



LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON PUBLIC ACCOUNTS

(Reference: **Review of Auditor-General's Report No 7 of 2016: Certain Land Development Agency Acquisitions**)

Members:

MRS V DUNNE (Chair)
MR M PETTERSSON (Deputy Chair)
MS B CODY
MR A COE

PROOF TRANSCRIPT OF EVIDENCE

CANBERRA

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Secretary to the committee:
Dr B Lloyd (Ph: 620 50137)

By authority of the Legislative Assembly for the Australian Capital Territory

Submissions, answers to questions on notice and other documents, including requests for clarification of the transcript of evidence, relevant to this inquiry that have been authorised for publication by the committee may be obtained from the Legislative Assembly website.

WITNESSES

COOPER, DR MAXINE, Auditor-General, ACT Audit Office.....1

STANTON, MR BRETT, Director, Performance Audits, ACT Audit Office1

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Amended 20 May 2013

The committee met at 9.37 am.

COOPER, DR MAXINE, Auditor-General, ACT Audit Office

STANTON, MR BRETT, Director, Performance Audits, ACT Audit Office

THE CHAIR: Welcome to the public hearing of the public accounts committee into the Auditor-General's report on certain Land Development Agency acquisitions. I welcome the Auditor-General, Dr Maxine Cooper, and Mr Brett Stanton from the Auditor-General's Office. I know this is purely for form, but you understand the privilege statement on the pink sheet?

Dr Cooper: Yes.

Mr Stanton: Yes.

THE CHAIR: Dr Cooper, do you want to make an opening statement?

Dr Cooper: If I may. The audit report on certain Land Development Agency acquisitions, report 7 of 2016, was not one in our forward program. We received a representation regarding the acquisition, which was subsequently considered formally to be a public interest disclosure. Importantly for us, upon further investigation of the PID and given the issues that were emerging through that PID, I made a decision that it was best put out into the Assembly for consideration, closed the PID and did a performance audit to give it full transparency.

The audit examined the acquisition of block 24 section 65 (land adjacent to Glebe Park); block 13 section 33 Acton, Mr Spokes Bike Hire, for reference during the conversation today; block 16 section 33 Dobel Boat Hire and, importantly, Lake Burley Griffin Boat Hire business, which was on the latter block, block 16 section 33. Essentially we are dealing with two businesses and three blocks of land.

In examining the acquisitions, administrative matters were identified in relation to application of the land acquisition policy framework, governance and project management of the city to the lake procurement and contracting, responding to a freedom of information request and the engagement with Colliers International—they were also issues that came up through looking at the acquisitions.

It was found that transparency, accountability and rigour were lacking in the processes used by the Land Development Agency for acquiring the three sites and two associated businesses. Without these, it was not possible for us to consider whether the integrity and probity of the acquisition processes were there because it could not be demonstrated.

Given the detail of the information that is in our report, would the committee like to discuss each site separately and walk through the report? If you would like to do that, we can give a summary, at the beginning of each of the clustering, of ways of walking through the report or just take questions. We are open. The only images we have are of the sites. We have three images for the benefit of the committee, just to make sure in terms of geographical location that we are all aware.

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THE CHAIR: I am a little agnostic but it might be better to deal with them block by block, issue by issue. But before we proceed, I do apologise to members and to witnesses. Mr Coe had asked to make a statement before we begin the process and when we got through the housekeeping it fell out of my brain. I do apologise. Could I hand over to Mr Coe who wishes to make a statement in relation to this.

MR COE: I have sought advice from the Ethics and Integrity Adviser about my participation in these hearings. I am doing this in order to maintain the openness and honesty which is essential to my work as a member of the Assembly and to our work as a committee of the Assembly.

To date it has not been made public that I was involved in the instigation of the Auditor-General's inquiry. I can now confirm that I made representations to the Auditor-General in 2015 about this issue. The Ethics and Integrity Adviser has confirmed that I do not have a conflict of interest about this or several other issues, which I will disclose shortly. However, he has made suggestions about how I can deal with the situation, and I am adhering to all his suggestions.

Ahead of the Assembly's inquiry, which gives me a role in scrutinising the issues raised by the Auditor-General's report, I wanted to take every possible step to ensure transparency and accountability. By seeking advice from the Ethics and Integrity Adviser, I am demonstrating an unprecedented level of transparency. Until now, I have only sought information and referred matters for investigation. Unlike the government and ministers, I am not an executive decision-maker.

It is also important to remember that, without my referral of these deals to the Auditor-General in the first place, they would never have been investigated and they would not be being further investigated by an Assembly committee. I am totally committed to pursuing these issues because I care deeply about the integrity of the local government process.

The following are direct quotes from the advice I have received which summarises the matters considered by the adviser and the adviser's conclusions. Mr Skehill said:

The first matter relates to your provision to the Auditor-General of information that eventually led to the conduct of the performance audit to which the Report relates.

The second matter that warrants attention is the matter of family-based relationships with the principal of Colliers International. The principal has various commercial and friendship relationships with members of your wife's family, and as a result was invited to attend your wedding.

The third matter that warrants consideration arises from the fact that Colliers International, through an employee who is your brother-in-law, purchased some hampers from your wife's hamper business as presents for clients of Colliers International.

The fourth matter arises from your advice that the principal of Colliers has facilitated fundraising dinners for the Liberal Party and, you understand, for the Labor Party.

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The fifth matter relates to your referral to the police of the alteration of a document that was the subject of a freedom of information request made by you to the Land Development Agency.

The ethics adviser has concluded the following:

In these circumstances it is appropriate to consider whether your connection to the matters to which the Report relates gives rise to any actual or perceived conflict of interest and, if so, what action you should take to manage or avoid that actual or perceived conflict as required by the Members' Code of Conduct.

The ethics adviser has said:

I do not consider that it is necessary for you to excuse yourself from the Committee or from its inquiry into the Report, provided that you make early disclosure to the committee (perhaps through, but not just to, the Chair) of the various relationships between Colliers International and/or its principal and your wife's family's and your wife's business.

By doing so, I consider that you would manage the potential for a perception of conflict of interest in a manner that is consistent with the Members' Code of Conduct.

In making that disclosure and in the absence of any legal compulsion to do so, I do not consider that it would be necessary for you to disclose to the Committee the identity of those who may have provided to you the information that you conveyed to the Auditor-General.

If the principal of Colliers International appears before the Committee, it would be appropriate that he be made aware of the relevant disclosures that you have made to the Committee.

If a person who was one of your informants appears before the Committee as a witness, I do not consider that it would be necessary for you to disclose that fact to the Committee. However, if that witness were to give evidence to the Committee inconsistent with their previous advice to you, I suggest that you seek additional advice as a matter of urgency.

I would like to conclude by saying that the advice from the ethics adviser states:

In my view, having regard to the circumstances set out above, it would not be appropriate to conclude that you had any actual conflict of interest that would preclude you from participating in the work of the Committee when considering the Report.

There is nothing of which I am aware that would suggest that you would gain any personal advantage from the Report, the Committee's inquiry into it or any subsequent Assembly or government decisions in relation to matters involved.

While your wife's business, and thereby you indirectly, may have benefited from a sale of goods to Colliers International, you have advised me that this was a one-off transaction and there is no ongoing commercial relationship or any expectation of the same.

In light of that disclosure, which is consistent with the advice of the Ethics and Integrity Adviser, I thought it appropriate that the Auditor-General and future witnesses and the public at large be aware of that declaration.

Dr Cooper: May I make a comment please, Madam Chair?

THE CHAIR: Yes.

Dr Cooper: There are a few things. Just for the public record, when we close a PID we have no further communication on our audit work with the entities making the PID. That often causes anxiety but we cease it because we are independent. I just wanted to say that for the benefit of everyone.

Another thing is: I would not assume that the matters would never have been investigated. I think that is important to say. You made that statement. Do not assume the matters would not have been investigated. And I would also say that I would not assume that you are the only person or persons who have come forward over this issue. I just leave that there for the interest of confidentiality. We treat everything confidentially. If we had thought there was or knew of details of any conflict of interest, we would have brought that out.

The other thing for the committee's benefit is that you are aware we did take statements under oath or affirmation and the people who made those statements may actually provide them to you. That is their prerogative now. If they do, what I would suggest the committee may wish to consider is: we have realised we gave the final ones where they were offered the chance to amend, as is normal process, back to them in a Word document. We actually have the ones we have agreed with them were the final statements. If the committee does receive any of those, we would be more than happy to make sure that they correlated with the final one on our record.

THE CHAIR: With those matters dealt with, shall we begin by going through the report as it relates to and starting with the land adjacent to Glebe Park. Mr Stanton, this is your gig.

Mr Stanton: I will attempt to give a brief overview of the events that unfolded in terms of the acquisition. I will start by referring to block 24 section 65. It is there on the map and is adjacent to Glebe Park. A key issue with this block was that it was always identified as a site for the relocation of Coranderrk Pond, and you can see Coranderrk Pond at the bottom of that particular picture there.

The relocation of Coranderrk Pond to the northern part of the block would facilitate urban redevelopment objectives of the city to the lake project and would also address shortcomings in stormwater management in the eastern part of the city. According to a SMEC report in October 2014, the northern part of that block was the most appropriate site for a relocated pond.

In March 2014 we saw documentation associated with an economic development senior manager who was in discussion with owners of the land and that person shared a document titled *The Glebe Park wetlands draft discussion paper* that included a map which basically showed the northern part of the block labelled "Surrendered to the

territory” and the southern part of the block labelled “Future development by existing lessee”. That senior manager identified a series of actions to the owners which concluded with “constructing the new water quality control pond and parkland improvements and provide services to the owners’ future development site in the southern part of that block”.

In May 2014 that senior manager circulated to economic development and LDA staff and executives a Glebe Park wetlands design options document, which included a pond in the northern part of the site and a range of options for the southern part of the site, ranging from no residential development through to 271 residential units in three eight-storey blocks.

In July 2014 the city to the lake project team engaged a professional valuation firm to provide one valuation as is as a baseline to start a discussion for the purposes of acquiring the land. That August 2014 valuation valued the land at \$950,000 to \$1.05 million. The valuation was provided on the basis of “market value ‘as is’—subject to all present lease conditions”.

THE CHAIR: Could I interrupt? What were the lease conditions at the time?

Mr Stanton: The lease conditions at the time? I will refer you to one of the early paragraphs of chapter 2. Paragraphs 2.1 to 2.4 summarise the lease conditions or the status of the site, as it were. Importantly, the site was subject to the city precinct map and code under the Territory Plan, which was identified as MT4. According to that, the MT4 designation allows for additional merit track development for residential use. Residential use could be achieved through a variation to the existing crown lease. However, the Planning and Land Authority would need to assess that the site was suitable for residential use.

Dr Cooper: And the information Mr Stanton has just given us about the process evaluation was not done by the executive involvement. I think that is important. There seem to be two processes running within the same agency. The first one is the one Mr Stanton has outlined that ended up with a \$1 million valuation which ended up quite differently from the other one. On these factual things—2.1 to 2.4—it may be that the MT4 issue was not in the vision of the people that we have just referenced to get to the \$1 million valuation.

Mr Stanton: From August 2014 through to April 2015 there did not appear to be a great deal of activity associated with the site. But then in April 2015 there was a renewed interest from LDA executives in pursuing the acquisition. At the suggestion of the CEO of the LDA, the former deputy CEO of the LDA sought advice from the principal of Colliers International. There was no service agreement or written instructions associated with this advice nor was there, to our knowledge, any specific payment for this advice. In early June 2015 the principal of Colliers International provided a two-page *Valuation considerations May 2015* document that identified a range of values for the site based on whether the site was used for a hotel, serviced apartments or residential units.

Dr Cooper: And, importantly in our audit, that material was not on LDA files. We sourced that from Colliers. I think under oath the people involved in that did

acknowledge it existed but it was not on LDA files. That was some material we were able to source external to the LDA files.

MR COE: Sorry, I missed that. What documents were you not able to source?

Mr Stanton: In early June 2015 there was a two-page document provided by the principal of Colliers International.

MR COE: The valuation advice?

THE CHAIR: The valuation consideration?

Dr Cooper: No, that comes later. This was a precursor to that and was based on the negotiations.

Mr Stanton: Paragraphs 260 to 283 of the report outline the various documents that were provided in that period.

In mid-June 2015 the principal of Colliers International provided another two-page document called “Block 24, Section 65, Division of City, Glebe Park land May 2015 discussion paper”. That provided a range of current values to settle the matter at \$2.8 million to \$4.6 million with a recommendation of \$3.6 million to \$3.8 million.

The principal of Colliers International advised under oath or affirmation that they offered to provide further, more detailed valuation advice through a formal valuation report if the ACT government wished to proceed with acquiring the land.

Dr Cooper: But that was never followed up.

Mr Stanton: We sought advice from a subject matter expert, Capital Valuers, in the area of valuations. Capital Valuers’ advice was that the Opteon valuation was a comprehensive and valid valuation document. However, Capital Valuers advised:

... limiting the market value to “Market Value ‘as is’—subject to all present lease conditions” is a restriction on assessing the value in accordance with the definition Market Value ... and removes the concept of “highest and best use”, which is inherently assumed to be reflected in an open market transaction.

At the time, through this negotiation between the LDA executives and the owners, or the representatives of the owners, they were pursuing this open market transaction purchase.

Dr Cooper: If I can, before Brett talks about the negotiations with the owner, the take-home message there for us, I think, is: the assumptions that you seek valuation on need to be made clear. That is in recommendation 1 that we have certainly put forward. Clearly in this you have got two different perspectives: one from the executive about what should be considered in the valuation and one from the team who initiated the first valuation.

THE CHAIR: My recollection is that—it might have been 2011 or 2012—there were

questions asked about this block of land in the Legislative Assembly, and the planning minister at the time described the land uses as, roughly speaking, those described in paragraph 2.2. He also explicitly said that it was not the government's intention to build residential on that site. Are you aware of how and when the thinking changed on that? That was probably 2011 or 2012. Did that come into your purview?

Dr Cooper: No.

MR COE: It was in *Hansard* on 22 June.

Dr Cooper: You could slot it into this time line. But quite clearly you have got two very important parts of the organisation, one purchasing based on certain assumptions and the other getting a valuation that does not match the description of what the potential for the land would be.

THE CHAIR: In 2011, or 2012?

MR COE: On 22 June 2011; that is my record.

Dr Cooper: That was, therefore, well before the first.

THE CHAIR: Yes, well before that, but I was wondering whether you were able to see how the thinking had changed from the government's statement that this was not a block that would have residential development on it to its eventually being sold on the basis of a valuation at its highest and best use, which was residential.

Mr Stanton: In June 2015 the former deputy CEO of the LDA negotiated with the owners of block 24, section 65 for the surrender of the lease for a purchase price of \$4.18 million, that is, \$3.8 million plus \$380,000 GST. The principal of Colliers International arranged the initial discussion with the owner. The CEO of the LDA was advised of and supported the negotiation through the process. But there is no documentation associated with the negotiation process itself and how it came to that figure.

THE CHAIR: None on the LDA file and none on Colliers's file?

Dr Cooper: We did not actually audit Colliers's files; we actually sourced that other document that was given to us by Colliers and then we confirmed that the person whom they said they had given it to actually had received it, but it was not on their file.

THE CHAIR: The committee is working with a lot of moving parts in this, and there are also changing personnel. I know that it is the practice to refer to people by their titles and not by their names. You referred to the former deputy CEO of the LDA in 2015. How long was that person in that position? Did they still maintain that position up until the conclusion of the winding-up of the LDA?

Dr Cooper: No.

Mr Stanton: That deputy CEO was in place in the LDA for a period of time but, at

the conclusion of the actual purchase, that deputy CEO was not at the LDA and did not see it through to its final conclusion.

Dr Cooper: They even give us comments. We could go back and probably get the dates, but they even give comments like, “If I had still been there, I would have assumed this would have happened. A business case would have gone before the board.” Am I remembering correctly, Mr Stanton?

Mr Stanton: That is correct. I am trying to find the reference in the report.

Dr Cooper: When we interviewed that person under oath—it is in here—they gave a whole process that they would have used if they had still been there that was not followed.

Mr Stanton: I draw your attention to paragraph 2.97 to reinforce what Dr Cooper said. The former deputy CEO had departed this role in early August 2015 prior to the contracts being executed. They advised that they would have prepared and provided to the board for consideration a business case before any contracts were executed.

THE CHAIR: Okay.

Dr Cooper: If that had occurred, it would have ameliorated the situation that this person themselves had been discussing, to some degree. But it is still, I think, highly problematic.

MR COE: If there is a difference of opinion or a difference in the hypothetical approach that the deputy CEO would have used, as opposed to what was used, did the records that you uncovered suggest that the deputy CEO had made known to anybody else in the organisation the course of action that they would follow?

Mr Stanton: Our commentary over the past minute or so was specifically in relation to whether a business case would have been presented to the board and whether documentation associated with the negotiation process would have been presented to the board. What we were referring to a bit earlier was differences between the expectations of the city to the lake project team and director at the time as to how the acquisition process should have unfolded and those of the CEO and the deputy CEO of the LDA. The difference in expectations as to the acquisition and how to approach and acquire the land was between the executives and the project team.

Dr Cooper: There has been extremely poor communication. The management team were doing one thing, apparently without signing off everything at the executive level. After that there was a pause—

MR COE: When you say “management team”, you are referring to the CEO and the deputy CEO?

Dr Cooper: No, the director and the project management team. They were doing something initially. Then it stopped for six or seven months, I think.

Mr Stanton: From August 2014 through to April 2015.

Dr Cooper: And then the executive became actively involved, and it is quite clear that communication between the two was not occurring.

MR COE: But your comment about the business case was made by the deputy CEO?

Dr Cooper: That is correct; in interviewing afterwards.

MR COE: And is there any record that the deputy CEO had that path laid out prior to his departure?

Dr Cooper: We did not see any evidence of that.

MR COE: Is there any evidence to suggest that there was a disagreement between the CEO and the deputy CEO prior to the departure?

Dr Cooper: No. None of the information we have got indicates anything like that.

THE CHAIR: Could I just recap the time line? In April 2015 there was a renewed interest in the land. Colliers presented the first of two papers. Then, according to paragraph 2.93, there was a contract for sale drawn up on 23 June, which was eventually finalised on 9 September with the surrender of the lease. And in the intervening period, sometime in August, the then deputy chief executive officer departed the LDA.

Mr Stanton: Correct.

MR COE: Why would a contract be drawn up prior to a business case being made? If the deputy CEO's comments that he would have initiated a business case were plausible—the contract was drawn up two months earlier. How likely is that?

Dr Cooper: I would not even guess there. I do not want to be difficult for the committee but this audit has been extremely challenging, and we have just tried to put down when things happened. As you know, when we interview under oath, there are contradictions. Someone will say, "I never said that. I didn't have any knowledge of it," yet we will have an email showing that they certainly were copied in.

Mr Stanton: Recommendation 3 is that the LDA should provide the LDA board with information prior to acquisitions that allows the board to authorise acquisitions in accordance with the legislation.

MR COE: Is it your understanding that the LDA executive—perhaps in particular the CEO but perhaps more broadly—conducted a lot of business on the phone and not much is documented?

Dr Cooper: Our understanding from the culture of the organisation is that a lot was verbally done.

MR COE: Is it your understanding that with regard to this purchase a lot was verbally done?

Dr Cooper: That is quite clear, even in what we have documented and under oath, yes.

THE CHAIR: Would that be normal practice? The LDA ostensibly operated like a business. Would that be the sort of behaviour that you would expect to see in a private real estate business?

Dr Cooper: I would not comment on a private real estate business. The reality for us is that the LDA was reporting ultimately on its outcomes to the government. It is associated with government. So, while it may have had some private sector operations, you would have expected more transparency in what was going on. If they wanted to pay 10 times the valuation price for something, audit would not comment on that, but audit would expect anybody in any government agency to put down some reasoning so that you would then argue with the reasoning for yourselves rather than having absolutely nothing. You would expect something.

Mr Stanton: I would like to recap in relation to the internal arrangements associated with the LDA. The activity associated with the acquisition from approximately April 2015 was undertaken by the former deputy CEO of the LDA, with the knowledge of the CEO. It would appear to us that the former city to the lake project director was not involved in that period. The lack of communication within the LDA from the most senior levels of management to the operational staff has resulted in confusion and differences in expectations and understanding with respect to the administrative processes associated with the acquisition.

THE CHAIR: The audit office does not have a view about whether an appropriate price was paid?

Dr Cooper: No, we do not, and we would not—

THE CHAIR: You are concerned about the paper trail that supports that decision making?

Dr Cooper: That is right. And that paper trail should have in it reasons why that was paid. There are gaps and you cannot understand why. There is one coming up, which we will share with you, where the gap is so big it raises significant questions. But we have not got those answers.

THE CHAIR: Have you concluded in relation to block 24?

Mr Stanton: Yes.

THE CHAIR: Do members have any other questions about block 24?

MR PETTERSSON: I have a question about the *Valuation considerations May 2015* document. Is that the document that you mentioned can be found on the Colliers server and not on the LDA server?

Mr Stanton: There were two documents—paragraphs 2.60 to 2.83 of the report. Paragraph 2.67 onwards, “valuation considerations May 2015” document—

THE CHAIR: That is the one that was not on the LDA file?

Mr Stanton: That is right. In speaking to the principal of Colliers International under oath, he asserted to us that they provided that document to the deputy CEO of the LDA. We took that document and we reported that in the report. When we went through the LDA's documentation and recordkeeping systems, we found the second document, referred to in paragraphs 2.72 onwards, which was the discussion paper.

MR COE: That is also dated May 2015?

Mr Stanton: Yes, and that was provided on 16 June 2015, whereas the previous document, according to the principal of Colliers International, was provided some time between 8 June and 10 June.

MR PETTERSSON: I am trying to get to a very specific point. That document was found on the Colliers server, but from what I am reading—

Dr Cooper: No, we did not find it; it was provided to us. In interviewing people we asked them to tell us what happened, and when they mention documents, if we have not got them, we say, "Do you have that and what's the evidence that you did provide it?"

MR PETTERSSON: In 2.80 it states:

Approximately a week after the *Valuation Considerations May 2015* document was presented ...

Presented to whom?

Mr Stanton: To the deputy CEO of the LDA.

Dr Cooper: So the deputy was given it by Colliers.

MR PETTERSSON: Yes, but then there is still no record of it?

Dr Cooper: On the LDA's system.

Mr Stanton: That is correct.

Dr Cooper: So you check verbally with both of them, and if they confirm, "Yes, I did get that document," and, "Yes, it's not on the system," then we—

THE CHAIR: Is the subsequent discussion paper on the LDA file?

Mr Stanton: Yes, the 16 June one.

Dr Cooper: The changed one, yes.

THE CHAIR: I am not sure whether it will be useful in the long term, but can you

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provide the committee with a copy of both those papers?

Dr Cooper: Yes. We will let Colliers know and we will let the agency know, and just check that they have no objections and, if they do, we would want to know what it is. I will go through a process before we hand it over.

THE CHAIR: That is fine. Are there any other questions on block 24 section 65?

MR COE: Yes. With regard to your comments about dealing with the owner of the block, who were the dealings with?

Mr Stanton: The owners identified a representative who was the primary point of contact with the LDA and ACT government staff.

THE CHAIR: So it was not the owners directly but an agent for the owner?

Mr Stanton: Their representative. I do not know of the employment or otherwise relationship.

THE CHAIR: Who was that person?

Mr Stanton: I do not recall.

Dr Cooper: Could we just check—

MR COE: I think there are a number of identities that it will be useful for the committee to know.

THE CHAIR: Yes.

MR COE: Would it be possible, with your consent, Madam Chair, for us to, in effect, put together a list of positions, and, offline, perhaps you could provide the names of those people?

Dr Cooper: I feel very uncomfortable doing that.

THE CHAIR: I appreciate that.

Dr Cooper: I am just trying to think of a way ahead. Would it be possible for you to put those names forward and we check with those names if they have any objection to us confirming for the committee, because of the protected way we do work? If any of them do object then we can digest that; if they all agree then there is not an issue.

THE CHAIR: I appreciate the way that you deal with these matters and that you do have a protected relationship with people who inform you. I am happy for us to proceed the way that you have recommended, but it might be that we have to have a further conversation if we get to a sticking point.

Dr Cooper: I respect that, and I would also totally respect how difficult this is, because it is very difficult—

THE CHAIR: It is very difficult for us because, for instance, personnel change and we do not know whether we are talking about the right person. And there is a risk that someone may be tarnished or—

Dr Cooper: Aggrieved.

THE CHAIR: something attributed to them that they did not do.

Dr Cooper: We totally agree that it is problematic. If we could try that and then we will look at our legal obligation. We understand; we certainly do. But as a strong principle, people will not come to us and will not share the information if they know we just hand it out.

THE CHAIR: Yes, I appreciate that.

MR COE: Who actually initiated the purchase of this land? What was the catalyst for this? I realise there is a stated explanation for it, but what was actually the catalyst for acquiring the block?

Mr Stanton: When we sought information in relation to block 24 section 65, initially from the LDA in terms of its documentation and recordkeeping, we more or less found the documentation associated with March 2014 and started from there—March 2014 being the design options document for the site et cetera—which then led to the drawings and the discussions with the owners between March and May 2014, which is outlined in paragraph 2.17 onwards.

MR COE: Who did the drawings for the block? Who is the owner of them, if not who actually drew them?

Dr Cooper: We can say that. It was a firm, a group of people.

Mr Stanton: Paragraph 2.24 states:

On 1 April 2014, the Economic Development Senior Manager sent an email ... stating:

I have a proposal from TRACT, Cox Architects and Envirolinks Design ... to prepare the master plan drawings ...

Paragraph 2.26 states:

In early May 2014 ... *Glebe Park Wetlands*, a 'design options' document from TRACT, Cox Architects and Envirolinks ...

MR COE: And was that to the LDA?

Dr Cooper: Yes.

Mr Stanton: Or specifically economic development.

Dr Cooper: We had problems sometimes differentiating between the two, but the agency should be asked for that image, if the committee would like to see it.

MR COE: Yes. With regard to that, you said “I have received”; who actually requested it? Was that actually a proposal from Cox architecture or was that a request from the agency?

Mr Stanton: We do not have the information on that at the moment.

Dr Cooper: But the agency certainly would.

Mr Stanton: Just to clarify, that is the second document. Paragraph 2.21 refers to the “Glebe Park wetland draft discussion paper”. It would appear that that one was produced within EDD and/or LDA.

MR COE: Are you aware of any time line for this work to be undertaken? There has not been a huge amount of progress on this wetlands; we are still waiting.

Mr Stanton: No, we are not.

Dr Cooper: No.

MR COE: With regard to the rights or options of the casino, are you aware of any rights or options for this block that the casino—

Mr Stanton: No, we are not.

Dr Cooper: No.

MR COE: Did you ever request information about that? Did you request information on the use of the block or did that just come up in your general searches?

Dr Cooper: It came up in our general searches—the information we have got. We tried to understand why certain valuations were made, and that is why it just came up.

MR COE: If the government controls the lease variation process and the government had previously said that there would not be any residential on this site, and the government intended to acquire it for wetlands, is there any explanation as to why it was valued for residential and why it was assumed that the lease variation would be approved by the very government acquiring the land?

Dr Cooper: They are questions that you may wish to ask of the deputy chief executive and Colliers, if you interview them. We cannot answer those kinds of questions. We can tell you factually what we found.

MS CODY: Was it Colliers that did the valuation based on residential?

Mr Stanton: That is right.

Dr Cooper: Yes.

Mr Stanton: At that time—

Dr Cooper: There were three options, and they did the residential one. I am just trying to find it; I have marked it, because I thought the committee would want it.

MR COE: Are you talking about the Opteon valuation?

MS CODY: No. Colliers wrote down the valuation.

Dr Cooper: At paragraph 2.69, you have three options there, and the one that was then adopted was the residential, the third one.

MS CODY: It refers to a 280-room eight-storey hotel, 122 serviced apartments—I am paraphrasing here; I am not reading the whole sentence—and 122 residential apartments.

Dr Cooper: One thing that we are aware of that we did not look at in all of this was that \$1 million was also supposed to have been spent on this site—

Mr Stanton: As part of the lease conditions.

THE CHAIR: The lease conditions, which were referred to by the minister in his answer to questions in June—

Dr Cooper: We did not look into that.

THE CHAIR: You did not look into that?

Dr Cooper: We were interested in the acquisition process and we just wanted to get this as best we could on that issue.

Mr Stanton: In June 2015, when there was renewed interest in the acquisition of the site from LDA executives, they were approaching the acquisition from a negotiated market-based transaction. In doing that, the advice that we have from Capital Valuers is that you should not ignore the potential highest and best use of the site, and the highest and best use of the site, according to Colliers International in the advice that was provided in June 2015, was that residential in the order of high threes to low fours.

Dr Cooper: They were looking at the current arrangements that could prevail and whether it was a policy position of the minister or not—they were looking at the legality of the instruments at the moment that could be used. I think that is the way to put it. Again, the whole communication on this is vexed.

MR COE: What involvement did the minister, as economic development minister and then as Chief Minister, have throughout this process?

Dr Cooper: I am unaware.

Mr Stanton: We looked at the LDA records and documentation and we spoke with

PROOF

people under oath or affirmation. We understand that it was managed through those LDA executives.

Dr Cooper: Again, this is an organisation that did not have a strong culture of documentation. So it was very hard to know sometimes even what to ask on some of these issues.

MR COE: Are you aware of any written or verbal briefs to the responsible minister throughout this time?

Mr Stanton: No, we are not.

MR COE: What decisions or what involvement did the board have throughout this process and when were they notified?

Dr Cooper: That is in chapter 4.

Mr Stanton: Well, no. In relation to this one?

MR COE: Yes, this specific one.

Mr Stanton: No involvement in the acquisition.

Dr Cooper: No involvement, and they should have.

Mr Stanton: And they were advised after the fact. I believe they were advised in September.

Dr Cooper: Months later; four months later.

Mr Stanton: Paragraph 2.98: the LDA board was advised that the CEO of the agency had approved the acquisition in accordance with his delegations.

THE CHAIR: In the same month, but after the acquisition. The acquisition was effectively on the ninth, so one presumes that the LDA board was advised after 9 September?

Mr Stanton: I do not know the precise date in September.

THE CHAIR: Yes. But the reading of this paragraph is that they were advised after the acquisition.

Mr Stanton: Certainly the negotiations occurred in June 2015 and the agreement was struck.

Dr Cooper: But there was a lot of communication between members of the board, particularly the chair and the CEO, we understood.

MR COE: About this?

Dr Cooper: No, just in general. It was one of the things where we said that, with so much communication, a challenge would be what do you actually then document.

MS CODY: Paragraph 2.98 says the board was advised by the chief executive officer of the LDA that the acquisition of the block had been approved in September. But you say in paragraph 2.94 that the Chief Executive Officer of the Land Development Agency advised that they provided verbal updates to the Land Development Agency board on the proposed purchase prior to the purchase being made.

Mr Stanton: Yes, that is what it says.

MS CODY: So the board were aware of—

Dr Cooper: It is really hard, some of this, when verbal things happen, to know who was there, who was not. That is the problem for us.

MR COE: But the minutes of the LDA board do not shed any light on whether the board was briefed?

Mr Stanton: I could not answer that specifically. We simply did not go into that level of detail on this.

Dr Cooper: Clearly for us there were some significant issues prior to all of that. Putting it here for the committee, and in the process, we felt we stopped at a particular point, given all the issues.

MR COE: Did you see or did you have access to unredacted copies of board minutes?

Mr Stanton: Yes, we did.

MR COE: You did?

Dr Cooper: Yes.

THE CHAIR: So are you able to verify, either through access to the board minutes or in conversation with the board chair or members, the assertion made in paragraph 2.94 that the chief executive officer advised that they had provided verbal updates to the board prior to the purchase?

Dr Cooper: We would need to go back, if you do not mind, Madam Chair, and check our records on that. We have got it all backed with material.

THE CHAIR: If you could do that on notice that would be helpful.

MR COE: I have a question about the board's interpretation of the land acquisition policy. With regard to that interpretation that was adopted, what is your understanding of when it was adopted, why it was adopted when it was, and what was the interpretation prior to that interpretation?

Mr Stanton: To the best of our knowledge, the framework itself came into effect in

June 2014, and then in August 2015 an interpretation document was presented to the LDA board on the best way to interpret that framework and implement that framework. We cannot answer any questions as to what was the catalyst for that or what was the driver for that; nevertheless, those are the dates for that interpretation document to be presented to the board. It presented a few options for how to proceed with that framework and ultimately a recommendation was put to and agreed by the board. Our report suggests that that was an incorrect interpretation of the framework.

THE CHAIR: It was incorrect?

Mr Stanton: An incorrect interpretation of the framework and that, more or less, all acquisitions should have been put through the board. We received legal advice on that from the Australian Government Solicitor.

MR COE: Did the LDA receive legal advice?

Dr Cooper: Not to our knowledge. That is part of the problem. That is why we made recommendations that they should seek some legal advice. In discussing it with some of the board members, they felt they had enough knowledge in that area and that they had made the right decision.

THE CHAIR: Paragraph 2.98 refers to the board being advised that this block had been acquired in accordance with the chief executive officer's delegation. Is that delegation dependent upon that erroneous interpretation?

Mr Stanton: Yes, I suppose so. According to our interpretation or our advice on the framework, acquisitions less than—

THE CHAIR: That purchase should have been approved by the board?

Mr Stanton: Correct.

THE CHAIR: And the interpretation absolved the board from that role, therefore delegating that to the chief executive officer?

Mr Stanton: Correct.

THE CHAIR: Is that the appropriate interpretation, or was there some written delegation from the board to the chief executive officer?

Dr Cooper: It was this particular instrument.

Mr Stanton: That would be the CEO of the organisation who more or less has a broad remit to spend the money of that organisation in accordance with its objectives.

Dr Cooper: If this helps, you can have delegated power, but if you do not have a policy for a particular thing or if you have a policy for a particular thing that limits you—the delegated financial power under whatever act we get our financial delegations—you cannot just say, “Well, that overrides the other policy.” You actually have to comply with both.

THE CHAIR: So did you look at the chief executive officer's delegations?

Mr Stanton: No.

Dr Cooper: No, we did not.

Mr Stanton: We assumed that the CEO of an organisation has that broad accountability to spend that money.

Dr Cooper: It would not be unreasonable.

THE CHAIR: That the chief executive officer may have a delegation to spend up to a certain amount?

Dr Cooper: That is right.

THE CHAIR: Without reference to—

Dr Cooper: There can be a financial delegation, but if the policy and the framework under which they are operating for a particular purchase say it must go to the board, to me, that does not mean the delegation overrides the other policy. That is why we said they should take legal advice, and that is exactly why we took legal advice to ask how much this held the chief executive and the board to.

THE CHAIR: So it is possible that the chief executive's delegation may be in conflict with the policy?

Dr Cooper: I would not say in conflict; I would say it is there for the broad operations of the agency and there will be some activities on which you have to also comply with a certain policy procedure.

Mr Stanton: The land acquisition policy framework is a notifiable instrument.

THE CHAIR: So that would, generally speaking, override? If there was conflict, it would have precedence over a delegation?

Dr Cooper: In our view. Again, in getting legal advice, that seems to be the case.

THE CHAIR: So why did you go to AGS rather than the ACT Government Solicitor?

Dr Cooper: Because we knew the GSO provides advice on acquisitions to the agency. I choose AGS when we know that other advice has been received, so that we do not put anyone in a conflict of interest. We do it on many occasions.

MR COE: Did anyone in the organisation, including the board, declare any conflicts of interest with regard to this purchase?

Mr Stanton: I do not think we got specific information in relation to that.

Dr Cooper: We did ask some of them under oath or affirmation: did they have any conflicts, did they or their family have any personal gains from this and for the people we did interview, they said no.

THE CHAIR: I am mindful of the time. We are scheduled to be here for somewhere between another 10 and 25 minutes.

Dr Cooper: I would consider this more important than what I have to go to, if that is all right.

THE CHAIR: Thank you for that.

MR PETTERSSON: I have a follow-up question on that point. You said you asked certain people about conflicts of interest.

Dr Cooper: In respect of any of the people we interviewed, we would probably not have used the conflict of interest words, but we would have said, “Did you gain from any of this, or did your family members?”

MR PETTERSSON: That was certain people or everyone?

Dr Cooper: No, just certain people we interviewed, the key people. As we said, the D-G, the deputy D-G.

THE CHAIR: If we are all done on Glebe Park, where do we go to next, Mr Stanton—Mr Spokes?

Mr Stanton: Thank you, we will work our way sequentially through the report. Block 13 section 33 is Mr Spokes bike hire. Essentially, the lease was surrendered on 1 February 2016 for \$1.1 million and the associated business for \$1. The LDA also paid in the order of \$52,338 for the owner’s costs associated with the surrender.

The discussions with the owners in relation to acquisition commenced in April 2014. It is fair to say it was characterised by a difficult relationship that deteriorated over time between the owners and the LDA. The owners also made a significant and unsubstantiated offer to the LDA to surrender the crown lease for over \$3 million. Apparently this claim did not take into account an apparent land value component which is to add additional costs to that figure.

THE CHAIR: So they were saying that the business was worth \$3 million?

Mr Stanton: Yes, the surrender of the lease, technically. In respect of the valuation process, there were three valuations conducted in April and May 2015. Initial valuations valued the real estate and the business at \$275,610 and a third valuation was somewhere between \$220,000 to \$551,000. A few months later in August 2015 additional information was sent by the owners’ broker, including financial records. The first valuations were conducted more or less from the kerbside without any access to documentation and records from the owners. The second lot of valuations valued the real estate and the business at \$647,680 and a third valuation

was somewhere between \$600,000 to \$700,000.

Dr Cooper: That is in table 3.1, for the committee's benefit.

Mr Stanton: Negotiations for the acquisition took place throughout November 2015. There is very little to no documentation associated with these negotiations, nor is there any documentation outlining the rationale for the acquisition price and the amounts paid, which ended up being \$1.1 million.

Dr Cooper: Moving to the business, I would recommend that the committee focus on the next one in particular. There are significant gaps in information on this one.

Mr Stanton: I will move on to block 16 section 33. That is Dobel Boat Hire. The lease was surrendered on 17 September 2015 for a sum of \$1 million. The discussions with the owner in relation to the acquisition were complicated by the existence of an unapproved sublease that was in place for the block. So Dobel Boat Hire was the crown lessee. There was a sublessee, Lake Burley Griffin Boat Hire, which was the operator of the boating business. There was also an apparent business dispute between these entities at the time, which complicated matters.

THE CHAIR: And the entities were owned or operated by different people?

Mr Stanton: Correct.

THE CHAIR: So there are two separate business entities with different ownership structures?

Mr Stanton: To the best of our knowledge, yes. Dobel Boat Hire was the crown lessee for the site and there were a different sublessee and a different ownership structure for Lake Burley Griffin Boat Hire.

Dr Cooper: We do understand that there was a personal relationship.

Mr Stanton: There was no permission for the sublease that had been sought from or approved by ACTPLA, but legal representatives for the owner, Dobel Boat Hire, sought retrospective approval for the sublease in June 2015, but this was not approved.

In April and May 2015 there were two initial valuations for Dobel Boat Hire, being the crown lessee's interest in the land. In respect of the two valuations, one was for \$50,000 and one was for \$100,000. In November 2015 a third valuation was sought from Colliers International. That identified that a total acquisition price could therefore be in the range of \$900,000 to \$1 million.

THE CHAIR: Did Colliers in this case provide a full valuation?

Mr Stanton: We sought advice from Capital Valuers, our subject matter expert in this space. Capital Valuers advise us that the Colliers report does not stand on its own and cannot be relied upon without further review of a number of anomalies in the report. The final ascribed value lacks evidence in the methodology and has not been justified.

Dr Cooper: Where the other two were.

Mr Stanton: Yes, the first two valuations complied with industry standards but lacked some important detail and due to poor data on which to rely, the reports are heavily qualified.

THE CHAIR: What I asked was whether the Colliers' valuation in this case was more in the form of a valuation rather than an issues paper or whatever?

Mr Stanton: It was approximately half a dozen pages or so. I think it was a discussion paper or issues paper.

THE CHAIR: Thank you. Did they pay for it? Did anyone pay for that advice?

Mr Stanton: I do not think we have got information on that.

Dr Cooper: It was hard to find out who paid for what given the arrangements, Mrs Dunne. In fact, it was near impossible on some of it.

THE CHAIR: Okay.

Dr Cooper: That is why we asked, "Was this free advice?" "Yes, it was," or "We had a lot of services from Colliers and we clustered them." You just could not track. This came in and, therefore, that invoice covered that.

THE CHAIR: Thank you.

Mr Stanton: Paragraphs 3.75 through to 3.89 talk about the Colliers International advice in November 2015 and advice we received from Capital Valuers on the shortcomings associated with that advice.

Dr Cooper: We realise the difficulty and the complexity, but it does seem that to go from \$50,000 and \$100,000 up into near a million is quite a jump.

THE CHAIR: That was for the lease, not the business? That was for the land value?

Mr Stanton: Correct. That was for the crown lessee's interest, Dobel Boat Hire's interest, in the lease.

Dr Cooper: Then the other one, the Lake Burley Griffin Boat Hire, that was an additional \$575,000 plus 10, then rental arrears actually back to Dobel Boat Hire. So they got the \$1 million plus \$17,000.

THE CHAIR: The operator owed the landholder rent arrears?

Mr Stanton: Correct, of \$17,000.

THE CHAIR: And when it was all settled up, the LDA essentially paid the arrears?

Mr Stanton: Correct.

Dr Cooper: Correct, yes. This entity got \$1 million plus \$17,000, and the business side got \$585,000—\$575,000 for the purchase of the actual business, the hire, plus \$10,000 to cover their legal and accountancy fees.

THE CHAIR: That issue of covering legal fees also came up in the case of Mr Spokes. Is that a usual activity?

Mr Stanton: I beg your pardon?

THE CHAIR: Is it usual that the territory would cover—

Mr Stanton: We do not know.

Dr Cooper: I do not know. That would be a question to GSO or the agency. Sorry, Mrs Dunne.

THE CHAIR: Okay.

MR PETTERSSON: I have a question on the rental arrears: I was under the impression, based on some of your earlier comments, that the owner of Lake Burley Griffin Boat Hire and Dobel Boat Hire had an existing relationship.

Dr Cooper: On a personal level.

MR PETTERSSON: Right; and there were still rental arrears?

Dr Cooper: I understand that there is a personal relationship; so what you conceptualise is two businesses but then, also, as we are human, there was also a personal relationship, but we also understand that there was not harmony.

MR PETTERSSON: I was under that impression as well.

THE CHAIR: Yes.

MR PETTERSSON: But they still paid \$17,000.

Dr Cooper: Yes.

THE CHAIR: What did the valuation, the \$500,000-odd for the Lake Burley Griffin Boat Hire business, cover? Was that half a million dollars' worth of boats and the shed?

Mr Stanton: Correct. That was the business itself. So initial valuation advice from three valuers valued the business at between \$270,000 to \$278,750. That was the business—

Dr Cooper: Table 3.2.

Mr Stanton: That was the business as a going concern.

Dr Cooper: But even that was significantly above the valuations, what they did end up getting paid—nearly double.

THE CHAIR: But then they ended up with a valuation from Colliers that took it slightly over \$500,000.

Mr Stanton: No, Colliers International did not provide any valuation advice for the business of the boat hire.

THE CHAIR: Sorry, I stand corrected. So how did we come to a valuation of slightly north of \$500,000 then?

Mr Stanton: A purchase price?

Dr Cooper: No documentation.

Mr Stanton: Very little documentation.

Dr Cooper: So the valuations we found were in table 3.2, and then as to how they got to the other figure, there is a lack of documentation.

MR COE: It has been reported that there was a broker involved in these dealings. What is your understanding about how the broker was appointed and what the role was?

Mr Stanton: We approached this exercise by looking at the acquisitions processes and the documentation and record keeping of the LDA. If the business owners or crown lessees were represented by either an agent or a broker, we just assumed that relationship was there and we made no inquiry into that.

MR COE: Are you aware of any payments by the LDA to the broker?

Mr Stanton: No, I am not.

MR COE: You are not aware or there were not any?

Mr Stanton: I am not aware.

Dr Cooper: In much of the material we have, I do recall reading something, but I cannot remember exactly what it was.

MR COE: Do you have a definitive list of payments made by the LDA or by the ACT government related to this purchase?

Mr Stanton: I am not sure what you mean by “definitive list”. We have simply reported what we understand to be the acquisition prices and the amounts paid to settle the crown lessee’s interests.

MR COE: I imagine you have thousands of pages of documents related to this

inquiry. In amongst that, do you—

Dr Cooper: If there were other figures paid, we would have reported them, to give full transparency to how much all of this cost. That does not mean it did not occur, but what we have been able to source is what we have presented around the acquisition.

MR COE: Do you have any understanding about the role of the broker?

Dr Cooper: We are aware, but in terms of their role—

Mr Stanton: I am vaguely aware of either an agent or a broker—I am not really sure about the terminology—for the bike hire.

MR COE: Yes, that is what I am referring to.

Mr Stanton: All that I can recall is that at the end of the statement in figure 3-1, from the former owners of the bike hire, it states:

We remain eternally grateful to our broker/mediator who helped both parties return to the negotiating table ...

There is that broker and/or agent, and then there is another—

MR COE: I am curious about why it would take a broker to be involved in this—

Dr Cooper: It could be—

MR COE: and how they were remunerated, how they were appointed and what gave the broker the confidence to know that they might be able to resolve this situation.

Dr Cooper: We did not go there, Mr Coe. We did not ask those kinds of questions.

MR COE: Is there a reason why that was not approached? I realise there is a lot of—

Dr Cooper: We covered a lot of things. In terms of that particular issue, it did not come up.

Mr Stanton: We were simply trying to answer the question around the acquisition process, and what happened unfolded in relation to the acquisition and the documentation and record keeping supporting that. With respect to the relationship or otherwise between representatives, agents and brokers, we did not go into that.

MR COE: If a payment is made without a valuation or without substance, is it actually a legal payment in terms of government rules, guidelines or even laws?

Dr Cooper: You would have to ask a legal person. The money is gone; it is in someone else's bank. I do not know.

MR COE: It is not a question about whether it is retrievable; it is more about the actual legitimacy of a payment that cannot be substantiated. That, on face value, is a

very serious issue.

Dr Cooper: It opens the risk of fraud, and that is why we report where there are risks. This whole thing, in terms of any systems issue, opens up the opportunities for fraud. When you have a system this loose, without documentation, there is no way that the agency can come back and show justification, which is why one of the principles of any government is to have that transparency through documentation.

MR COE: Can you rule out fraud having taken place in this transaction or any of the transactions?

Dr Cooper: We cannot rule out fraud in anything. We cannot even rule it out in the way we prepare our financial statements. We go in at a particular level. If we see it, we certainly will do something about it, if it becomes blatantly obvious, but you cannot rule it out. But you then cannot assume it did occur.

MR COE: That is right. But you can say that, in these circumstances, there is a higher risk of fraud occurring?

Dr Cooper: Absolutely. You can say that, given loose systems like this, it provides the opportunity for that to occur and go undetected.

MR COE: In terms of the attitude of the LDA officials that you dealt with throughout this process, were they, firstly, cooperative?

Dr Cooper: Yes, they were.

MR COE: Secondly, were they aware that their processes were out of step with best practice?

Dr Cooper: I do not know whether they were aware of that, but there were statements like, “Well, we put a lot of trust in certain things.” We did talk about what were the values of the organisation. So it is the cement that holds an organisation together, for me—values—and then the processes. I think once they read the report, they certainly were quite aware that their lack of documentation was problematic for them.

MR COE: In terms of the evidence that you received, is it fair to say that this culture was pretty well entrenched in the LDA? Was this how they have been doing business for quite a while?

Dr Cooper: That is why at the moment we only looked at a few sites. You always have the benefit of the doubt. We are doing another audit looking at the Land Development Agency assemblage of rural lands, which is quite different from these kinds of sites. We are right in the process of doing fieldwork for that. If that brings up similar issues, or even different issues, again, this is a loose governance arrangement and loose management that pose risks for the territory. We cannot generalise from these few sites, but we quite clearly can say that, for these few sites, there are very significant problems.

Mr Stanton: Chapter 4 of the report is entitled “Administrative matters”. In the

course of looking at these sites and these acquisition processes, another set of issues came up around governance, project management, procurement, contracting and responding to the FOI requests, which we felt warranted elevating in the report. Our conclusion was:

... given the significance of the findings an independent audit of other activities of the Land Development Agency seems prudent.

That led to the rural lease acquisitions one.

THE CHAIR: Before we get on to the administrative matters, could I touch on one issue which keeps coming up—that is, the threat of compulsory acquisition, which comes up on a number of occasions. First of all, it seems to me that the threshold for compulsory acquisitions was not there. In fact, on at least one occasion the LDA sought advice and was advised that they could not go down the path of compulsory acquisition. Did you gain a view that these references to compulsory acquisition were made in good faith or were they made in a way that was perhaps badgering or bullying to give an advantage in negotiations?

Dr Cooper: I do not think we can make a call on that at all. There was huge enthusiasm and drive in the first instance, particularly over the first block of land we discussed, to resolve it as quickly as they could. There was clearly enthusiasm, but then for six or seven months everything seemed to stop and then the executive took it over.

THE CHAIR: So the issue about compulsory acquisition in relation to the Glebe Park land was raised by the project team?

Dr Cooper: That is exactly right.

THE CHAIR: Rather than the chief executive or deputy chief executive?

Dr Cooper: And that was a big point of difference between the people in the organisation—an incredibly big difference.

THE CHAIR: Would you like to elaborate on that?

Dr Cooper: From the first discussions around the site, they were quite clear they were heading down the compulsory acquisition path.

Mr Stanton: The project team.

Dr Cooper: The project team. In their minds was: “This is what we’ve got to do.” Then there was that break period, the executive came in and that was completely off the table—compulsory acquisition.

THE CHAIR: My recollection is that, in relation to the bike hire, there was a threat of compulsory acquisition. I am not sure about the other, the boat hire, off the top of my head. Did they actually contemplate compulsory acquisition or was it used as a bargaining exercise?

Mr Stanton: No, I believe they did. I would refer to paragraphs 2.104 to 2.111. This is a discussion around the potential compulsory acquisition of Glebe Park, of block 24, section 65. But it refers to, from my recollection, three occasions between March 2014 and March 2015 that the LDA sought legal advice on compulsory acquisition of land. At least one of those was in relation to the land adjacent to Glebe Park and at least one of those was in relation to the other blocks around Lake Burley Griffin, being these other ones. As for the third piece, I cannot recall whether that was specifically for one or the other or all. In paragraph 2.108, in relation to the potential compulsory acquisition of land around Lake Burley Griffin, in terms of “public purpose”, the advice from the ACT Government Solicitor was:

There is some uncertainty whether the proposed acquisitions are for public purpose.

The quotation is set out there. It concludes by saying:

I think on balance the acquisition is for a public purpose and therefore permitted ... though the matter is not entirely free from doubt.

THE CHAIR: So this was in May 2014. In that early stage they were thinking about compulsory acquisition, so it would have been at least in that time frame as a possibility that they would raise with the lessees?

Mr Stanton: They certainly sought legal advice on it.

THE CHAIR: Are there any other questions on the acquisition of the land before we move on to the administrative matters?

MR COE: Yes. As a follow-up to your question, Madam Chair, Auditor-General, you have confirmed the difference of opinion between compulsory acquisition and the executive view of going through private treaty. But what you did not state is the reason for that difference of opinion. You stated there was a difference of opinion but not the reasons for it. Do you have any information about that?

Dr Cooper: My only understanding is that there were some assumptions made by different people that were never documented again. People made assumptions and progressed on a path, but we do not have the reasons behind it.

Mr Stanton: May I suggest paragraph 2.111, which reads:

The Chief Executive Officer of the Land Development Agency has advised under oath/affirmation that the suitability of Block 24, Section 65, City ... for compulsory acquisition was uncertain. The Chief Executive Officer advised that uncertainty derived from whether the purchase of the land met the ‘public purpose’ requirement for compulsory acquisitions ... given the portion of the land that was ultimately to be used for the purpose of the relocated pond.

Dr Cooper: However, with the project team earlier, their reasoning was not something that came forward.

Mr Stanton: Yes, these were assertions put to us as to these differences of opinion.

MR COE: And you are not aware of whether that was backed up by any legal advice?

Mr Stanton: In the preceding paragraphs, it is stated that legal advice had been sought from the ACT Government Solicitor in relation to various parts of all of these acquisitions. In paragraph 2.109, although this is specifically in relation to the businesses around Lake Burley Griffin, the ACT Government Solicitor said:

... we require further instructions regarding the exact plans for the blocks to allow us to provide more definitive advice as to whether the public purpose test is satisfied.

That quote relates to those leases around the lake.

MR COE: And that was not provided?

Mr Stanton: It continues:

Once you have provided this detail we will examine this issue further.

I do not know how that unfolded. Ultimately, for those leases and for the land adjacent to Glebe Park, the LDA decided to proceed on an open market transaction.

MR PETTERSSON: In their statement, the former owners of Mr Spokes bike hire make the point—point one—that “unwillingness to communicate in writing” was one of the reasons why they found negotiations quite cumbersome. Was it ever put to LDA officials that there may not have been sufficient communication in writing? Did they have a view that they had been communicating sufficiently in writing?

Dr Cooper: We did not ask specifically on that issue. We offered various parties the opportunity to present words that we would not select parts from; that they could make a statement. These people offered those words, so we left that at the end. Did LDA think it was enough or not? We did not ask them; we just put down what we found. We did not find concrete evidence on some of the things that you would have expected.

MR PETTERSSON: The reason why I bring it up is that you mentioned before that there was a preference to talk over the phone for some of these dealings.

Dr Cooper: There appeared to be a culture of verbal advice to each other.

THE CHAIR: Which would be reinforced—

Dr Cooper: By this.

THE CHAIR: This statement about the unwillingness to communicate in writing is reinforced by your experience of record keeping?

Dr Cooper: Yes. Or it could be completely separate—they were communicated with

and they just did not like what they received—but we do not have the evidence of that. Also I think some of their wording indicates the whole communication problem within the agency. Lacking detail, staff changes, contradictory approaches; it does depict the communication and the management style in the organisation.

MR COE: Are you aware of whether the government actually has the legal powers to purchase businesses?

Mr Stanton: We did not specifically seek to answer that question. I note that the ACT Government Solicitor was assisting and providing legal advice and facilitating the transactions, so that question might be directed to them.

THE CHAIR: The Government Solicitor was providing advice in relation to compulsory acquisition of a lease, not necessarily a business.

Dr Cooper: We would have to go back and look at what they asked.

Mr Stanton: I do not know about the specifics of the compulsory acquisition advice that was provided, but the ACT Government Solicitor was facilitating and drawing up the deeds of sale and the like for all of these acquisitions: leases and businesses.

MR COE: Did the LDA only use the Government Solicitor or did they use other lawyers?

Mr Stanton: I do not know specifically.

THE CHAIR: Could we move on now to the administrative matters in chapter 4.

Dr Cooper: We have addressed some of these: the land acquisition policy. The governance arrangements are in there; there were no plans. What you would expect for a project like this is a clear articulation of plans to guide what you request people like GSO to give advice on in terms of acquisitions and then in terms of valuations. That was not there.

Elleven Consulting; Brett might go there in terms of the hiring of people. You could say that under this arrangement nothing illegal happened. But was it actually the intent of the hiring arrangements to allow the flexibility to go on to two-point-whatever-it-is millions worth of services to be provided by single select? I think this is at the heart of an integrity-type issue. You do not do just what is legal; you do what the intent of something that allows you to be flexible requires.

Mr Stanton: That is the procurement of services from Elleven Consulting Pty Ltd or Elleven Project Co-ordination Pty Ltd.

THE CHAIR: What is the difference between those two entities?

Mr Stanton: The personnel were more or less the same between the two entities but they were different company structures. I do not specifically know, but both of those company structures were engaged by the LDA at various points.

Since 2011, approximately \$2.66 million in payments have been made to both of those entities. The services were all approved on a single-select, non-competitive basis, with the CEO of the LDA approving their exemption from the requirements of the government procurement regulation.

A significant proportion of these payments relates to services provided by former executives of the LDA or the Economic Development Directorate. The former project director for the city to the lake project advised under oath or affirmation that the former executives were employed on the basis that their previous public service remuneration package was matched by the companies but that there was a profit component built into the fees that was charged to the LDA or EDD.

In our view the administrative arrangements used to secure these services—being successive single-select, non-competitive procurement processes—make it difficult to demonstrate that the services are an effective use of public money.

THE CHAIR: Because we do not have names to attach to things, I am not quite sure whether we are talking about the same people or different people. They need numbers or something like that. There were employees of the LDA who were engaged on the city to the lake project—not the project director?

Dr Cooper: Can we go back?

THE CHAIR: Yes.

Mr Stanton: In April 2012, Elleven Consulting was engaged to provide financial services to the Economic Development Directorate.

THE CHAIR: What sorts of financial services?

Mr Stanton: Financial management, financial administration, taxation advice and the like.

THE CHAIR: Were those the sorts of services that would normally be provided by Shared Services, or was there something specialised?

Mr Stanton: I do not know.

Dr Cooper: Paragraph 4.106 is to do with these financial services. Then we ceased the conversation on those for a few pages until 4.124. That is one person.

Mr Stanton: A handful of people, but a key person there was a former executive of the Economic Development Directorate who finished as a temporary employee of the directorate on 21 April 2012 and commenced through these arrangements on 23 April 2012. So there was one former executive of the EDD providing those financial, taxation and other services but there were also a few other people providing those services through Elleven Consulting Pty Ltd.

In September 2012, Elleven Consulting Pty Ltd was further engaged to provide services to the directorate for the city to the lake project. That was varied in

September 2013 and again in November 2013. A key person associated with this was a former executive of the LDA whose employment there ceased on 19 September 2012 and who commenced on 20 September 2012 through this company, Elleven Project Consulting, to provide city to the lake project services.

THE CHAIR: But in the first case the person employed was temporarily employed by the Economic Development Agency?

Mr Stanton: Yes, a temporary employee.

Dr Cooper: Under the Public Sector Management Act.

THE CHAIR: And that person's job was to provide specialist financial advice to the Economic Development Agency, or to the LDA?

Mr Stanton: I do not know about specialist but it was financial and other advice to either the EDD or the LDA.

THE CHAIR: You are not sure?

Mr Stanton: Correct.

THE CHAIR: That contractual appointment under the Financial Management Act ceased on a particular date and, on the day following that, the same services were provided by the same person through Elleven Consulting?

Mr Stanton: That is our understanding.

Dr Cooper: It may not be exactly the same services; they might argue that that person provided services in that financial area.

THE CHAIR: Okay. That is one. Then, further down the track, Elleven Consulting took over functions in relation to advising on the city to the lake project. Did the personnel come out of the LDA into Elleven Consulting?

Mr Stanton: Correct.

Dr Cooper: Or ESDD, yes.

THE CHAIR: You are not sure?

Mr Stanton: That one was LDA.

THE CHAIR: In that case, was the person's employment under the Public Sector Management Act concluded, or did they resign?

Mr Stanton: It was concluded.

THE CHAIR: So they had a contract and the contract expired?

Mr Stanton: That is correct. Table 4-4 provides some information as to dates and times there.

MR COE: I am just curious why the LDA would entertain this arrangement. They did not go through with it, of course. Could it be related to cost centres? When they were under public servants, did they come under one cost centre, whereas when they were—

Dr Cooper: Contracting consultants.

Mr Stanton: It was asserted to us that there was an exercise at the time to try to identify the staffing and executive needs of the LDA and/or EDD at the time, and some positions were identified as no longer there. Nevertheless, the people in those positions whose contracts were concluding were subsequently employed through this company to provide services.

MR COE: In effect, were the executives—and I mean at the very top of the LDA—told to become more efficient or lose staff and they did that? However, because they still needed them, they then came to another arrangement?

Dr Cooper: As auditors we tend to shy away from the motive. But I think 4.110 and also 4.163 might capture a sentiment similar to what you are posing in your question. Yet I recall that the chief executive denies saying these words. It is quite clear in 4.110:

... came to me and said, “We can’t lose [the former executive] but I can’t be seen to be employing [them].

...

[The former executive] and [the Chief Executive Officer of the Land Development Agency] came to see me to say, “Look, is there a way we can get [them] into your company as a consultant?” I ran a business with consultants, right.

And then the other one in 4.163:

... I’m in the business of hiring out people.

...

So there was a profit in it for me ... I’ll be quite honest. I was making a profit on their employment but that was my business. I had a consultancy ...

And we did go on to ask, because we were really concerned more about the acquisitions:

Without sharing too much, was it a healthy profit?

The response, under oath/affirmation, was:

It was reasonable. Better than [the first former executive’s].

We then asked:

So it would have been cheaper ... it would have been more cost-effective for the government to maintain [the second former executive's] employment than to put it through a private forum?

And the response was:

Well and truly.

We did not go into how much; otherwise we would be doing these audits for a year or two years. We thought we should focus on the acquisitions and that these were peripheral issues of significance that we thought we would bring forward.

MR COE: But to get the sequence of events right, the LDA, in effect, asked this company to facilitate it?

Dr Cooper: Alleged that that had occurred. There is no—

MR COE: Well, the LDA agreed to it, did they not? Obviously.

Dr Cooper: The LDA did agree to it, yes, and it was signed off at the CEO level, as you have to under single select.

Mr Stanton: The representative or the person associated with Elleven Consulting or Elleven Project Coordination asserts that the CEO of the LDA came to them with the advice: “These people are too valuable to lose. Can you find an arrangement for them?”

Dr Cooper: But the CEO says that was not the case.

Mr Stanton: Correct.

Dr Cooper: So I think we need to—

MR COE: But if they were too valuable to lose, why did the LDA not just keep employing them?

Dr Cooper: I think that is a question for the agency. I am sorry; it is a valid question but we did not ask that. Again, in an audit, where is our focus? These were issues that came up about their overall management approach to things. You should have a workforce plan and you should have a whole suite of things and you should figure out whether you keep staff or whether you use consultants. We did not go there. That would be another detailed audit on how they manage their workforce.

Mr Stanton: The other issues that were raised in this chapter are in relation to responding to the freedom of information requests, which we can go through, and also the role of Colliers International and the arrangement they had with the executives of the LDA.

THE CHAIR: In relation to the FOI requests, as far as the committee understands, there is a police investigation afoot, so it may be appropriate to pass over that.

Dr Cooper: Fine.

Mr Stanton: At the conclusion of chapter 4, in relation to the role of Colliers International, from paragraph 4.178 onwards we note and reiterate that advice was provided by Colliers International in relation to the various acquisitions. We note and reiterate that there was an absence of written instructions for the services performed and no payment for the services and that that impairs transparency and accountability and impartiality of the services provided. There was no evidence of a proper process in relation to the seeking of valuations for the acquisitions. It also became apparent during the course of the audit that the former deputy CEO of the LDA—

THE CHAIR: The one who finished in August 2015?

Mr Stanton: Correct. That person was in a relationship with the principals of Colliers International. There was some sort of mentoring relationship that was instigated by the CEO of the LDA, who requested the principal of Colliers International to provide that mentoring advice and support to the deputy CEO, and what we understand of that arrangement is documented.

Dr Cooper: And that raises a conflict of interest issue.

MR COE: Madam Chair, I ask you to consider whether we can review the FOI issue.

THE CHAIR: I am agnostic. It is a matter for police investigation. It is not sub judice; there is no court matter afoot as far as we know. I am sensitive to the fact that there is a police investigation, but it is only a police investigation. With the indulgence of the committee—

MS CODY: My concerns are in—sorry, excuse me for a moment.

Dr Cooper: Would you like us to leave?

THE CHAIR: No.

MS CODY: No, not at all. My concerns relate to other information I have received. It is very clear to me that in committee hearings if evidence is given and then if the police try to use it in an investigation and it does go further to become a case that is supported by the Director of Public Prosecutions—the evidence given in a committee hearing—there is a bit of a grey area as to whether that information can be continue to be supported. I feel that it would be not very good for the committee to look at this, but that is just my opinion.

MR COE: At the risk of turning this into a private discussion, however, we do not actually know what matters the police are investigating, and we are not necessarily going to get notified if they close the investigation, either. If we are not careful, we could be limited by lots of things.

THE CHAIR: I am prepared to contemplate the questions, yes.

MR COE: Auditor-General, are you happy to answer these?

Dr Cooper: We will answer anything. Essentially, what we are doing is answering anything that is already in the public domain. So we are happy to share, for clarity, what we have written. That would be my view, rather than introduce any new material that is already out there.

MR COE: I think it is well known that the freedom of information request was submitted by me. In terms of the time line, the report makes mention of the fact that the correct document was provided to the applicant. What issues were there that you are aware of surrounding the provision of that correct document?

Mr Stanton: I draw your attention to paragraph 4.170 onwards of the report. Our understanding is that an FOI request was received by the LDA on 5 November 2015. The LDA, or the people handling that particular request, were seeking to locate that Colliers International discussion paper document, which is referred to in paragraph 2.72 onwards. That was the document, the second two-page document, that was provided by Colliers International.

THE CHAIR: The one that was on the file.

Mr Stanton: This was on file. The second one was provided on 16 June 2015. A senior manager from the LDA contacted the principal of Colliers in order to obtain a copy of that document. The principal of Colliers sent through the discussion paper at 9.57 am on 12 November 2015 saying:

... please find attached what was provided to [the former Deputy Chief Executive Officer ...] If you want it changed to say valuation advice I can change.

At 10.05 am, eight minutes later, the principal of Colliers International sent a further email stating:

... this is a copy of the advice provided to [the former Deputy Chief Executive Officer ...]

Attached to that email was the same document, identical in all respects, except that the term “discussion paper” was changed to “valuation advice”.

MR COE: What is the significance of that change of wording?

Dr Cooper: It is around, I think, the difference between what you could reasonably expect a discussion paper to be, which is something quite loose, maybe searching ideas down to a valuation—what was the word?—

Mr Stanton: Advice.

Dr Cooper: advice, which you would expect would be a lot firmer.

MR COE: Could the government reasonably depend on that document to make a payment?

Dr Cooper: I would not have imagined, but it would have more credence with that kind of title, I would imagine, than a loose discussion paper.

MR COE: Right, but it did have that title at the time of the payment being made?

Mr Stanton: Discussion paper.

Dr Cooper: Discussion paper, correct. In terms of words being our vehicle of communicating, “discussion paper”—a very loose thing—yes, that was used then. But then to imply that it was more than a discussion paper is misleading.

MR COE: Sure. paragraph 4.174 makes reference to a further freedom of information request.

Mr Stanton: Correct. That paragraph there refers to another FOI request. The June 2015 discussion paper was provided in response to that FOI request; that is our understanding. But in releasing this document the LDA did not identify or otherwise correct the record that the first document had been created only in November 2015—ie the valuation advice.

MR COE: Are you confident that that document was provided at that time or is that the advice that was given by the agency?

Mr Stanton: That is our understanding, based on the agency’s records.

MR COE: If in November a document called “valuation advice” was provided and on 7 January the original document was provided, what communication took place in that two-month period to cause the LDA to give the original document in January?

Mr Stanton: We are not aware of any. We did not go into that level of detail. We simply sought information on what was provided, to the best of our knowledge and in response to those FOI requests, and reported on that.

MR COE: I understand that—the reference to this is in paragraph 4.175—a senior manager, now executive, was counselled in relation to their actions. What evidence is there to suggest that they were counselled?

Dr Cooper: There was actually a report done, an investigation within the agency.

Mr Stanton: There is documentation.

Dr Cooper: I understand, yes. I understand that there was.

MR COE: Do you know who conducted that report?

Dr Cooper: No.

Mr Stanton: I believe it was an internal investigation.

MR COE: Do you know what instigated that investigation?

Mr Stanton: No, I cannot recall it.

Dr Cooper: But the agency should be able to provide the committee with that kind of information, because we are very aware that there was that process.

MR COE: Because I—

Dr Cooper: And there was training. I can remember being told there was training for all staff on how to handle FOIs.

MS CODY: It does say that at 4.176.

MR COE: Yes. I am perplexed as to how it could be accepted practice in November to do this but then two months later suddenly there was an about face on it. Do you know who was aware in November of the provision of that altered document?

Dr Cooper: No.

Mr Stanton: Not offhand, no.

MR COE: Paragraph 4.175 says that the senior manager, now executive, was counselled in relation to their actions. So the senior manager was promoted?

Dr Cooper: Correct.

MR COE: Following this?

Dr Cooper: Correct. Their view, I recall—and I may be wrong—was that there was an issue. The person was counselled. They now have knowledge and there was across-agency training.

MR COE: Do you know when the senior manager was counselled but also when they were promoted?

Dr Cooper: No.

MR COE: Thank you. Are you aware of any telephone calls that took place throughout this time?

Mr Stanton: No.

Dr Cooper: No, sorry.

THE CHAIR: Are there any concluding questions that we might have for the Auditor-General?

MR COE: I expect, Madam Chair, that I will have further questions upon reflection on the evidence and the transcript. Would the Auditor-General be willing to accept questions in writing from the committee?

Dr Cooper: Yes. Without consulting with my colleague, I think what we might do to help the committee is, without putting names down, maybe put person A, B or C and then track them through parts of the report. I will give it to the secretary and see if that helps in terms of—

THE CHAIR: It will help to some extent, but at some stage we need to know whether our witness list is complete.

Dr Cooper: I respect that, Madam Chair. I am just thinking in terms of reading a document how that might help.

THE CHAIR: Yes.

Dr Cooper: Okay, we could do that.

MR COE: In respect of my only question about conflicts of interest, I think I might have framed it specifically with regard to block 24, section 65. I might broaden that question: regarding all the acquisitions, were there any conflicts of interest that you came across or that were declared by anyone that you investigated?

Mr Stanton: Not specifically, but in the course of the audit we spoke to various people, either under oath or affirmation or through interview process. Particularly under oath or affirmation, to reiterate what Dr Cooper said a little earlier, we would have asked those people if they actually had anything to gain from the particular acquisition. We asked those questions of those people. So far as other general information about conflicts of interest and the like for various people, clearly a lot of people were involved but we cannot answer at this point in time whether this person or that person had declared through one forum or another what their conflicts might or might not be.

MR COE: But there were no remarkable conflicts that you came across?

Mr Stanton: Not specifically, no.

MR COE: Thanks.

THE CHAIR: Any other questions? Thank you, Dr Cooper and Mr Stanton, for your extended visit today. It was very useful. There are a number of things that you said you would take on notice. We will perhaps have an offline conversation to make sure that our records and your records on that are the same.

Mr Stanton: There was a question taken on notice.

Dr Cooper: That was in relation to paragraph 2.94. We will come back with a copy marked so that you can track people. But also—I cannot remember whether we

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agreed—we might contact everyone that we spoke to to see if they have any objections, because in some ways it would be better to give our considered final transcript than necessarily their providing it. It saves us checking for accuracy.

THE CHAIR: Yes, but you are also going to contact people about names being revealed to the committee.

Dr Cooper: Yes, the same: material and names, Madam Chair.

THE CHAIR: Thank you very much. We will conclude.

The committee adjourned at 11.30 am.