



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 PETERSSON (Deputy Chair)
MS B CODY
MR A COE

PROOF TRANSCRIPT OF EVIDENCE

CANBERRA

WEDNESDAY, 27 SEPTEMBER 2017

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Secretary to the committee:
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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.

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Amended 20 May 2013

The committee met at 9.32 am.

BARR, MR ANDREW, Chief Minister, Treasurer, Minister for Economic Development and Minister for Tourism and Major Events

PONTON, MR BEN, Director-General, Environment, Planning and Sustainable Development Directorate

THE CHAIR: Good morning, and welcome to the second public hearing of the Standing Committee on Public Accounts inquiry into the Auditor-General's report *Certain Land Development Agency Acquisitions*.

On the table, Chief Minister and Mr Ponton, there is a pink card in relation to privilege. I would ask witnesses to make themselves familiar with it; I am sure you both are. I advise witnesses that the proceedings today will be recorded and transcribed, and copies of the transcript will be sent to witnesses for their consideration.

I welcome the Chief Minister and Minister for Economic Development, Mr Barr. Mr Barr, have you read and understood the privilege statement?

Mr Barr: Yes, thank you, chair.

THE CHAIR: Do you wish to make a brief opening statement?

Mr Barr: Indeed; and I am conscious of previous committee findings around the brevity of opening remarks.

THE CHAIR: I was just going to make that comment; thank you.

Mr Barr: Thank you, chair, for the opportunity to make some opening remarks. In drawing to the committee's attention the government response to the Auditor-General's report, I can confirm that the government accepted and has implemented all seven recommendations contained in the Auditor-General's report to enhance probity and governance when undertaking these forms of activities.

The former Land Development Agency established a governance program to address all of the Auditor-General's recommendations, relating particularly to executive ownership and accountability for governance. That was embedded through the LDA's governance executive committee, chaired by the deputy chief executive officer.

A dedicated governance function was established to develop and oversee a comprehensive program for the agency as a whole. A centralised core business process was implemented in relation to valuations, requesting legal advice, and records and document management. Training and education sessions were conducted for all LDA staff on instructing valuers, fraud prevention and ethics, records management, financial delegations and procurement.

Guidance material and working instructions were developed and provided to staff in relation to record keeping, requirements for briefing the LDA board in relation to land

acquisitions, and the process for amending or seeking advice on the land acquisition policy framework and use of compulsory acquisition under that framework.

The committee should be aware that this process and investment in public sector governance is a continuous thing, and that it continues across into the new land development arrangements that commenced on 1 July with the creation of the City Renewal Authority and the Suburban Land Agency. With the abolition of the LDA and the creation of the two separate land development bodies, they have been established with clear reporting mechanisms and governance structures. This was a commitment that I made prior to the last election. As you would all be aware, because you participated in the debate, the Assembly considered a new legislative framework, passed that legislation and commenced the new bodies by the start of the first financial year following the election.

The ongoing commitment that we have in relation to this rigorous governance model is demonstrated by the appointment of independent governing boards that are directly accountable to the relevant responsible minister for the performance of the entity in pursuit of the government's expectations and directions; the creation of a dedicated chief executive officer for each agency and authority respectively to ensure a clear and single line of accountability to their respective governing boards; an annual direction setting process by the responsible ministers through a legislative statement of expectation for the City Renewal Authority and a similar administrative direction for the Suburban Land Agency; and enhanced statutory reporting requirements in relation to land acquisition.

As part of the administrative arrangements that came into effect on 1 July 2017, some land development policy and governance functions were moved into the Environment, Planning and Sustainable Development Directorate, which reinforces the governance oversight of the two new entities and ensures that there is a clear delineation between the policy and delivery arms of land development.

We will continue to roll out improved governance structures within the portfolio as a whole across five key themes: governance systems and framework documents; project management governance; document control and records management; operational policy and procedure; and training and communication.

I think that covers where we are now in relation to the issues that the Auditor-General has raised. In summary, there has been a quick and decisive response in relation to the seven recommendations of the Auditor-General; a new legislative framework; consideration by the Assembly as a whole of new governance arrangements; and a more robust system in response to the issues that the auditor has raised. With that, Madam Chair, I will wrap up my opening remarks.

THE CHAIR: Thank you, Chief Minister. In June 2014 you signed the Planning and Development (Land Acquisition Policy Framework) Direction 2014 (No 1). Is that the first time that there was a land acquisition policy framework for the LDA? From reading it, it does not seem that it replaces a previous one, but I just wanted to check that.

Mr Barr: I believe so, yes.

THE CHAIR: What was the process for finalising the land acquisition policy framework?

Mr Barr: Cabinet-level consideration and then approval.

THE CHAIR: So there was a full cabinet submission?

Mr Barr: Yes.

THE CHAIR: What sort of time frame was involved in the consideration of that? When did it start? You signed it off on 14 June, so when did the process start?

Mr Barr: There were the usual cabinet processes associated with the guidelines outlined in the cabinet handbook.

THE CHAIR: So there was a cabinet submission and there were coordination comments, but when did the process start?

Mr Barr: I will need to take that date on notice.

THE CHAIR: Thank you; that would be good. In the consultation process, was there consultation outside government, with property experts et cetera?

Mr Barr: I will need to take that on notice as well.

THE CHAIR: Okay. I think it was in August or September the following year that the LDA board approved a guidance procedure for their interpretation of it, which seems to be at the heart of some of the problems, because the interpretation seems to have been somewhat different from the plain words in the policy framework. Were you aware of that at the time?

Mr Barr: That the LDA had taken a different interpretation?

THE CHAIR: That the LDA had an interpretation.

Mr Barr: No.

THE CHAIR: When did you become aware that the LDA board had a different interpretation?

Mr Barr: In the context of the Auditor-General.

THE CHAIR: So not until the Auditor-General reported or in the investigatory process?

Mr Barr: The process, yes.

THE CHAIR: Could you, on notice, perhaps come back to us, if you can, with when you first became aware that there was a discrepancy between the policy document and

the LDA's interpretation?

Mr Barr: Sure.

THE CHAIR: This report on certain land acquisitions relates to three different land acquisitions and some administrative matters, Chief Minister. What did you know about each of the land sales in question at the time, contemporaneously with what was going on in the LDA?

Mr Barr: In relation to West Basin, the first cabinet-level discussions on West Basin would have occurred in 2006, associated with the Griffin legacy amendment. The then federal minister was Jim Lloyd; he was the minister for territories, I understand, at that time. The National Capital Authority undertook a consultation process in relation to the Griffin legacy that incorporated West Basin, linkages between the Canberra CBD and Lake Burley Griffin. At that stage—I joined the cabinet in May 2006—I believe the federal minister signed off on that change towards the end of calendar year 2006. Whilst I do not recall the specifics of submissions before cabinet at that time, it certainly was a planning matter that required the input of the ACT government.

THE CHAIR: I think you have misunderstood the point of my question. At the time that the land sale that was being dealt with in the report on certain land acquisitions was being processed, from August 2014 onwards, what did you know contemporaneously?

Mr Barr: I think it is important, in the context of the history of West Basin, to understand the issues associated with planning changes, and therefore any land acquisition that commenced way back then. The next discussion in relation to West Basin would have been in the context of the city plan work and then when Chief Minister Gallagher launched the city to the lake strategy.

In relation to the period 2014 onwards, cabinet and cabinet subcommittees would have discussed both the city plan and city to the lake projects. In the context of a potential land release, I think the 2014 city plan work, when it was published, indicated a land release time frame for West Basin of a five-year period—in the period 2014 to 2019 there would be development in that context. There were then a series of briefings to cabinet, cabinet subcommittees and to me as the minister on various elements of the West Basin proposals, including necessary land acquisitions as part of that discussion.

THE CHAIR: So you were briefed at various stages in that period on—

Mr Barr: The project.

THE CHAIR: the purchase of the Glebe Park block and—

Mr Barr: No, not of listed sites. Glebe Park block is a separate issue from—

THE CHAIR: Yes, I know it is not actually in West Basin, but were you briefed on the process of acquiring the boat hire and the bike hire leases?

Mr Barr: That land acquisition would be necessary was understood by cabinet, by the cabinet subcommittee and by me as minister at that time.

THE CHAIR: And were you briefed on the processes of what was going on at the various stages?

Mr Barr: Yes, that the Land Development Agency would lead the land acquisition process, and that was one of the catalysts, obviously, for the broader policy framework around city to the lake, the city plan and the land acquisition framework. My engagement was, as it should be, at the policy level in relation to both policy frameworks and planning frameworks for the project.

THE CHAIR: What you are saying, Chief Minister, is that you were not briefed on the detail of the land acquisition for Mr Spokes, Dobel Boat Hire and separately on Glebe Park, which is not quite in the West Basin?

Mr Barr: That there would be land acquisition and it would be the subject of—

THE CHAIR: Yes, I understand.

Mr Barr: the LDA's processes around negotiation, appointment of a negotiator, valuers et cetera, yes, but not on the commercial nature of the negotiation. It would not be appropriate for a minister to be engaged in the commercial negotiations with the Land Development Agency, who are delegated to undertake that responsibility. With the chief executive, the agency, together with the board, under the policy framework, were delegated with that responsibility.

MR COE: In terms of the briefings, Chief Minister, what form would they take? Did you have a weekly or regular meeting?

Mr Barr: With the directorate as a whole, yes.

MR COE: When you say “with directorate as a whole,” you are going to have a couple of thousand people in a room and—

Mr Barr: No, as in the broader Economic Development Directorate, of which items from week to week would vary, depending on—

MR COE: Right, but would the attendees be the same?

Mr Barr: No, it would vary, depending on the agenda.

MR COE: So the director-general of the LDA, would he come?

Mr Barr: Generally, he would have been at the meeting, yes.

MR COE: And were there standing agenda items?

Mr Barr: Yes, but this would not have been one of them.

MR COE: Was there a published agenda for each meeting?

Mr Barr: Not always, no.

MR COE: But for some of them there were?

Mr Barr: Yes.

MR COE: Was the agenda set by your office or by the agency?

Mr Barr: A combination; there would be items that the agency would need to bring to my attention and items that I would place on the agenda.

MR COE: Who actually compiled that document? Was it done in your office or at the LDA?

Mr Barr: Generally speaking, that would be a role for a directorate liaison officer to work with the directorate and my office to coordinate the agenda for such matters.

MR COE: With regard to land acquisitions, would you be informed as a matter of course that this acquisition was coming up or that “we have just done this acquisition”?

Mr Barr: No, not as a regular matter of course. It would depend, of course, on the quantum of the acquisition, in accordance with the policy framework.

MR COE: What about the board? Do you have regular briefings by the LDA board?

Mr Barr: Annually, I think would be a fair description. I would attend a board meeting once a year and on occasion we would meet with the chair but no more than once as a year as well; so perhaps twice a year. Most engagement with the agency would have been through the chief executive or deputy chief executive or staff members associated with particular projects.

MR COE: Who would actually, in effect, keep an eye on the board and make sure that the board was fulfilling its responsibilities?

Mr Barr: The board has responsibilities outlined under legislation. There are a range of governance and oversight responsibilities within the public sector—the head of service, the Auditor-General. There are a range of entities within the public sector who provide that overarching process of accountability for boards—chief executives and others.

MR COE: Were you, and by saying “you” I also include your office, sent board agendas or minutes?

Mr Barr: I do not believe so.

MR COE: Are you able to check that?

Mr Barr: I can check that.

MR COE: Regarding the acquisition process as stipulated in the legislation, how many times did an acquisition come to you for sign-off?

Mr Barr: I will need to check the record on that; very rarely.

MR COE: If you could please do so, that would be good.

Mr Barr: Because most acquisitions would have been below the threshold set in the regulation.

MR COE: Thank you.

THE CHAIR: Just to follow up, before we go on, in relation to the regulation and the \$20 million annual quantum, were you ever—that is, you as the minister, your office or the cabinet—approached to approve sales of more than \$20 million a year?

Mr Barr: There may have been some over the course of the period. I will need to check.

THE CHAIR: Could you check and get back to me.

Mr Barr: I think they mostly fell either in the category of above the quantum, and so it would go to cabinet, or well below the threshold and would be a matter within either the chief executive's delegation or the chief executive and board. There were very few, from memory, that fell in that space that would just be the minister with the board and the chief executive. Mostly they were at a cabinet-level decision, as in a large scale, but there are not many of them, full stop. I think that is the point to make.

MR PETTERSSON: Can I ask a—

MR STEEL: I have a supplementary around the process that you undertake when you are presented with an acquisition of \$20 million. What process would you undertake in terms of approving that as the minister?

Mr Barr: We come forward with a brief agency comment. Clearly, treasury would have an input.

THE CHAIR: A brief agency comment or a brief with an agency?

Mr Barr: No, a brief with agency comments, yes—with agency comments. A cabinet-level decision and it would go through a coordination comment process. The process in terms of cabinet deliberation may or may not be resolved in one meeting. There are times when cabinet ministers will ask questions and seek further information before making a final decision and an item will be considered over more than one cabinet meeting.

MR STEEL: Is the sort of information that might be provided in that brief going to

cabinet?

Mr Barr: It would outline the business case for the acquisition of the land, but it is such a rare thing. It happens very infrequently in the context of the business of the LDA. There are occasions, though, through a desire for strategic acquisition, as I think we have discussed in this place and in the Assembly previously, when we are looking to augment land supply opportunities into the medium term. But that would be where the most activity has been in recent times, as opposed to, if you like, purchases within the existing city.

MR STEEL: You would have valuations potentially included within that business case; is that right?

Mr Barr: Yes, that would be the underpinning of any treasury assessment of a land acquisition. But there would also then be a need for an assessment of other strategic priorities—as an example, acquisition of a piece of land that was contiguous with other ACT government land holdings but that will deliver a quite significant public benefit or acquisition of land that could well resolve a range of other policy challenges.

In the context of Glebe Park, for example, there was a need for a better water treatment solution for stormwater flowing into Lake Burley Griffin and there was a need in the context of the alignment of Parkes Way, and the release of certain blocks aligned with Parkes Way, to address the question of realignment of Parkes Way and what the southern borders of those particular land parcels would be.

MR PETTERSSON: Chief Minister, could you please expand for me what the role of the responsible minister is in overseeing the LDA historically?

Mr Barr: The agency was established by the Stanhope government under a set of legislative parameters that provided for an independent board to be appointed. So it was necessarily a degree of arm's length oversight by a minister in so much as there are a range of commercial activities that the Land Development Agency, or the former Land Development Agency, was required to undertake. It was determined through the wisdom of the Assembly, in establishing legislation for the authority, that to have a skills-based board and to have a chief executive and an administrative structure allowed for a degree of interaction with the commercial sector. In this instance, that process has been tested and found wanting in the context particularly of documentation around decisions that were delegated, appropriately delegated in my view, to the authority, to the agency and to the board.

There is not much point having a board and a chief executive officer if every single business decision of the entity is required to be approved either by cabinet or by a minister. You need to have a degree, clearly, of ministerial oversight. I think there are some lessons out of this process that we have responded to in the context of the legislative framework for the new entities. So the lessons learned out of what the Auditor-General has highlighted have now been put into practice in relation to both the legislation that governs the new entities and, indeed, the responsibility that falls on the boards and chief executives of the new entities.

MR PETTERSSON: Just touching on something you said there, can you explain to me how oversight is different for the new Suburban Land Agency and the City Renewal Authority as opposed to LDA?

Mr Barr: Obviously, we have made a number of changes in the context of board members, delegations and chief executive responsibilities, and the level of ministerial oversight. They do reflect experiences here but also seek to find a balance between a range of competing priorities in so much as, I suspect, for those who work in this area, they would experience through most of their working lives being told to operate more commercially and not be excessively bureaucratic. That is clearly the prevailing culture within the development sector in this city.

One need only attend a meeting with any of the industry associations in this city to hear that mantra time and again: that the government fails to recognise the process of doing business in this context. But clearly the lessons learned from this exercise are that ultimately that is something that will have to be stared down and stricter public sector governance protocols put in place. The details of that are obviously outlined both in the legislation and in the various instruments that support that change.

MR PETTERSSON: One of the things you mentioned was the composition of a board. Could you explain to me any changes on that front and how it might lead to good governance?

Mr Barr: Yes. In the context particularly of the City Renewal Authority that I have responsibility for, the legislation requires a variety of different skill sets on the board. I have also taken a decision, in the appointment of the recommendations to the relevant Assembly standing committee and ultimately in the appointment of board members, to seek to address another issue of concern that has been raised around the potential closeness of relationships between board members and those who operate in the development industry in the city. So if you look at the composition of the board of the City Renewal Authority, there is no-one, with the exception of the National Capital Authority's nominee, who resides in this city or has business dealings in this city.

I think that is an extra step. Again, we will be criticised in some quarters for not involving those who are doing the day-to-day development in the city, not being on the board of the CRA. But I think that if there is a lesson out of this as well, it is not just the actual conflicts of interest but the perceptions of conflict of interest that need to be addressed as well, and have been in this context.

MR COE: In terms of the arrangement being found wanting, is it a system issue or a human issue?

Mr Barr: I think the media commentary and public discussion on this went very quickly to perception issues, even if there was no actual conflict. Nevertheless, there was extensive media reporting on who used to work somewhere and the extent to which there was a board member of the LDA who in a previous role worked for a commercial real estate agency. Arguably there is a skill set you might want on a board, but in a community and a business community of this size one of the lessons is to err

on the side of caution and to attempt to address even perceptions of conflict of interest. And that is what the government has done.

MR COE: Before I ask my substantive question, can I ask in what capacity Mr Ponton is here?

Mr Barr: As the Director-General of the Environment, Planning and Sustainable Development Directorate, who has a policy and governance oversight role, as I outlined in my opening remarks.

MR COE: Chief Minister, did you give instructions to speed up the acquisition process of Glebe Park or any of the others?

Mr Barr: No.

MR COE: If I may present a copy of this to the committee, and also to Mr Barr.

THE CHAIR: So what is this?

MR COE: This is a document obtained by freedom of information. You will note it has your signature on it, Mr Barr. I assume that is your handwriting?

Mr Barr: Yes, that is correct. Yes.

MR COE: If you turn to the back page, you have the little note there, “Yes, this is significant,” next to number 29, which matches your handwriting.

Mr Barr: Yes.

MR COE: I am particularly interested in point 30, which says that community consultation will be important, particularly with the residents in the nearby area and the users of Glebe Park, and given concerns by residents affected by Aquis rights to block 24 section 65. This document has your signature on it. What rights did Aquis have to this Glebe Park block?

Mr Barr: I will need to check which block number that was, but they—

MR COE: This is the block in question, the one that was acquired by the ACT government.

Mr Barr: They have the adjoining block, which I think relates to the back of the convention centre, so that is in the casino.

MR COE: This is about Aquis rights to block 24 section 65, which is the block acquired by the LDA. So what rights did Aquis have?

Mr Barr: None that I am aware of.

MR COE: You have signed this, and you have noted—

Mr Barr: Yes, and I have ticked a dot point in relation to community consultation—

THE CHAIR: And double-ticked the dot point.

Mr Barr: That is right, yes, as being essential.

MR COE: But I would find it hard to believe that you would just ignore the fact that it says there are rights to this block. Did the government acquire this block for the casino?

Mr Barr: No, the government purpose for the acquisition has been outlined.

MR COE: So did you attend a meeting with the owner of the casino in Canberra in May 2015?

Mr Barr: I have met once with the owner of the casino. I will need to check the date, but that could well be right, yes.

MR COE: Yes, quite likely in May 2015. Can you please let me know the date?

Mr Barr: Sure, yes. I will take that on notice.

MR COE: Okay. Because I find it quite curious that you would meet with the owner of the casino in May 2015 when right around that time there is this haste to purchase this particular block. And then we see in November 2015 you signing a document that says the casino has rights to the block acquired by the government. Is this all a big coincidence?

Mr Barr: I am not aware of any rights that the casino has to that block. There has been no decision of government to give the casino any rights.

MR COE: So why would you have signed this? Why would you not have asked questions? Would alarm bells not have been ringing at that point?

Mr Barr: There is not a map associated with that particular brief that I am aware of—I will need to go back and check. I am aware that the casino has that block that is commonly understood to be public land behind the convention centre. It surprised me that that was actually part of the casino lease, but it is. So it may well have been, Mr Coe, that I have confused the blocks. I am taking it on your advice that block 24 section 65 is the totality of the block that—

THE CHAIR: For the record, chapter 2 of the report is “Purchase of block 24 section 65 city, land adjacent to Glebe Park”.

Mr Barr: But I can assure the committee that the government has taken no decisions in relation to giving the casino rights to block 24 section 65.

MR COE: But at the time you were aware that the casino was interested in this block?

Mr Barr: I understand that when they released their initial proposal they were interested in taking over the convention centre, together with land adjacent to it, yes. But the government determined not to support that particular element of their proposal.

THE CHAIR: When?

Mr Barr: Again, I would need to check the time on that. Cabinet has had a number of discussions in relation to the unsolicited proposal. We made public our position in relation to that, particularly in relation to the land surrounding the convention centre, so the land that is owned by the government surrounding their lease.

THE CHAIR: To follow up on that, were there any other circumstances around at the time that suddenly accelerated the interest and activity around the reacquisition of the land in Glebe Park? The timetable shows that the first valuation was in August 2014 and then nothing seems to have happened until about June the following year. Then it was all signed, sealed and delivered by September.

Mr Barr: There probably would have been an update to cabinet and to the cabinet subcommittee in relation to the city to the lake project.

THE CHAIR: So are you saying that in response to a possible update to the cabinet on city to the lake the cabinet could have said, “Get on with acquiring this land and why is this land so important”?

Mr Barr: No, I do not think it would have been that level of detail, but there would have been a discussion about various elements of the city to the lake project and where they were at in the context of the implementation of the government’s policy agenda as it relates to both the city plan and the city to the lake project.

THE CHAIR: Were you conscious at the time that someone was dragging their feet or that there was a slowness in this acquisition?

Mr Barr: No. This acquisition was not a major discussion point in the context of the broader project. Most discussion was focused on the Parkes Way realignment and the major pieces of public infrastructure—convention centres, stadia, West Basin public realm, land release sequencing. By that stage I imagine the issues of connectivity to Vernon Circle as it related to the Constitution Avenue project, for example, would have been part of the discussion.

THE CHAIR: Chief Minister, do you know why the lease on block 24 section 65 was not just resumed by the government? My understanding is that the lease, when it was originally given out, was for possible food and drink outlets and that there was some covenant that required the leaseholder to do something in the order of a million dollars’ worth of landscaping. That was a 2008 lease or maybe 2006; I cannot recall off the top of my head. If the government wanted the land for another purpose and the lease conditions had not been complied with, why would the government not just have resumed the lease?

Mr Barr: There are a range of issues agencies would need to consider in that context, including the potential legal costs associated with that process. It is not

straightforward, as I am sure you are aware. That said, this raises a broader issue around how government would seek to buy land and whether, in fact, compulsory acquisition is the only viable way in which to do that, regardless of time frames and cost.

THE CHAIR: I was not actually talking about—

Mr Barr: Otherwise you go through a valuation process and you get a degree of expert opinion, but it is just that—informed opinion—which, presumably in the context of the debate that we have had, effectively sets a set of negotiating parameters for a public official within which to negotiate. If that process does not lead to a successful agreement with the other party then it would seem that compulsory acquisition becomes the only viable way.

THE CHAIR: I was not actually talking about compulsory acquisition; I was talking about reacquisition of leases because of failure to comply with the lease conditions, which is somewhat different.

Mr Barr: It is still a legal process.

THE CHAIR: It is still a legal process, but it is not the same. It does not have the same public good tests as compulsory acquisition. Was reacquisition of the lease considered because of the failure to comply with the lease conditions?

Mr Barr: I will need to check the record on that.

THE CHAIR: Thank you. I am conscious of the time, Chief Minister.

Mr Barr: I have been given the date of a meeting with Aquis, which was 21 May.

MR COE: And you were in attendance at that meeting?

Mr Barr: I was in attendance at that meeting.

MR COE: For the whole meeting?

Mr Barr: I believe so, yes.

MR COE: I have a quick question for Mr Ponton. Back in November of 2015 you spoke about project acquisitions. I was just curious as to why you mentioned that project acquisition, and what was the status of project acquisitions at the time? In the hearing, as you may recall, there had been talk about strategic acquisitions. We litigated that for some time, and then you said:

An example of where it was project based is in fact Glebe Park.

And you went on. What was the definition of a “project acquisition” at the time of you saying that?

Mr Ponton: At that time—November; I recall it was annual report hearings—I had only recently commenced with the Land Development Agency. The advice that I gave to the committee at that time was based on briefings that I had received in relation to the LDA's interpretation of strategic acquisitions versus project acquisitions, and I think the events since that time have proven that that was in fact incorrect.

MR COE: You say “the briefings you received at the time”. You were actually at that August board meeting, were you not, where the definition of—

Mr Ponton: I believe I had been working for the LDA for two or three days at that point, yes.

MR COE: But at that meeting was it actually clarified that project acquisitions existed?

Mr Ponton: In terms of the detail, as I said, given that I had been working for the LDA for a matter of days, there was a lot to absorb in the board papers, but my briefings occurred after that, prior to the November annual report hearings.

MR COE: But who briefed you that a project acquisition existed?

Mr Ponton: I received briefings from my team, essentially from the relevant executive director, those briefing notes.

MR COE: That means it was after the August board meeting, because some time later the Chief Minister came and said that project acquisition policy is not a term that exists in LDA-relevant legislation or regulation; neither is it a term used by the LDA. The authority for project-related land acquisition is provided by the Planning and Development Act and the LDA statement of intent.

I understand that you were briefed on this, so I am just curious to know how, in effect, the whole system, the whole agency, got it wrong. How did this happen? Who actually briefed you? Did the previous director-general have a handover with you as well?

Mr Ponton: The previous deputy director-general?

MR COE: The previous deputy director-general.

Mr Ponton: Not in relation to this particular issue, no. As I said, I was relying, at the time of those annual report hearings, on the briefing that I received from the relevant executive director. I acknowledge that that briefing, as it turns out, was incorrect.

MR COE: And so what involvement did you have with the acquisition of the Glebe Park block?

Mr Ponton: Nil.

MR COE: None at all?

Mr Ponton: No.

MR COE: What about the other two sites and the business by the lake?

Mr Ponton: None.

MR COE: None at all?

Mr Ponton: None.

MR COE: Who was dealing with it then, if it was not you, because the previous deputy director-general had been dealing with these?

Mr Ponton: Mr Dawes.

MR COE: Mr Dawes did it all?

Mr Ponton: Yes.

MR COE: And there was no consultation with you or the rest of the team?

Mr Ponton: I do not know about the rest of the team but in relation to me, no, I did not have any involvement. Given that I was relatively new, Mr Dawes continued the negotiations, as I understand it, with the people involved in the project directly.

MR COE: When did you become aware that an FOI had been provided that was not the document as requested?

Mr Ponton: I believe that was on 15 December, but I can clarify that for you.

MR COE: And how did that come to your attention?

Mr Ponton: It came to my attention because of a second FOI that had been submitted. We, through my office, had asked for people to provide documentation, and the officer who was subsequently found to have tampered with that document provided a thumb drive with all of his emails. My executive officer, going through those emails, identified a particular email of concern and immediately brought that to my attention. The same day, I referred that to our senior executive responsible for business integrity and risk, or SERBIR.

MR PETERSSON: Just in the interests of time, if we were going to go to a substantive question, it was Mr Steel's turn.

MR COE: Did you counsel that person?

Mr Ponton: No, I did not. That was referred to the SERBIR, as I said. The SERBIR then instigated an investigation and that investigation was concluded when I was not with the Land Development Agency. So the counselling was done by another person.

THE CHAIR: We have kept you longer than we agreed, Chief Minister. Thank you

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very much for your participation. There are a number of things that you said that you would take on notice, mainly dates but a few other bits and pieces as well. There will be a transcript available in the next couple of days which will work as an aide-memoire for those as well.

Mr Barr: Indeed.

THE CHAIR: Thank you very much for your time. Thank you, Mr Ponton.

DAWES, MR DAVID, former Chief Executive Officer, Land Development Agency

THE CHAIR: Welcome back to the second hearing of the inquiry of the public accounts committee into the Auditor-General's report on certain land acquisitions by the Land Development Agency. I welcome Mr David Dawes. Mr Dawes, have you seen the pink privilege statement?

Mr Dawes: Yes.

THE CHAIR: And you are aware of its implications?

Mr Dawes: Yes, I am.

THE CHAIR: Would you like to make an opening statement?

Mr Dawes: I have no opening statement. I think I have said quite a bit before the committee before.

THE CHAIR: As CEO of the Land Development Agency, you took an active role in the negotiation for the purchases of the properties that are covered by the Auditor-General's report; that is, the land adjacent to Glebe Park, Mr Spokes Bike Hire and Dobel Boat Hire. Is it usual practice for the CEO of such an agency to take such a direct, hands-on approach to negotiations?

Mr Dawes: I did not do the negotiations on Glebe Park. That was done by my deputy at the time. But obviously my deputy kept me up to date on that particular transaction. Initially I was not involved in the Spokes or the Seears purchases. That was done by the project director of the city to the lake project at the time. But I think everyone is well aware of some of the discussions that appeared on the front page of the *Canberra Times* through those negotiations. After the project director was finished up at the LDA, I then took over those negotiations, yes, to try to actually get things back to at least people talking to one another.

THE CHAIR: You said that you did not take part in the land adjacent to Glebe Park; your deputy director did. Who was that? Mr Stewart?

Mr Dawes: Mr Stewart at the time.

THE CHAIR: And when Mr Stewart left, you then took over? Is that what you said?

Mr Dawes: That was virtually finished and finalised at that point in time.

THE CHAIR: It was virtually finished?

Mr Dawes: Yes.

THE CHAIR: Mr Stewart left in August?

Mr Dawes: Yes, August 2015.

THE CHAIR: And this was finalised in early to mid-September?

Mr Dawes: Yes.

THE CHAIR: In relation to the two Acton blocks of land, you said that was principally done by the executive—

Mr Dawes: The former project director.

THE CHAIR: The project director, who was?

Mr Dawes: Mr Xirakis at the time.

THE CHAIR: And Mr Xirakis left and then you took over?

Mr Dawes: Correct.

THE CHAIR: And when did Mr Xirakis leave?

Mr Dawes: I forget when he left but it would have been some time in August, I think.

THE CHAIR: In 2015?

Mr Dawes: Yes. Mr Xirakis did some very good things while he was there, but I think these negotiations broke down when Mr Stewart left. I think it is fair to say that I was concerned because that team was directly reporting to me about some of the processes and some of the things that were occurring there. So we chose not to continue with the contract with Mr Xirakis, and it was finished and then I took over. We had a new deputy director-general and deputy CEO at the time. That was Mr Ponton, whom you spoke to just a few minutes ago.

We had some discussions, I think it is fair to say, and it was agreed that we did not need it and we changed the whole governance, because I think, going back—and as the Chief Minister said—all the recommendations from the Auditor-General had been adopted by the then LDA, but also I think it is fair to say that back at that point in time there were a number of things that were initiated to change the governance of the city to the lake team from that September or October onwards. I just forget the exact dates because I have not had the privilege of looking at files.

We set up a new governance team for the city to the lake involving a number of the directors-general from other agencies. We had a nomination from the board to sit on that particular city to the lake committee. We also implemented things such as a centralised business unit to oversee and instruct valuers, because one of the things that have been revealed is different instructions going to valuers as well. So I think that was a core thing. A lot of the things that the Auditor-General recommended we have put in place.

As you are well aware, in 2016, just to look at where we were going, I appointed Dr McPhee, the former commonwealth Auditor-General, to come in and do a bit of a

review of not only the LDA but the broader economic development as well, to look at what we were doing to ensure that we had the systems. From that point on, the LDA board, under the guide of the deputy chair, certainly took a very proactive role in implementing not only the Auditor-General's recommendations but also the recommendations of Dr McPhee.

THE CHAIR: Who was the deputy chair of the board at the time?

Mr Dawes: Do I need to name particular individuals?

THE CHAIR: Yes. It is helpful because—

Mr Dawes: It is just that I am very conscious of privacy and all that.

THE CHAIR: I know. I understand all that. This is an inquiry and we need to be sure that we are talking about the same people.

Mr Dawes: Certainly. Sandra Lambert was the deputy chair of the LDA at that point in time, the previous deputy chair being Rob Tonkin.

THE CHAIR: You have said, Mr Dawes, that things started to change about September 2015—the former deputy director had gone, there was a new deputy director and a couple of contracts were not renewed. What else was going on that suddenly caused this? Was there a sudden point when the light went on and the organisation felt that things were not being done according to Hoyle, or was there some other catalyst for these things?

Mr Dawes: I think there was just a combination of things. With the negotiations, it was a very toxic relationship the LDA had in particular with one of the Seears brothers—that is, James Seears, who had the boat hire business, and the two brothers were not on speaking terms at that particular time either—and then also the Mr Spokes business. It has been well recorded in the *Canberra Times* a number of different times the threats the LDA may or may not have made at points in time. So there was that.

I was asking for various reports and I was not getting those reports that I would have thought would have been readily available. This happened in a discussion that I had with the then deputy chair. I said, "I've got some concerns. Can you also have a look at what's happening in that city to the lake," because it was reporting directly to that particular role. As you know, I had a number of other direct reports as well, and I was quite relieved that we had a new deputy coming in. I said, "Can you just see where and what and if you can get a better handle on things as well because I have got some concerns." We had discussions and that is when we chose to terminate that particular contract at the time.

THE CHAIR: What were the reporting arrangements between you and the board, if you were reporting to the deputy chair rather than the chair on this issue?

Mr Dawes: These were discussed at the board meeting, but the chair, for corporate

governance and audit, does not sit on the compliance committees. For the governance of an organisation that is the deputy chair.

THE CHAIR: So you were talking to the deputy chair in what context?

Mr Dawes: Actually being the CEO for governance as well. It was discussed, obviously, at a board meeting about the implementation of some of these changes and the recommendations of the Auditor-General. You are getting the time lines a little mixed up, Mrs Dunne.

THE CHAIR: So you are saying that in September 2015—

Mr Dawes: We did not have an Auditor-General's report.

THE CHAIR: No, I know.

Mr Dawes: Sorry.

THE CHAIR: But you were saying that in September 2015 there were a number of changes—you had a new deputy CEO; some contracts were discontinued at about that time—and you said that you had been in discussion with the deputy chair of the board.

Mr Dawes: The deputy director-general, or deputy CEO. Sorry if I have not clarified that. That was about the way the team was being led at the time.

THE CHAIR: Okay. It was useful to go back because there was ambiguity there.

Mr Dawes: Certainly.

THE CHAIR: As to the board decision in relation to the interpretation of the land acquisition policy framework, which I think was on 27 August 2015, the Land Development Agency adopted an interpretation of that policy framework. Can you outline for the committee the process that you went through to interpret a full-page document for the board?

Mr Dawes: Can I just take a step back. I think this is a fairly important point. That particular document for strategic acquisition was initiated by the LDA board in some discussions because we were in the process of purchasing particular properties and we wanted a framework. There was also—

THE CHAIR: Could I just clarify; I asked the Chief Minister this question. In June 2014 when that was signed off, that was the first—

Mr Dawes: That was signed off, but this started back in 2012 at the initiation of the board. The board wanted to have a guideline about where and what we might do if, for example, opportunities presented themselves. This came out of the purchase of Glenloch Station, which went to cabinet and was approved by cabinet at the time we purchased that. But we felt we needed to have a little more rigour in that forward strategic acquisition.

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I will not go into all of the information, but when that policy was developed—I have not looked at it for some time now—if you look at the purpose and the goals, they actually state the intention of that particular instrument. I think it is fair to say that as a result of some questioning that we had through estimates we went back and had another look at that particular document. At that point in time I think it is fair to say—and this is not an excuse; it is an oversight and I have already admitted that in a previous hearing—when it was mentioned in the Auditor-General’s report we actually went back to check some of the things.

When you listen to some of the audio from what was happening in the Assembly and also some of the questioning at estimates, for whatever reason the word “strategic” had dropped off that document and the word “all” was added. I was working always on the basis of two policies, I suppose. There was what I would call the strategic acquisition, if it was like a purchase of a Glenloch or some of the other properties that the LDA have bought. That would then be referred and you had your five to 10 and 20 and so forth. So we followed that process. But if, for example, we were doing a particular project, that was quite clearly defined under my delegation. I had a delegation of up to \$10 million, and if you go back through transcripts you will see that I have said that on several occasions.

So, coming back to your question, I know there has been a thing made about the board trying to circumnavigate and get around the particular instrument, but I think it is fair to say—and perhaps it is a failing back on me as the CEO at the time, or even the LDA board—that when that paper was presented the board I do not think were fully aware that the word “all” had been added. It had actually been initiated by the board. They wanted that policy implemented. As it turned out it was not implemented or worded the way in which the board were wanting.

THE CHAIR: So the 2014—

Mr Dawes: So that is where there is confusion.

THE CHAIR: Sorry, regarding the 2014 document which sets out the acquisition thresholds and the annual cumulative threshold: what you are saying, Mr Dawes, is that it was not the way the board had wanted it? There was a disagreement between the board and the government about—

Mr Dawes: No, I do not think there was a disagreement. I do not think actually the board realised that the word “all” had been added to it.

THE CHAIR: So where had the word “all” been added?

Mr Dawes: I do not know. To this very day I do not know. Because all of the documents that we had signed off—

THE CHAIR: So 2.2.1 says:

The following thresholds and decision makers apply to all LDA land acquisitions:

Mr Dawes: Correct.

THE CHAIR: So you are saying that you thought and the board thought that that read, “apply to strategic LDA land acquisitions”?

Mr Dawes: Correct.

MR COE: Elsewhere in the document, right at the very beginning, the framework is to enable the LDA to pursue business opportunities for the acquisition of land, and the whole document is called the “Land acquisition policy framework”, not the “Strategic land acquisition policy”. So there must have been quite a few changes to it. You also said questions actually sparked this sort of review or a rethink. But the board passed the land acquisition policy framework interpretation in August, and I think my first questions on this were not until November, three months after that. So I do not think it was questions in the Assembly or in committees that sparked this interpretation.

Mr Dawes: What I am saying is that the board at the time when we were discussing that particular document thought it related to the strategic acquisitions and not all of the land. If you look at the purchases of Glebe Park and the other business acquisitions, they were bought under the basis of a project, the city to the lake, so that did not meet the strategic acquisition policy, the interpretation of what we had at the time, and that has been an oversight. I think actually that is the thing that has added to all of this confusion.

MR COE: Quite aside from this sort of system or this documented stuff, there was no doubt in your mind that the ministers wanted these acquisitions to take place?

Mr Dawes: In the context of the city to the lake, if you were looking at West Basin, it was quite clear that we needed to resolve those issues. If you look at where the boardwalk is going and where the lake is going to be filled in, are people going to carry their boats 50 metres or 60 metres to put them in the water and go from there? Certainly not.

MR COE: But, regardless of this process and regardless of whether this system is followed or another system is followed, you are quite happy and confident that you were fulfilling the government’s wishes?

Mr Dawes: Correct. And it comes back to Glebe Park and your question earlier to the Chief Minister. I will reinforce the Chief Minister. We never bought the land for the purposes of the casino. That was bought always for the Coranderrk Pond. Initially we looked at the Coranderrk Pond and what we could do with that, because we needed to get an extra 11 metres on Parkes Way to fit the stadium. I think I have been quite clear in my discussions to previous committee meetings on this. It also added value to what we call Parkes 3, which is the CIT car park.

The Coranderrk Pond, we could have put it on Parkes 3 because we owned that particular land, but that meant that we were going to lose somewhere in the order of \$10 million to \$15 million in value. By actually being able to extend Parkes 3 we were adding to the value. If you look back through all of the records and the history of the ACT, the best place for the pond to allow better filtration and better water quality

going into Nerang Pool and Lake Burley Griffin is back in Glebe Park.

MR COE: Why the haste? Why was it in 2015 that the foot was put on the accelerator to buy this? Because to date there has been no activity on this, As far as I can gather, the NCA has not surrendered any land with regard to the swimming pool site or Parkes 3.

Mr Dawes: Because we had not applied for it. I assume—

MR COE: Yes, and that is the point. Why the haste? Who, in effect, said, “Let’s get cracking on this”?

Mr Dawes: I think it came about in discussions. We were looking at putting a submission in to Infrastructure Australia for Parkes Way. I think that was one of the catalysts, to try to clear that. Obviously when you are putting in a submission to Infrastructure Australia for joint commonwealth funding or whatever the case may be, that would be a catalyst.

MR COE: To be blunt, do you feel like you have been pushed in front of a bus for simply carrying out the minister’s wishes?

Mr Dawes: Definitely not. I do not feel that at all. At the end of the day, it made good sense to secure this. What we have to remember in the context of the city to the lake project is that in today’s dollars it is in the order of \$2 billion worth of revenue. Obviously we have to deal with Parkes Way, and a lot of very good work has been done, and that has been handed over to the City Renewal Authority to review the work that has been done. That is a great catalyst, and there will be other things as different thinking comes along to look at how that will unfold over time. I think it is a wonderful project. I think it is forward-looking as a project and it will be a game changer for the territory over time. It is a 20-year project, but obviously Parkes Way has to be dealt with.

MR PETTERSSON: I have some questions regarding the mentoring of the deputy chief executive officer by Colliers. This was mentioned a couple of times in the report—that you instigated it. Could you expand on what was going on there?

Mr Dawes: We tried to do the right thing, and sometimes these things have an effect. I have been around the property industry for a long time, since the late 70s. I appointed a new deputy CEO—that is probably where the confusion came from, Mrs Dunne. I was referring to the deputy chair and the deputy CEO and deputy director-general, Mr Stewart. Dan had a strong background from a treasury perspective and other aspects and policy; he did not have a lot to do with property. I had been associated with Mr Powderly for some 20-odd years, 25 years, from my days when I was at the Master Builders Association. If you look for anyone that knows a lot about property in the city, it is Mr Powderly. I suggested that Dan could do worse than talk to Mr Powderly to get a good background and a handle on that.

It was not only Mr Powderly; there were also other agents that we used to have a regular dialogue with. I used to instigate a number of different meetings from time to

time with different valuers, because some are more proficient on sales and some are more proficient on rental. You try to keep abreast of what is happening out in the market. I did facilitate Mr Stewart meeting with Mr Powderly, to get a good background history on land development and land transactions.

MR PETTERSSON: The word that is used in the report constantly is “mentoring”. Do you think that is the right term to use? From what you have just described, it seems like it was just engaging with industry.

Mr Dawes: It is engaging with industry, but Mr Powderly in particular did meet with Mr Stewart in a couple of weeks. “Engaging with industry” is probably a better term, but I may have mentioned mentoring to the Auditor-General, and that is the word that has been picked up.

MR COE: I want to go to how conflicts of interest were managed by the agency. Firstly, at the board level, if somebody was conflicted or was perceived to be conflicted, how would they deal with that?

Mr Dawes: It is fair to say that, at the start of every meeting, there was a conflicts of interest register. All of the board members declared any particular conflicts of interest. If, for example—and it happened on a few occasions—there was a potential conflict of interest, that particular board member left the room.

THE CHAIR: For the meeting, or for the particular—

Mr Dawes: No, for that particular point in the discussion. For example, the chair of the LDA, Mr Barrett, still had an interest in Woden Contractors—not that he was hands-on day to day, but when we were signing off on civil contracts he would leave the meeting, the deputy chair would assume the role for that particular meeting and we would then discuss the awarding of the civil contracts. The decision would be made and he would then come back into the room.

MR COE: To an extent, that is inevitable when you have a skills-based board and they are locals. Of course, it is how you deal with it that really matters. Why is it that decisions about the contracts, such as civil works, actually went to the board as opposed to being awarded independently?

Mr Dawes: I had a limit of \$10 million, and a lot of those civil contracts were over \$10 million.

MR COE: But why wasn’t it just the usual procurement process that every other procurement goes through?

Mr Dawes: No, in the LDA it was different. In my role as the Director-General of Economic Development, I would go through a procurement, and if it was a \$50 million job I would sign off on that contract, but with the LDA my delegation was \$10 million.

MR COE: What about with regard to staff in the agency? How were declarations of interest made?

Mr Dawes: We always asked staff to fill in any declarations. When I took up the joint role of Director-General of Economic Development and the CEO of the LDA, there was a policy there about land purchase by staff. I made sure that that was adopted right across the broader Economic Development. It was not fair, because the LDA was part of my responsibilities, just to restrict that to LDA staff, so that was adopted across the broader economic portfolio.

THE CHAIR: Was that process of ensuring that staff filled out declarations of interest policed?

Mr Dawes: Yes. Again, Mrs Dunne, I always relied on the various directors and executive directors that had responsibility for those teams to remind people that there was that sort of training. That was also on the websites, to provide guidance to staff—that sort of thing as well.

MR COE: What would actually change? After someone filled out a form saying, “I’ve got a declaration of interest,” was there a risk that it went into an envelope or a filing cabinet and nothing actually changed?

Mr Dawes: No. The example I was giving was on land. If, for example, they wanted to participate in a ballot or they wanted to buy a block of land, they had no further involvement in that particular release or that particular activity for preparing those blocks of land.

THE CHAIR: That would require someone to either know in advance that they wanted to do that or be up-front enough to say, “I want to do that,” because that process of preparing a suburb to eventually go to ballot may take a matter of years. Somewhere in that process you might think, “This is not a bad deal. I might be interested.” But they only might be interested. So what is the threshold?

Mr Dawes: If, for example, they were wanting to go into that particular ballot—and you have to remember that the ballot is very fairly conducted. It is done with a legal team presiding over it. Also, Gambling and Racing used to attend that when the numbers were drawn. So there was no way in which they could manipulate anything, anyway. I was just giving that as an example.

THE CHAIR: What about conflicts where someone who may have worked for the Land Development Agency had previously worked for a real estate agent, a development company, a civil company or something like that?

MR COE: Or the other way round: an ex-LDA staff member goes to—

Mr Dawes: That happens. The government has obviously lost good staff to different organisations or they go back to the private sector. I have gone back to the private sector myself, and I am keeping away from ACT government. Again, you do have knowledge, and how can you stop that?

MR COE: I realise that this is perhaps a tad awkward, but we do have to ask, if we are doing our due diligence, especially given that some of the sums paid for some of

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the West Basin blocks do not seem to have been substantiated, according to the Auditor-General's report. Did you declare any conflicts of interest with regard to any of the acquisitions that the Auditor-General looked into?

Mr Dawes: Why would I have had to declare an interest? The fact that Pat Seears and I went to school in 1966, is that a conflict of interest? The fact that he was a member of the MBA when I was the executive director of the MBA and he was a sponsor of the MBA, is that a conflict of interest? Actually, I think I have dealt with things very well. If you talk to some of the private sector people, they think I am a bit of a hard-arse—excuse the expression—and I have probably taken a little bit more latitude with that. Why don't you spit it out? What do you want to ask me?

MR COE: That is exactly what I am doing. With regard to any of the directors of the Glebe Park block, were—

Mr Dawes: If I was a partner with Graham Potts, or a director of Reg Daly Real Estate back in the 90s, is that a conflict of interest? I have had hardly anything to do with Graham Potts since then. From time to time I would catch up with him at a meeting. I know Barry Morris. I have been around the property industry since the late 70s. It would mean that I can't actually do work in this town.

MR COE: No, of course it does not. As I said earlier, the issue is about how you deal with this rather than the actual nature. You have been in property since the late 70s. It is somewhat inevitable. I am the first to admit that. But it is how we actually deal with this and avoid any perception issues that is front of mind. Do you have any relationship with Mr Parsons, who was the broker that I believe was used for Mr Spokes?

Mr Dawes: No.

MR COE: But you do know him?

Mr Dawes: I did meet him, yes, but in a completely different context as well. I did not appoint Mr Parsons to act for Mrs Edwards and the gentleman from Spokes—I forget his name.

MR COE: In terms of the actual acquisitions, did you conduct the negotiations on Glebe Park?

Mr Dawes: No.

MR COE: Mr Spokes?

Mr Dawes: At the end I did, yes. Might I add, when I met with the Spokes people, we met in a lawyer's office with the Spokes people, over in Marcus Clarke Street. I had an officer, David Gray, from GSO with me at that particular meeting. In any meeting I had with Ben Parsons, I had David Gray from the Government Solicitor's office in attendance with me.

MR COE: What about Dobel Boat Hire?

Mr Dawes: In the case of Dobel Boat Hire, no.

MR COE: Lake Burley Griffin Boat Hire?

Mr Dawes: Yes, James Seears and I met, and David Gray was present at those meetings.

MR COE: When the Auditor-General says that, in effect, the valuation report does not stand on its own and cannot be relied upon without further review of Dobel Boat Hire, when they say there is no documentation associated with negotiations or the rationale for the purchase price of the Lake Burley Griffin Boat Hire, what is the reason for that?

Mr Dawes: As I stated before, Mr Coe, I think the Auditor-General was questioning the valuations as well. There were three valuations done for the boat hire business as well. If you look at those leases, I can't remember what the Latin term is, but there is a disruption fee that you can pay as well. Part of the negotiations was about realising a price. You have to remember that when those three businesses started negotiating, they wanted in excess of \$12 million for their businesses, land and all of that. We paid less than \$3 million, about \$2.775 million, from memory, for all of them, including GST. So it was a substantial amount less than what they wanted. Obviously, you get to a point in any negotiations where you have to pay fair value, at the end of the day. There is no point if it ends up in court or whatever; there are always two winners in those sorts of scenarios, and it is not the two parties. So you go in and negotiate as best you can. The Government Solicitor's office said at the time—there are things on file—to try to negotiate it privately.

Subsequently—I think I mentioned this at one of the last hearings—the valuation of those businesses and the land that we acquired is on the LDA books at a higher price than what we paid for it. That was done by separate value altogether. I do not know; only the Auditor-General can say why she wrote that. In particular, for the Dobel Boat Hire land, with respect to the same examples that were used by Mr Powderly, who did the valuation for Dobel Boat Hire—and I was relying on professional advice—there was the same methodology and the same examples that the other valuer used when it was for the purposes of the financial accounts which the Auditor-General signed off on.

MR COE: An underlying point to all of this is that you were acting on behalf of the government. You were doing the minister's bidding.

Mr Dawes: I would not say I was doing the minister's bidding. I was actually getting on with a particular project that was important. It was a government policy decision.

MR COE: What information did you pass on to the minister about each of these?

Mr Dawes: We would have kept him up to date. Whether he was across the detail of prices, I am not sure. It would have been reported that there were negotiations. As I said, I did not have to do very much in the initial stages on West Basin because it was on the front page of the *Canberra Times* just about every other day—the bullying

tactics of the LDA.

THE CHAIR: Following up on Mr Coe's question, the Auditor-General says consistently in relation to Dobel Boat Hire, Lake Burley Griffin Boat Hire and Mr Spokes Bike Hire that no documentation associated with negotiations or rationale for the purchase price existed. Why is that the case? Was there a failure in the LDA's record keeping at the time that meant there was not enough information on file?

Mr Dawes: If everyone had hindsight we would do things a little differently, I think it is fair to say.

THE CHAIR: So you are agreeing that there is not enough documentation associated—

Mr Dawes: There is not enough documentation. Also, in the negotiations, I was very disappointed that, when I went back to the GSO's office and asked, "Can I have the minutes or the notes that Mr Gray had?" we could not read them as well. Again, I was relying on other people. That is not an excuse. At the end of the day, I should have been making more stringent file notes myself. But I think it is fair to say that any time after those particular discussions I always had someone else with me at any meeting to take notes.

THE CHAIR: When did you come to the conclusion that the LDA's record keeping for negotiations was not up to scratch?

Mr Dawes: It was at that time when all of those went through.

THE CHAIR: Sorry, at the time of the purchases of the land or at the time when the Auditor-General came along and said there was not enough information?

Mr Dawes: No, we literally changed a lot of things prior to the Auditor-General coming in. You have to remember that what drove the Auditor-General's report was a PID as well—the Auditor-General coming in to talk about doing a PID. I had made up a complete file of all of those transactions. There are three people who can do a PID. I could have done it as the director-general or I could have got another director-general to do the PID. But I chose to hand it back to the Auditor-General because I felt at that time that there was nothing to hide in any of this; so I handed it back to her.

When she came in to talk to me about the PID, it was just before she was going on leave. I had a file made up, but obviously she was well informed because she had probably half as much as I was giving her already. But they did not have all of the information at all. So someone had obviously given them something.

THE CHAIR: So the files were not made up contemporaneously. They were made up because it came on your radar as a PID.

Mr Dawes: No. I think it came after we dismissed the contractor that was running the city to the lake. I think we have to be careful here about reputations as well. As I said,

that particular project director had done some very good things, but it was getting to the point whereby the negotiations had failed. The record keeping was not good. I was very disappointed, so we let him go. We put a completely new director into the city to the lake. As I said, there was a new governance regime.

We centralised a whole lot of things. For example, why instruct a valuer, “Look, we do not want to pay very much for the block of land. Give me a low valuation”? It comes back to fit for purpose, what that particular land is for. If you look even at the documentation that Mr Powderly has now produced and all of the things there, he talks about the same price range that Opteon gave as well—back in the 14—and different numbers on that.

Again, it comes back to the way people are instructed. That is actually what we did. We changed a lot of it. Obviously, we had not covered everything. Then we had the McPhee review. There were some things that came out of that. There were 20-odd recommendations from that. We adopted all of those recommendations. They were well in train. I am very pleased to hear even today that the templates arising from McPhee are being implemented in the new agencies to ensure that things like this do not happen again.

MR COE: When you refer to the documents that Mr Powderly produced, what are you referring to?

Mr Dawes: The market advice, evaluation advice—those documents. There are four pages and you have got copies of them. You FOIed and we provided all those pages to you. Actually, that is what triggered it, following on from what Mr Ponton said as well. Once we realised that there was something in error, if you recall they gave you another copy of it subsequently. I wrote to you saying that this particular document had been found and we actually released that to you. Unfortunately, what I should have been is probably more explicit when I wrote that particular letter. Again, in hindsight you would do things differently. But that was a different paper to what we had actually released to you as a previous FOI.

Just to finish off on that, as Mr Ponton pointed out as well, we reported that to the chief minister’s department, corporate and governance area. There was a private investigator that looked at that particular matter. It was dealt with. I actually gave a copy of that file to the Auditor-General but the Auditor-General did not make any reference to it, which is I think is unfortunate. The LDA had dealt with that particular issue. That particular officer was counselled and the board also had a meeting with the Solicitor-General to make sure that the action and the investigative report on that particular matter was appropriate, and he said it was.

THE CHAIR: There are a couple of questions I would like to pursue. I am mindful of the time. There are two different things. I asked the Chief Minister this and I will ask you, Mr Dawes, because you would have hands-on experience and knowledge of this. The lease for the land adjacent to Glebe Park, from my understanding—and no-one has gainsaid this—was originally for open space, landscaping, drainage and food and beverage outlets, and there was a covenant on the lease that required the lessee to do \$1 million worth of essentially offsite works, which was landscaping. That was a lease that was issued in 2006 or 2008. Can you recall?

Mr Dawes: I am not sure when that was done.

THE CHAIR: But it was in that sort of period.

Mr Dawes: It could have been; I am not sure because I did not do the leasehold. That was—

THE CHAIR: When there was consideration of reacquiring that lease for Coranderrk Pond replacement, did the LDA consider resuming the lease because of a failure to comply with the lease conditions?

Mr Dawes: If you look at that particular site, I understand that the developers did do the landscaping and the required works on that particular site.

MR COE: Is there any evidence to suggest that?

Mr Dawes: I think just walked down there and looked at the landscape. There is a car park as well. But anyway, I—

MR COE: There is no evidence. It is not that they do landscaping because they spent \$1 million. It is pretty easy to quantify, isn't it?

Mr Dawes: It is, but I was not in charge of leases. That is completely ACTPLA.

THE CHAIR: That would be an ACTPLA issue. You did not have a discussion with ACTPLA. You wanted to reacquire the land, but you did not have a discussion with ACTPLA about the lease conditions?

Mr Dawes: No. If you look at that particular lease, it has an overlay as well for leisure. It can have serviced apartments or a hotel. If you look at what happened as well, the developers had rejected twice Crowne Plaza's approach for that site at \$3 million because they wanted to expand their hotel and that so—

THE CHAIR: So there was an overlay?

Mr Dawes: There was an overlay that they could put serviced apartments in—

THE CHAIR: But the terms of the lease, as it stood at the time, were for landscaping, drainage, food and beverage outlets, which come sort of under entertainment.

Mr Dawes: Yes.

THE CHAIR: The lease as it stood did not allow for—

Mr Dawes: Residential.

THE CHAIR: residential or even a hotel.

Mr Dawes: My understanding is that it allowed for a hotel or serviced apartments.

THE CHAIR: Okay. I think we might have to—

MR COE: Are you talking about the zoning or the lease?

Mr Dawes: The zoning.

MR COE: The zoning did; that is right.

THE CHAIR: No, not the zoning. I am talking about the terms of the lease.

Mr Dawes: No, but the zoning does and—

THE CHAIR: No, I am actually asking about the terms of the lease. Did the terms of the lease allow for the building of a hotel or apartment?

Mr Dawes: I would have to go back and have a look at the lease, but I was looking at the overlay at the time.

THE CHAIR: Yes, but the planning overlay is separate from the terms of the lease.

Mr Dawes: And most of it is.

THE CHAIR: And in the context that, if the terms of the lease were limited, as is my understanding and no-one has corrected my understanding of it—

MR COE: The Opteon valuation states—

THE CHAIR: and the Opteon valuation states that that is what the purpose is for, why did you not consider resuming the lease for non-compliance with the lease conditions?

Mr Dawes: That was not discussed.

THE CHAIR: It was not discussed? It was never discussed?

Mr Dawes: Not that I can recall.

THE CHAIR: Just one other thing—I said I had a couple of things—that goes in a different direction. How often did you meet with the adviser to the Mr Spokes people, Mr Parsons?

Mr Dawes: I would have to go back through, but probably two or three times, max.

THE CHAIR: You said that you knew him in a different context.

Mr Dawes: Correct, yes.

THE CHAIR: What was that?

Mr Dawes: Look, I had bumped into him around land. He was looking at buying houses in Reid; so I knew him from there. He looked at buying my house. His brother looked at buying my house, so—

THE CHAIR: So you knew him in that context and then he just serendipitously turned up in working for—

Mr Dawes: He did. I think actually this is a question I would encourage you to ask. Have you got Mr Spokes coming—

THE CHAIR: Mr Spokes, they are coming, yes.

Mr Dawes: I would ask the Mr Spokes people because they are the ones that engaged Mr Parsons. That followed on from, I think, a Philip Clark interview that we had had on the radio. I was being interviewed and Mrs Edwards was being interviewed. That is why I remember her name more clearly than her partner. I think they got a phone call from Ben Parsons then. But I was surprised when he sent an email requesting a meeting, because there was another lawyer for the legal firm acting for them when I met with their legal counsel about a month or two earlier.

MR COE: So when you said two or three times with Mr Parsons, when? What period are we talking about?

Mr Dawes: I would have to go back through and look at the dates. That would be there in my diaries, I suppose, with—

THE CHAIR: Could you take that on notice, please?

Mr Dawes: I have not got any access to those records; so we will have to ask the department perhaps to go back and have a look at those records of the meetings.

THE CHAIR: Okay.

MR COE: But you did, in effect, consent to that being done or—

Mr Dawes: What being done?

MR COE: You would consent to the government checking that? I am just curious as to how we actually go about—

Mr Dawes: I have no problems with my meeting, as I met with Ben Parsons, with David Gray, at my office at TransACT House.

MR COE: And then also at the lawyers.

Mr Dawes: Beg your pardon?

MR COE: And also at the lawyers.

Mr Dawes: Yes, with Mr Flint at the—

THE CHAIR: Who is Mr Flint, sorry?

Mr Dawes: He was the initial lawyer for the Mr Spokes people. But you ask them and they will be able to give you that information.

MR PETTERSSON: I have a question about block 24 section 65 and compulsory acquisitions. Some confusion arose in regard to the public purpose in that arrangement. Could you expand on that for me? Why was there confusion about any compulsory acquisition?

Mr Dawes: I think if the government had acted in the late 90s when the food court went broke—they had the offer of buying that block of land for \$1 million or \$1.25 million—we would not be having this conversation. And then the particular developer gets two additional parcels of land. One begs the question, but anyway that is all history on this particular site.

But the issue of us acquiring it for the pond was the critical thing, to be able to widen Parkes Way. As I said—and this is one of the other things that happened with the LDA records as well—we have things on different files. One of the new things that occurred, and it was confirmed in the McPhee report, just centralised a lot of the files. There was a valuation done on Parkes 3, before and after value on Parkes 3, with the additional land that would have been put into it because of Parkes Way, which added about \$15 million in value. There would have been some negotiations on that as well with the NCA because we would have been de-gazetting part of a road and they would have been entitled to something. But that is why I was saying it is somewhere between \$10 million and \$15 million in added value.

Why would we put the pond there when it was quite practical to go back to Glebe Park? If you look at Glebe Park and if you walk down Glebe Park, that is one of the main overflows for water. If you go over to the back of the convention centre there is a big stormwater drain there, down the steps there at the back of the convention centre. If there is a massive overflow, that is where it goes. And the reason I can remember all of these things is that it won an MBA award for a civil engineering feat, all of that sort of drainage back in the early 90s or whatever the case may be. It made logical sense. Then there was a report commissioned, I think it might have been by SMEC, on the pond being relocated. Where is the best location for the pond? And that was where it landed.

MR PETTERSSON: It sounds like there is a clear case for, I guess, the idea of public purpose.

Mr Dawes: There is and there is not. At the end of the day you have still got to pay fair value for land, otherwise you end up in court as well. And there have been some other compulsory acquisitions that are still going after three and four years. There are certainly two winners out of those sorts of cases as well. It is neither of the two parties. You can get in and move on as well. If I could have bought the land for less, I would have.

MR PETTERSSON: This is more broadly speaking. When you compulsorily acquire something is it cost effective or are the costs of going down that road quite extreme?

Mr Dawes: It depends, I suppose, on the person you are dealing with and what the purpose of it is. We acquired some land which we did not do through compulsory acquisition—we did not need to threaten that—where we wanted to put a substation for an electrical easement. That is a lot easier to negotiate as well, but some of the more difficult ones are: if you want to run a road through a car park that is owned by a particular building owner, that can be problematic, especially if the building owner has other plans and he might want to put another building on it. Again, it talks a bit about value, the perception of what we might think is for a public purpose, to put a road through, and what a particular owner of a property has as well. So that is where you can end up in a dispute.

MR PETTERSSON: I am just trying to understand this dispute and how it plays out. I am assuming the cost comes from the legal dispute that starts from trying to compulsorily buy something. How big in dollar terms are we talking when one of these disputes escalates?

Mr Dawes: That is a good question. I could not quantify that, but it could be a small amount to a substantial amount, depending on where it gets to. If it ends up in the Supreme Court, and some of these matters have ended up in the Supreme Court, it could run into the hundreds of thousands of dollars, I suppose, but I could not quantify that.

MR COE: With regard to the valuations that were prepared for Lake Burley Griffin Boat Hire and Dobel Boat Hire, can you recall when those valuations were received; that is, the valuations that you actually ran with?

Mr Dawes: I would have to go back through it and look at the dates for the values, but I know we had back and forth conversations with James Sears, with the boat hire business. There were a couple of meetings there and there were a couple of meetings and discussions. I think we got a valuation fairly late in the piece for the Dobel Boat Hire because the two brothers were not on speaking terms. They were awkward negotiations.

MR COE: Did you arrive at a price before getting a valuation?

Mr Dawes: Beg pardon?

MR COE: Did you arrive at a price before—

Mr Dawes: I don't believe so. I was wanting to pay a lot less. The valuation came in and we then met at that valuation price. I know that Mr Sears was not happy at all because he originally—

MR COE: Which Mr Sears?

THE CHAIR: Which Mr Sears, sorry?

Mr Dawes: Patrick Seears, Dobel Boat Hire. He was not happy at the end of the day and he reluctantly took the \$1 million but he was wanting in the order of \$3 million for his land initially, which I could not justify getting to that price.

MR COE: Had you negotiated \$1 million as the price before receiving the valuation?

Mr Dawes: No, I do not believe so.

MR COE: What about with regard to the \$575,000 for Lake Burley Griffin Boat Hire? Had you negotiated that price or come to that price before getting the valuation?

Mr Dawes: No, the valuations formed that discussion with James Seears.

THE CHAIR: On the subject of the Acton land, the two plots of land with the different businesses on them were treated quite differently. For the Spokes hire business, there was no separate price arrived at for the value of the business. They essentially got the valuation of the land and there was no valuation of the business. But for the other block of land and business they were separated. What were the material differences in those two blocks of land and those two businesses that meant that one was essentially not valued and the other one was?

Mr Dawes: I would have to go back through it. I thought that there was a value on the business for Mr Spokes. As I remember in one of the conversations I had with Mr Parsons—

THE CHAIR: It was \$1, as I recollect.

Mr Dawes: That might have evolved, but what we agreed to was the way it was finally negotiated as well. But there were some valuations prior to that, because I remember Mr Parsons submitted to me that the Spokes people had had plans to re-instigate the canteen there and they put a business case to us. And if you go back through it—and I think that was FOied—we sent that back to the valuers for a review and it did not have any material value. It would have just been the way we negotiated, because one of the things that we did do, when we acquired land, was that we used to get the leases surrendered as well.

THE CHAIR: Yes, but what I am trying to get a feel for as—

Mr Dawes: And the same with the Spokes.

THE CHAIR: These were almost contemporaneous arrangements and negotiations, but one was treated as if the business had no value and one was treated as if the business had substantial value.

Mr Dawes: Yes.

THE CHAIR: They were both businesses with goodwill, going concerns and equipment and premises. So why was one treated as if it had no value or \$1 value and one valued in excess of \$400,000?

Mr Dawes: I suppose it goes back to the way the negotiations just panned out and the way settlement may have been derived. You had in the one—

THE CHAIR: But you were involved in both those negotiations.

Mr Dawes: Yes, but what I am saying is that James Seears was a completely different entity to Spokes, where there was the land and they had the land and the business.

MR COE: But under what provision did you actually buy a business? I am at a bit of a loss as to how the government actually buys a business other than through an act of grace payment. How does the Land Development Agency buy a business? You are in the business of land. How did you actually buy the business?

Mr Dawes: We did. As I say—

MR COE: I understand that you paid for it, but I want to know under what legal instrument did you actually buy it?

Mr Dawes: All I can say is that we purchased them. It is on the record.

THE CHAIR: So did you purchase the boats, the bikes?

Mr Dawes: Yes.

THE CHAIR: What did you do with them?

Mr Dawes: The bikes, if you recall, were then ongoing and that was being run by an independent. I think that it is in the process now of looking at it. You would have to ask what the agency are doing with them now because it was handed over to Property Group.

THE CHAIR: You buy the business as a going concern for a dollar and somebody else continued to run it to this day?

Mr Dawes: Yes, the bikes continued there for a few months until—

THE CHAIR: For a few months?

Mr Dawes: Yes.

THE CHAIR: And now it is owned by Property Group?

Mr Dawes: Yes.

THE CHAIR: But what is owned by Property Group, the land?

Mr Dawes: No, the business. It is on the books of the LDA but they were managing it on behalf of the LDA, the bikes and all of that. I do not know what they are doing with that.

THE CHAIR: But what about the boat hire?

Mr Dawes: I do not know what they are doing with the boats.

THE CHAIR: No, at the time when you acquired it.

Mr Dawes: No, the boat hire never operated again.

THE CHAIR: The boat hire.

Mr Dawes: We were approached by different people, different organisations that wanted to operate the business.

THE CHAIR: So who owns the boats?

Mr Dawes: The LDA.

THE CHAIR: You have got however many, 50, 100 paddleboats somewhere?

Mr Dawes: I do not know how many boats. It is not quite that many. It is about 25 or 30 or something like that.

THE CHAIR: But you have got some paddleboats somewhere.

MR COE: We are now about to have our third summer without a paddleboat business in Canberra. Why did you even acquire the business? Why didn't you just buy the land and, in effect, lease it to the business, to keep on—

THE CHAIR: License it.

MR COE: Or not even license it; the business just keeps going. You are just leasing the premises.

Mr Dawes: That was suggested. James Seears did not want to do that at the time.

MR COE: I understand that, but you are the custodian of the taxpayers' money here. Why did you buy it?

Mr Dawes: Well, as I—

MR COE: Why was there actually a need to buy the business at all?

Mr Dawes: As I said, and if you look at the current budget, there is more money for the extension of the boardwalk so that the jetty will not be near the water.

MR COE: I understand about the building, but I do not know why you even bought the business. What was the need to buy the business? Isn't it the business's concern as to whether they have a building or not?

PROOF

Mr Dawes: Again it comes back to, I believe, fairness, Mr Coe. Are people going to pick up the boat and carry it 50 metres to put it into the water? One of the other things—

MR COE: But isn't it the business's responsibility as to where their premises are?

Mr Dawes: Yes, and as far as I know, that could be still—

MR COE: The shore has not moved much at this stage and it does not look like it is going to go anywhere any time soon. We are about to have a third summer where the business could have still been operational or somebody else could have run it, or the LDA could own that building and be leasing it to somebody else.

Mr Dawes: They could.

THE CHAIR: And all the paddleboats that they own.

MR COE: Have you considered leasing—

Mr Dawes: I have not. I am not with government anymore.

MR COE: Did you consider leasing it?

Mr Dawes: Yes, we did. Actually, we leased the bikes but we could not get any interest in—

MR COE: Did you put in an expression of interest for operating the paddleboat business?

Mr Dawes: No, I did not. That is something the government might want to consider.

MR COE: I am just at a loss as to who determines the fairness of whether you buy a business worth \$575,000. If the ACT government were to buy a building somewhere and there was a coffee shop trading at the bottom, I find it hard to believe that the government would say, "We'll buy the coffee shop because we now own the building." Surely, it would be the coffee shop's responsibility as to where they operate.

Mr Dawes: It was all integral to that city to the lake project to acquire both pieces of land and those businesses at the time. I did offer the Spokes people—and they may mention that when you talk to them—at a meeting I had in their office, that we could, when we built a pavilion, give them the first right of refusal to move their business to that pavilion, but they chose not to do that.

MR COE: That is a different case because they had a lease. I do think that, with Lake Burley Griffin Boat Hire, it is quite exceptional.

Mr Dawes: I treated them both the same. That is perhaps a different interpretation of yours and mine, Mr Coe.

THE CHAIR: I am conscious of the time. The time set aside for Mr Dawes has just

about concluded. I want to go back to my first question this morning, Mr Dawes, relating to the interplay between the land acquisition policy and the LDA's interpretation of it. I have been reflecting on what was said. Correct me if I have misinterpreted this: you seemed to be saying that the LDA did not notice that the policy they had asked for related to "all" land acquisitions, but you—and when I say "you" I mean the LDA corporately, the board and all—thought that it related to "strategic" land acquisition; is that right?

Mr Dawes: That is correct.

THE CHAIR: That is your—

Mr Dawes: That is my interpretation.

THE CHAIR: What does that say about governance, that somebody did not read the—

Mr Dawes: That instrument?

THE CHAIR: The instrument.

Mr Dawes: The final version. That is a good question. Once we realised that, we—

THE CHAIR: When did you realise it?

Mr Dawes: Well and truly very late in the piece. I think I was still arguing "strategic" and "project" and all of that for some months after that. It was highlighted in the Auditor-General's report.

THE CHAIR: This policy had been in existence since June 2014. In August 2015 the LDA adopted an interpretation of that—which I note, members, we do not have a copy of, and I think we might have to discuss what—

MR COE: Sorry, what was it?

THE CHAIR: A copy of the LDA interpretation. That LDA interpretation existed for some time, basically, until the Auditor-General came in, and then you realised that that interpretation was wrong and that your interpretation had been wrong since the outset?

Mr Dawes: Yes. I remember having a conversation with Mr McPhee about it, because we had discovered it, and I said, "Would you be able to have a look at this?" at the time. We discussed the interpretation. That was probably in the middle of 20—

THE CHAIR: 2016?

Mr Dawes: 2016, yes; so it would have been around the time he was starting his report. There had been some discussions as well. It is fair to say that, even when we started looking at that more closely, different people within the LDA were arguing that that was not the case. But it does stem back—

THE CHAIR: But none of them ever actually read the words in the—

Mr Dawes: No.

THE CHAIR: What you are saying is that no-one read the document?

Mr Dawes: All I can honestly say is that it was initiated by the LDA, that strategic policy, back in 2012. It had gone through a number of different iterations, as these things do. It is fair to say that we all assumed that is what the instrument was.

THE CHAIR: From the Chief Minister's evidence there was a cabinet submission and there were coordination comments. He is going to tell us when the cabinet submission first appeared. There would have been discussion before the cabinet submission, all through that process.

Mr Dawes: Yes.

THE CHAIR: Presumably you would have gone to cabinet with this?

Mr Dawes: I did not go to cabinet, no. It went to cabinet but I did not go to a cabinet meeting. I can honestly say that we did not notice the word "all" had been put in. The dropping of "strategic" did not matter quite so much, but the word "all" changed the interpretation of that whole document.

MR COE: You say it was in mid-2016, but my question on 5 November clearly highlighted this very issue and we had a whole—

THE CHAIR: This was November 2015?

MR COE: Yes, November 2015. We went through this in some detail in that committee hearing.

Mr Dawes: If you recall, as can be read in the transcript, I was still talking about project acquisition because city to the lake was a project that we were doing, and we bought it under that and under my delegation, because I had delegation up to \$10 million and they were not strategic purchases. I know you and I disagreed, so we agreed to disagree.

MR COE: But it had been brought to your attention. That is when Mr Ponton and the acting finance officer were also brought in. I find it hard to believe that, following that discussion, it was not looked at in more detail.

THE CHAIR: Could I clarify this: when you put to the board the interpretation, who drafted the interpretation and why was it considered necessary to draft an interpretation of a four-page document?

Mr Dawes: I would have to recall, but it might have been the CFO who was acting at the time.

MR COE: The acting CFO, I think.

Mr Dawes: Yes.

THE CHAIR: Did you seek legal advice on the interpretation?

Mr Dawes: Unfortunately not, because it would have been picked up then.

THE CHAIR: One would hope so.

MR COE: Mr Dawes, with regard to the FOI, I understand that the person who provided the incorrect document was promoted some time later; is that correct?

Mr Dawes: He was promoted to a director, yes, but I have forgotten what the timing was.

MR COE: Whose decision was it to promote that person?

Mr Dawes: There was an interview panel conducted and it would have been at that particular interview panel that he would have been promoted. He applied for the job and won the job.

MR COE: Is it fair to say that the fact that the FOI had been doctored was not regarded in the organisation as being a—

Mr Dawes: That is your interpretation. I do not believe that it was doctored.

MR COE: That is why I am asking: is it fair to say that the doctoring of the FOI was not seen as too serious an issue?

Mr Dawes: I do not think there was any malice or deliberate manipulation of the FOI document. As the private investigator found, there was nothing untoward.

MR COE: But, given that—

Mr Dawes: I would have to check the dates when he was promoted.

MR COE: Surely, it was significant to add the word “valuation” because, had that word not been included, how is it that on 5 November you said you had a valuation in the order of \$3.6 million to \$3.8 million?

Mr Dawes: It might be an interpretation; I would have to go back and look at the transcript. If you look at the particular document, it had a number of different titles. It had “market advice”, “discussion paper” and then “valuation advice”. Probably one of the things that should have been done was a proper valuation. Again, that was not done. There is no point getting a proper valuation done after the event.

MR COE: When you said there was a valuation done in the order of \$3.6 million to \$3.8 million—you usually get two valuations done—was that strictly true? Was there a valuation in the order of \$3.6 million to \$3.8 million?

Mr Dawes: That was my interpretation at the time, that we had had a valuation. At the time I thought we did have a valuation, but we did not.

THE CHAIR: Going back to the question of the person who had the document changed that was given to Mr Coe in FOI, as a result of the investigation, was that person disciplined in any way?

Mr Dawes: Yes, he was.

THE CHAIR: What was the nature of the disciplinary action?

Mr Dawes: He was sent off to FOI training. That is actually one of the reasons why the board was concerned as to whether that was the appropriate level. The Solicitor-General came to the board and the board directly asked the Solicitor-General at the time whether that was an appropriate recourse, and he said yes.

THE CHAIR: Was this person in any way performance managed or under a warning? If so, was he still under a warning when he was interviewed and promoted?

Mr Dawes: I would have to take that on notice. I am not sure about the dates. I do know that the CFO at the time was also in charge of corporate and governance. The other thing that we did was to bring the corporate and governance area back into the LDA, because that had been centrally taken out and put somewhere else. That particular executive director dealt directly with that particular matter.

THE CHAIR: I would like to know on notice whether the person was—

Mr Dawes: I will not be able to get those records. I do not have access to records.

THE CHAIR: We will have to consider how we ask those questions.

MR COE: Had you worked with this particular person in the private sector before?

Mr Dawes: Yes, some 20 or so years before—had a real estate background.

THE CHAIR: Thank you, Mr Dawes, for your participation today. I know that there are things you said you would have to check, and I am mindful of the fact that you—

Mr Dawes: I will not be able to check, because I do not have access.

THE CHAIR: You do not have access? You do not have your own diary?

Mr Dawes: It was all electronic.

THE CHAIR: The committee will have to go through the things where there are questions and we will have to devise some means of asking the questions. Perhaps we will have to put some questions on notice.

Mr Dawes: My view of the world is that if, for example, you need to clarify anything,

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I will not be objecting to you seeking that clarification.

THE CHAIR: Thank you very much for your time.

STEWART, MR DAN, former Deputy Chief Executive Officer, Land Development Agency

THE CHAIR: Mr Stewart, welcome to the second hearing of the inquiry into the Auditor-General's report on certain land acquisitions of the Land Development Agency. Have you read and understood the pink privilege statement?

Mr Stewart: I have and I do, Mrs Dunne. Thank you.

THE CHAIR: Thank you, Mr Stewart. Do you wish to make an opening statement?

Mr Stewart: No, thank you.

THE CHAIR: Great. In that case we will get straight on to the questions. I have been quite preoccupied with this, as you may have gathered, because you have been sitting in the gallery. Can you cast any light on the document which is the LDA interpretation of the LDA's land acquisition policy?

Mr Stewart: No, that post-dated my departure.

THE CHAIR: That post-dated your departure?

Mr Stewart: The analysis by the LDA of the acquisition framework was done after I left the LDA on 7 August 2015.

THE CHAIR: I am sorry; I thought that you were at the meeting—

Mr Stewart: No, I was not.

THE CHAIR: of the LDA where the interpretation was adopted.

Mr Stewart: No.

THE CHAIR: I am sorry; in that case I—

Mr Stewart: The board meeting was at the end of August. I left at the beginning of August.

THE CHAIR: You were not at that meeting?

Mr Stewart: No.

THE CHAIR: You left in early August—

Mr Stewart: Yes.

THE CHAIR: and you handed over to your successor. What sort of briefing did you hand over? Were you both in the office at the same time or was there a formal handover period between your departure and—

Mr Stewart: We had a number of meetings. We were both incredibly busy in the lead-up to my departure. Ben, or Mr Ponton, had agreed at that point to take on my existing support staff, which was my executive assistant and my executive officer, who were across everything that had been going on in a project sense, in a management sense, from my office at the time. Mr Ponton and I had a number of meetings—two or three, I recall—where we went through all of the material that was on my radar. They were verbal conversations. I do not recall handing over anything in writing at that stage, no.

THE CHAIR: There has been some discussion, and Mr Pettersson asked a question about this, about the fact that the CEO of the Land Development Agency had asked the principal of Colliers International—the word “mentor” has been used; I am not hung up on the word but it is a useful phrase—to mentor you through the time when you started in the agency. My understanding is that although you had an extensive administrative and territory background you did not have a long background in property. Is that—

Mr Stewart: I had no direct involvement in the property industry when I commenced my role with the Land Development Agency. I had been in the ACT treasury for seven years, across a variety of roles, and then director of the Chief Minister’s economic, regional and planning policy area for a further four years. So I had had the opportunity to work closely with the LDA both from a treasury perspective in terms of financial monitoring and budget work and then on the Chief Minister’s side in relation to the development of the annual land release program.

When I won the role, Mr Dawes suggested that to get some detailed advice—I guess a mentor is an adviser; so I am happy if you would like to use the word “mentor”—I hold, at least for the first couple of months in my role, regular meetings with Mr Powderly, given that he was president of the API at that point of time, and Mr Barrett, who was chair of the LDA board. Mr Powderly and I met fortnightly for, I think, the first two months in the role—maybe three months. You would have to check my diary. And I met Mr Barrett regularly, fortnightly.

THE CHAIR: Outside of board meetings?

Mr Stewart: Outside of board meetings; that is right. The mentoring relationship with Mr Barrett continued and I had fortnightly or monthly meetings with him throughout the duration of my time with the Land Development Agency.

THE CHAIR: When did you start at the LDA?

Mr Stewart: I started with the Economic Development Directorate around August 2011. Then I believe I won the role of the deputy—I had three roles. I was the deputy CEO of the Land Development Agency, the deputy director-general of the Economic Development Directorate and, for the last six months of my time in government, I was the coordinator-general for revenue. So it was a pretty busy business card.

THE CHAIR: You held those positions simultaneously?

Mr Stewart: For the last six months, all three concurrently, yes.

THE CHAIR: Okay.

Mr Stewart: I believe my appointment to the deputy CEO role of the LDA occurred around October-November 2011, but then there was a window where I was acting under treasurer. But I am sorry, I would have to double-check those dates.

THE CHAIR: Can you double-check those?

Mr Stewart: Certainly.

THE CHAIR: So it was roughly 2011 until August 2015.

Mr Stewart: That is right; give or take four years with the economic development, land development portfolio, yes.

MR PETTERSSON: With regard to block 24 section 65, the report says you verbally requested advice from Colliers on the value of this block. It says that you received this advice free of charge. Two questions: how much would a valuation of that nature normally cost and why do you think you received it for free?

Mr Stewart: If I can backtrack to give you the full picture. You have heard some elements of the conversation or some elements of the process that led to that conversation, so I think it would be really instructive for you to fully understand why we had reached that point.

The Chief Minister alluded to the fact that there had been a briefing for the urban renewal subcommittee of cabinet. That was in either late April 2015 or early May 2015. I think it was the latter. The purpose of that briefing that I had undertaken as coordinator-general was to give the subcommittee a full update on the city to the lake project but with a particular emphasis on the options that had been generated for the realignment of Parkes Way. A number of those options were put to the subcommittee. We had a handful of the project consultants attend that meeting as part of the briefing. It was a very comprehensive briefing.

An outcome of that conversation with that subcommittee was a strong desire to pursue a business case through Infrastructure Australia to obtain federal government funding for Parkes Way. You may recall that there was a strong predilection at the time by the commonwealth government for road funding and it was seen as a strong candidate for a business case, given all of the opportunities and potential revenue that that realignment—any of those proposed realignments—would create in terms of the additional land development opportunities on the northern side of West Basin, the southern tips of those clover leafs south of City Hill, most particularly Parkes 3, which Mr Dawes mentioned in his testimony, and of course the opportunities to redevelop the Civic pool site for either a future stadium, which had been proposed through the master plan, or some other purpose.

In debriefing, Mr Dawes, following the meeting with the subcommittee and working—

THE CHAIR: I am sorry, could you just refresh my memory: what was the date of that briefing?

Mr Stewart: I spoke to Mr Dawes immediately after the subcommittee meeting.

THE CHAIR: But when was the subcommittee—

Mr Stewart: Late April or early May 2015.

THE CHAIR: Late April or early May.

Mr Stewart: We had already actually engaged a consultant out of Melbourne who was going to be responsible for preparing that business case.

MR PETTERSSON: Who was that?

Mr Stewart: ISG, I believe. But a key issue, of course, in putting forward a business case for the realignment of Parkes Way was the fact that we had not identified formally what the solution was for relocating Coranderrk Pond. We had done quite a bit of engineering analysis through the project team, and I think Mr Dawes suggested that work had been done by SMEC. I believe that is right; SMEC or Endesco. A number of options had been explored. There were really only two options. There was the land adjacent to Glebe Park, which you referenced, Mr Pettersson, and there was the Parkes 3 site, which has some significant value.

It was agreed that before we could undertake any detailed work we should explore with the owners of the Glebe Park land what their willingness was to sell. Mr Dawes suggested I speak with Colliers to get some valuation advice on that block. You have, I believe, read the steps that were taken. He and I spoke in May. He provided some preliminary advice. He provided further advice in June, offered to arrange a meeting with the owners or a representative of the owners, because I had not met any of them, of the property or the block in question. We had a preliminary meeting at Colliers' offices in June, I believe, mid to late June. They indicated a willingness to sell the land at that time and Mr Potts was nominated as the representative of the owners.

Mr Potts and I then had a series of subsequent telephone calls where we finally agreed that they were willing to accept the \$3.8 million plus GST as being the value—sorry, as being the price that they would sell the land for.

MR COE: What date was that, roughly?

Mr Stewart: That was in July. I could not tell you. It would have been the date—no, I do not know. I could not tell you, sorry. It was definitely in July because I had already given notice at that stage to depart my role. To go back to your original question, it was never a formal value. It was valuation advice and it provided a basis for discussions with the lessee. A formal value—I do not know; \$3,000 to \$5,000 maybe. It depends on the—

MR COE: But that is the ballpark you are kind of talking about.

Mr Stewart: I believe so. I have never actually instructed a valuer other than to seek valuation advice from Mr Powderly in relation to that block.

THE CHAIR: So was it the plan at any stage to obtain a formal valuation?

Mr Stewart: At the point at which I departed the agency there had never been a discussion about obtaining a formal valuation.

THE CHAIR: So how did you know whether or not you were getting value for money? I mean—

Mr Stewart: Well, we were relying on valuation advice from Mr Powderly at that stage.

THE CHAIR: But the only formal valuation that you had was 950,000 to 1.05, as I recall.

Mr Stewart: Yes.

THE CHAIR: That was admittedly the year earlier, a bit more than a year.

Mr Stewart: It was the back end, I believe, of 2014.

THE CHAIR: And this was July. So it was less than a year old. So how did you move from \$950,000 to—

Mr Stewart: I think the path that was followed in terms of the approach taken by the two valuers has been borne out in the Auditor-General's report and in the conversations that have been had here. The initial valuation for \$900,000 to \$1 million was done on a very specific basis. The valuation advice provided by Mr Powderly was done on an alternative basis, largely highest and best years.

THE CHAIR: But the thing is that with the lease itself and your specific uses on it, why would you go for the highest and best use if the lease that you were acquiring did not have the capacity to build at the highest and best use?

Mr Stewart: But leases can be changed, Mrs Dunne. They are all the time, and Mr Powderly's advice factored in lease variation as part of that process. So it was considered that the number advised by Mr Powderly that took highest and best use, factoring the cost of lease variation as the charges that would be paid to government, was appropriate as fair value.

MR COE: Even though the government had said that they would not contemplate a lease variation on that site.

Mr Stewart: The government has said that on many sites that have subsequently had leases varied, Mr Coe. If the owner had chosen—

MR COE: If you could provide such a list I would be very grateful.

THE CHAIR: The thing is—

Mr Stewart: But the lessee has the right to argue fair market value, and fair value on that site was considered to be highest and best use, which was borne out by subsequent valuations undertaken on behalf of the Auditor-General and subsequently a further valuation which was done to establish the value of that asset on the LDA's books.

THE CHAIR: I will ask you this question because I have asked everybody else the question so it is only fair: the original lease, the lease that was surrendered in 2015, was for landscaping, drainage and food and beverage outlets. They are the terms of the lease. I take your point that at any time a holder of the lease could apply for a variation of the lease. It was issued with the caveat, whatever, that required the expenditure of \$1 million of landscaping on that block. When you looked at the lease and thought it was in the best interests of the territory to acquire that, did you consider acquiring the lease through a mechanism demonstrating that the leaseholders may have been in breach of their lease because they had not expended \$1 million on landscaping?

Mr Stewart: No.

THE CHAIR: Did you not think of it or did you discount it?

Mr Stewart: It was not considered or discussed.

THE CHAIR: It was never considered or discussed?

Mr Stewart: No, not to my knowledge.

MR COE: Does a valuation need to be on an as-is basis?

Mr Stewart: I am not a qualified valuer, Mr Coe. We took valuation advice, and that was the basis of my discussion with the lessee.

MR COE: In terms of the mechanics, you get this advice from Colliers. How does that go from being advice to being, in effect, a sale, a deal? What is the process for going from that point to getting a cheque cut?

Mr Stewart: I was not at the agency.

MR COE: But what is the process, to the best of your knowledge?

Mr Stewart: I would be speculating.

MR COE: So you never saw it? What about all the other land acquisitions?

Mr Stewart: For the acquisitions that I—I would not say had carriage of—was privy to in my role at the LDA, to the best of my knowledge they had all been to the board

for approval. At that point a formal valuation was generally required, although I do not think always.

THE CHAIR: So are you saying that you had not actually handled any land acquisitions apart from this one?

Mr Stewart: Not directly in terms of negotiations, no.

MR COE: Is there a form that gets filled out that then goes to treasury, or how does that actually work?

Mr Stewart: For the acquisitions that I recall in the time between the policy being signed off and my departure—there would have been two or three that I can think of maybe—a business case was taken to the LDA board because they were below a certain value threshold, as per the policy, and the board approved the acquisitions and the properties were acquired as per the policy.

THE CHAIR: So you would have made a submission to the board that would have outlined the tests.

Mr Stewart: That is exactly right. A board paper would have gone up to the board seeking approval to acquire a particular site.

THE CHAIR: So that would have outlined the tests, like the intended outcome as being identified for the proposed acquisition.

Mr Stewart: That is exactly right. Let's call it a business case of sorts.

THE CHAIR: So you would have read those bits of the policy in the boxes—test 1, test 2, the intended outcome for the proposed acquisition advances the government's land development policies?

Mr Stewart: Yes.

THE CHAIR: But you did not ever read the bit which said that it related to all land development acquisitions.

Mr Stewart: I never made a distinction. I had assumed that all acquisitions had to go to the board.

THE CHAIR: You assumed that all acquisitions had to go to the board?

Mr Stewart: Absolutely. That is what I said to the Auditor-General.

THE CHAIR: So you had shaken hands.

Mr Stewart: Nothing had been signed.

THE CHAIR: You had shaken hands.

Mr Stewart: Well, we had agreed a value over the phone.

THE CHAIR: You had agreed to a value and you had agreed to a sale, and then you assumed that that \$3.8 million plus GST—\$4.1 million—would have gone to the board for sign-off because everything else had?

Mr Stewart: Yes.

THE CHAIR: In your experience, everything else had?

Mr Stewart: In my experience, which is limited to a handful of instances, yes.

THE CHAIR: When you say “handful”: half a dozen, 10?

Mr Stewart: No, not that many. Two or three.

MR COE: You said you had not met any of the owners or directors of Glebe Park Pty Ltd?

Mr Stewart: Correct.

MR COE: Who were they?

Mr Stewart: Barry Morris and Graham Potts are the two I can recall off the top of my head. There is a gentleman who owns the zoo, whose name I cannot recall. And I believe there was a fourth party. I had not met any of those individuals until I met with Mr Potts at the Colliers offices.

THE CHAIR: You only met with Mr Potts?

Mr Stewart: Correct.

MR COE: Were they in the box seat in terms of negotiating? If the government was particularly keen to purchase this, especially in the absence of a valuation, were they really in a position to be able to drive the process?

Mr Stewart: Not really, because Mr Dawes had given me very clear instructions that the threshold I was allowed to use in my discussions with the lessees was the band of \$3.6 to \$3.8 million, as per the advice provided by Colliers. Had they said, “We want \$10 million,” I mean, the number they wanted was higher than the number we agreed on. The number we wanted was the lower end of the threshold and we ended up agreeing on it.

THE CHAIR: Plus GST.

Mr Stewart: Plus GST. But at that point in time I was instructed by my CEO that I was able to negotiate up to \$3.8 million for the acquisition of that site. If they had come back with a number much higher than that and dug their heels in, I suspect we would be having a very different conversation.

MR COE: If you were able to negotiate up to \$3.8 million and you sold it for \$3.8 million—

Mr Stewart: It was a narrow negotiating band, Mr Coe.

MR COE: That is right. And the meeting took place at the Colliers office, and—

Mr Stewart: The first conversation. There was no negotiation at that time.

MR COE: So the meeting takes place at the Colliers office. The person that advised you that it is worth \$3.6 to \$3.8 million was a Colliers person. The Colliers person arranges the meeting. Do you think there is a fair chance that the director of Glebe Park might have known that you were advised that it was in the vicinity of \$3.6 million to \$3.8 million?

Mr Stewart: I do not believe so, no.

MR COE: Despite the fact that the person who had facilitated that meeting and had got everyone in the room had told you a price, you do not think the other party would have been aware?

Mr Stewart: I choose to believe not.

THE CHAIR: So did the documentation you had received from Colliers that outlined the price band in any way indicate that it was privileged to the LDA?

Mr Stewart: It was an advice addressed to me, so it would assume to be, yes.

THE CHAIR: You would assume that it was privileged advice?

Mr Stewart: Absolutely.

MR COE: But had this informal advice said it was \$5.4 million, do you think the director-general would have said, “Go up to \$5.4 million”?

Mr Stewart: I do not know.

MR COE: I am just wondering what actual due diligence was done on this \$3.6 million to \$3.8 million.

Mr Stewart: There were examples provided with the valuation advice that was given to me by Mr Powderly that illustrated the basis of his assumptions. As I said, they seemed reasonable at the time. We had only just sold Campbell 5 for a record price, well above the expectations at the time, and we had subsequently—

MR COE: With construction rights, mind you.

Mr Stewart: Absolutely. And a number of valuations have subsequently found that that was an appropriate price to pay. I am comfortable with that. The president of the

API at the time had said—not in a formal valuation but in a valuation advice provided to me, with some examples of what was underpinning that valuation—\$3.6 to \$3.8 million was a reasonable band to be paid for this block of land. And that, following discussions with Mr Dawes, was agreed to be the threshold that I was allowed to negotiate with him.

MR COE: Why was there a haste to actually get on with this project? What had happened in—

Mr Stewart: As I said, we had the briefing to the subcommittee of cabinet. They indicated a desire to pursue commonwealth funding for Parkes Way. The design options for Parkes Way at that point were reasonably well advanced. We knew what they were, at least in terms of having a number of options that could be put forward as being feasible for the site, each with different costs and benefits, and in order to put forward a submission to Infrastructure Australia we felt at that time that we needed to have an understanding of the option or the outcome for Coranderrk Pond, and the land behind Glebe Park was key to that. So that is exactly what prompted the conversation with Mr Powderly. I spoke with Mr Dawes, and then probably within a day I was on the phone to Mr Powderly, and then the events unfolded from there.

MR COE: So around that same time a meeting had taken place between the Chief Minister and others, I am guessing, with regard to the casino development?

Mr Stewart: Yes.

MR COE: Had you been in any meeting with the casino owners?

Mr Stewart: I believe so, yes.

MR COE: In light of that, were you aware that the casino wanted to develop on that block?

Mr Stewart: My understanding at that time was that the casino's interest was only in developing on their own land and that they only developed an interest in expanding their design post the public discussions around the Glebe Park land.

MR COE: So put a time on that if you can.

Mr Stewart: I cannot.

MR COE: You have just said your understanding is that that only changed after it came to government—

Mr Stewart: So having left government, and having spoken with representatives from Aquis who were watching these events unfold publicly, the point made at the time was that their initial thinking and initial designs for their expansion had only ever taken in the land that they had control of, which is the land behind the casino.

MR COE: The Chief Minister signed a note which includes, in particular, concerns by residents affected by Aquis's rights to block 24 section 65. This was dated

November 2015.

Mr Stewart: Aquis put in their submission in September 2015 and publicly released images of their proposal. I am not aware of any rights that they have ever had over that block other than the right to submit an application for direct sale.

MR COE: Was it pretty clear from the meeting that you were at that they wanted to do a project on land that they did not own?

Mr Stewart: No. My recollection is that their initial design for the casino, at least the one that was discussed in the early part of 2015, or their early thinking, was an expansion of the existing convention centre, with them assuming management rights of the convention centre, and that was to be largely confined to their existing land right.

When it crept into the adjacent block I could not tell you, but the conversation that I had with representatives from Aquis subsequently was that, when this information about the government acquiring this land first came to public light, that was the first time they had seriously considered a large development on that block.

MR COE: So when you met with the Canberra casino owners, Aquis, where did that meeting take place?

Mr Stewart: I had a series of discussions with them. I have done some work for them since leaving government.

MR COE: But at the time?

Mr Stewart: It was around the time that they were lodging their business case. No, sorry, it would not have been then, because the conversations about Glebe Park were not public. It could have been around the time of the estimates hearings when the articles first appeared following your line of questioning around that strategic project acquisition.

THE CHAIR: That would have been June 2016.

Mr Stewart: I thought there were articles in the paper around November.

MR COE: But you would agree that the images that the casino have put out with regard to their proposed redevelopment include this block in question?

Mr Stewart: Their final design does now, yes; I believe that is right.

MR COE: I am sure you were at the same event. There was an unveiling of some images at a Business Chamber dinner that I can recall, and I am pretty sure that that had some pretty grand structures out the back of the casino which, when you look at the actual map of 24-65, certainly look to include that site. Do you think it is possible that the owners of Glebe Park Pty Ltd perhaps knew that the casino were sniffing around and thought that maybe they were in an even stronger bargaining position because of that?

Mr Stewart: I do not know.

MR COE: Do you know whether the casino, Aquis, approached the owners of Glebe Park Pty Ltd?

Mr Stewart: No, I do not.

MR COE: In terms of LDA staff that had conflicts of interest, how were they declared?

Mr Stewart: In the manner that Mr Dawes outlined.

MR COE: And did that happen as a matter of course?

Mr Stewart: To the best of my knowledge, yes.

MR COE: And what did it actually mean when somebody made a declaration? Can you recall any circumstances where somebody had made a declaration and they were actually excluded from a project?

Mr Stewart: There were a number. Mr Dawes referenced Mr Barrett's enduring relationship with Woden's—

MR COE: That is on the board. I am talking about staff here.

Mr Stewart: There was at least one occurrence that I can recall where there was a panel established within the sale space and where there was an existing relationship between an individual and one of the agents, and that person was excluded from the assessment process.

MR COE: This is going back to your treasury days. Have you ever done treasury assessments of projects?

Mr Stewart: Yes.

MR COE: Was a treasury assessment undertaken for Glebe Park?

Mr Stewart: A treasury assessment?

MR COE: The acquisition?

Mr Stewart: No.

MR COE: Would that usually happen?

Mr Stewart: No, because, as the policy clearly identified, there were certain thresholds for decisions up to a certain point that were able to be made by the board, in which case the board would have been provided with certain information and the decision would have been taken on that basis.

MR COE: But you did mention that you would have prepared a business case. Would that business—

Mr Stewart: I said a business case of sorts. There were—

MR COE: Is it possible that that would have included a treasury assessment or not?

Mr Stewart: Unlikely, for those purchases under that first threshold. For anything over that threshold where there was a broader consideration by government, the Chief Minister or cabinet, I would expect so, yes.

MR COE: Did you ever declare any conflicts of interest with regard to any of these purchases, in particular Glebe Park?

Mr Stewart: No.

THE CHAIR: Were you ever offered a formal valuation advice from Colliers or anyone else for the Glebe Park land?

Mr Stewart: Mr Powderly, in our final conversation when he handed over his—just let me pull the title off the paper—discussion paper, offered to put me in contact. This was on the day of the discussion with Mr Potts, if we wished to—

THE CHAIR: At Mr Powderly's office?

Mr Stewart: At the first conversation, correct. We had a conversation prior to the meeting and then I met with Mr Potts at his office, yes, and he offered to put me in contact or put the LDA in contact with his senior valuer to prepare a valuation, yes.

THE CHAIR: And you did not take up that offer?

Mr Stewart: As I said, at that point the discussions were in train with Mr Potts and I had a band in which to negotiate, which I did.

THE CHAIR: So we had passed up the notion of value for money and you were actually negotiating in a band of what the LDA was prepared to pay?

Mr Stewart: I beg your pardon?

THE CHAIR: You were negotiating in a band of what the LDA was prepared to pay?

Mr Stewart: The initial conversation with Mr Potts, on behalf of the owners of the block, was to determine whether they were willing sellers. He said they were. We agreed to have a follow-up conversation. After having made those introductions on that day in person, he and I had two or three further conversations through the back end of June and then into July.

THE CHAIR: When you say "he and I", Mr Potts—

Mr Stewart: Mr Potts and I had two or three phone conversations. All the discussions were at that point about the price, as any negotiation would be.

THE CHAIR: Did you keep a record of those conversations?

Mr Stewart: No, I followed up the conversations with Mr Dawes.

THE CHAIR: There is no written record of those conversations?

Mr Stewart: No, there is not.

THE CHAIR: Was that standard practice when you were negotiating?

Mr Stewart: As I said, it was the first negotiation I had ever undertaken.

THE CHAIR: That is right; yes, you did too. Sorry. Was it standard practice for you, as a senior official in a senior government department, to not keep records of phone conversations?

Mr Stewart: It would depend on the conversation. I spoke on the phone a lot, but I had more face-to-face meetings. In all of my face-to-face meetings there would have been records of meetings or notes of meetings—no, not all of them; a good number of them.

THE CHAIR: So Mr Potts offered a more formal valuation but you did not take it up?

Mr Stewart: No, Mr Powderly offered it.

THE CHAIR: Sorry, thank you for that correction. Mr Powderly offered to put you in contact with a senior valuer in Colliers to give you a more formal valuation and you did not take up that offer?

Mr Stewart: Not at that time, no.

THE CHAIR: Did you discuss it with Mr Dawes?

Mr Stewart: I do not recall.

MR PETTERSSON: There has been much made about the meeting—the negotiations that took place at the Colliers office.

Mr Stewart: No negotiations took place at the Colliers office.

MR PETTERSSON: I am sorry; the meeting that took place at the Colliers office.

Mr Stewart: Yes.

MR PETTERSSON: Was it unusual to meet in such a location?

Mr Stewart: He was an agent on behalf of the LDA. I did not think anything of it at the time. Looking back on it now, I absolutely wish that the meeting had been held in my office.

MR PETTERSSON: Did meetings like that normally occur in your office or did they occur in cafes? Did they occur out and about?

Mr Stewart: All of the above, yes. Again, that was the first negotiation that I had undertaken, so in terms of meetings with industry representatives, agents, mentors, advisers and others, they were held in all manner of locations, usually to suit the individuals concerned. It may well have been that day—and again I could not tell you—I might have been in town for a meeting and it could have back-ended that. I do not know. The first conversation with Mr Potts was held at the Colliers offices.

THE CHAIR: Given that this was the first negotiation that you had handled, why didn't you want to do it according to Hoyle? Why wouldn't you want to do it strictly by the rules? If this was the first negotiation you were handling, why didn't you get a formal valuation?

Mr Stewart: Mrs Dunne, I had opened a conversation with the lessee to determine whether they were interested in selling the block. At that point in time we were relying on valuation advice, yes, but, as I pointed out, the valuation advice was underpinned by some logic, some reasoning and some rationale, and it was prepared by the president of the API. It was enough, as far as Mr Dawes and I were concerned at the time, to have a conversation with the lessees about whether they were interested in selling. I cannot tell you why the process unfolded from the point at which I said to Mr Dawes, "Mr Potts has agreed at \$3.8 million," to the point at which the contract was executed, because, as I mentioned, I was well within a notice period, and I departed the LDA a matter of weeks after that final conversation and had no further involvement in the discussion about that block.

THE CHAIR: But if I buy property as an individual, I really like that property, I negotiate with the seller and we come up with a figure, unless I am extraordinarily wealthy and I just write a cheque for it because I have that money in the bank, I usually go to a banking institution, who has probably given me pre-approval or whatever, but before that is signed off, there is a valuation. That is normal business practice. Why was there not a valuation?

Mr Stewart: I would say that there are very few individuals who seek valuations—

THE CHAIR: But my banking institution would seek a valuation to see whether they have—

Mr Stewart: Of course they do, but that is to approve your finance. But you as an individual are negotiating on the basis of what you are observing in the market and as—

THE CHAIR: Yes, but the thing is that before the sale is finalised there is a valuation. If I were just writing my own cheque—it is probably slightly different—in the case

PROOF

I am talking about, the bank goes and double-checks that I have not done something stupid and that they are not lending me money that is beyond the value of the property that they are holding a mortgage over. This did not happen anywhere along the line. Treasury had to sign a cheque. Somebody had to sign a cheque.

Mr Stewart: No, treasury did not sign a cheque.

THE CHAIR: Who signs the cheque?

Mr Stewart: The LDA would have paid for the land.

THE CHAIR: It is an LDA cheque; okay. What you are saying is that on this occasion it was the first time you had ever done this, and admittedly you had moved on before it was all signed, sealed and delivered and you may have had expectations. There was no formal valuation and it ended up that no business case of any sort went to the board to sign off on this; is that right?

Mr Stewart: My understanding is that Mr Dawes made the decision to finalise the purchase of the site without recourse to the board.

MR COE: You referred to the president of the API. You mentioned the president twice.

Mr Stewart: Mr Powderly was president at the time, I believe.

MR COE: You also said, “The president of the API had told me that it was worth X.” Are you talking about another valuation?

Mr Stewart: No, I am saying that his credentials, based on his experience and his position, warranted my trusting his advice.

MR COE: To your knowledge, did Colliers have a conflict with regard to this block?

Mr Stewart: I do not believe so.

MR COE: Did Colliers get a commission for this block?

Mr Stewart: I do not believe so.

MR COE: Are Colliers, in effect, the agent for these directors?

Mr Stewart: An agent would generally earn a commission and I do not believe Mr Powderly earned a commission; therefore his—

MR COE: But he had an ongoing business arrangement with them, didn't he, on other sites?

Mr Stewart: I believe so, yes. You are meeting with him this afternoon. He will be able to tell you whether he earned a fee from the sale of that particular site. I do not believe he did.

MR COE: Did Mr Dawes or the government, in effect, just tell you to get this deal done?

Mr Stewart: No. Mr Dawes and I spoke after the subcommittee of cabinet meeting and agreed that, in order to progress a business case to Infrastructure Australia, we needed to have a viable solution for Coranderrk Pond. All of the work that had been done over a number of years suggested that Glebe Park was the best—if not the only, certainly clearly the best—solution. But we did not control the land where we were hoping to relocate the pond. That is what facilitated all of these discussions.

MR COE: Were you, in effect, given a hospital pass to sort this out, do you think?

Mr Stewart: Not at all. I was asked by my CEO to get some advice from Colliers, which I did. My CEO and I reviewed that advice. The numbers looked reasonable. Based on our experience, my CEO asked me to initiate a conversation with the owners of the block. By this stage I had signalled my intent to my CEO that I was wrapping up my career with the LDA, with the ACT government. I had a series of conversations with the representative of the lessees and the final price was agreed, and I advised my CEO. That was where the process got up to and that was the extent of my involvement in that process.

MR COE: Are you aware of whether the Infrastructure Australia bid ever happened?

Mr Stewart: No.

MR COE: It is interesting that the pond has not happened, West Basin has not moved, city to the lake has not progressed and the Infrastructure Australia bid did not happen. The only thing that looks like it is going to happen is potentially the casino. It seems to me that there is a lot of perhaps smoke and mirrors regarding what is the actual motivation by the government—not you, the government—for acquiring this block.

Mr Stewart: I cannot say it any more clearly than I have. My motivation for initiating the debrief with Mr Dawes and the subsequent discussions with Colliers and with the lessees of the block behind the Glebe Park apartments was purely as an outcome of my briefing to the urban renewal subcommittee of cabinet. There were a good number of attendees in the subcommittee room that day who would be able to validate that there was a clear desire on the part of the government representatives in that room to pursue a business case.

I was keen to see city to the lake progress, and we had done a lot of work to get to that point. A lot of time and energy had been invested in exploring different options for Parkes Way and different options for Coranderrk Pond. It seemed like an opportune time to move. As I said we had already either engaged or we had opened conversations with ISG. I could not tell you for sure.

MR COE: If you were buying it for a pond, why did you value it for apartments?

Mr Stewart: Fair value, Mr Coe.

THE CHAIR: For a pond?

Mr Stewart: Fair value for the land.

MR COE: But not as is?

Mr Stewart: Again, I took the valuation advice from Colliers.

THE CHAIR: Was Mr Dawes at that cabinet subcommittee briefing or—

Mr Stewart: I do not know.

THE CHAIR: You were there, weren't you?

Mr Stewart: I was definitely there but I cannot recall if Mr Dawes was.

THE CHAIR: You said you debriefed Mr Dawes afterwards. Were you reporting back to Mr Dawes about the meeting or—

Mr Stewart: I do not know if Mr Dawes was at the meeting and he and I were speaking after the meeting, or whether Mr Dawes was absent from the meeting and I was updating him on the outcome.

THE CHAIR: Reporting back to him.

Mr Stewart: The government would have to advise who was in attendance at that meeting. I was definitely there.

MR COE: Have you done work for the LDA or economic development directorate since leaving?

Mr Stewart: One small piece of work, yes. One only, I believe, yes.

MR COE: In terms of the LDA was there a culture of just doing things on the phone and getting things done as quickly and as efficiently as possible?

Mr Stewart: As efficiently and as effectively as possible, yes.

MR COE: With regard to the city to the lake team, was there a feeling that they had not progressed or that they were not meeting the expectations?

Mr Stewart: I do not think so. The creation of the coordinator-general role in early 2015 was to try to draw together the work and activities that were going on across a number of different agencies at the time. City to the lake, being one of the government's priority projects, along with the Northbourne renewal at the time were two of those projects that fell into my remit in that role.

The concept for city to the lake was originally a very high level but reasonably detailed master plan. There was a lot of work to do before giving life to that vision. In the years subsequent to its unveiling—I think it won the Australian planning institute

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national award that year—there were a raft of studies, further designs and further analysis that had to be undertaken. It had a lot of moving parts and it was a very complex project. But at the point at which these conversations had been initiated, there was enough information, to the best of my recollection, to suggest that Coranderrk Pond could be relocated to Glebe Park, given its proximity to those main stormwater lines running from the inner north, and that the options that had been put forward, where there was some detailed analysis for Parkes Way, were options that the government was willing to consider and to put forward for commonwealth funding. The government had not identified a preferred option and the final work had not been completed at that stage, but that is what a business case is all about.

MR COE: We received evidence to say that a copy of the Opteon valuation was delivered to the Colliers office. Did you deliver that?

Mr Stewart: I do not think so. I could not tell you.

MR COE: Why would something be delivered to an office rather than emailed?

Mr Stewart: Perhaps it was a really large file. I do not know.

MR COE: At the time was there an understanding that this whole issue was sensitive and that a paper trail—

Mr Stewart: It was confidential insofar as we had not had any discussions with the lessees at that point. We had just come out of a subcommittee of cabinet meeting. Mr Dawes and I had agreed that we were going to manage the matter between ourselves at that stage.

THE CHAIR: What was the timing? It is a bit vague. You said the meeting might have been in late April or early May. You are not sure whether Mr Dawes was there. You spoke to Mr Dawes.

Mr Stewart: I spoke to Mr Powderly on 11 May. The subcommittee of cabinet meeting was before that. I could not tell you exactly what the date was. Government could tell you that. I have no access to any of my—

THE CHAIR: Was it a couple of days after the meeting that you spoke to Mr Powderly or was it—

Mr Stewart: Shortly thereafter, Mrs Dunne. It is over two years ago.

THE CHAIR: How soon after that cabinet subcommittee meeting, where the cabinet subcommittee was briefed on city to the lake, did you have the debrief with Mr Dawes?

Mr Stewart: Mr Dawes and I spoke every day and we had regular meetings scheduled every week, which was a formal catch-up. It could have happened that day, it could have happened the next day or it could have happened the day after. I just do not know.

MR COE: When did Colliers first get in touch with the owners of Glebe Park?

Mr Stewart: I do not know. It was after 16 June, when I was provided with the discussion paper, that we agreed that he would get in touch with the owners.

THE CHAIR: Why didn't the LDA approach the owners directly? What was the value in having an intermediary?

Mr Stewart: I do not know. It was simply a matter of expediency, I presume. At the time the conversation had been about getting valuation advice and the offer had been made to set that up.

MR COE: Is it quite possible that that would actually therefore trigger a commission for making that contact?

Mr Stewart: I do not know. Given that he was working on behalf of the LDA, I would presume not.

THE CHAIR: There being no further questions, thank you, Mr Stewart, for your participation today.

Mr Stewart: You are welcome. Thank you.

THE CHAIR: There will be a transcript; you can reflect on the transcript and suggest amendments. There may have been some things that you took on notice.

Mr Stewart: There is nothing that I can take on notice because I have no access to any of my records.

THE CHAIR: You have no records at all? Okay.

Mr Stewart: Zero.

THE CHAIR: So we are in the same situation as we are with Mr Dawes.

Mr Stewart: Any validation or verification of dates or diary entries would need to be handled by government.

THE CHAIR: Do you have a problem with the committee making those investigations?

Mr Stewart: None whatsoever.

THE CHAIR: Thank you very much.

Hearing suspended from 12.31 to 1.30 pm.

XIRAKIS, MR TIM, former Project Director, City to Lake Project, Land Development Agency

THE CHAIR: Welcome to the afternoon session of the second hearing into the Auditor-General's inquiry into certain land acquisitions. Welcome, Mr Tim Xirakis. Are you familiar with the privilege statement and do you understand it?

Mr Xirakis: I have read the privilege statement and I am happy with that. Yes, that is no problem.

THE CHAIR: Would you like to make an opening statement?

Mr Xirakis: I probably will not make an opening statement. I am happy to get into the questions, but with the committee's consent I would be happy to make a closing statement if something I think is relevant is not covered. Maybe I can make it then, if that works. If that does not work, please tell me and I will not do that.

THE CHAIR: That works for me; it is reasonable to think there may be something that we do not cover. Mr Xirakis, as you know, the main thrust of the inquiry is about the acquisition of three different blocks of land. Your involvement was with all of those blocks of land at various stages?

Mr Xirakis: Yes.

THE CHAIR: In what capacity?

Mr Xirakis: I will start where I started. Before I was contracted to be the project director I was asked to give assistance to the first project director, Mr Tom Gordon. He was an extremely busy man—as just about everyone that has testified here and everyone in the LDA at senior exec level was—and he needed some help. I had some capacity, just finishing off another contract, and so I undertook to help him. I got involved in a lot of the early processes around West Basin and Glebe Park.

THE CHAIR: So you were not at any time a direct employee of the ACT government?

Mr Xirakis: No.

THE CHAIR: You were a contractor.

MR COE: How did that come about?

Mr Xirakis: That I was not an employee or—

MR COE: No, that you were contracted. Was it an application or—

Mr Xirakis: Again, I was contracted to do a number of roles within the EDD and the structure of their financial systems and processes. I am an accountant by profession and I have had some experience in both the property industry and the business

advisory industry. In the course of my earlier roles I had been invited on to review committees et cetera as an experienced person with dealing with the private sector. So a lot of things involved dealings in the private sector.

Again, I helped Tom Gordon through the early stages of the city to the lake project and was asked if I would like to get involved when Tom stepped down due to his workload and constraints around his other responsibilities. I had a lot of knowledge. I employed Ian Wood-Bradley, so I had a relationship and a management responsibility for that. Firstly, I recommended another officer, who I had had some dealings with through my time, as someone I thought would be perfect for the role. So I declined it the first time. I was asked a second time, weighed it up, accepted the role, had a contract put before me and signed it.

THE CHAIR: The Auditor-General's report states that you provided instructions to Opteon, the valuers, for the valuation of the Glebe Park land at market value as is, subject to all present lease conditions. Why did you go down that path rather than the path used later, where people asked for valuations, of sorts, at highest and best use?

Mr Xirakis: I probably cannot say a lot about what everyone else did at a later stage.

THE CHAIR: No, I am asking why did you go as is rather than highest use?

Mr Xirakis: Almost the first thing put on my plate was dealing with an irate paddleboat business operator. I did everything with advice from the Government Solicitor's office. My understanding was at that time we had no budget or we had a budget that was fully committed. We did not have a lot of money. Another of my early tasks was actually renegotiating a contract to create some room in the budget to operate the project team, because there was no capacity.

Along with those considerations with the GSO, I understood clearly that we needed the piece of land for a piece of infrastructure. I understood from my briefings from Tom and the GSO that previously there had been discussions with the landowners around what we could do on that block of land. The GSO's advice was that they needed to know that we needed it for public infrastructure—that had not been conveyed to the owners at that stage—and that the best place to start was to get a valuation so that we knew the baseline, based on that reasoning.

We talked about whether we would get one or three valuations. My first question was: can we not just compulsorily acquire this land as it is needed for a piece of public infrastructure? I had read the framework. It seemed relatively clear to me. Again, I did not know the willingness of executives or others to pursue that process, but it seemed a clear path that we could follow. With that in mind we figured at some point that we would be going down the compulsory acquisition path but that the honourable thing to do would be to get a valuation based on the lease as it stood at the moment and to start a conversation with the owners to see if there was a possibility of negotiating that out. So, yes, we undertook to go down that path, but that was with full consultation with the GSO.

THE CHAIR: I will get back to the GSO in a sec, but I will ask you a similar sort of question to the one I have asked everybody else: the terms of the lease were for

landscaping, various bits and pieces, a drinks outlet and—

Mr Xirakis: Car park.

THE CHAIR: And car park. My understanding is that there was a lien on the lease requiring the leaseholder—

Mr Xirakis: It was a condition of the lease to have spent \$1 million on that landscaping. When we talk about landscaping, a requirement to spend \$1 million would imply quite strongly that that is significant and high quality landscaping. I do not think either of those things had happened, just with my eyes.

THE CHAIR: Did you check? Did you look at whether or not the lease conditions had been complied with and, therefore, could you have resumed the lease for failure to comply with the lease conditions?

Mr Xirakis: That was, again, a question I asked the GSO. I had no contact with the landowners before that process. We got a valuation. We sat down with them. We went through the valuation. The valuers themselves asked whether they had met that condition. It was his opinion to me that they had not. I asked them again. That got almost laughed off.

THE CHAIR: Sorry, you asked whom again?

Mr Xirakis: I asked the CEO of the vendor, the CEO who represented the owners of the block of land.

THE CHAIR: And who did you ask?

Mr Xirakis: His name is Phil O'Brien. I was asking what I thought was a legitimate question—if we could have receipts proving they had spent \$1 million—and I got no sensible response. The valuer, I believe, also asked them that at my request. It was certainly one of my considerations.

THE CHAIR: So you did raise with the Government Solicitor whether or not you could resume the lease?

Mr Xirakis: Yes. Technically I wanted to know, firstly, what strength is in those lease conditions. One of the things I had seen previously—and it is not just leases; it is contracts in general in the ACT government—is that we spend an exorbitant amount of time working on details in contracts and then we spend almost no time or effort or money or resource in ensuring that they are complied with.

I have had experience with swimming pools, where we get into absolute minute detail but there is no comeback, there is no policing of whether people are meeting the conditions of those contracts. My question on this was: why do we bother putting conditions in leases if we do not check them? Have we got the ability to resume that for failure to comply? I think it was put to bed pretty quickly. It had never been done or “We’re not going down that path,” so that got struck off as an option, and compulsory acquisition looked the most likely for me.

THE CHAIR: So you looked at the issue of compulsory acquisition and you explored that with the GSO?

Mr Xirakis: I explored it on all three blocks in question, yes.

THE CHAIR: Did you explore it before you raised it as a possibility with the lessees?

Mr Xirakis: I cannot recall exactly whether I explicitly said to them that compulsory acquisition was a path we were looking at. I certainly said we would look at all our options before us, given I got a total non-response or a negative response to my valuation, which was followed up by an offer for them to go and get their own valuation as a place for them to start their positioning and their negotiations. That was just declined: saying, “Oh, we’ll deal with this later,” basically.

THE CHAIR: So you got a “thanks, but no thanks” and no more correspondence.

Mr Xirakis: Yes.

THE CHAIR: And that was in relation to the Glebe Park block?

Mr Xirakis: Yes.

THE CHAIR: And when was that?

Mr Xirakis: This is July-August.

THE CHAIR: 2014?

Mr Xirakis: It will be August 2014.

MR COE: If I might chime in there, you were dealing with Phil O’Brien?

Mr Xirakis: Yes.

MR COE: Who are or were the owners or directors of Glebe Park Pty Ltd?

Mr Xirakis: Phil O’Brien was the CEO of Amalgamated Holdings. I believe that is a joint venture through that company between Barry Morris and Graham Potts. I did not and do not believe to this day that I have met either of those gentleman.

MR COE: But there are three or four owners of that land; is that right?

Mr Xirakis: As I understand it now. At the time I was dealing with Amalgamated Holdings in their role because that is where all previous correspondence to the LDA had from.

MR COE: So, as you understand it now, who were or are the four directors or owners or shareholders of the block?

Mr Xirakis: I believe Barry Morris, Graham Potts and Richard Tindale. I am not aware of the fourth one; I have neither met him nor heard his name.

THE CHAIR: Are you aware that in answer to a question in the Assembly in about 2012 the then planning minister said that the government had no intention of building housing or hotels on that site?

Mr Xirakis: Fully aware, yes.

THE CHAIR: You were fully aware?

Mr Xirakis: Yes. I guess that was probably the clearest indicator to me that we were talking of the block as it is. There was an absolute process and deliberation over whether this block would ever be allowed to have residences on it. It seemed pretty clear to me that the government had made a decision that it would not. We now required it for a public piece of infrastructure. That information came from SMEC. That was the only block on ACT land that was not NCA controlled, so, short of going into Glebe Park, there were not any other blocks of land available to put that gross pollutant trap on. It was decided that it was needed for infrastructure. I did not think we needed to go talk about what a block was worth with a residential development. Certainly the GSO did not advise me that we needed to do that.

MR PETTERSSON: I want to talk about the hiring of some former LDA staff.

Mr Xirakis: Yes.

MR PETTERSSON: In the report it says their package for the consulting firm was matched to their work agency. Is that the case?

Mr Xirakis: Yes. The two cases you are talking about are totally different cases. Both of them were with the company of which I was a senior employee. I was not a director, but I did a lot of the negotiating. The first one was, I believe, after finishing his employ. He was a specialist or an owner of some specialised knowledge. There was a wish for him to continue in some future capacity. He needed a consulting firm. We were a consulting firm. He asked me if it was all right if he went through my company and I said, "I will check," and we did that. That was not designed to package up and equal anything; that was simply for some specialised advice at an hourly rate.

Ian Wood-Bradley had come to me and was very keen to pursue the city to lake project. He was the architect of that project. It was, for want of a better expression, probably a lifelong dream and a commitment to doing something in the city that he was very passionate about. The decision had not been made by government at that stage to go ahead with that project, so they could not and did not have a permanent position for him to continue that work. There were pending discussions around the city plan and the city to lake project. There was not a permanent role as I understood it, and I agreed that I would put together an offer to match what he was currently getting paid, right down to trying to negotiate to pay PSS super and all the things that went with that.

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MR PETTERSSON: But it is not unusual for someone leaving the public sphere to enter the private sector.

Mr Xirakis: I would say that is almost the most common way a consultant is derived in this town.

MR COE: Turning now to Mr Spokes, as opposed to Glebe Park, why was a resolution not achieved prior to when it was, given that discussions had started some time earlier?

Mr Xirakis: We have talked about them individually, I guess. So we are starting with Spokes? Because that negotiation started later, in terms of my understanding of the events, but I can cover that—

MR COE: Right. Chair, do you have a preference as to whether we bounce around or—

THE CHAIR: No, I am quite happy to go—

MR COE: Okay, I will go back to Glebe Park then.

THE CHAIR: Yes.

MR COE: Are you aware of any talk or documentation about a casino expansion on the block in question?

Mr Xirakis: Yes.

MR COE: Was that known at the time?

Mr Xirakis: I do not think it was known at the time. There was an understanding that the casino owned a sliver of land that, from its front door, as I understand it, needed street access to actually get a licence as a casino. That sliver goes down the side and out on to Coranderrk Street. That is considered the street access or street address. There was a conversation I was involved in. I was asked to attend with an architect, looking at alternatives, looking at what they could do with that block, the adjoining block, block 24-65. My conversation was that, well, we do not own that block; so it ended pretty much there.

MR COE: Do you think the owners of the Glebe Park block were aware that the casino was interested in it?

Mr Xirakis: From my understanding, I doubt they understood the conversations with the casino. As far as I was aware, there were only a select few that had those conversations. They had just bought the casino and were looking at alternatives. I did not think it was public knowledge that they were out there until a later date.

MR COE: What do you think it is that gave the owners of Glebe Park the bargaining power, in effect, to drive up the government offer by several million?

Mr Xirakis: I do not know that they had bargaining power. I had heard from a long way back, long before I was involved in the project, that they would not let that block go unless it was significantly higher than we could ever have placed a value on it, given the terms and conditions of that lease. So I do not know that that was the driver at all. My concern was that I had started a process and I had no knowledge of it till the deal was done. That was disturbing for me.

I have listened to previous testimony and complaints of governance. I assume that the senior bureaucrats and the people in charge and responsible for these entities of government are in charge of governance, both designing it and managing it. That would have been, to me, a clear breach of what I thought I was responsible for. I had started a process that was directly to do with my project and I had no knowledge that this had actually taken place, that we were looking to fast-track a purchase, because I had been told it was not urgent.

Certainly, in my program it was of no urgency. We were trying to turn dirt down on West Basin and that was all the urgency. Yes, the most difficult thing for me was not knowing that that was happening, Alistair, but I do not think I was the creator of the governance, and if there is a governance fall-down, I think that rests with the senior bureaucrats.

THE CHAIR: Can you give us a timetable, Mr Xirakis? When did you start as the city to lake—

Mr Xirakis: July 2014 was my—

THE CHAIR: That is when you started?

Mr Xirakis: That is when I commenced my contract as project director.

THE CHAIR: For city to the lake?

Mr Xirakis: Yes.

THE CHAIR: And at the time your understanding was that the highest priority was to get on with the development actually on the waterfront?

Mr Xirakis: No, not at that time. Remembering, again, this had started as a vision embedded in the city plan. Then it grew a life when it won national awards as a large-scale city building project. It sort of became topical as something we really wanted to focus on. My first issue was that I had no team. I had another contractor under my own organisation who was the architect of the project. We had a couple of support staff, but we had a multifaceted project dealing with the Australia forum, stadiums, pools, moving the only east-west arterial in the city. We had so many issues to deal with; it was just about trying to get my head around what that was and the sort of resourcing that would be required.

THE CHAIR: At the beginning you had yourself and another contractor—

Mr Xirakis: Yes.

THE CHAIR: who was employed by the company that you were employed by, and some support staff. Were they employed by your company or were they government employees?

Mr Xirakis: No, they were government employees. They were LDA employees.

THE CHAIR: So you had LDA employees answering to outside contractors?

Mr Xirakis: Yes.

THE CHAIR: And you were answering to?

Mr Xirakis: My direct report was Dan Stewart.

THE CHAIR: To the deputy chief executive?

Mr Xirakis: Deputy chief, up to the chief and up to the minister and the cabinet.

THE CHAIR: Did you attend board meetings?

Mr Xirakis: No.

THE CHAIR: Did you brief ministers?

Mr Xirakis: I have briefed ministers, yes. I have been called to briefings. Probably one of the most surprising things from my point of view was the volume of briefing and reporting we did. It ended up being two full-time positions, senior officers in my team just constantly briefing up to cabinet, briefing up to the minister.

THE CHAIR: Over what period? When was the—

Mr Xirakis: As soon as we had the resourcing to actually put the team members on, the briefings began in earnest.

THE CHAIR: From when you started in July 2014—

Mr Xirakis: July 2014.

THE CHAIR: when did the team get up to full strength?

Mr Xirakis: By Christmas that year. One of the first things I did and one of the things I really focused on early was actually creating enough money to build that team.

THE CHAIR: How did you do that?

Mr Xirakis: We had one major contract. It was with a big engineering firm. It was the project-wide, project management design with all the consulting. It was the main contract. It was in the vicinity of \$7.5 million. I just rescoped it and renegotiated it

back to \$4 million. As pieces of that were totally dependent on whether we got early pieces of the project up and running, it did not seem right to commit the whole project budget to one contract when I was being asked to look after five major pieces of infrastructure, integrate them and go across every government directorate.

THE CHAIR: So you were able to rescope that contract and redirect the funds—

Mr Xirakis: I renegotiated it with the manager of that company, the managing director of the local branch, who was a director of the worldwide business. We sat down, as we do in the private sector, put the issues on the table, negotiated and came up with a solution. We did that.

THE CHAIR: The savings that were made were then redirected elsewhere into city to the lake?

Mr Xirakis: The \$3.5 million gave us room to build the rest of the team. We got experienced staff. We got people with cabinet office experience, people with Chief Minister's. We thought that people who were used to briefing all the time would be very handy people to have. On the recommendation of my direct report, we put those people on. We got an experienced financial officer from the LDA who understood the LDA processes. We put on an experienced guy from sport and rec who had previously dealt with pools, since that was one of our big considerations. We had still the architect and some support staff.

THE CHAIR: You said that you had a dedicated financial officer for the city to the lake project.

Mr Xirakis: His background was as the financial controller of the LDA. He was not dedicated to just doing the finances; he did the financial management and was responsible for looking after briefs and the flow of information—the key things. He ended up morphing into what we called a deputy director—

THE CHAIR: I am sorry; he was dedicated to the city to the lake project and he was a financial person?

Mr Xirakis: Yes. He was the 2IC to me, and the most senior government official on the team.

THE CHAIR: And he was a public servant?

Mr Xirakis: Yes, everyone else was a public servant.

THE CHAIR: When the team was at full strength there were still two consultants from your firm—yourself and another person?

Mr Xirakis: Yes.

THE CHAIR: But the rest of the team, which was now, what—five, seven, a dozen?

Mr Xirakis: There was my second in charge, there was a former procurement officer

we had brought onto the team. He was a senior officer.

THE CHAIR: You had two people for briefings?

Mr Xirakis: There was one from treasury, or both from treasury, one with previous cabinet experience. We had one support staffer because the other one had left the public service—retired or moved on. We had a pool specialist, a senior officer from sport and rec and we hired, on the recommendation of the chief executive’s office, a full-time or a part-time—I think it was about 30 hours a week—communications officer.

THE CHAIR: So that is about eight people in addition to you and the other independent contractor from your firm?

Mr Xirakis: Yes.

MR COE: Now we move on to Mr Spokes. There was some negative publicity at one point where the owners said they were not satisfied with the processes that were taking place. Can you talk us through how that acquisition commenced, noting your earlier comment that the government wanted to get cracking on West Basin pretty quickly?

Mr Xirakis: We had an early meeting and discussed the city to lake project and what it entailed and indicated that we would like to acquire their lease as part of that process. Again, in consultation with the GSO, we described a process that we would need to go through—get some valuations and negotiate. It was met with relative hostility from the beginning. They did not want to go.

MR COE: Had you received any advice about whether the government could acquire a business?

Mr Xirakis: I had no intentions of acquiring any businesses, not when I was managing the process.

MR COE: Did you know whether a government could—

Mr Xirakis: There was no facility in the policies that I have read. There were ways to acquire land, but they were, I will say, relatively clear in what they were saying you should do but relatively unclear on whether we could actually enforce any of them or follow through with those processes, but there was no description of buying businesses. I did not understand that we were in the business of buying businesses, so—

MR COE: Had the LDA bought businesses in the past that you were aware of?

Mr Xirakis: Not that I was aware of, no.

MR COE: So you did not see out the acquisition of Mr Spokes or—

Mr Xirakis: No. The Spokes and the paddleboat dual negotiations were all going concurrently. We had made a decision to develop a public area down to the lake. It did require those leases to be sensible. It was not an absolute requirement, and we had had many conversations around: “Could we build around them and deal with it at a later stage?” The sensible thing, and the advice from the GSO, was: “Let’s see if we could negotiate it out.”

It was far less clear than Glebe Park in terms of the requirement for public infrastructure, because if a new commercial block of apartments sat on that lease that could be considered other than for public interest. We had not got down to the fine detail of designing the whole precinct to know whether those particular blocks of land sat on public land or what would end up as a developer’s block of land to build and sell. We could not make that decision.

It was also considered unlikely that we would get a favourable response in the media for going after a compulsory acquisition of two leaseholders. So the decision was made to negotiate it out. We made that relatively early, in terms of not pursuing any sort of compulsory acquisition.

MR COE: And whom were you dealing with for the Mr Spokes acquisition?

Mr Xirakis: Whom was I dealing with on the Mr Spokes side? Martin Shanahan, Jillian Edwards and Mark Flint, their solicitor at one stage.

MR COE: Did you ever deal with the broker, Mr Parsons?

Mr Xirakis: No.

MR COE: Did other people deal with him, or was that after you had finished up?

Mr Xirakis: I think that was after I finished up.

THE CHAIR: When did you finish up?

Mr Xirakis: On 9 September.

THE CHAIR: 2000 and—

Mr Xirakis: 2015. I think that was the day the Glebe block settled.

MR COE: It was around that time, was it not?

Mr Xirakis: It was exactly that day. Did you want to talk about how I finished up? That would be significant and probably something I will cover at the end if we do not cover it.

MR COE: I do have that as dot point 1 on my list here, would you believe?

Mr Xirakis: We can keep going, if you want.

PROOF

MR COE: Just staying on West Basin for a while and just walking anticlockwise for a moment to the boat hire, an amount of \$575,000 was paid for the business, and then a million dollars was paid for the block. Were you involved in the negotiation of those prices?

Mr Xirakis: No. Can I give a bit of context around the boat hire? It was a significantly more complicated lease. Mr Spokes sat on a lease where they owned a crown lease and owned the building. The paddleboat business sat on a rental lease. We owned the building, we were renting it to them, for the purpose, a very narrow purpose, of running a paddleboat business.

The lessee had then sublet that business. Again, going back to my lots of time spent designing these conditions and no time spent enforcing them, the lessee had then sublet this business to his brother. Under the terms of the lease he was required to seek territory permission to do so. We spent at least a month trying to find out if that permission had ever been sought, and I had to at least ask the question: if that was an illegal arrangement do we need to honour any commitment to the boat hire business and do we just stick with the lessee? Or, conversely, do we compensate the guy who has been running the business and gets his livelihood out of it and ignore the fact that the lessee has breached his obligations under the lease by subletting it? They were the layers of complication, but infinitely more complicated than the Mr Spokes business.

MR COE: Before I go back to the original question, you said that it was in effect a rental. So what was—

Mr Xirakis: It was a rental lease. They were renting a building.

MR COE: What was the term of that?

Mr Xirakis: They were rolling 25-year leases. I think we were—

MR COE: Yes, and they had an annual payment, or was it a—

Mr Xirakis: There was an annual payment from the lessee to the government, and the lessee received an annual payment from his brother, who was—

MR COE: Do you know roughly how much the annual payment to the government was?

Mr Xirakis: It was not huge money, in the vicinity of \$14,000 a year.

MR COE: So if it was in the vicinity of \$14,000, it is pretty hard to see how you get to a million dollars as a valuation on the block.

Mr Xirakis: We conducted valuations. We went to three valuers. From memory—and again I do not have access to my records—I think at least one of the valuers said it had no value. One lot said, “If you just wanted to deal with it quickly, it might be worth \$50,000.” I think the third valuer declined to put a value on it, did not see the point.

PROOF

MR COE: The Auditor-General said that there were two initial valuations received in April and May 2015 for \$50,000 and \$100,000. In November 2015, which is after you had left, a valuation from Colliers had been provided that put it at \$900,000 to a million dollars.

Mr Xirakis: I was not party to the discussion with Colliers, never had a discussion with Colliers.

MR COE: Had you had direct conversations with the crown lessee and the business operator?

Mr Xirakis: Absolutely, numerous conversations.

MR COE: And I think it was Mr Dawes who said earlier today that the crown lessee perhaps requested considerably more than the million dollars. Is that right, chair?

THE CHAIR: That is my recollection, but I think it was something—

MR COE: Is that your recollection?

Mr Xirakis: We had some amounts put to us, and that lot was subject to changing, and intended to change, the conditions of that lease some years earlier. There had been a lot of money spent on it. The claim was to recover all the money they had spent preparing this change of use for the lease, and some believed that if you had a restaurant there it would be worth a lot more money. I thought it was a relatively ambit claim, and it was not considered appropriate.

THE CHAIR: Could I just go back for a moment of clarification because I think I have come across a piece of information that I do not think I knew before, that the boat hire lease, not the business, but the lease to Dobel Boat Hire, was in fact not a lease on the land but a rental lease on the building that was on the land.

Mr Xirakis: Yes.

THE CHAIR: Who held the crown lease? Who held the lease?

Mr Xirakis: It was the ACT government. It was a crown lease. It was a rental crown lease. That is one of the conditions put on the lease. There was no suing of the—

THE CHAIR: They did not own the land?

Mr Xirakis: So, typically, the improvements to a crown lease the owner of the crown lease will own. In this case they did not. The government owned the improvements on the lease.

MR COE: That certainly explains why I was not able to do a title search on that block.

THE CHAIR: It reminds me of something that I knew in a previous life that does not relate to this inquiry.

Mr Xirakis: None of this, not a meeting, not a piece of correspondence, was done without consultation with the GSO. At times we had three senior people, including the Solicitor-General himself, discussing how we deal with that. The overwhelming, repeated advice from our main contact at the GSO was that he had dealt with many of these leases around the lake before, they trade in the vicinity of \$100,000 to \$120,000 and that is what they are worth. “They will carry on for a bit but at the end of the day that is the sort of value.” That was the baseline advice from the GSO.

Our valuers had a bit of a different opinion, especially on the Mr Spokes business. They had physically paid some hundreds of thousands of dollars for that business with the lease. They had operated a business that for all intents was profitable. And we got both the business and the land valued. I know there was a question earlier—I cannot remember who it was to, maybe to Mr Dawes—that we did not value the business and the land. We did. It was just incorporated. Because we were dealing with the same party, we did not need to separate those two things. This was a business operated on the land and buildings that they owned. What was it worth? The valuers certainly went through what the business was worth and separately what the building was worth to arrive at their valuations, and they were—

THE CHAIR: I asked that question, and it still perplexes me. Yes, in the case of Mr Spokes, there was one entity. They owned the lease and the building and the business. They owned everything.

Mr Xirakis: Yes.

THE CHAIR: And they paid for that—

Mr Xirakis: Some years earlier.

THE CHAIR: some years earlier, \$400,000-something, from recollection. And they were paid out for the land and a notional value of the business of \$1.

Mr Xirakis: Yes.

THE CHAIR: Soon after that there was a settlement on the other block, the Dobel Boat Hire, which was comparable to the value of the land and the business at Mr Spokes, and on top of that there was an amount paid out to a second party for the business. In the process it seems that the ACT government acquired a whole lot of bikes and a whole lot of paddleboats, and whatever has happened to those will be an interesting story in itself, but it does seem that the difference in treatment in those two circumstances is not justified or is not explained by the fact that there were two separate entities in place for the second sale. Why did we in one process value the business at effectively nothing and then in the other one effectively value the business at a substantial amount of money?

Mr Xirakis: I think both businesses were valued as businesses in the instructions we gave to the valuer.

THE CHAIR: So you are saying that there was a value—and it is clear that there was a value put on the business for Mr Spokes—but that was eventually wound into the

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value of the block of land and not separately—

Mr Xirakis: I am not sure how the settlement statement comes, but often in negotiations to buy businesses you will ask for certain things to be allocated more or less value, and there are obviously tax implications and other implications. Our purpose of buying those leases was to get the land. The value we were putting on the business was to compensate them for the business, not for us to buy businesses.

Our instructions were to get that land, and as part of that negotiation we offered to relocate and pay to relocate them, looked at various locations where that could happen, which was our offer to Mr Spokes, but they said they did not particularly want to move. They wanted to know exactly what their block of land was going to be used for. We could not give them that. We had not arrived at that yet. But we did offer to relocate them, pay for them, find them a place to be back on the completed new West Basin if that was appropriate. We offered a lot of alternatives. We just did not get taken up on any.

MR COE: At \$575,000 for Lake Burley Griffin Boat Hire, at a price to earnings ratio of, say, three to one, would that be reasonable? I do not know.

Mr Xirakis: I think our valuations came in at around the high twos to threes for that business.

MR COE: So if it was three to one, are we looking at a couple of hundred thousand dollars worth of trade? Who knows, I guess? There was obviously some urgency to actually acquire these businesses then, but not much has happened in West Basin since.

Mr Xirakis: Either I was doing a really good job as project director or they have taken a decision to slow everything down. I cannot answer why it has not proceeded. Clearly, we were going to be turning dirt on West Basin within 12 months, and our planning around that said we needed to acquire those leases—there was some urgency—or agree to relocate. Jim Seears had said he did not want to relocate, that he was retiring. We made every opportunity to value that business and buy him out, knowing he was not going to operate it. With the rest of the leases, again, we tried to relocate Mr Spokes. We looked at multiple options, and in the end it looks like they just acquired it and acquired the business. I am not sure who ran it or if it was run after that.

THE CHAIR: Could I clarify this: there was a greater priority to settle on the blocks in West Basin, Mr Spokes and Dobel Boat Hire, than there was to settle on Glebe Park?

Mr Xirakis: We had a project time line that said we needed to be turning dirt on West Basin in 12 months.

THE CHAIR: Twelve months from when?

Mr Xirakis: From July 2015. The urgency had wound up.

THE CHAIR: 2015?

Mr Xirakis: 2015.

THE CHAIR: You were negotiating; you came in in July 2014—

Mr Xirakis: 2014.

THE CHAIR: The negotiations started in August—

Mr Xirakis: They started before I got there.

THE CHAIR: May to August 2014. You left in September 2015.

Mr Xirakis: Yes.

THE CHAIR: We were supposed to be turning a sod before the 2016 election?

Mr Xirakis: Yes. We had just put in a budget submission for money to fund the development down on West Basin.

THE CHAIR: You left in 2016. Can I ask—

Mr Xirakis: 2015.

THE CHAIR: 2015. Can I ask the question: why did you leave?

Mr Xirakis: As to the why, I would like to know. I have heard about the fourth or fifth reason, listening to the hearing today. Certainly no reason was put to me.

THE CHAIR: How did you come to leave, then?

Mr Xirakis: I was called to a meeting to discuss the city to the lake project. The meeting was with Ben Ponton and Nick Holt. A week or so earlier, Nick had been put in charge of the city to the lake project in the interim while they found a permanent officer. He was an employee of the government. Ben had recently taken over from Dan, and although I had offered from the first day he walked into the place to give him a briefing on city to the lake, we had never had the opportunity—very busy people. Although I offered a handover at the time, David asked me to stand down from the city to the lake project while he put in this interim position and built a permanent team. I offered a transition and I was told that there was not one required, which seemed strange to me, since I had run the project and had carriage of most of the knowledge around that project, but it was not required.

After that meeting, Nick had approached me and said, “It actually is required. I need some help. I don’t have great knowledge.” So I had worked with him on and off. I was also working on other projects, both to Nick and to Tom Gordon. I assumed the meeting was called to give Ben a briefing on the city to the lake project, since I had never had the opportunity to do that. At that meeting they told me they were choosing

to terminate my contract, effective immediately. They handed me a piece of paper that said they were invoking the “no fault” clause, signed by David—no fault. David had often said what a good job I had done, so I assumed “no fault” meant a fault I do not know about—that I have done something wrong that I do not know about.

Mr Ponton and Mr Holt then proceeded to say, “There is the issue of financial management of the project,” and neither of them even understood the financial beginnings of the project, which was no budget. I did not hold a financial delegation. I was not a member of the public service. I was managing the processes. I asked them if they had had that conversation with Liz Lopa, who was at that time my direct report and held a financial delegation. There was deathly silence. I was told, “Anyway, you’re finishing up; by the way, clear your desk and be out of here by 5 o’clock.” It was just after 4 o’clock when those words were spoken, so I had less than an hour to get out of the office.

THE CHAIR: That was on 9 September, was it?

Mr Xirakis: “And leave all the information; leave all your notes; leave it all.” They probably spent more time telling me about my confidentiality requirements than explaining why, after four years in multiple roles, I was being what felt like unceremoniously dumped.

MR COE: Why do you think you were?

Mr Xirakis: At the time I immediately went back and thought, “I’ve hit someone’s nerve and I need to be removed.” No-one had put it to me. Let’s put it in perspective: only nine weeks earlier the contract was extended. If they were not happy with my performance, we had had lots of negotiations. I heard David’s comment that there was bad publicity on these lease arrangements. There had been bad publicity for 12 months. Every conversation we ever had and plenty we never had ended up in the paper. Clearly, we had had an unhealthy relationship on those lease negotiations. There were lots of reasons for that. But we had all of them in existence on 30 June 2015, when they renewed my contract.

I always understood that this was an interim position to manage a multifaceted, unbudgeted, complicated project with multiple dealings with the private sector. That is why I agreed to take it on. I did not think I would be there to see the whole fruition of the project. I was there to coordinate the beginning stages, to build a team, to get a position on the core pieces of infrastructure and then transition it across. I had no expectations of longevity. That was not the role. The role was the interim position.

I did have an expectation, on 30 June, when my contract was extended for six months, that if there was an issue with performance or an issue with anything, that might have been the time to bring it up and say, “Sorry, Tim, we don’t think we will extend that contract.” I did not get any of that. I got, “Great job; a complicated project; doing a magnificent job. Your team are doing well.” We were briefing daily. Immediately before that, I was appointed on a review panel for Denman Prospect. Again I was seen as someone with a good deal of experience in the private sector, managing a process for government. These are not the indications that you are not doing a good job in your contract. So I was ultimately surprised at that.

PROOF

Two years have passed; lots of things have happened. I have racked my brains. Remember that I said I had to be out of that office at 5 o'clock? At one minute past five my calendar was removed, my email was stopped, every contact I had ever received as a result of going through the governance system was removed from my phone. At that time I could not clarify a meeting. I could not work out what had gone wrong. I really had to rely, as I do to this day, on my memory. Most of that conversation was about reminding me that I had confidentiality.

I could only assume two things. Something I knew and brought up somewhere had really spooked someone and they thought the best course of action to deal with that was to remove me. That is the only assumption I could make, given the circumstances. I have not had other alternatives put to me by anyone. I do know it is very hard to get legal representation in this town because most of them represent the LDA in one shape or another. It has been a difficult time for me and, because of the nature of that, my confidentiality was to remain in place but clearly the office of the LDA can say anything they want to anyone. There are plenty of stories that have come back to me. It made it very difficult for me to operate in the private sector, where you have to have dealings with the government in any respect.

It was a tough period and I was absolutely shocked. That would be my response. I have been involved in the LDA before, where there were people we were not happy with—contractors and employees. There were a series of warnings and processes in place and then, when we finally made a decision to pay them out a big redundancy or, in the case of a contractor, to give them a period of time to look for another contract, for six weeks we would continue to pay them. “You can finish today and still get paid for six weeks.” There are a whole lot of ways to do what was done to me, but I have just never seen or heard of it done that way. I could only assume that I had brought up something that clearly, in someone's eyes, I was not meant to bring up—someone who was in a decision-making capacity.

MR COE: You said, in amongst that, that there were briefings daily.

Mr Xirakis: Yes.

MR COE: Who were you briefing?

Mr Xirakis: We briefed David. At the end, when Liz Lopa was in place, we would go through Liz, through Dan to David and, if we were briefing to the minister, it went through all those three and up to the minister, with the exception of a face-to-face meeting with one of the minister's advisers. We had been asked if we could organise it so that the minister's office had more visibility around what we were doing, and we had organised a weekly meeting where we would catch up with one of his advisers for an hour or so and go through the topical issues of the project.

THE CHAIR: An adviser to which minister?

Mr Xirakis: Andrew Barr, the minister for land and economic development.

MR COE: You mentioned Ms Lopa. She went straight from Mr Barr's office to that

position?

Mr Xirakis: I do not believe so. I think Liz was on maternity leave before she applied for that position. When Dan Stewart got handed another role and responsibility, being the coordinator-general, that role became too big and too hard, and I think that position was opened up and Liz was successful. That sat between me and a number of other projects and Dan. But every report and every brief goes through that whole chain.

I can tell you one thing: we briefed every day. We were constantly writing briefs. I had a team of experienced brief writers from the ACT government. This was not me, with my inexperience of a briefing. I had what were considered elite brief writers. If someone thinks they were not getting enough information, have a look along that chain, because I was briefing Liz, Dan, David and the minister. We had regular verbal catch-ups with Liz. We discussed issues of the day. We had verbal catch-ups with the minister's office. David and Dan were very difficult men to get a face to face with. It was one of my complaints: "I'm running a big project here. I can't find time in his diary to have 15 minutes." Not once a week; not once a month. I might have had a quarterly face-to-face briefing with David.

MR COE: Going back to almost the beginning with regard to Glebe Park and the valuation, the optimum valuation is as is?

Mr Xirakis: Yes.

MR COE: Whereas, in contrast, the valuation advice discussion paper that was put forward by Colliers was based on something that was not?

Mr Xirakis: To be blunt, I do not know how you buy anything on valuation advice. With the valuation, I followed a process that the GSO outlined. The GSO had a copy of that valuation. They went through that valuation and gave me the follow-up steps to that valuation. At no point did anyone say to me, "Hold on. This should not be as is. This should be something else." The GSO are, I assume, the guardians and the followers of the rules and regs, and they should know that. I assumed we would be buying a block of land that we needed for public infrastructure at the cheapest price possible. That is what I assumed.

THE CHAIR: Could I go back to the final stages of those negotiations? You made the point that the final stage of the negotiations was the day that you were shown the door?

Mr Xirakis: That was the settlement of—

THE CHAIR: The settlement. The fact that the settlement was on the day that you were shown the door—this is something that has not really sunk in with me before, so I might be a bit slow. You had started this process. At some stage you were dealt out of this project. Were you aware that you were dealt out of the project?

Mr Xirakis: I was not dealt out of the project; I was the project director.

THE CHAIR: No, the negotiation on—

Mr Xirakis: The negotiation, yes; clearly, that became an issue that required a level of secrecy from me as the project director that I did not know about. I clearly was not informed that that had restarted and was being negotiated. My first knowledge of that was when I was at a workshop in Brisbane with our major engineering contractor, trying to work out an engineering solution for Parkes Way, which was no easy thing. So it was very topical, but until we got that engineering solution sorted, at least some options that were both practical and cost-effective, there was no point acquiring a block of land.

It is not that I do not accept that cabinet decided we needed to acquire it before we put in an Infrastructure Australia request, but I can promise you there are thousands of requests to Infrastructure Australia, and the bodies that are looking at pieces of infrastructure do not go and acquire all of that land until they get the funding and all the things in place. So we are not all going and speculating on potential infrastructure and therefore running a whole lot of processes we do not need to run. That just seemed a naive position which I heard for the first time when I listened to the earlier hearings. That would seem very strange to me.

THE CHAIR: So you got the Opteon valuation in August 2014?

Mr Xirakis: Yes, I think we contracted for it in August. We might have received it in September-October.

THE CHAIR: What happened then? There were discussions and then—

Mr Xirakis: I went and had a meeting with—

THE CHAIR: With Morris—with Amalgamated?

Mr Xirakis: Yes, with the Amalgamated CEO; we discussed that we got the valuation, we were keen to acquire the block and we needed it for a public piece of infrastructure.

THE CHAIR: They said, “No, thank you”?

Mr Xirakis: No, Phil said, “I’ll take it to the board, but I don’t think they will be happy, and I’ll get back to you with their response.” Their response was, “No, we don’t accept that at all. That’s not what we expect.” I then offered, under advice from the GSO, for them to go and get their own valuation and start their point of negotiation on what they thought it was worth. They declined that; they said they would deal with it separately.

THE CHAIR: What was the time frame on that?

Mr Xirakis: It must have been October, November—

THE CHAIR: So it was in the latter part of 2014?

Mr Xirakis: Yes.

THE CHAIR: As far as you know, that died as an issue?

Mr Xirakis: It did not die. It was simply not—

THE CHAIR: It was not pursued. It was not actively pursued and then—

Mr Xirakis: I had five critical infrastructure projects. That was a small piece of one of them. That could not happen until a lot of other things happened. In terms of urgency, that was not urgent.

THE CHAIR: When did you become aware that somebody else had taken up the negotiation? You said it was—

Mr Xirakis: In late June, when I was in Brisbane at a workshop discussing feasibility engineering, the feasibility of a Parkes Way realign. I got a phone call from the office. There was an envelope that arrived from Clayton Utz. It had a contract in it. I asked what the contract was for. They said it was to acquire Glebe Park. I said, “Look, they are trying it on. I will deal with it when I get back Monday. How much was it? Yes, no, no.”

MR COE: What was the amount?

Mr Xirakis: \$3.8 million.

MR COE: In that contract with Clayton Utz in June?

Mr Xirakis: Yes. It would have been 25 June, I believe. I am sure somewhere in the archives all my calendars and all my emails are kept. You can check anything. I am happy to come back and discuss any content of any of my emails or calendars but without them I cannot be precise about the dates.

THE CHAIR: Yes, I understand. So, to the best of your knowledge, that was 25 June. When you came back to the office and you looked at the contract—

Mr Xirakis: I did not wait until I came back. I rang Tom Gordon; so to me—

THE CHAIR: Sorry, Tom; he is from Amalgamated?

Mr Xirakis: No, he is, or he was, an executive director of the LDA. I was aware that we had a strategic cap. I believed that no matter what we did with this block of land it would be part of those strategic acquisitions. We had a committee of two that presided over that strategic cap. No acquisition happened unless you first checked with that committee. So I rang Tom. Tom was unaware of any agreement to purchase that land. He was one member of the committee.

The other was the CFO, Margaret Cicolini at the time. Margaret was not available when I tried to ring her. I went to see her immediately on my return on Monday. She

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also expressed no knowledge that this had happened. So that rang alarm bells with me because these are the people who have to decide whether it actually fits inside the cap or not and therefore whether it goes to cabinet. I also knew there had not been a process that had gone to the board, certainly not from my project. Quite literally, I thought someone was trying something on here. I did not think there was a real transaction happening.

THE CHAIR: You actually thought that it was the other side sort of—

Mr Xirakis: I thought it was part of a negotiating technique for the other side's solicitors: send us a number and see if that starts a negotiation. That would not be the first time that happened. But certainly I did not believe it. It was not in line with anything I had discussed with anyone. I had no knowledge of it.

MR COE: Was that Clayton Utz contract drawn up by Glebe Park, by a director or on behalf of Glebe Park, or was it by the ACT government?

Mr Xirakis: I would be surprised if it was not drawn up by Glebe Park and their solicitors. But if we are talking about contracts to exchange there was no possibility that that had not gone to the Government Solicitor's Office. Again, the one consistent entity who was involved both in my negotiations and in however the final negotiations ended up was the Government Solicitor's office. It would be quite reasonable to ask them at what point it changed, how the negotiations went. In my opinion they would have been involved the whole time—certainly at the start and certainly at the end.

MR COE: So would the ACT government use Clayton Utz?

Mr Xirakis: It was one of the solicitors. The key people at Clayton Utz are fantastic property lawyers. They would be able to—

MR COE: But the ACT government did use them?

Mr Xirakis: I believe they had used them before, yes.

THE CHAIR: Is there anything else, members? We are starting to run behind time.

MR COE: Are you able to recall whether that contract that you saw in June actually had the settlement of September?

Mr Xirakis: I did not see the contract. I told them to send it back. I was away when it arrived. I told them to send it back. It was clearly a mistake and I have never laid eyes on that contract.

THE CHAIR: So you asked them to send it back on the Friday?

Mr Xirakis: Yes, I thought it was a mistake. I am not joking. It was not a joke. I seriously thought it was a mistake or a try-on. Either way, it was something that happened without my knowledge, on my project, on a parcel of land that I had started a process on. I could not fathom that I would not have been involved in follow-up negotiations on that. In hindsight, if I had known they wanted to keep it, potentially

there were issues around not telling contractors what you are doing, but no-one had a conversation with me. I guess that was the most disappointing thing.

MR COE: The evidence suggests that—I think Mr Stewart confirmed this—from 11 May his involvement in this commenced, or that on 11 May his involvement commenced. So in that six-week period or thereabouts, between 11 May and 25 June, I imagine that you had had conversations with Dan Stewart. You would have done?

Mr Xirakis: I honestly do not think I did. Dan Stewart and David Dawes were the two hardest men to get a meeting with face to face. We did spend a lot of time briefing up to them. My regular contact was with my direct report, which was Liz Lopa. I expressed my concern on this contract to Liz, but I had tried and had not been able to get in contact with either Dan or David. Events sweep you at the time; they seem really important now. Maybe I should have focused harder on having those meetings. But we were also in the middle of a review process which required a lot of my time. There were five facets to this project that all required a lot of my time. I made my attempts to meet with them, unsuccessfully, and I got on with the rest of my job.

THE CHAIR: After what you think was 25 June, when you became aware of this contract, did you discover anything else about negotiations on the Glebe Park block before you left?

Mr Xirakis: No.

THE CHAIR: So you did not know anything about—

Mr Xirakis: No.

THE CHAIR: the sealing of the deal, which—

Mr Xirakis: Not at all.

THE CHAIR: Not at all. Thank you, Mr Xirakis.

Mr Xirakis: Thank you.

THE CHAIR: There will be a transcript that comes out. Could you review it?

Mr Xirakis: Yes, I would.

THE CHAIR: If there is anything that you think is not clear or whatever, can you alert us to it?

Mr Xirakis: I shall.

THE CHAIR: Can I take from the comments that you made that if we want to put some questions on notice about when particular meetings happened, because the ACT government owns all those diary entries and email entries—

PROOF

Mr Xirakis: Yes, quite happy for anyone to review my emails and my calendars and identify dates. I will not take it on notice because I am sure I am not going to get access.

THE CHAIR: No, I understand that you cannot take it on notice.

Mr Xirakis: If you can get me access to them, Vicki, I would be pretty pleased to see them, I can promise you.

THE CHAIR: Thank you very much for your time.

MR COE: Is there a closing statement?

THE CHAIR: Sorry?

Mr Xirakis: Look, I think we have covered it.

THE CHAIR: So we were prescient enough to cover all the issues that we wanted to cover?

Mr Xirakis: No, it was thorough and you gave me a bit of latitude in my answers; so I covered them where I did not think the questions covered them. Thanks very much.

THE CHAIR: You should go into politics, perhaps. “That is not the question. You should have asked this.” Thank you very much for your time, Mr Xirakis.

MORRIS, MR BARRY, Director, Glebe Park Pty Ltd

THE CHAIR: Welcome, Mr Morris, to the second hearing of the public accounts committee inquiry into certain land acquisitions by the Land Development Agency. You have a pink laminated sheet in front of you, a statement of privilege. Do you understand the statement of privilege?

Mr Morris: Yes.

THE CHAIR: Thank you. Do you wish to make an opening statement in relation to the committee's inquiry?

Mr Morris: No.

THE CHAIR: We are inquiring into certain land acquisitions and you are the principal of one of the companies that owned a block of land that was acquired by the ACT government. Could you give us an outline of the corporate structure of your business? My understanding is that the actual leaseholder was Glebe Park Pty Ltd but that Glebe Park Pty Ltd is a subsidiary of another organisation. Could you give the committee an outline of your corporate structure?

Mr Morris: Glebe Park Pty Ltd was a bare trustee that held the interests of four joint venture parties over the block of land at section 65 in Canberra city, which is referred to here as Glebe Park. The original block of land was a larger parcel, which was the old food court and quite a substantial parcel of land that ran north and abutted what is known as Glebe Park, on what would be the east. Its common boundary on the west was the Crowne Plaza Hotel and Casino Canberra. On the south it abutted a walkway that ultimately was across the walkway to the convention centre.

Glebe Park Pty Ltd purchased that land in the early 2000s; I could not be sure of the exact date anymore. A development application was submitted for what is now known as the Glebe Park Residences, which is a development of 180-odd residential apartments which front Coranderrk Street to the east and front the residual parcel of land to the west. That parcel now is substantially where the Glebe Park food court stood at the time.

THE CHAIR: The Glebe Park food court stood on what is now the vacant block of land or where the apartments are?

Mr Morris: No, where the Glebe Park Residences, the current apartments, now stand. With respect to Glebe Park Pty Ltd, the two directors of that company are Graham Potts and me. Between us we owned more than 50 per cent of the joint venture interest in the land.

THE CHAIR: There are other parties who are part of the joint venture?

Mr Morris: Each joint venture participant had its own company or trust that held its joint venture interest. The other two principals were Joe Bisa and Richard Tindale.

THE CHAIR: You have had this larger block of land since the early 2000s. You are

not quite sure exactly when?

Mr Morris: That is correct, yes.

THE CHAIR: You built the residences on it. Was the land subdivided at any time?

Mr Morris: The land was subdivided into two parcels. The Glebe Park Residences parcel was subject to a units plan and then the balance of the land, which I think is about 12,000 square metres, was the remnant parcel that we, the joint venture, continued to own.

THE CHAIR: The terms of the lease for the residual piece of land, on my understanding, are that it was for a number of ancillary uses—landscaping, car parking, a food and drink outlet; I think it says a beverage outlet—and there was to be a million dollars spent on landscaping as a term of the lease. Is that right?

Mr Morris: Yes, as part of the subdivision there were funds to be spent on that remnant parcel. That was landscaping works, car parking works and things like that. There were a lot of redundant trees on the site. Between the Glebe Park Residences and the remnant parcel there is a stand of poplars and pine trees. Some of those had to be removed and made good, because obviously the land was available to the public to access, so it had to be safe.

THE CHAIR: They were the terms of the lease. Do you know how much was spent on the works on that block?

Mr Morris: I cannot recall what may or may not have been spent. Certainly in the early days there was, as I said, maintenance and tree removal. As time went on, we were looking at redevelopment options for the site, and that is when that million dollars of offsite works, if you like, or works to the land, would be undertaken to provide more car parking and an access way into the back of the casino. It may not be widely known that the casino in fact does not have driveway access. One of the things we were looking at as part of a redevelopment was to give the casino a front door, effectively, which it never had, because it only ever had laneway access off Binara Street, I think it is—where the Crowne Plaza Hotel is.

THE CHAIR: Could I ask, on notice, if you could check your records and give the committee a timetable for when the various leases were acquired and subdivided and when the lease and the lease conditions on block 24 were provided? I do not expect you to know all of this stuff off the top of your head. It might be useful so that we are talking not in vague terms but in precise terms.

Mr Morris: If I have those records, Mrs Dunne. In 2009 the management of the Amalgamated Property Group and Morris Property Group businesses changed. I manage the Queensland assets for our combined interests and Graham Potts manages the Canberra assets for our combined interests.

THE CHAIR: Mr Potts is appearing at some stage, when he is back from overseas.

Mr Morris: Those records may well be with him. I can say I do not have those

records. If I was to procure those records, I would have to go to them.

THE CHAIR: In that case, thank you for that clarification. Mr Potts is appearing later, so we can pursue that matter with him.

MR PETTERSSON: In regard to valuations, there was the original valuation of \$1 million and there was a second valuation advice. That is on the LDA's side. Do you have your own personal valuations that you consider when considering whether to sell a piece of land?

Mr Morris: No. The first email that I have come from Phil O'Brien, who is the chief executive officer at Amalgamated, in around July 2014. He emailed and said that he had been approached by Tim Xirakis with a view to buying the land because the government had to solve a problem with the relocation of Rond Pond, which was related to the lowering of Parkes Way and having to remove Rond Pond out of the middle of Parkes Way. In that email Phil advised that Tim was going to get a valuation. I suppose it was about a month or so later that I received another email from Phil saying, "Please find attached the valuation." The valuation said that it was for negotiation purposes, which I thought was somewhat strange in itself, because normally you get a valuation for valuation purposes.

In any case, the valuation said \$950,000 to \$1,050,000. I responded to Phil and said, "That's totally ridiculous. It hasn't taken into consideration the potential development value of the land," which was in Phil's previous email. When Mr Xirakis said he was going to get a valuation, Phil said, "Make sure you take into consideration the development value of the land." Mr Xirakis did offer that we get a valuation. I responded to Phil, saying, "It is so far away from what would be acceptable to the joint venture; why would we engage?"

When you say a personal valuation, not being a valuer but from a development point of view, we had already had a development scheme done, as I said previously, with a view to giving the casino access, a front door et cetera. We had a scheme with 140 or 150 units on it, and from our own viewpoint, at a land value of \$50,000 per unit site, at 150 units that would be \$7.5 million. From that you deduct the lease variation charge that would have to be paid to the government. The land value, if you like, the net of the lease variation charge, was \$3,750,000, assuming a unit value of \$50,000 per unit site. That is not development profit. That is just raw land value, as if a development application had been approved to put residential units on that land. Residential is an allowable use under the Territory Plan for that land, so the territory or ACTPLA would have to accept a development application and deal with it in the normal processes.

From our point of view, from our experience, an approval would be forthcoming at some point in time. You get objections, as we know, with development, but normally objections can be dealt with or are dealt with; concessions are made. People push and pull, but ultimately a development approval would be obtained for that land. From our point of view, based on 150 units—we had a scheme that had something like that on it—if you take off all the bits and pieces that you lose along the way, you would have a land value ultimately around the number that we ultimately accepted for the block.

PROOF

MR PETTERSSON: What was the number again? Your calculation was about \$3.75 million?

Mr Morris: Yes. That is for development on that part of the land, which was that part bounded by the casino, the convention centre, the tree break between Glebe Park Residences and what is now the current driveway that crosses the block. There is nothing to say that you could not develop to the north of that—all of that land parallel to Crowne Plaza—although we were not looking at that at the time.

THE CHAIR: Following on from that, Mr Morris, could you give the committee, to the best of your recollection, a chronology of what happened after that, after you said, to use the vernacular, “Tell him he’s dreaming”?

Mr Morris: Mrs Dunne, nothing much. It is fair to say I checked my emails before I came here today, to refresh my memory. I cannot recall conversations that I may have had directly or indirectly with Graham Potts or Phil O’Brien, but my email records fast-forward to June 2015. The valuation, I think, was in August 2014, so we fast-forward 10 months and I received an email from Graham that said, “I met with Dan Stewart yesterday and after a bit of argy-bargy we’ve agreed at \$3.8 million.” I emailed back and said, “That would be acceptable to me.” So there was a huge void in that period. Again, I was not running the Canberra assets, so there may have been other conversations that I was not a party to.

THE CHAIR: From your email records, in June 2015 you had advice from Mr Potts that he had agreed to a price?

Mr Morris: Yes.

THE CHAIR: You knew nothing about that beforehand?

Mr Morris: No.

MR COE: Can I just go back to when the Glebe residences were built. In effect, it is a much larger parcel of land and had the condition of being able to be subdivided to build the Glebe residences—the million dollars of works on the other block, in effect offsite works—and at the time the government said that there would not be development there. Is that correct? There would not be development on that block, on 24- 65?

Mr Morris: No. The government never said what development would be on the site. The crown lease allowed for development with a gross floor area of 650 square metres, I think it was.

MR COE: A single-storey hospitality facility or something; is that correct?

Mr Morris: I would have to check the crown lease as to what it said. No, I do not think it is that specific. The crown lease just lists a list of uses and says a maximum gross floor area of 650 square metres.

MR COE: Why would the lease be so precise if you could go and vary that in a flash? Surely that was part of the negotiation to actually be able to build the Glebe residences?

Mr Morris: I would have to check the original crown lease from Amalgamated, but I think the original crown lease allowed for 650 square metres, or something like that, of uses. When the Glebe Park Residences came about, the 650 square metres on the aggregated parcel, if you like, went to the remnant parcel and then the Glebe Park Residences was a new crown lease under the subdivision for the 180-odd units.

MR COE: Did your marketing material for the Glebe residences make any mention of the fact that there would not be development next door?

Mr Morris: I think we did say in the contracts for sale that there could possibly be additional development on the other parcel, because when we were marketing the Glebe Park Residences the land was not subdivided, I do not believe, at that point in time. The subdivision came as part of the unit titling process and we did not represent to buyers of Glebe Park Residences that there may not be other development in the area. I am pretty sure on the plans that attached to the contracts for sale of the Glebe residences we said that there was possible future development or words to that effect.

MR COE: So you are saying that the subdivision was not actually a requirement of the ACT government?

Mr Morris: No, I do not believe so. But, by the same token, from a development point of view we did not want to saddle up the buyers of those units with having to maintain a 12,000-square metre park, because their body corporate fees would be astronomical and we did not want to lose, I guess, the potential future development opportunity.

THE CHAIR: Were you aware that, at least sometime in late 2011, in answer to a question in the Assembly, Mr Corbell told Ms Le Couteur that the government had no intention of developing that land for residential purposes?

Mr Morris: No, I was not aware of that.

THE CHAIR: You were not aware of that?

Mr Morris: No.

MR COE: What year were the Glebe residences constructed, roughly?

Mr Morris: I am thinking maybe 2002 or 2004, somewhere around there. I could not be sure.

MR COE: In that time Amalgamated had quite a few developments around town and bought a fair bit of land, I imagine, either privately or from the LDA. Why did not Amalgamated do a development on this block? If you could do it, and it was valued that you could do it, why didn't you?

PROOF

Mr Morris: We had drawings prepared. At that stage I do not think we had lodged a development application.

MR COE: I understand that. Obviously that is so, but I just wonder whether the reason you did not do it was that it would not have been approved, because the government had said very clearly in 2011 that they would not allow any construction to take place on that block. Perhaps that is the reason why construction did not take place.

Mr Morris: That could possibly have been a reason, but if Mr Corbell said in 2011 that he would not approve construction on the block that does not mean that approval would be withheld forever. I think it has been reported in the *Canberra Times* that the government is intending to sell part of this parcel to the casino. Clearly there has already been a change of government policy in relation to development of the land.

MR COE: There has been a change in policy. But it does suggest that prior to this change of policy the old policy was that nothing could be built there; in which case, is not the valuation advice really quite speculative rather than actually representative of what is legal?

Mr Morris: Firstly, I am not sure what valuation advice you are talking about.

MR COE: I am talking about the Colliers' valuation.

Mr Morris: I have never seen the Colliers' valuation advice. I gave you my personal view on, if there was development, what the land would be worth, but I have never seen any Colliers' valuation advice or any other advice apart from the valuation that was provided to Phil O'Brien and then to me by Mr Xirakis.

MR COE: So you were never provided with any substantiation for how the government got to the \$3.8 million?

Mr Morris: No, and that was purely based on my view that if we had a development of 150-odd units, as I explained, it would have a land value around that \$3.75 million. When Graham came back and said that was the figure he had been able to negotiate, I felt that was a reasonable outcome, notwithstanding that there was no development profit but we were getting the value of the land that I thought it was worth.

MR COE: Are you saying that Mr Potts put the figure of \$3.75 million or the government put the figure of \$3.8 million or Mr Potts put it? Who, in effect, proposed that sale amount?

Mr Morris: The email that I have from Graham said that he met with Dan Stewart "yesterday" and after some negotiations they agreed on a figure of \$3.8 million. I do not know who put the \$3.8 million. I was not in the conversation.

THE CHAIR: What was the date of that email?

Mr Morris: It is June 2015; I think maybe around the 20th.

THE CHAIR: Could you just get back to us with the exact date? Could I just ask about block 24. You said that you had done some work on a plan for part of the block but not all the block. Which part of the block was your proposed plan for?

Mr Morris: There is, on the northern side of the Glebe Park Residences, a driveway with car parking on the side, visitor car parking. If you continue that road in a westerly direction straight over to the junction with the Crowne Plaza hotel and the casino, the land to the south of that, which is bounded by the casino, the walkway to the convention centre, the treed break and that road, that was the parcel of land.

THE CHAIR: So that is 12,000 square metres. It was half of that, roughly?

Mr Morris: I think it would be less than half. The parcel of land to the north which then abuts Glebe Park and the Crowne Plaza goes all the way to the end of the hotel there. It has got a wiggly line.

THE CHAIR: I am just looking at the map as we talk so that I can get a—

Mr Morris: The territory has got a free parcel of land out of this exercise because we did not consider any development on that parcel of land.

MR COE: I want to go to the way that business was usually conducted with the LDA. Have you negotiated directly with the LDA in the past or do you use staff or consultants to do that?

Mr Morris: I have only bought one parcel of land from the LDA, block 1 section 199 Belconnen, the old bus interchange. That was at a public auction held in Belconnen. The land was passed in. I was advised by the agent, I think McGrath or someone like that—I know the gentleman's name was McGrath, the agent—of the reserve price. I purchased the block of land after the auction at the reserve price. That is the only dealing that I have had with the LDA.

THE CHAIR: Sorry, that is you personally or Amalgamated?

Mr Morris: That is me personally as Morris Property Group. I do not know what Amalgamated have purchased.

MR COE: You mentioned a couple of times that Mr Potts had negotiated the price. Who nominated Mr Potts to be the negotiator rather than you?

Mr Morris: As I said, back in 2009 our management of the business separated, and I look after our assets in Queensland. Graham looks after the assets in Canberra. We have been doing stuff together long enough that I trust him implicitly. What he negotiates is what he negotiates and then obviously, as I would not, he would not sell a parcel of land without coming to the joint venturers and saying, "Do you agree?" which is what occurred in this case. But he does all the face to face.

MR COE: Did Colliers get a commission out of the sale?

Mr Morris: I do not believe so, no. No, I do not think they were acting. I do not

PROOF

believe they were acting for us, but that is something I would need to check. But, no, I do not think so.

MR COE: So was there anyone acting for you other than the lawyers?

Mr Morris: No. Graham did the negotiation.

MR COE: With regard to direct sales to government, have you sold any other parcels of land to the government before?

Mr Morris: No.

MR COE: Have you sold land to other governments interstate?

Mr Morris: I do not think so, no. I am just trying to recall, but no.

MR COE: I am just curious to see how this process compares to other jurisdictions that might be engaged in similar work.

THE CHAIR: I think we have taken enough of Mr Morris's time. Is there anything else that you would like to add before we conclude?

Mr Morris: No. I will come back to Dr Lloyd with the date of that email so that you have that.

THE CHAIR: After this process there will be a proof *Hansard* made available. If you feel that anything needs clarification there is a mechanism for rectifying things that are not clear. You have taken a date on notice that you will get back to us with. Thank you very much for your time.

Mr Morris: Not a problem; thank you.

POWDERLY, MR PAUL, State Chief Executive, Colliers International and Colliers ACT Pty Ltd

THE CHAIR: Thank you for your appearance here today. This is the second day of hearings of the public accounts committee inquiry into the Auditor-General's report *Certain Land Development Agency Acquisitions*, report No 7 of 2016. You have read the privilege statement in front of you. Do you understand the implications of the privilege statement?

Mr Powderly: I do.

THE CHAIR: Do you wish to make a brief opening statement?

Mr Powderly: In my role as State Chief Executive, Colliers International, we have provided some advice to the LDA which you are obviously going to be asking me questions about. As I said, I am very happy for Colliers International to assist in any of those inquiries.

THE CHAIR: We are inquiring into the Auditor-General's report and you and your company get a mention or two in the report. We also acknowledge the receipt of the letter to me, dated yesterday, as the chair of the public accounts committee, which the public accounts committee has accepted and agreed to publish. Would you like to give some background, in your own words, into why you chose to send us these documents?

Mr Powderly: Sure. The Auditor-General wrote to me in August, after giving evidence to this committee in July, realising that all the documents that I provided to the Auditor-General, before the Auditor-General's inquiry commenced, were probably not made available to the members of this committee. And you should have those documents so that you are able to understand the full process, Colliers' involvement and obviously, I guess, the time line processes and the failures that led to the Auditor-General's report.

It is probably important to realise that I went to the Auditor-General; I wrote to the Auditor-General in advance of the inquiry, because I found that what was being reported in the media and what was being said by certain politicians was not necessarily reflective of having all the documents, which is the reason I went to her, hoping that those documents would be on the public record. As it turned out, she felt they were privileged and did not turn them over; hence her letter to me, which is why I have provided it to you so that you have those and, if you are going to ask me questions, you have the correct documents to ask me questions about.

MR COE: So what difference do you think these documents make? What piece of the puzzle do these documents constitute?

Mr Powderly: I think the most important document is the initial document that was provided to the former deputy director-general, which was the document done after I reviewed the valuation obtained in 2014. That document was handed to the deputy director-general in the meeting of—the date is in the file.

THE CHAIR: This is the document called “Valuation considerations” dated May 2015?

Mr Powderly: Yes; correct. We provided that document to the Auditor-General. I was under instructions that you did not have that document.

THE CHAIR: That is right.

Mr Powderly: Hence the reason to write to you was to provide that. I thought, while I had the opportunity, I would give you a copy of all the other documents we produced to the Auditor-General so that you had file notes and the documents that we made available to her when she did her inquiry. The main reason is that you should obviously have the file notes and that initial document.

THE CHAIR: One of the failings reported by the Auditor-General was that the LDA did not have a lot of the information it should have had on file. My understanding from the briefing we received from the Auditor-General was that she actually had to go to organisations like your own to backfill the information that should have been on the LDA file, including things like this valuation consideration.

Mr Powderly: The Auditor-General did not come to us; I wrote to the Auditor-General—

THE CHAIR: Sorry, yes. And you handed over some documents.

Mr Powderly: My entire folder, for her to take copies of all the documents.

MR COE: Can I request that you actually read some of these notes to us because I am struggling to—

Mr Powderly: I should have been a doctor, yes.

MR COE: I was about to say that very thing.

THE CHAIR: Have you got a copy of these?

Mr Powderly: Yes.

MR COE: So are you able to help us out?

Mr Powderly: The first file note is a note after I received that phone call from the deputy director-general, and I am assuming for the purposes of today I can use people’s names because it would seem that everyone else is using names.

THE CHAIR: Yes.

Mr Powderly: Mr Stewart had called me after he had had some meeting. I have described it in my letter. The Auditor-General gave me that description, so I apologise if that is not the correct description. The description given to me by the

Auditor-General was that they had had a cabinet meeting about the city to the lake. So I am assuming that is correct.

I had a phone call—I do not know whether it was the same day, the following day or a few days later—saying they had had a conversation and they were wanting to look at city to the lake and the relocation of the retention pond, or whatever it was, in Parkes Way. I had previously been involved with the city to the lake conversations; consultative bodies were invited to city to the lake meetings. There was some discussion about lowering Parkes Way, which was a reason to have to relocate this particular pond, and that they were looking to put it onto Parkes 3, which was a site the LDA owned opposite the CIT car park.

They had had valuation advice to say that would have quite a substantial impact on the Parkes 3 site, so they were looking for an alternative location. For some reason this site had floated back to the top and I got a phone call from Mr Stewart saying, “Look, we had a valuation on this property for \$1 million a year ago. We have approached the owners. They’ve told us to take a flying leap. Can you give us some advice as to what’s wrong with this \$1 million valuation?” I said I was happy to have a look at it if they wanted to shoot me over a copy. So the first file note was just really—

MR COE: Can you actually read the words?

Mr Powderly: It says, “Phone call from D Stewart regarding advice on part of Glebe Park. Have advice of value of \$1 million”—so he has obviously got a report of \$1 million—“and approached owners some months ago to see if would sell. Xirakis had carriage.” Sorry if I do not have his surname right. “Need to meet to review and get advice.”

THE CHAIR: Arranged.

Mr Powderly: So I asked that they drop off a copy of their report—I had never seen the report—so that I could have a read of the review.

MR COE: This is company practice to jot down these sorts of notes and just put them in a file?

Mr Powderly: Yes. From my very first days when I started at Colliers we had a major court case against Leda Holdings on the hyperdome and I was taught very early in my days to take exhaustive notes. That held us in good stead when Roger David lost the court case for basically fabricating the truth. I always do that every time I have meetings, and I will do the same after this afternoon’s meeting just to make sure what you send me is correct.

THE CHAIR: We do have Hansard.

Mr Powderly: I have had things taped before; they do not necessarily end up the right way. So that was the first conversation. As I said, I received a copy of it; it was dropped off to the office. I do not know who dropped it off; it was just dropped off in an envelope and—

MR COE: Why would they not have emailed that?

Mr Powderly: I do not know. Maybe they did not have an electronic copy. No idea.

THE CHAIR: Was it a very big document?

Mr Powderly: Yes. I have a copy in the office, but it was a typical 20, 30, 40-page document.

THE CHAIR: Fairly standard.

Mr Powderly: Yes. I just got a black-and-white copy dropped off to the office. I do not know whether they dropped it off from having another meeting in the city. I basically had a look at that report. There was nothing wrong with the valuation report in the extent of the instructions that were provided to the valuer, and that was to provide a valuation on the property pretty much on an as-is basis. I think I commented in my paper that that was reasonable, given the property's location and its current purpose clause and that that was about the right number.

As I always do—it is a bad habit or a good habit—I then basically put all my thoughts down on a bit of paper so that I could talk through it when I met with Mr Stewart. For lack of a better word, I called it “Valuation consideration”, because I was considering the valuation they had given me of a million dollars. I then put my own thoughts down on paper as to the different options that would be in front of that site, if you look at it on a highest and best-use basis.

THE CHAIR: You did not consider this was a formal valuation?

Mr Powderly: Absolutely not. Just to be clear, the State Chief Executive of Colliers International does not do valuations; it is a real estate agency business. Colliers has a national valuation business, which I am not employed in. I have not been involved in that for three years.

THE CHAIR: But you are a valuer?

Mr Powderly: By trade I am, yes. And I was the director of valuations for 10 years at Colliers in my 29-year tenure.

THE CHAIR: But you are not currently a valuer, technically speaking?

Mr Powderly: Yes, I am qualified as a valuer, but I do not do swathes of valuations. My job is to run the Colliers International business and all the different business units within Colliers International. As I said, valuations are a very prescriptive process. You must receive valuation instructions when you are doing a valuation; you must have the purpose of the valuation, what the use is going to be, and obviously you sign it. You put a single number on it; you do not give people ranges. You will find later in my notes where I am reasonably clear to Mr Stewart that if he was proceeding beyond what was, in my view, just some initial advice, he should get formal valuation advice. He could have got it from my director of valuations; he could have got it from any one

of his panel members and paid a handsome fee to do that.

MR PETTERSSON: How much is a handsome fee?

Mr Powderly: If it was just a normal valuation with normal timing, probably \$5,000 to \$6,000. If someone wanted it in a rush and you had to prioritise it ahead of other jobs, you might get \$8,000 or \$9,000. But the director of valuations would quote based on workload. The director of valuations would do anywhere between 50 and 100 valuations in the course of a year for the LDA, whether it is reserve prices or—

THE CHAIR: Are you on this Colliers International-LDA panel?

Mr Powderly: The national valuation firm of Colliers is on the LDA's panel of valuers—correct—which is different to our agency contract with the LDA. It is different service levels.

THE CHAIR: Thank you.

Mr Powderly: So I produced the said paper valuation considerations document, which you will see. Then I met with Mr Stewart—my records from the Auditor-General were 21 May—and went through that paper with him and handed it to him, with a number of other documents, which included a change to the Territory Plan where they removed the residential use from the Territory Plan schedule of uses, with a map showing the Territory Plan uses. Also, there were a couple of sales that we talked about that, I guess, gave some credence to some of the numbers we were talking about. Do you want me to go through those notes?

THE CHAIR: Yes, if you could.

Mr Powderly: I said, "Glebe Park land and review, existing valuation based on not variation and not market value." I guess my point there was it was being done on a specific as-is use. Examples of other sites: as I said, I talked about other sites that had sold. There is a bowling club in Braddon that had a very restrictive purpose clause for a club. It had sold the same month for \$3.8 million. It was an 8,000-metre site. There was another site in Deakin—the Southern Cross Club bowling club—which had also sold, both zoned very similarly. "Must be market value as lessee has the rights to vary the lease." I said, "Territory Plan would block variation." Then we talked about compulsory acquisition and basically talked about, I guess, the pros and cons of that issue.

Just terms compensation was a thing that is relevant legislation in New South Wales and we just talked about the issues. I guess it is probably worth elaborating on that, because I know that is obviously something that you may want to talk about. I have noticed there has been a lot of conversation about compulsory acquisition for public purpose, so I am happy to talk about that if you wish. I just said there, according to my note, "You cannot use the argument that you are a monopoly planning authority buyer for the site and approving authority and say that is the reason why you should buy it cheap." A court would shine a very poor light on someone who tried to use all those influences to say that is why they should buy it cheap.

“Provide paper options based on other sales and LVC to vary, set up meeting for Dan with owners”—because he basically said that if they were going to go forward they would want to meet with the owners and see whether it was even worth while having the conversation, because if they wanted \$10 million, it does not really matter what it is worth; it was not going to be an option. So that was provided in that paper.

My understanding from the deputy director-general, from Dan, is that he went away and had the conversation with the powers that be. I cannot say whether that was David Dawes, the Chief Minister, cabinet; that really was not advised to me. I gave him a range. I think it was a reasonably wide range from something like 3.2 to 4.2—it was quite a wide range—and said, “Look, my view would be somewhere between 3.6 and 3.8.” Given that the bowling club in Braddon and the one in Deakin had just transacted at those sorts of numbers, it was quite defensible. Those leases had specific uses and they were in that sort of range.

MR COE: But, dare I say it, that sounded like valuation advice.

Mr Powderly: Sorry?

MR COE: It is sounding like valuation advice, is it not?

Mr Powderly: Well, it is market advice, yes.

MR COE: Yes. So I guess where do valuations stop and market advice start? If you are not a valuer and you pass it on to a different side of the business, the national business, does it—

Mr Powderly: It is obviously quite—

MR COE: It seems to me that a lot of this sounds like valuation-type stuff.

Mr Powderly: Yes, the issue is that obviously the clear confusion, from what I have been reading and hearing, is that Mr Stewart, for whatever reason, thought this was a valuation advice. That is obviously a mistake on everybody’s part. If he thought this was valuation advice, he clearly has not seen too many valuations.

MR COE: Mr Dawes in fact said that he had received, or they had received, a valuation in the order of \$3.6 million to \$3.8 million in November of 2015.

Mr Powderly: Sure. As I said, it is clear confusion. But the point is that a valuation must be prior instructions—

MR COE: In fact, even my freedom of information request was actually requesting valuations; it was not requesting all documents. It was requesting valuations. Therefore, if this is not a valuation, which it is not and you are saying it is not, then I really should have only received one document in that freedom of information request, which was the Opteon valuation and that is that.

Mr Powderly: Correct.

MR COE: Yes.

Mr Powderly: Yes. And in your freedom of information request, which I saw, you asked for instructions; you asked for the engagement of the valuation of Colliers; you asked for the invoice. None of it existed. We do not go about doing valuations when we do not get instructed to do them.

MR COE: Yes, that was a second valuation.

Mr Powderly: Yes.

MR COE: Sorry, a second FOI. The first FOI was actually just for the valuation for the block.

Mr Powderly: As I said, I was very critical of the process that this was taken to be more than it really was, with some initial advice to give them a bit of a view so that they could formulate whether they wanted to go to the next step and contemplate an acquisition or not, go for a compulsory acquisition or not buy it at all. The failure to then go and get formal valuation advice on the basis of highest and best use has meant that my papers have ended up being gospel and viable and everyone holding them to be something greater than they are.

So, at the end of the day, my conversation with the LDA after that was, “There seriously need to be some people who understand what is a valuation and what is not and there should be a centralised part of government that instructs valuers for valuations,” and that is exactly what happened.

MR COE: We are meant to have that with the Property Group. We are sort of meant to have that with the Property Group, anyway.

Mr Powderly: Yes, they have now basically got a centralised person, or two or three people, within the LDA that issue all instructions—not issued by deputy directors-general or anybody else—so that they follow the LDA’s procedures, which set out the instructions, set out the terms of contract when you are engaged to do work for the LDA. A number of senior members of the Australia Property Institute met with that team and made sure they understood how to do instructions. But that is irrelevant now as—

MR COE: Yes, but you said that they should have sought a valuation. However, I guess one of the issues is that there was a mentoring arrangement taking place. I understand the goodwill associated with that; that is what Dan Stewart suggested. But there is this conflict, I guess, in the mentoring where you might have said, “You should get valuations,” but then in addition to that there is arranging the meeting for the sale in the knowledge that they did not have a valuation.

Mr Powderly: Sure.

MR COE: At some point—it is probably not your responsibility to do this because ultimately it is government’s decision—prior to the actual transaction happening and

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at the time of your arranging that meeting at Colliers, did you say, “You need to get a valuation”?

Mr Powderly: Before the meeting, yes. Obviously, Mr Stewart has said himself that he was not necessarily highly experienced in this. They did not ask Colliers whether we wanted to handle the negotiation process. At that particular time I was pretty busy dealing with a major commonwealth requirement which was due. I did not really have the time; so I said, “I’m not really interested, but if you want to meet with the owners, I know the owners’ representative and I can set the meeting up,” which I offered to do. My understanding is that they met briefly, for 10 or 15 minutes, in our office. I introduced them in the front foyer and they had a meeting. But the point—

THE CHAIR: So you were not at that meeting?

Mr Powderly: No.

THE CHAIR: You just facilitated it and provided the venue?

Mr Powderly: Yes. For some reason it happened in my office. I do not know—you would have to check with Mr Stewart—but I thought he had another meeting in the city that day. I just remember the Independent Property Group people—Mr Potts. You will probably ask him the question; he does not like necessarily being told where and when he can have meetings. It was an LDA-requested meeting, so I just said, “I’m happy to send out the calendar invite to both of you,” and I did send that calendar invite, and they met. My understanding is that it was just really to trade details so that they could have further conversations. My understanding is that they did not actually get down to tick-tacks and do any deals that particular day.

THE CHAIR: What was that particular day?

Mr Powderly: I think it is in the documents; it is the 19th.

MR COE: Of June?

THE CHAIR: 19 June; so that is the last meeting date, the last—

Mr Powderly: Yes, I provided the Auditor-General with a copy of the calendar invite that I had set up for that meeting. It was not a long meeting, as I said. I left them to it. When I came back they were gone.

THE CHAIR: Okay.

Mr Powderly: Just going back to your bit about mentoring, mentoring would be a loose description but let’s just call it for what it is. Effectively, I was asked by the former director-general to have a few conversations with Dan Stewart because of his background with treasury. I was sitting on a commercial advisory board—residential advisory board—representing Master Builders, the Australian Property Institute and other organisations. So I had a reasonably wide knowledge of the Canberra property market in terms of what was happening with industrial land and residential land.

The aim of those meetings was really to get him up to speed pretty quickly on what was happening across the different marketplaces—supply and demand; that sort of stuff. It turned out to be more challenging to have those meetings than one would have thought. I probably got about two in a month for two or three months and after that his diary turned to pretty ordinary. So it was always, “No, cancel, not on.” So probably for a number of months I got to have a few of those meetings and we discussed effectively those issues about the marketplace. That is really what it was about so that he would get up to speed on the portfolios that he was dealing with.

As I said, yes, I mentor a number of people in Canberra who are not necessarily confined to the LDA. It is one of my roles as a senior person in the property industry. Right or wrong, I do not see anything wrong with doing it. I believe it is part of what I should be doing. But, as I said, in this instance apparently it is not acceptable to provide mentorship or share knowledge with government people.

MR COE: But you do understand the perception issues.

Mr Powderly: I understand it totally.

MR COE: Could you run through this last file note that you have provided, Mr Powderly—the one dated 19 June?

Mr Powderly: I wrote that up pretty much over a couple of parts. Dan was going to have the meeting, so I said to him in the previous meetings that obviously these developers that own the site are pretty much developers. So they are going to be looking at it from a development outcome. He needs to go into the meeting well armed with what their views would be in terms of residential, because I think there was a DA that had been tried to be submitted, or there were conversations about a DA for 120 or 130 units some time earlier.

I said, “You’ve got the valuation considerations. I’m going to give you a paper on residential so that you understand their numbers. They’re going to be talking \$10 million or \$11 million numbers. You need to understand the importance of the lease variation charge and the costs—\$1 million-plus of dealing with the site to get it to the point where you could even contemplate residential, because they will obviously be coming at it from a very high number and your view is that it is \$2 million or \$3 million. So I emailed him a second paper, which was the discussion paper, because I called it what it was. It was a discussion between him and the owners. It basically just set out the residential numbers and what they would be thinking so that from his perspective he had a bit of a handle on it.

It just says that in the meeting we had, which was a brief meeting before he met Mr Potts: “Review of discussion papers and advice provided. Site could be hotel, serviced apartments. Developer wants resi, but it would need a change of government.” I think the government at the time had said they were not real keen to allow residential to go onto that part of the site and they had actually removed residential from that schedule in the Territory Plan. It was previously permitted; they had removed it. “Parkroyal owners pay Eureka. Met with owners 2012 to buy for expansion,” which was a fact. There had been a conversation about Eureka, which owned Parkroyal next door. “Good location for hotel et cetera and value in the

ranging paper. Suggest LDA meet and discuss with owner. Dan to meet. Paul to make intro. Then they do deal. If Dan buys, get valuation advice replace paper.”

THE CHAIR: That was the meeting you had with Dan Stewart prior to the meeting with Mr Potts?

Mr Powderly: Yes.

THE CHAIR: Was the meeting with Mr Potts and Dan Stewart on the same day?

Mr Powderly: Yes, at 11.30.

THE CHAIR: And this was just beforehand?

Mr Powderly: I always write my notes up at the end of the day; so I just took the scribble notes and sat down and wrote it up and put it on the file.

THE CHAIR: Fantastic; thank you. You have probably covered most of this, but could I ask you to give us your best idea of the chronology? Starting on, I think, 11 May, you got a phone call from Dan Stewart. Can you take it from there?

Mr Powderly: Yes, sure. On 11 May I got the phone call, received the report—I do not know whether it was the next day or the day after—had a review of that report, put my thoughts down on paper and arranged to meet with him on 21 May, I think. I handed over to him my first paper looking through the options. He went away. He was going to have conversations with whoever he was going to have conversations with—his powers-that-be. He came back to me and said, “Yes, happy to look at going forward and having a conversation to see whether they are interested in selling it.” I suggested I could set up the meeting. I sent an email setting up that meeting, emailed him the discussion paper on about 16 June, so he had it for his meeting on the 19th, and then he came in before the meeting and we had a brief chat to make sure he—

THE CHAIR: You talked him through that, yes.

Mr Powderly: had a handle on everything he had been given for his conversation.

THE CHAIR: And you were not in the meeting?

Mr Powderly: No.

THE CHAIR: What did you know about the process after that?

Mr Powderly: Some weeks later I was told they were in negotiations. Then I heard that Dan had resigned and was leaving the LDA. I asked whether they needed a hand with anything. “No, the government’s got it under control; they’re dealing with it.” My understanding is that—

THE CHAIR: Who did you ask whether they needed a hand? Did you ask the LDA or did you ask Mr Potts?

Mr Powderly: I am not sure. I think it was the person that was going to be acting in Dan's role. I cannot remember the person's name. I just got an email.

THE CHAIR: So you asked somebody in the LDA, or who was going into the LDA?

Mr Powderly: Yes.

THE CHAIR: You were asking the government side whether they needed a hand in negotiating with—

Mr Powderly: Yes. I was not sure whether Dan had completed the task, was completing the task or whether the GSO was doing it, because obviously—

THE CHAIR: After that?

Mr Powderly: Nothing until November.

THE CHAIR: Nothing until November?

Mr Powderly: Yes.

THE CHAIR: What happened in November?

Mr Powderly: That is when I received a phone call from an ex-employee of the LDA saying that David Dawes had asked for a file on Glebe Park and they could not find any file, but David seemed to think that I had done some work on it and he rang me up. I was out of the office when he phoned me and I said, "Yes, we did some initial work on the property." He goes, "I don't seem to have anything on file at all." I was out of the office so I arranged—

THE CHAIR: So you were surprised that they said they had nothing on file at all?

Mr Powderly: Yes; exactly right. That is when I rang one of my colleagues in the office and said, "Did you end up doing any valuation work?" and he said, "No, never heard a thing." I was out of the office. I asked my assistant, my EA, to go through my emails. There would have been an email to Dan Stewart. "Send to this particular ex-employee a copy of whatever's in my outbox—Glebe Park, Dan Stewart." She forwarded that first email to John. I got a phone call about half an hour later, 40 minutes later, saying, "We should have got valuation advice."

I said, "No, we haven't got any valuation. We did this initial paper." He asked whether we could change the heading on the document. I said, "I have no issue with it; it's not a formal valuation, but I don't understand why you'd want to have a discussion paper labelled that." Again, I phoned the office and asked for that to be done and sent to him.

Probably four weeks later, in early December, I found out that there was a freedom of information request. I ran into Mr Dawes at a particular function and said what had happened. You have obviously had conversations with David. That particular person

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obviously went through an inquiry. I gave evidence to an investigator in February who had asked questions about the conversations, and I gave my advice to him at the time and provided that to the Auditor-General.

The critical thing that came out of it for me was that, for a freedom of information request to the LDA by you or anybody, under, I think, section 22, they are supposed to write to me and get my approval to release documents. Firstly, that did not occur, which would have been good, because then I could have provided all the documents that I had, rather than have to give them to the Auditor-General. That was, as I said, another bit of a failing on behalf of this whole governance process, that I did not receive that. I have received them on other issues. There were conversations about the youth detention centre and valuations we have done previously that we have provided to them. But, for some reason, we did not receive that, which was a bit disappointing.

MR COE: You mentioned the name John. Who is John?

Mr Powderly: He is the ex-employee of the LDA.

MR COE: John Mason?

Mr Powderly: You said his name.

MR COE: The acting sales, marketing and land management director?

Mr Powderly: Yes.

MR PETERSSON: I want to go back to why this package of information is appearing now. You gave it to the Auditor-General in June 2016?

Mr Powderly: Yes.

MR PETERSSON: Why did this appear yesterday?

Mr Powderly: Because the Auditor-General wrote to me, and I have given you a copy of her letter, saying that she has not given you this information and that she thinks, in her letter—you can read her letter—the committee should have that information, and it is not up to her to give it to them but that I should. I thought you should have it. If you are going to be asking me questions, it would be handy that you know what you need to ask questions about.

MR PETERSSON: Do you think all of this information that you handed to the Auditor-General was included in her report?

Mr Powderly: It was given to her for her report.

THE CHAIR: The Auditor-General did at one stage, in her evidence to us, say that Colliers had handed over information which had not been stored anywhere else. While we are on the subject of storing, these handwritten file notes, which are presumably in your hand—

Mr Powderly: I hope so.

THE CHAIR: where do you store those?

Mr Powderly: On the files.

THE CHAIR: On the file? This discussion paper and the valuation consideration would have been in a physical file as well?

Mr Powderly: Yes, and the Auditor-General took copies of all of it.

THE CHAIR: Is that the extent of everything that was on the physical file? The things that are in appendix D in what you gave us yesterday, is that everything that is on—

Mr Powderly: No.

THE CHAIR: the physical file in relation to the Glebe Park—

Mr Powderly: No, there was the copy of the Opteon valuations and those things. I feel you already have all of those. I supplied you with the documents that she seemed to think you would not have had. So that is the reason for supplying them. I am assuming you have extracts of the Territory Plan which I had on the file.

THE CHAIR: Yes.

Mr Powderly: And things like that. It was just that she said there were documents that I provided to her that you did not have, which is my reason for providing them. There is probably one document I have provided that you do have, which was one of the papers, but I thought you should have them for completeness with the file notes.

MR PETTERSSON: Following on from that, in your summary section you say that this lack of information being provided has led to politicians and the media reporting things incorrectly?

Mr Powderly: Yes.

MR PETTERSSON: Is that the case?

Mr Powderly: Yes. Everyone talked about a residential use on this site and did not talk about all the other uses which were clearly provided to Mr Stewart and Mr Dawes when making their view about the site, because you obviously did not have the valuation considerations document, which set out all the things that we examined with this site. At the time I was not very pleased, but I can understand that if you do not have the documents then you have one arm tied behind your back, which is the reason why I said to the Auditor-General I did not understand why they would not produce it to you as a committee. I gave them to the Auditor-General on the basis that they were documents freely available for the review.

MR COE: What gave you the confidence that the ACT government would approve a lease variation?

Mr Powderly: What would give me the confidence?

MR COE: Yes. As is, the lease clearly does not allow it. The lease allows 650 square metres for a drinking establishment or a few other things.

Mr Powderly: Yes. Absolutely.

MR COE: There is no ability to actually do the things that are listed in the consideration document as it currently stands. Why do you think that the government would be willing to actually entertain a lease variation?

Mr Powderly: As I said, Canberra's leasehold system allows anybody to lodge a lease variation and try to change their lease and pay the appropriate charge. Other similar-zoned properties with purpose clauses that allow other non-commercial uses have been varied. Since I was a boy, it has been happening in Canberra for many years. I have heard of many instances where I have been told by planning ministers, "There is no way we will ever rezone that land." I remember one of the infamous ones was the land at Holt golf course. Guess what, 350 housing blocks are being built there right now.

You can never assume in perpetuity one particular government's view of the day because people's views on values are long term, not short term, and there are many instances where different governments have come in and had a different view on development in certain areas.

THE CHAIR: Even governments of the same—

Mr Powderly: From my perspective, you have to take a value judgement, and I took a value judgement because there were a couple of other properties—the bowling club for \$3.8 million and another bowling club for \$5 million—which had very similar restrictive purpose clauses. And guess what, they are getting rezoned.

MR COE: Surely this was part of the quid pro quo to allow the Glebe residences, though, that we will allow development here but there will not be development elsewhere on that block?

Mr Powderly: I do not know that. If you know that, obviously you know more than I do, but I would not have assumed that would be the case at all. If it had been purchased by the hotel in front of it, I am sure it would have hotel rooms on the site today and the government would be encouraging to build more hotel rooms in the city. It was not. It was in the hands of a developer.

Obviously the government had two choices. One was: pay a price that would get the property out of private ownership, whether it be market value or market value plus a small premium. The second was: go down the litigious route of trying to compulsorily acquire it. That in itself has some pitfalls, which I am happy to discuss if you want to.

MR COE: It still works on this assumption that the government would allow it. Do leaseholders in Canberra have the right to have their lease varied or do they have a right to request that the lease be varied?

Mr Powderly: They have the right to request and, under the Territory Plan, as you would be very much aware, there are different types of development that have different merit and other tracks. Some developments will be considered to be more likely and some will be considered less likely. But what it does not change is that there are sales of properties every day in Canberra that have exactly the same purpose clause, with no “as of right” that they are going to get development, with people paying prices for this sort of property. We sell heaps of them every single day.

MR COE: But there is a difference between a private treaty by negotiation and spending taxpayers’ money and showing the evidence or justification for spending that?

Mr Powderly: I agree. But the LDA’s advice, or discussion with me, is: if we were trying to buy this in a normal local market sense, what would be a price that would buy the property? If you want to go down the track and compulsorily acquire, there are pretty clear tests about what you have got to pay. You cannot pay a value you want to pay; you have got to pay open market value. And you have to assume what is open market value based on what is available in the marketplace. Evidence is critical in all of these things, not what we want to pay for something.

MR COE: If we turn now to West Basin—

Mr Powderly: We have got a bit of a problem there. Your request for me to appear was to talk only about Glebe Park.

MR COE: I beg your pardon?

Mr Powderly: Your request to me in your letter was to only appear to give evidence on Glebe Park. I am sorry, I do not have any of the information on Acton and I did not do any work on it other than countersigning someone else’s report. Your letter clearly stipulates “specifically in your role as provider of valuations as the intermediary for land development and acquisition of block 24 section 65”. I can only talk about that probably. It is what you wrote to me about.

MR COE: Put it this way: I have certainly got a few questions, given the Auditor-General has made mention of this. I cannot recall what the letter says.

THE CHAIR: I do not recall, but the—

Mr Powderly: It is the chair’s letter. I have just quoted it verbatim.

THE CHAIR: I do not recall that stipulation but—

Mr Powderly: What you could do is write and I can refer that to the Colliers valuation business and they can respond to your questions, because I am not an employee and I am not authorised to answer questions on it. I do not have the file.

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You can write and they can respond to your questions.

MR COE: As a point of clarification, with regard to Dobel Boat Hire and Lake Burley Griffin Boat Hire, that was not done out of your office?

Mr Powderly: It was done by our valuation business, not by Colliers ACT Pty Ltd, which is what I am the state chief executive of. Our valuation business did that work. They were instructed by the LDA. One of our valuers did that valuation and I countersigned it, because we basically have a checking process, but I had no knowledge—

THE CHAIR: That distinction has never been made to this committee before. Thank you.

Mr Powderly: Correct, which is another issue, as I say, about what valuations are and what advice I provide as state chief executive. As I said, I am happy for you to write and I will refer it to the valuation business and they can respond to you, because they certainly have had a massive internal review about that job being in Colliers' hands, in the valuation business, to review because of the Auditor-General's report. But, as I say, I am not across it and I cannot answer questions about it because I do not know anything about it. Please forward the questions and I will—

MR COE: Correct me, but you did countersign. When you say “countersign”, what does that actually mean?

Mr Powderly: Generally, someone gives it to you and you check their maths, their calculations and you sign it. That was my involvement. You could ask me a question and I would not know anything about the business, about what was valued. So there is no point my answering questions because, as I said—

MR COE: But by putting your signature on it that is still taking on some responsibility for it, though, is it not?

Mr Powderly: Sure. And when you write to us, I will get them to respond to your questions about it.

MR COE: It probably will draw out this process.

THE CHAIR: Be that as it may, the committee has got a long track to continue its inquiry into this.

Mr Powderly: You have got other hearing dates. You can write and get answers. As I said, I do not have the files. I am not across it. If you had written to me and asked me, I would have made someone available here to answer your questions.

MR PETTERSSON: Just going back to valuations, you are not currently working in a position of valuer, but I am hoping you can answer this question for me. What is the difference between a formal valuation advice and an informal valuation advice? Is it how it is presented? Is it signed off? Is it certified? Is that what the difference is?

Mr Powderly: Yes. There are some critical things to formal valuations. Valuations need to have instructions. That is the first and most important basis, because you receive an instruction from a client stipulating what they want. If it is for mortgage purposes, is it a market value, is it an open market value? That is critical because the biggest issue with valuations and litigation is that the person instructing and the person doing the report mismatch what the advice is. That is the first and critical thing.

The LDA, under its panel arrangement for its valuation firms, has got a template that critically sets out what the definitions and what the valuation instructions specify. The valuation firms, because they are all carrying professional indemnity insurance, then go through a quality assurance matrix. Some of them are ISO 9004 and 9001, which means that they refer it to an internal process which says, “We’ve been instructed to do this valuation. Is it a high-risk valuation? Do we provide approval to do the valuation?”

Then they issue an instruction or a quotation letter back to the person instructing saying, “These are your instructions. We’re clear this is what you want us to do. This is the fee. These are the terms of payment and attached are the terms and conditions.” That is signed. The valuation proceeds. The valuation report must then specify all those things in the instructions. It must be signed, showing the valuer’s qualifications, and it must also have a single figure. You do not give out value ranges. It is not really prescribed or what detailed valuations do.

The valuation profession is very specific and, as I said, is very controlled because of a long history of legislation and litigation. As I said, in my role I was the director of valuation for many years and have served time as president of the Australian Property Institute. But, as I said, I have moved on now to more of an agency capacity. Colliers have a full valuation business that has got hundreds of staff and they do valuations every day. It is their job.

MR PETTERSSON: With regard to what I am looking at here—considerations May 2015—when I look at these numbers and read what is being expressed, I think it makes a lot of sense. I can see the reasoning as to how you come up with these numbers. If you were to do a formal valuation, is the cost that is incurred in the indemnification of being a licensed valuer a cost incurred—

Mr Powderly: It is not a detail you need to provide. You have got to go through all the disciplines, the location, the planning, the title, the description of the improvements—and your question was about whether they did or did not fulfil their agreements with their current crown lease—all sales evidence, the analysis of the sales evidence, the rationale you have used to come up with the valuation and then your assessment of figure. That takes days and weeks to do, which is why you pay large amounts of money to do formal valuations.

MR PETTERSSON: What was the number you said before about roughly how many valuations you do for the LDA?

Mr Powderly: It would vary. With our valuation business, it depends. If the LDA is selling a lot of land, they get two or three valuations for their reserve prices and you could end up doing 200 blocks for a ballot and you have got to do 200 individual

valuations. So it varies from year to year and it varies on the panel arrangements. If Colliers agency is appointed to sell land for the LDA, Colliers does not get the valuation work. It is a clear conflict of interest and they cannot do that work. But if it is given to another firm to sell then clearly they are one of the two or three valuers that can do the reserve prices. It would vary, but you would have to say between 50 and 100 different valuations over the course of a year would be reasonable, and if you are doing a lot of land it could be a lot more.

THE CHAIR: Can I go back to the land uses for block 24. I was looking at this document that you sent yesterday and it has a whole lot of land uses under “Leisure and accommodation zone”. I cannot actually see anything that says “Hotel”.

Mr Powderly: “Commercial accommodation use”, is that what it says?

THE CHAIR: Yes, it does.

Mr Powderly: That is the description of that under the Territory Plan. It is the main use for that site, the main encouraged use.

THE CHAIR: So commercial accommodation use but not residential. Mr Morris did say that residential was approved under the Territory Plan at one stage in his evidence today. That made me think and I went back to this and it seems not to be the case.

Mr Powderly: The copy on my file should be the 2008 version, where they varied it out.

THE CHAIR: Yes. So prior to 2008—

Mr Powderly: It was permitted use, and it is currently permitted under that zone in every other block in Canberra—you can do it under CZ—but they have removed it from that specific site.

THE CHAIR: They removed it from that specific overlay?

Mr Powderly: In Glebe Park, correct.

THE CHAIR: In 2008?

Mr Powderly: Well, that is the version that I found. It was the first one to find that did not have residential on it, so it could have been a little before or after, but going backwards and getting copies of our planning documents is not as easy as it should be, but anyway.

MR COE: Such a formal valuation surely would include a risk assessment as well?

Mr Powderly: Yes. A SWOT analysis.

MR COE: Well, the risk that the proposed lease variation will not go ahead.

Mr Powderly: Sure.

MR COE: Surely once you actually write risk into it that would bring down the value?

Mr Powderly: It could do but, as I said, the point is you would look at what properties are selling in the marketplace. That is the governing rule for all valuations. If five other people have bought CZ sites, which do not have residential and do not have a purpose clause that allows anything but a club, and they are paying big money, as a valuer you do not ignore market evidence. You are not above the market. I know you are getting to the point that they could not have got it approved, but you cannot assume that in perpetuity when you are doing a valuation.

MR COE: No, I am not saying that it could not get approved, but I am saying there is a risk that it would not get approved, especially when you have a minister on the record in effect arguing against development there.

Mr Powderly: Against residential.

MR COE: Against residential.

Mr Powderly: Not against development.

MR COE: Yes, against residential.

Mr Powderly: As I said, if you look at the other two values and the other two potential uses, they were pretty much around \$3.6 million, and they were permitted uses and, in actual fact, as the chair has just pointed out, highlighted as the main uses within a CZ zoning.

THE CHAIR: What Mr Corbell said is that the government would not permit residential and would not consider any change to the Territory Plan that permits residential development or any other development beyond that which is already granted under the lease. So he did rule out basically everything in June 2011 except what was already approved.

Mr Powderly: Excellent.

MR COE: With regard to how the LDA did their business, obviously it is an arm of government that was meant to operate in a somewhat commercial way, which is always going to be challenging when you are dealing with taxpayers' money. In your dealings with them, were they operating, for instance, on the phone rather than in writing? If something did not work out in one contract or something did not work out in one arrangement, would they make good on a later contract the way you might do in the commercial world?

Mr Powderly: My involvement primarily was with tendering for the sale of sites for the LDA, and that was a pretty stringent process of going through the procurement processes of government. You knew when you dealt with government, whether it was the ACT government through the LDA or the commonwealth, that you were up for a

death by a thousand cuts. But that was pretty standard and everyone understood the procurement solutions. In the case of Glebe Park, the acquisition of properties was reasonably new to the LDA. I know there have been a whole host of conversations about how they have dealt with that and probably some of the failures to have the right systems in place. Obviously that would be a reasonably new activity to the LDA.

As I said in my comments to the Auditor-General, I deal with a lot of jurisdictions, like institutional parties, and they probably were a bit new at it and their systems were not as stringent as they could have been. I am not sure about your reference to being able to square up on other stuff. At the end of the day, I think the acquisition of properties is something they are learning. I notice they have bought some rural properties and their systems are getting marginally better.

MR COE: Did you receive a commission or fee for any of this work?

Mr Powderly: I wish I had. No.

MR COE: No commission from Glebe Park Pty Ltd?

Mr Powderly: Definitely not.

MR COE: Based on what you have done, there are many hours of work in this?

Mr Powderly: No. What I pulled together was probably two or three hours' work. As I said, I have 29 years experience; I can quickly get a reasonably good handle on things. I would have to say what I have had to put up with for the last couple of years as a result of doing a bit of initial work and not getting paid for it has been the most disappointing thing—being dragged through all of these supposed conversations and criticisms of Colliers. As I said, all we did was give them some initial advice and we thought they would go on and get their own formal valuation advice. So the initial work was small.

MR PETTERSSON: What sort of criticism are you talking about? You said that Colliers have received lots of criticism stemming from this. What sort of stuff?

Mr Powderly: Basically implying that we have done dodgy work or we have not done the right thing by the government. That is not what we are about. If we are commissioned to do formal valuation reports, we do them. If we are asked to give advice, I give advice to many people in government and opposition at the beck and call of one phone call without question, without fear or favour, whether it is about playgrounds in Weston Creek or rates and land tax. I believe my role as a senior person in the industry is to be available to give people advice if they want it. As I said, it has been reasonably disappointing to see just one side of the argument.

MR COE: I understand that the owners of a block of land are, of course, going to want to receive top dollar, but it seems there has not been the counterweight from the ACT government in trying to drive down that price. That is certainly the perception, that the government has just taken a price that seems very high for the four blocks collectively. When you say that the processes are improving within government, especially with regard to rural leases, what improvements have you seen?

Mr Powderly: My point was that the processes for acquiring properties and getting formal valuations have improved. As I said, I have seen a whole host of instructions going out to different people saying, “We’re looking at buying this. Can you get a valuation?” On a number of occasions my valuers have had to say we can or we cannot do it because we do not have the expertise or we do, but they are obviously doing it because we are seeing that they are out there requesting those instructions. So that is an improvement on not getting formal valuation advice in some instances. Obviously there have been some high profile announcements about some properties they have purchased in the Molonglo Valley. From my perspective that seems like a reasonably sensible thing to do, as long as they are paying the right price. I guess we will get to see whether that is the case very soon.

MR COE: Perhaps in Dickson as well.

Mr Powderly: Yes.

THE CHAIR: Could I go back to the land use overlay for this block? In your professional experience, Mr Powderly, what does “tourist facility” cover?

Mr Powderly: I would have thought it would be the sorts of things you see out at Federation Square. I do not know what the detailed uses are for a tourist facility. It is not one of my high focus areas of—

THE CHAIR: So it might be anything from a dinosaur museum to a casino?

Mr Powderly: Yes, it could be some sort of tourist attraction.

MR COE: At the outset you pretty much said that you are not a valuer, or you do not engage in valuations?

Mr Powderly: No, that is not what I said.

MR COE: What did you say then?

Mr Powderly: I said I am the State Chief Executive of Colliers International. I am a qualified valuer, but I do not daily get engaged in doing valuations. It is not my role anymore. I used to do a lot of valuations but it is not my role now. My role is to run the business, and if I identify opportunities for our valuation business I refer them to them to do the valuations. That is my role.

MR COE: Do you provide advice or expertise to the valuation business, or as soon as you have done the referral, is that it?

Mr Powderly: It would vary. If we are currently selling an office building and they want to know what it sold for, and if they are putting a particular value on this office building, they may ask me or the director of our sales business those questions. That is the whole idea about being in the same premises. You get the opportunity to get your handle on market intel.

MR COE: Whilst it is the nature of a small town, there still have to be processes regarding how conflicts of interest are managed. How do you and how does Colliers manage conflicts of interest, or potential conflicts of interest—for instance, on this issue with Glebe Park, where you do work for both sides or both parties—but not in this instance; you were not receiving a fee. How do you manage that so that there is not such a perception?

Mr Powderly: We understand the conflicts of interest policy at Colliers, so you cannot act for one client or another client if you are acting currently for that client. In the case of the Glebe Park owners, we were not doing any work for the owner of the land. Mr Potts, who is the representative, we do not—

MR COE: The owner being Glebe Park Pty Ltd?

Mr Powderly: Yes. We do not do any work for them. Mr Potts, who handled the transaction, uses the Independent Property Group for all of his selling. We do not do his business at all. For Morris Property Group, we sold an apartment building for him in 2015, but he had nothing to do with the transaction. As far as I am aware, Mr Potts was running it. If we were asked to be engaged to do a formal valuation, if Colliers was asked, we would have gone through that conflict of interest policy. Our valuation team would have worked out whether we had a conflict, and whether we could have done the job. Colliers cannot do valuation work for somebody that we are selling property for. There is a pretty standard, stringent set of rules about conflict of interest. We are a listed company on the US stock exchange. We cannot enter into any conflict of interest, and that is standard policy.

MR COE: You are saying that, had the LDA asked you to do a valuation, you could have done that?

Mr Powderly: I would have given it to the valuation team, and they would have worked out whether we are doing any work at the moment for Mr Morris or any one of those other ones.

MR COE: What about the LDA, though?

Mr Powderly: The LDA would be our client, so it does not matter if we are doing work for the LDA. It is the same client. Otherwise if I do one job for the LDA, I could not do the other 50 in a year. You can act for the same client; you just cannot act for another client while you are acting for one.

MR COE: But you are only talking about simultaneously, as opposed to over a period?

Mr Powderly: Yes. I would have to shut the business if I could not work for more than one client over the course of—

MR COE: No, I am not talking about one client. Is it hard and fast so that, on this day, you are only working for one of them; therefore it is okay? If it was a month earlier—

Mr Powderly: If we had done any work on the Glebe Park site at any time in the last five years for the current owners that would be a conflict. Obviously, it is property specific, and then it becomes client. You have to go through and look at those potential conflicts. Certainly, if we had done previous work on Glebe Park for the current owners and told them it was worth \$10 million, we would not be able to act for the LDA. That would be a pretty simple way to rule out a conflict. Whether we have done work for one of those four owners in the last two years that would not be classified as a conflict, especially when it is a different service, if we are selling an apartment or selling something else.

MR COE: To your knowledge, does the government want to sell the land to a casino?

Mr Powderly: I am not aware of that. I have obviously seen the imagery of the casino over many months. I know there are a lot of people against it, and some people that I am reasonably close to are against what would happen there. I have no idea whether the government is entertaining any conversation with them, and they are not a client.

MR COE: That did not come up in the discussions at all for Glebe Park?

Mr Powderly: No, it was primarily about the relocation of the retention pond, because it was going to cost \$10-plus million to put it on Parkes 3. That was really the focus from the government's point of view. Your point is valid; nothing has happened since it occurred, since they purchased it. The question has to be asked about the urgency.

MR COE: Doesn't that also beg the question: if the government, who controls leases in Canberra and who controls variations of leases in Canberra, were seeking to buy this land for a pond, isn't it a little bit redundant—a valuation or valuation advice based on anything other than a pond?

Mr Powderly: No. There have been plenty of properties purchased that are perfectly good development land and someone has decided to put something else for a public purpose there. If you look through all the resumptions in New South Wales that have occurred for the tunnel and the freeways, they did not buy their land for a road; they paid them for the value of their properties based on their residential or development value. It is pretty clear.

THE CHAIR: But they were not vacant blocks of land.

Mr Powderly: No, some had homes on them.

THE CHAIR: Yes. That is the point. They were already developed to their potential—

MR COE: They were optimised.

THE CHAIR: Yes.

Mr Powderly: We can spend an hour talking about just terms compensation.

THE CHAIR: Which New South Wales does not have.

Mr Powderly: The ACT does not have?

THE CHAIR: The ACT does.

Mr Powderly: New South Wales, yes. There is legislation, and the issue you have for the ACT would be interesting to have tested in a court case. When you are the buyer, the planning authority, the monopoly provider, how would a court judge you, using all of those levers to want to buy something below—

MR COE: Given that they also control legislation, they can—

THE CHAIR: Yes.

Mr Powderly: Sure. There are plenty of courts you can go to that are outside the ACT, if you want to keep appealing it. I am saying that it has not been tested.

MR COE: Only according to ACT law, though.

Mr Powderly: I would like to see a test case.

THE CHAIR: That is a conversation for another day as well. We have probably concluded the questioning that we needed to ask. Thank you very much for your participation today, Mr Powderly.

Mr Powderly: It was a pleasure.

THE CHAIR: Thank you for your clarification of a number of issues. There are some issues that we will take up with other arms of Colliers.

Mr Powderly: Yes.

THE CHAIR: Thank you.

The committee adjourned at 4.27 pm.