that with one or two of the others as well, because there is questions about turnover as well, so the broader understanding of the lease agreement.

The base rental is generally the rental net of the utility exposure. The utility exposure is your consumer bills, the petrol in your car and the oil. Electricity, water, sewer, *et cetera, et cetera*. Rates and taxes very often is included in upfront base rental and then
30 increases to rates and taxes.

But that is a negotiation, because you can separate that element, but that would be the cost of occupancy, and then the base rental. The turnover rental, there is sometimes from a landlord's perspective you try and split out what is called the operating costs. So you have a net cost of use, so if it cost you R20 a square metre arguably, just to use a figure, to run the shopping centre, you would like the guy to pay you R20 a square metre operating costs plus then, let us call it your base rental.

10 That is generally not how it is done; it is generally done on the base rental, net of utilities, the turnover clause, and that typically I will deal with the escalations as well if I may, and maybe the questions will clarify the picture as we go along, but typically that would escalate at an agreed rate, which is generally in line with reported inflation.

Some might have a CPI increase linked to that, some might not. We try and stay away from CPI, more just pure inflation as it comes through so that the net value remains the same. Inflation is an erosion of value, so we try and remain with the same value.

20 The turnover, those two things, if the performance is better than anticipated for various reasons, because it could be because we put a wonderful development together; it could be because they are a wonderful tenant and contribute to that, hopefully it is more symbiotic than it is just the one or the other, then we would share in an outperformance if you will.

So the base rental and the turnover rental are different elements. So the lease structure will typically be your rental is R100, I will just use a figure, R100 a square metre, and you are going to pay your increases on rates and taxes.

30 Your utilities you pay according to consumption at whatever rate that comes through that. The turnover rental then is, if your annual turnover, whatever that percentage is, exceeds the base rental.

Okay, so if the clause is five percent or is of calculation ten percent

and you have paid R100 a square metre, you would have paid R1 200 for the annum, and you have a ten percent turnover clause, if you translate that into a performance better than R12 000 density, then you will be paying that percentage of that turnover. So assumingly doing R13 000 density for that period, that is then a hundred more and you would pay the ten percent of... [Intervenues]

CHAIRPERSON: Of that hundred.

MR KRIEK: Yes, of the, of the hundred, yes. So that, the other thing that the turnover clause does do is if there is a scenario
10 where there is hyper inflation, heaven forbid, but we have had that before, 24, 23% interest rates if you recall that.

I am just old enough to recall that, but you know, if you have agreed on six percent escalations at the time, because that was the market, and you are 20 years down the line and you had 20 percent inflation, obviously that does eventually translate through into the price of the commodities and that serves as a bit of a protection, particularly on the longer term leases, because it is very difficult taking a 20-year view on the economy.

We would all like to, but that is difficult. So that is the other
20 function of the turnover clause, and that obviously does not escalate, because it is a function of the turnover, a percentage of the turnover, so there is no, it will escalate every year at whatever CPI, the percentage.

So the base rental escalates at an agreed percentage typically, and the turnover is a separate component. So hopefully...

CHAIRPERSON: I am happy with your answer.

MR KHUMALO: So, we, we have heard that in other instances, landlords reserve the right to cancel the lease where the, the store does not meet its own, you know, projected turnovers. Does that
30 happen and, and why?

MR KRIEK: I will venture to say that, that is maybe a bit arrogant from a landlord if you, as much as, if I was the tenant I would say

to the landlord then please guarantee me my turnover. I think it is... I have heard, we do not do it. I do not even presume to do it. But the rental payable, I often discuss with them and say what turnover do you project you could do here and knowing the categories, their percentage backward calculation, and say, so I know I am relatively safe at R150m² or R100 or whatever the case might be.

CHAIRPERSON: The next question I would like you to address from my perspective, I think the others I am happy with, is question 10 47.

MR KRIEK: 47?

CHAIRPERSON: Yes, the upfront, upfront payment of deposits, which tenants are required to pay this deposit, which are, which tenants are not, are exempted from paying and, and why.

MR KRIEK: I think, It talks to eventually the creditworthiness of the tenant. I think as much as any financial application at a bank for a car loan or a home loan, if you have no track record, they will ask you for greater security and that is the same thing with lease agreements. So typically the large listed national tenants would 20 pay no deposit. It is also a huge burden on the, on the balance sheet if you have 2500 leases arguably and you have got 2500 deposits sitting in somebody else's hand, it ties up a lot of operating capital but if they had a history of defaulting, I would think that they would be required to pay a deposits more regularly than, than not.

So it is, it is combination. *Ja*, there are... I think I am just reminded, here, that it is not necessarily deposits. I treat deposit and guarantee as the same thing. It is supplying additional security for, for the lease.

30 Very often from the perspective of, of a potentially higher risk operator with no track record, you know if that tenant fails, the cost of replacing that tenant, is tremendous because you are going to

sit with a couple of months of vacancy, you have got to take out the old shop fitting et cetera, et cetera. So, it is, it is mostly really at the end of the day, the pursuit creditworthiness of, of the tenant.

CHAIRPERSON: Just one last question from me. In the, in the, in our initial public hearings there was a, especially here in Gauteng, there was a lot of..., there were concerns raised around wanting to understand when, when the malls are in the, or with the malls having entered the townships and rural areas and taken up the space... You know, this all linked to the history of the country
10 where 1994, these guys, we, we... Like people did not own land, past 1994 they start to think, okay now there is a chance for us own things and then they wake up, there is a mall that owns the land and they had been... They had been sitting there hoping that they will be developing the land or they would their businesses into this areas and, and they have missed the opportunity, and this land has never been made available to them.

This is what we get towards, so we would not have the specifics obviously but in the context of that and the outcry that came from that, there have been parties that kind of wanted to understand if is
20 it possible for a property developers to, to have a percentage when you do develop in a, in a community like Soshanguve, as you have mentioned, like Mafikeng as you have mentioned and, and I would imagine again Burgersfort, would actually your smaller players, and this may not even have a colour thing to it.

It, it may also just be about taking into account and independent players in the, in the community that are operating there. And whether or not you could have, you could allocate a percentage at all. Is it something that is feasible, is it crazy?

Is it another case of entitlement by South Africans, when they ask
30 that they be allocated some percentage in this mall that is in their community and making money in their community in a land that they were never given an opportunity to, to own business on?

MR KRIEK: It is difficult answering them never been given the opportunity because I think is in the hands of the landowner potentially to, to try and beneficiate the land.

I think there is huge, huge difficulty in deciding who the partner will be because in Burgersfort how do I decide that it is that guy and not that guy or... And how do you structure shareholding for a community? What, what structure does that take? Is it in the name of the chief, if there is a chief in the area?

10 Is it in the name of a trust on behalf of...? So there are complications I think around that which I think bare to be considered.

CHAIRPERSON: Can I just offer a solution there? It, it would come in the, exactly, in exactly the same format as it comes when the employ..., when the retailers in your, in your mall, in your development say, can claim that 70% of the people that are employed in their retailers are actually from that community. So you basically, it can be made known that we have... [Intervened]

MR KRIEK: Yes.

20 CHAIRPERSON: As a development we would like to, we have set aside 5%, 10% of this development for business, for, as an opportunity for business that would like to set up in the mall. Obviously terms and conditions apply and which, which is everything that we discussed here with you today.

MR KRIEK: think Madam, anything is possible. As we say, if you decide on a partner, how do you decide who the partner is? And we are not saying we do not do that. We have many previously disadvantaged partners that we have financed on behalf of.

30 CHAIRPERSON: Let me correct you. We are not saying to partner with you in the development because we think that would be a complicated situation ... [intervened]

MR KRIEK: Yes, okay ... [intervened]

CHAIRPERSON: Because there are ... [intervened]

MR KRIEK: That is why I say ... [intervened]

CHAIRPERSON: Ja, I agree with you, it will be difficult to, it could be a politician, you could end up with all the politicians partnering up with you.

MR KRIEK: Yes.

CHAIRPERSON: And having a big outcry against you. We are talking about a certain portion of the development itself being made available to businesses that is of your lettable area.

MR KRIEK: Yes.

10 CHAIRPERSON: In the development being made available. And obviously when you do so, you consider that this people cannot afford this rentals, three times the rental amount that is paid by the anchor tenant becomes a big issue.

MR KRIEK: It also ... [intervened]

CHAIRPERSON: And, and take that into account, so it becomes some kind of an empowerment deal if, if I may call it that.

20 MR KRIEK: Yes. So, first of all we have a number of partners previously disadvantaged; Mafikeng, Highveld Mall, Tubatse in Burgersfort, et cetera. So, you know, we kind of embrace that as a, as a group. We have large social responsibility initiatives.

We established a trust that I think this coming year awarded I stand to be corrected 120 full bursaries for study. We made those available in the local markets. So if I take the example of Burgersfort, I think there is five or six bursaries awarded there.

The same trust has created a learning lab which if you have time one day and I show you Burgersfort, I can promise you... And we have one in, in Hammanskraal as a matter of fact which is much closer, where we offer training.

30 We distribute hundreds and thousands of learning aids every year through the department of education to specifically, into the areas that we operate. In fact, more broadly than that now. When it comes to business development... I know where you are going... I

am just, I do not think I, I, would be ... [intervened]

CHAIRPERSON: I just want to say, I do not want to hear of your CSI initiatives. That I understand because most companies do that. So you will not be an exception. We, we are talking about a development and, and the extent to which the development, the shopping mall itself can allocate a space for the entrepreneurs coming from the community in which it is located.

MR KRIEK: Yes, and that does happen. In Tzaneen we have created a number kiosks for tenants. So there is real informal, and
10 there is more formal and if they progress out of that in terms of their own wishes because I, we cannot force anybody. So those opportunities do exist.

We have numbers of scores of local traders and, and, and depending on the commercial viability, some are subsidised and that sort of thing. So, your answer, is it possible to say it should be 5% of the development, I think the market might dictate that but principally, yes. The principle absolutely. It does go to, I do not know whether you want to hear this maybe considering the earlier
20 comment about the CSI, but as far as the employment in the shopping centre, when we developed Burgersfort, we went to the department and we said, of Labour, and said please work with us because we would like to, as far as we can.

So we wrote letters to all the tenants and said to them, we encourage you to have local employment. We facilitated CV's to be submitted to the department who then submitted it to, from time to time we go through, and we ask them, please just tell us what is happening, not because we can, we do not have a lease that allows us to do that, but just in terms of community feedback.

So we recognise that need and I think every developer should
30 recognise that need. That is also, we, we created the facilities for, for the informal traders as well.

CHAIRPERSON: Oh, thank you. I take your point on that. I would

like to request that you maybe in addition to whatever else we asked you to add to your submission that you just give us an example of how you did this in Burgersfort.

MR KRIEK: Tzaneen is maybe a better example.

CHAIRPERSON: Tzaneen, Tzaneen, *ja*, the kiosk is in, in... And also that progression thing because there is also a complaint, I do not think we always want to be informal. Why do you think we do not aspire to become bigger?

10 So all those things because you kind of spoke to that before I even asked you. And I just want to see how you, you have... We would like to see how you have conceptualised your one and see if it can be done and it is, it is not an issue, that it is just township.

It is everywhere. Chatsworth, we have had people complaining, even in the Kwa Zulu Natal hearings, these, these issues did come up and in Cape Town, same issue came up. So and we wanted to... Because we had never come across any property developer that actually, that has been as forthright as you have been and at least we have had a better discussion with you than we have ever had with any property developer and I would like to thank you, Mr
20 Kriek, for that.

MR KRIEK: I appreciate that, Madam.

CHAIRPERSON: You have given us a better understanding of how it is that Resilient conducts its business and that will enable this inquiry to use a lot of what you have told us here today, to ask better questions with better understanding, with a better background when we deal with other property developers.

MR KRIEK: It is a pleasure, Madam.

CHAIRPERSON: Thank you very much.

MR KRIEK: Thank you. Thank you.

30

HEARING ADJOURNS
