



LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON PUBLIC ACCOUNTS

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

Members:

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

PROOF TRANSCRIPT OF EVIDENCE

CANBERRA

FRIDAY, 20 OCTOBER 2017

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

By authority of the Legislative Assembly for the Australian Capital Territory

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

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Privilege statement

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Amended 20 May 2013

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The committee met at 9.03 am.

EDWARDS, MS JILLIAN, former owner, Mr Spokes Bike Hire

THE CHAIR: I welcome people to the fourth public hearing of the Standing Committee on Public Accounts inquiry into the Auditor-General's report on certain acquisitions by the Land Development Agency. On the table is a pink laminated card, and I ask witnesses to make themselves familiar with the terms of the privilege statement on that pink laminated card. Before we start, 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.

With those preliminaries out of the way, I welcome Ms Jillian Edwards, formerly of Mr Spokes Bike Hire, to the table. Have you read and understood the privilege statement?

Ms Edwards: Yes, I have.

THE CHAIR: Do you wish to make an opening statement?

Ms Edwards: No. I think we can just go straight into questions.

THE CHAIR: If I could perhaps ask you by way of opening statement to give the committee a rundown on the business that was known as Mr Spokes Bike Hire, how and when you came to acquire it and then perhaps a rundown, from your perspective, on the acquisition process.

Ms Edwards: My husband, Martin Shanahan, and I purchased the business, Mr Spokes Bike Hire, in November 2006, I think it was. We purchased the business for \$480,000. We had to immediately buy a new fleet of bikes. We think of the purchase as a bit over \$500,000 because we invested in bikes straight away. It was largely for tourists, although some locals did use the business. We ran it for close to 10 years before the LDA acquired our lease. It operated almost every week, usually seven days a week. We received a lot of school groups in that time. We were very proud of what we did. We had great accolades and reviews on TripAdvisor. We were often rated, ranked, very highly compared to even the War Memorial and Questacon as one of the great family things to do in Canberra. As a small, husband and wife run team, we were quite proud of what we did.

The acquisition was a long and drawn-out process. I do not want in this opening statement get into too much detail for you.

THE CHAIR: I think we are interested in the long and drawn-out process.

Ms Edwards: You are? You are just going to have to get me to move on if I am getting into too much detail. For us, the first real knowledge that this was coming was in April 2011, when a man called Lincoln Hawkins rang and asked for a face-to-face meeting with us because there was going to be a press release coming out about the development of that site we were on. In those days there were plans for the new forum to be there. Obviously, the city to the lake project morphed many times in the years

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that followed.

He came to our house because it was our one afternoon off, that particular day. He said it would affect us, it had a lot of weight behind the project, but he was not in a position to say how it would affect us. That was really the beginning of a degree of uncertainty for us. We did meet a few months later with Simon Corbell, who was the relevant minister at that time. I do not remember the title. Maybe he was minister for planning or something at that time.

THE CHAIR: When was this?

Ms Edwards: This was 25 July 2011. Simon Corbell was with Vic Smorhun, which is relevant for later as well. We took the *Canberra Times* article which talked about the plans for the forum and the city to the lake project. We discussed the project, but he was not in a position to advise us. He reassured us that there would be some sort of process that would be followed when it came time for us to have to surrender our lease, but he was not in a position to really help us in any other way than to reassure us because there was no DA and it was way too early in the piece to be at all helpful.

We urged him at the time that we knew that it would be difficult to find us another location. We knew how regulated the lake foreshore was and that we needed to be near the cyclepath around the lake. We figured moving us and the paddleboats would have to be the first cab off the rank with any project of that scale.

Certainly the scale of the capital works, both then and later, when the forum was no longer part of it, was so huge that it was very obvious that the whole area would be locked down for development for some years. It was not a case of, "We'll just move you over there for six months and then your new building will be there and you'll just move back in." This was major. They were talking about filling in the lake; they were talking about burying Parkes Way in a tunnel. I know those plans have changed since then but the scale of the project remained very large. We had thought that in the coming months or even years there would be contact made to begin those discussions on a possible relocation, but we did not really hear anything.

Zooming along, I think one of the most pivotal moments would then be 17 March 2014, when we had a phone call from a woman by the name of Tania Parks. She was the media consultant for the city to the lake project and she asked if we could pose for some happy snaps for an article for the *Canberra Times* in the coming days regarding the city to the lake development. I was understandably quite put out by this because we still did not know how it was going to impact on us. We knew it was huge; we knew it would probably mean that we would be completely relocated or our lease would be resumed. It did not seem appropriate that the first contact from the government would be their private consultant asking us to pose for some happy snaps for a bit of a splash in the *Canberra Times*.

We then got in touch with the LDA. In the beginning we met with some quite nice blokes. They were more town planners; they were not really in the business of resuming leases. I am not sure that they knew how to proceed. But they were pleasant people and they did say there was a possible location on the lake foreshore close to Commonwealth Avenue Bridge that might be a suitable place to collocate us with the

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boat hire people.

When asked if we were interested in relocation we indicated quite possibly but we needed more detail of both the relocation option and the compensation option in order to respond. I frequently used with them the line: “Without the detail of how many apples versus how many oranges, we cannot indicate a preference.” For instance, if our relocation option was near Scrivener Dam, nowhere near the CBD or any hotels, then I could possibly be much more interested in compensation for the lease to be resumed, if the only possible relocation was somewhere more remote like that.

It seemed like the project had legs at this stage but we did not really continue to see the same individuals. I think they were taken off our case or our particular issue was passed on to a different team in the LDA.

THE CHAIR: Do you have the names? Do you recollect the names?

Ms Edwards: Mr Tom Gordon and Mr Ian Wood-Bradley were the first two gentlemen we met with, who were very pleasant. I think it was pretty clear, looking back on it, that they had not done anything like that before but they were willing to do their job in a friendly way, muddle through. We did meet with them a couple of times. We had maps in front of us showing the project. We could see the scale of the project then. There were going to be roads all over the area where we were situated. The lake was being filled in significantly and we were told we would not be able to stay. I am reading from this little diary that I kept during the process. It might sound a bit stilted, but I have forgotten the detail because it was a couple of years ago.

On 16 April 2014 we received our first letter from the LDA regarding the development. The letter stated that the project “will result in significant changes to the road and block layout in the West Basin precinct that will result in extinguishing your lease as it currently exists” and “The territory has available the option to acquire your lease by commercial negotiation or compulsory acquisition.”

We met with them again. They were talking about options. “Do you want to be relocated?” Sometimes it was discussed that you could be temporarily relocated and then brought back into the final city to the lake project. We were not really content with that idea because my experience from observing other capital works projects is that they can go on for double the number of years than was first thought. I thought if we did go for a relocation it was probably important to make that the right relocation and stay there, make the business there.

We were asked at meetings what was necessary for a site. It was always “close to the CBD, next to the lake cyclepath, with coach parking and a big enough space for bikes”. Our lease also allowed us to run a cafe, which we scaled back in the course of our business when my father died. We did it for personal reasons, just to simplify the business. But that was part of our lease. I would stress again at these meetings that the devil was in the detail for us. Really, if there was to be a possible relocation, I needed to see, and consult our lawyer on, the terms and conditions of the lease. It would, no doubt, be a complex, difficult thing. I was not presuming it would be easy. We were never actually offered any site, ever.

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THE CHAIR: So there was talk about another site but no-one ever made you an offer?

Ms Edwards: That one got withdrawn, that particular offer. There was going to be possibly a little jetty out near Commonwealth Avenue Bridge, off an area which is now referred to as Point Park, I believe. The plan was to possibly have the boat hire there and the bike hire collocated, but I can tell you when that got withdrawn. That got withdrawn soon after. I will just give you the date—13 June 2014. It was at a second meeting with Tom Gordon and Ian Wood-Bradley and it was just a general discussion on the developments at Acton and the time lines for the developments.

I wrote minutes for this meeting—maybe; no, maybe there was another woman who wrote minutes. Some of the meetings I had to write minutes for, and I got them cleared by the LDA staff who were present. We did get the LDA to confirm that they would seek our consent prior to lodging a works approval from the NCA, but the previously mentioned possible relocation site near Commonwealth Avenue Bridge was no longer regarded by the LDA as viable, as the scale of the development in the area was so great that running a business in the region at the same time as the construction would simply not be viable. Those comments are in the approved minutes, which I can provide to you if you need them at some point.

THE CHAIR: Somebody has got minutes of something.

MR COE: Something is documented.

THE CHAIR: Perhaps we would like to see those, just for the sheer novelty of it.

Ms Edwards: They might have been written by me; I cannot remember. At some meetings I wrote the minutes. The only possible relocation that was discussed with us was only in existence for a couple of months really. It goes on for pages.

THE CHAIR: When did someone first come to you and say, “We want your block”?

Ms Edwards: No-one really said it quite like that. Tom Gordon did say, “We’re going to need your land.”

THE CHAIR: But you had conversations with him and others about possible relocations. When did somebody come to you and say, “We want to acquire the block”?

Ms Edwards: There was a lot of frustration and lots of wishy-washy communication. There was one pivotal moment when I ended up ringing. Our lawyer had written a number of times to Mick Gentleman. We did not get a response. The *Canberra Times* wanted to write a story on us. We chased a response from Mick Gentleman’s office several times.

THE CHAIR: So this was—

Ms Edwards: We are still in late 2014.

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THE CHAIR: Mr Gentleman would have been the planning minister at that time?

Ms Edwards: I guess that is why it went to him. When did we write to him? On 27 September our then lawyer wrote to Mick Gentleman. Meanwhile we were seeing things in the paper about this wonderful new development and just getting increasingly nervous. Our house was against this. I spoke to Vic Smorhun in Katy Gallagher's office at that time about the lack of reply to our letter and the extraordinary frustration and, in my opinion, the lack of professionalism shown by the LDA, and he put up with me. I think my tirade might have gone for a good 20 minutes, looking at three years of wondering what was happening to us, and straight after that our lawyer got a phone call to say the ACT Government Solicitor had called a meeting.

That meeting was held. We never really got a response from the letter to Mick Gentleman but we did get a reply from Andrew Barr, which did not address the detail of the letter. It just said, "I believe you're now going to have a meeting, so everything should be sorted." The meeting was held on 19 November 2014, and at that meeting there were a number of LDA staff. I know Tim Xirakis was there, and Mr Barr's adviser, Tony Hodges, was there. Our lawyer was there; the Government Solicitor was there.

The LDA confirmed once again at this meeting that it would not be viable to run a business during the construction phase because there would be hundreds of trucks per day and the area would be too noisy and dusty. The LDA at that meeting said they hoped to have control of the land by Christmas—this was in November—ideally, and they hoped to let contracts, to organise contracts, with construction companies soon after that.

Our lawyer said it seemed too late to be talking about relocation now because they seemed to want the land in a month. At that meeting it was agreed that Mark Flint, our lawyer, should put together a cost estimate for us to be engaging valuers, forensic accountants and legal advice as required throughout the negotiation period. In early December our lawyer sent a letter with that fee estimate for expert witnesses and legal advice as agreed at the November meeting. We never really received a response to that letter.

THE CHAIR: Whom did the letter go to? To the Chief Minister or to someone else?

Ms Edwards: I think it would have gone to the LDA. It would have gone to the ACT Government Solicitor, who was representing the LDA at that time. We did not get a response to that, but we were asked just before Christmas for our financials and our tax returns. We were unable to respond for some time because in that Christmas period we were just crazy, hiring bikes out; we did not have time to see accountants. Our accountant was away anyway. We did not understand why there was no response in writing agreeing to or not agreeing to cover our costs for expert witnesses. We had already spent a fair bit of money with our lawyer anyway. We were getting nervous about how deep we were getting with what we owed to our lawyer.

In February 2015 there was an email that went from the ACT Government Solicitor to Mark Flint apologising that he had accidentally sent an email to the wrong area. He

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thought he had sent one to Mark Flint which explained why the LDA were not taking up the processes that were discussed in the meeting the previous year. It was because of a notifiable instrument that they had found. I do not really know what that means. We were no longer on that path at all.

It really was then the beginning of the fog. I do not really think they knew how to approach it. They kept threatening. Every now and then we would get a letter that might say, "If you don't respond." Our lawyer was saying on our behalf that we would be happy to provide our financials as long as the LDA provided the particulars of the use to which the land would be put, the reasons why the land was suitable for that use, whether an alternative location for our business was proposed, the time frame for the purchase, the time frame for conducting the valuation, the terms of engagement of the valuers. Basically, could we just commit to a process before we hand over our financials?

I did not know until this experience that forensic accountants are totally different. You do not just get your own accountant to spend a few hours working out what they think your lease is worth; it is a specialised field. Only some accountants have this qualification to do it. We got a quote then and it was between \$8,000 and \$10,000 to do it. We were reluctant to get our own valuation unless there was an agreed process. "Why do you want us to get a valuation? What are we doing? Are you resuming our land? What's your time frame? Why are you resuming it? What are you valuing? Is it just the business? Are you valuing the lease? Are you valuing our interests in that land?"

From my perspective, I would have been perfectly happy for them to use the Lands Acquisition Act. My layman's understanding is that the act is there to prevent people like me extorting the government in times like this, as it is in place to prevent the government exploiting people like me in this position. The act comes with a set of procedures. Our legal fees would have been assured to have been reimbursed, as would our expert advice, such as our accountants and valuers. But there was no process.

There were almost never any letters. Letters we would write would be responded to by a letter that seemed to be answering a different letter that did not exist. There was very little content, very few specifics. I had worked for some of my career in the public service and I was astonished. In fact, there is a tedious side to being a public servant when it is all about procedure and paper trails—I know that is probably an old-fashioned term these days—and the LDA did not seem to operate in that way at all. I had the feeling that they were busier on more exciting parts of the project and we were a tricky part that they did not quite know how to handle. But they just were not making it a priority.

There were times when junior staff were asked to call a meeting with us to discuss the project, and we would take time off work, put casual staff in the shop while we both went to meet with these people, only to discover that they were consulting us about some temporary road closures to the pop-up, the shipping crate thing that got built. They were not armed with any information to discuss with us the future of our business or the resumption of our lease. Those sorts of things were exceedingly frustrating. I felt that it probably was not fair on those junior staff, either, to get them

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to meet with us about the project and for them to see the frustration in us that all they were talking to us about was reassuring us that on Monday they are going to have a lollipop man saying stop and go for the traffic between 10 am and 12 noon. All that stuff was just—

THE CHAIR: That sort of thing could have been provided in an email?

Ms Edwards: Easily. Perhaps I am cynical, but it seemed like they would be able to tick a box then as an organisation that said, “We’ve consulted widely and broadly on many occasions with the proprietors of Mr Spokes,” when, in actual fact, they were just telling us very minor detail, stuff that we would just roll with on the day if it happened. We did not really need to be advised of it.

We were naturally friends with the people who ran the boat hire business down the hill from us. We understood each other’s stress. We particularly understood, when Cony was very ill, what Ziggy was going through. We helped them get a meeting with Shane Rattenbury’s office. I think that was because they were constituents. Where they lived, Shane represents their electorate. The adviser we met with did listen and did speak with maybe the LDA or maybe Mr Barr’s office. I do not quite know how that works. When he got back to us—we had told him of our predicament too, even though we were really there to support our friends—he had been told that the LDA had bent over backwards to make us happy and had offered us numerous locations, including Regatta Point.

THE CHAIR: Mr Rattenbury was told that?

Ms Edwards: Yes. We have never been offered any relocation in the whole time.

MR COE: Did he advise who had told him that?

Ms Edwards: No. It was Rob Thorman who met with us, but all I could tell him on the phone was, “Well, it’s the first I’ve heard of it.”

Our lawyer received letters from Brendan Ding that said the LDA remained committed to negotiating a commercial solution. That was in April 2015. Our lawyer wrote back, “Yes, we’ll allow access to figures on the condition that the valuers adopt a value to sell and methodology as set out in the Lands Acquisition Act and that you agree to cover the professional costs incurred by us, just as you would have to under the Lands Acquisition Act.” On that date our lawyer also put in some FOI requests to see if he could find out what else might be going on.

In May 2015 we advised our lawyer, “We have paid too much for legal fees. We feel like we’re going to have to represent ourselves.” He understood entirely. He sent a final letter in May 2015 stating the same as had been stated many times before. Again, he attached the cost estimates from his letter of December 2014. We instructed him to state that if the conditions that we made before we were willing to let our financials go over to their valuers were not met then we would enter into no further correspondence.

I had had enough. I could not do it anymore. I was not convinced that they really

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wanted the land. I did not understand why they would not use the Lands Acquisition Act. They said they were going to use it. I actually thought, “The project has possibly lost momentum.” We are \$20,000-odd poorer because of legal costs. Even if we had gone and got a valuation ourselves my understanding was that they are only valid for 12 months, after which point the whole thing expires anyway. That would have been another \$8,000 or \$10,000. I am just skimming over. Our lawyer got a letter about the FOI that the FOI requests referred to over 7,000 bits of paper and would cost us \$40,000 to retrieve. So we obviously did not pursue that.

THE CHAIR: At that stage did you conclude your conversation with the LDA?

Ms Edwards: We continued to get correspondence from them at times. I suppose I was jack of meeting with them and it going nowhere. I certainly did not want to be paying our lawyer anymore. We ended our contract on friendly terms and he understood exactly that we were just going to seek to represent ourselves. We started to get correspondence directly from their solicitor. At one point, in June 2015, they completed valuations of our business without having access to our financials and told us that those valuations would go to their board for final consideration.

MR COE: Did you ever see those valuations?

Ms Edwards: I think we did. It looks like that is where I have stopped the actual diary. Every four years, if you have a lease with the ACT government, a land lease, your rent gets revalued, reappraised. To do that you have to have your accountant provide profit and loss statements. So they would have had access to old financials through a different part of the ACT government to help form their compensation figure based on that. We knew we had built the business up a lot since the previous rent appraisal.

I remember speaking to the ACT Government Solicitor, expressing frustration, “Why don’t you use the Lands Acquisition Act? At least under that there’s a set of procedures and we know where we’re at.” I said, “I’m not convinced that anyone really wants this land after all. I would prefer to go back and just start running my bike hire and forget about you as best I can.”

There was one final meeting. It was held at our lawyer’s office and it was the first time I had met David Dawes. We had gone to the media as well. We had been to Mr Barr’s office. I suppose the only way we could escalate it, we thought, was to go to Andrew Barr’s office and/or the media.

In February 2015 my husband called Andrew Barr’s office asking for someone to return his call. Tony Hodges returned his call in the afternoon. Martin, my husband, expressed frustration with the LDA and how negotiations seemed to be going round in circles. He explained our reluctance to meet with the LDA again, because we had been asked to come in for a chat. And he said, “It never gets us anywhere.” He also explained the LDA’s reluctance to put any offer in writing of relocation or a process in writing.

Tony Hodges got back to us later that afternoon. It was at home. I was standing beside my husband; I heard this phone call, listening in to the phone. He raised his voice and

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he said, “If you don’t agree to sit down and meet with the LDA, things are going to get a lot tougher for you.” He did not elaborate on what he meant. He also said the LDA was considering a shipping crate for us, adjacent to the existing site, but we never actually heard that from the LDA. That was just what he mentioned.

MR COE: Can you confirm who said that?

Ms Edwards: Tony Hodges. I only ever heard the name.

THE CHAIR: What was your perception of that phone call?

Ms Edwards: That the LDA were just doing as they had been instructed.

THE CHAIR: And how did you feel about your personal circumstances as a result of that phone call?

Ms Edwards: It was extremely stressful. I am sorry.

THE CHAIR: Do you want to take a breath?

Ms Edwards: Yes.

MR COE: Should we suspend and come back in a couple of minutes?

THE CHAIR: We will suspend and come back.

Short suspension.

THE CHAIR: Before we suspended, you were telling us about a conversation that your husband had with Tony Hodges from Mr Barr’s office in February 2015. If you would like to pick up there, the question I asked was: as a result of that conversation, what thoughts did you have about the future of your business?

Ms Edwards: I was concerned, as it was with the shipping crate village—I cannot remember what it was called—

THE CHAIR: Neither can anyone else.

MR PETTERSSON: Westside, and I loved it.

Ms Edwards: We had already been hearing from many of our clients, particularly the coach companies who brought the school groups to us—a lot of those schools would come every year and we got to know the coach drivers very well in those years—and some of them would bring a school and say to us, “I’ve been crossing the bridge all week with this school group and I thought you’d closed down.” So people already thought the area was a construction site because of the visual appearance of the shipping crates. So we knew that the beginning of any construction was only going to increase that perception. We knew the scale of the project would ultimately mean that we would have to go. I thought, “They just don’t seem to seriously want this land. Surely they would use the Lands Acquisition Act or come up with a procedure or

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come up with a possible relocation and begin discussing some detail if they really want our land.”

After that conversation with Andrew Barr’s office it was obvious to us that there was nowhere higher to go, really, and that the media would be the only card left we could play. So we spoke to 666. In fact, David Dawes was invited on the same morning that I spoke to 666, so it was like an interview with the two of us. And it was then that I heard David Dawes say—I cannot remember the name of the announcer.

THE CHAIR: Philip Clark is the announcer.

Ms Edwards: David Dawes was saying, “Oh, we’re doing Point Park first.” He implied that there was no need for that piece of land at this stage. Philip Clark did push him on it and said, “But the project does mean that you need that land at some point.” I cannot remember exactly how David Dawes replied, but I did hear in that interview: “Oh, he is acknowledging he does want the land at some point.”

MR COE: And that was around February or March of--

Ms Edwards: I had sort of lost hope of everything and so I stopped even doing this diary. When did we meet?

MR COE: In terms of media, though.

Ms Edwards: What happened, though, was that we had actually met with David Dawes at our lawyer’s office just before we had gone to the media, and at that meeting they were going to hand over the valuations they had done without having our current financials, only the old financials. David Dawes was there with the Government Solicitor and we were there with our lawyer, and this was the second big shock. David Dawes said, “Right, I’ve been talking to McCabe”—the ACT’s work health and safety dude—“and we’ve decided you can stay where you are. We’re going to build around you.” At that same meeting he handed over these valuations, which were quite low because they were from old figures.

That was quite a shock because we knew the scale of the construction and apparently they had been discussing with McCabe different approaches and we were going to have a five-metre high hoarding around the perimeter of the land that was in our lease. So that meant no more views of the cyclepath or the lake. Over the other side of that hoarding was the staging site where all the trucks would be going, filling in the lake, and that particular car park was where they were going to dump all the fill that was going to be used to fill the lake. The cyclepath was going to be through a sort of tunnel of hoarding. It was obvious to me that that was not workable, and my fear then was that we were just going to go broke slowly and would have to surrender the lease ourselves or they would be able to buy the lease with some very paltry figures. Maybe I was being very cynical thinking that at this stage.

MR COE: They were trying to starve you out?

Ms Edwards: Yes. I just thought we would have a sort of slow death, yes. I could not see that anyone could run an outdoor bike hire where you receive hundreds of kids on

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interstate school groups Monday to Friday with trucks carrying fill around you and no view of the cyclepath or the lake. I will not go into this, but when you are putting 50 kids on bikes and they are all meant to be riding in single file and they are about 11 years old and they do not know the area they are in, they are from interstate, I cannot begin to tell you all the sorts of other dangers and complications of having hoarding around you as well.

MR COE: There are a few variables there.

Ms Edwards: So it was after that meeting that we decided to go to the media because we had gone as far as we could with the help from politicians and we thought the last cab off the rank was to escalate it, so there was an interview on 666. There was one the same week with one of the commercial stations; I have forgotten who it was now. The interview on 666 actually gave me some hope. I had never really had dealings with David Dawes, you see. He came to that meeting where he announced that we could stay where we were and McCabe said it would be safe and they were going to build around us, but that was the first time I had ever met him. I had not spoken to him, I do not think, prior to that. I had certainly never met with him. But this particular interview on 666 did make me think, “Well, they’re now saying they do want the land ultimately. There’s no point just saying, ‘We’re going to build around you and leave you as an island,’ because they’re not going to leave me an island forever. They are saying they will ultimately want that land.”

We had been looking at maps, site maps on the NCA’s website, of the street grid overlaid on the existing land, and it appeared that there was going to be a roundabout pretty much where we were. Whether that was an accurate interpretation of it I do not know, but I thought roadworks would be done reasonably early; you cannot build the apartment blocks until the road grid is in. So I had hoped that we would see some sort of action. I hoped there was going to be action under the Lands Acquisition Act. I do not know why they did not use the Lands Acquisition Act.

THE CHAIR: You said you met in your lawyer’s office with David Dawes and the Government Solicitor. Did you meet with the Government Solicitor or a representative of the Government Solicitor’s office?

Ms Edwards: Maybe it was a representative.

THE CHAIR: Do you recollect the name?

Ms Edwards: Yes, David Gray.

THE CHAIR: Not the Government Solicitor; someone from his office.

Ms Edwards: Sure, sorry; I do not understand that structure.

THE CHAIR: That is fine. Can you tell us something about what you understood to be the nature of the lease that you acquired in 2006?

Ms Edwards: It was a 25-year lease, but we were already a bit in to the lease and it was going to expire in 2027. I am a bit fuzzy on that, but I have got that somewhere.

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The lease was specifically for operating a bike hire business and a cafe.

THE CHAIR: So you acquired the business as a going concern and the cafe?

Ms Edwards: Yes.

THE CHAIR: And who owned the building?

Ms Edwards: We owned the building.

THE CHAIR: So you acquired that when you acquired the business?

Ms Edwards: That is right.

THE CHAIR: After you met with David Dawes and the Government Solicitor in your solicitor's office and they tried on the, "We'll create a bubble for you," what happened after that?

Ms Edwards: Nothing. Nothing.

THE CHAIR: Nothing?

Ms Edwards: We were not going to use our lawyer anymore. He knew that anyway because he understood how much money we had paid for a business of our size for legal fees. I thought that was quite untenable, personally, to be running an outdoor bike hire and have that sort of construction going around us. So apart from me going to the media, we did not do anything after that.

A gentleman overheard me on 666, a man by the name of Ben Parsons, who got in touch with me and said he felt he could possibly assist us. He could hear that a big stalemate had evolved and he said that he had had some experience that could lend towards being a sort of mediator or a broker in that regard. To this day, without him I do not actually know where we would be now.

THE CHAIR: So you did not know Mr Parsons before then?

Ms Edwards: No.

THE CHAIR: And you did not know of him?

Ms Edwards: No.

THE CHAIR: And what prompted you to take on Mr Parsons to assist you in this?

Ms Edwards: We met with him first. I was a little bit baffled to begin with. Imagine where we were; we were between a rock and a hard place. It could not really get any worse, could it? So Mr Parsons's offer I thought was worth pursuing.

MR COE: What was the actual offering?

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Ms Edwards: To attempt to meet with David Dawes to see if he could find some common ground and get the two parties back to speaking terms again. He felt that David Dawes sounded like he wanted the land, and he could hear how upset I was and how frustrated I was. Mr Parsons had met David Dawes on one or two occasions, and he divulged that immediately when he met with me. He said, "By the way, I've actually met him. Just letting you know." But he acknowledged that that could mean that we might be able to get a meeting with David Dawes and said, "Maybe I can help you sort this out."

MR COE: And was cost or price discussed?

Ms Edwards: No. He said he was willing to do it at no cost to us. When David Dawes did meet with me in our solicitor's rooms and handed over the low valuations he also agreed to pay our legal fees and our expert witness fees. So our accountant got paid and our lawyer's fees, the final invoice, was paid direct by the LDA and then we got reimbursed for all those legal fees. So it was at that meeting that David Dawes did agree to pay for those, as he would need to under the Lands Acquisition Act.

So Mr Parsons said he would be happy to just do this for us for. He had had a very significant career in Sydney before moving back to Canberra for personal reasons and was hoping that the LDA would also view his role in this as being one of our experts in trying to resolve this case and that there might be a payment direct to him from the LDA, but he was not counting on that and he was assisting us quite genuinely out of the goodness of his heart.

THE CHAIR: What did you think when a complete stranger came and offered to do this for you?

Ms Edwards: We were a little bit surprised. It does not happen in life usually, does it? But I can tell you now, it occasionally does happen and it restores my faith in humankind. I have absolutely no doubt that Mr Parsons's motivation was completely wholesome in that regard. He had moved back here; he did not have a 9 to 5 commitment in Canberra. He was raising a young daughter and he felt like he could assist. He had the skill set to do it, and he did manage to get both parties back to the table.

MR COE: To your understanding, did Mr Parsons end up being paid?

Ms Edwards: Yes, he did.

MR COE: But not by you?

Ms Edwards: Not by me. My accountant did not get paid by me in the end, but he did get paid.

MR COE: In effect, they were direct payments from the ACT government?

Ms Edwards: On settlement date. Just like when you buy a house and you get different cheques for different players.

PROOF

MR COE: So there was a direct disbursement from the ACT government to various consultants?

Ms Edwards: Yes. I do not know how that would differ if the Lands Acquisition Act had been used, but my understanding is that it is pretty much the same.

MR COE: Sure. Are you able to roughly say how much the ACT government paid in total for the legal costs in terms of the reimbursement you got initially and then the invoice?

Ms Edwards: I think it was in excess of \$25,000, but I am famously not good with figures.

MR COE: Right. But that ball park?

Ms Edwards: Yes, something like that.

THE CHAIR: And your accountant?

Ms Edwards: A couple of thousand.

THE CHAIR: Were there any other professional fees that you incurred that were dealt with at disbursement?

Ms Edwards: I do not think so. No, we were considering getting the forensic accountant on, but we never did because—

MR COE: Would you have any problems if we were to ask for those details from the ACT government?

Ms Edwards: No, not at all. That is fine.

MR COE: They will, of course, have the information, but they might say it is commercial in confidence.

Ms Edwards: Right.

MR COE: So you are happy from your end?

Ms Edwards: Yes, that is fine.

MR COE: Okay.

THE CHAIR: After Mr Parsons came on board and you satisfied yourself that this was a bona fide offer of assistance, how did things transpire after that?

Ms Edwards: It was still a very drawn-out process. It went on for months. It was very difficult for Mr Parsons, it seemed, to get access to David Dawes. David Dawes is a very busy man. He was interstate a lot. We, strangely enough, had to provide an extraordinary amount of paperwork—although I have seen in the media that the

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payouts to some other players seemed to be without paperwork. We had to provide the financials of the owner who had the business before we bought it. We happened to have those when we purchased the business. I had kept all that. So, yes, there were lots of i's to dot and t's to cross before we really started talking figures.

We felt very content in the end for the process to be over. Had we relocated somewhere, I mean, who knows how it would have been. But towards the end of this whole process we actually lost the appetite for running the business. Even in the construction phase of the pop-ups, the shipping crates, we had construction workers needing to access the water mains in front of us. We had hoses going across the bike path. We were trying to deal with foremen from the construction site. We were saying, "We're about to get 100 kids for a bike ride. We cannot have this hose across the path."

I cannot tell all the nitty-gritty day-to-day things in the years that led up to that that were related in some way to this LDA relationship, even if it might seem indirect, that wore us down. In the end, I know people around the world get—excuse the language—screwed by governments, often unwittingly. There is no sort of malicious intent; just decisions get made and business people flounder and go out of business. So I am very grateful that we did not end up being collateral damage. I am very happy with the figure that was arrived at as compensation for us. I will never for a minute pretend that I am not. But I cannot put a figure on the stress and the toll that the years of attempts at negotiations took on our family.

THE CHAIR: Were there times when, for instance, with the phone call that your husband had with the Chief Minister's office and when you had the meeting with Mr Dawes, you felt bullied, cowed, intimidated or without hope?

Ms Edwards: Yes.

THE CHAIR: Any or all of those?

Ms Edwards: Bullied, yes. I am not easily intimidated and my husband, he was talking about protesting. That is the level he was starting to go to. I did not know if he would. I was concerned about his mental health. Like any family, that fits into another context as well. I had an elderly mother I lived next door to and was supporting in various ways. We have a young child.

Look, all business people work very hard. Small business is not for the faint-hearted. I was grateful I had been in the public service so I knew something of the machine I was dealing with. I was not too intimidated, but I did feel that a lot of the behaviour was, hopefully, mostly incompetent. But if you were the sort of person who thinks too hard about things, maybe you could come to the conclusion that there was a bit of malicious intent in there at times.

It is quite possible we got a reputation for playing hard in this negotiation. I do not feel, even now, looking back on it, that we had a choice. If you do not want to be the person who gets screwed, you have got to stand up for yourself, which is why we met with Simon Corbell in the beginning and said, "Don't forget we're down here. We've got this long lease. The government's going to need to sort us out first. You're going

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to have to move us before you start digging up the ground.”

I knew it would be complicated. I knew it would be difficult to get like for like. It would not be like for like. I knew it would be a lot of work for someone in a government department to sort out a similar location: “Okay, well, you don’t have as much space, so for that reason the terms and conditions of the lease slightly benefit you more in this way to compensate for that. You’ve only got one coach car park.” I realised the enormity of taking that on, but that is why I thought that that job needed to be started long before it did.

I do not think David Dawes is a terrible person. I do not even know him. I cannot even comment on that. But he was willing to come back to the table in the end. You have got to give him credit for that, or I do. I give him credit for that. But it is not the first time I have seen the situation with a public servant. There seem to be many occasions when senior bureaucrats seem obliged to fall on their sword or apologise profusely for something when the relevant politicians wipe their hands of it and claim ignorance of what was really going on.

People sometimes have their doubts about that. My feeling—it is just a feeling; I do not have anything to substantiate this, really, except my interaction with the Chief Minister’s office—is that the LDA were tasked with a big project. It was going to be a big splash. It was going to look fantastic. It was going to make money for the government because it was going to sell parcels of land. The LDA might have been told to get on with it; damn the torpedoes; just get on with it and find any way of doing that so that the little players like us and the boat hire people were relocated. I still do not know why they did not use the Lands Acquisition Act. Surely that would have been fairly fast and straightforward; I do not know. But, yes, I suspect the directive just to get on with the project might have come from the Chief Minister’s office.

MR COE: On that, did you ever feel that—you might even have mentioned something—about forces from above? Where was it all coming from?

Ms Edwards: I am really only referring to that phone call where we thought the Chief Minister’s office might be concerned. Apart from anything else, we were a tourist operator and the Chief Minister was the minister for tourism at the time. We were performing really well. We had this great reputation. We were performing, I think, a really wonderful job for Canberra’s tourists. And we were not being looked after. I certainly felt that the Chief Minister’s office were willing to accept, potentially, the LDA’s claim that we were just being pains in the butt and we had been offered numerous locations, and that the Chief Minister’s office weren’t really interested in digging any further into it.

And you know what? We were not the pointy end of town, were we? We were not important people, if you know what I mean. Martin and I, we are not big developers or investors. It is hard to throw your weight around when you do not have those sorts of profiles. That is how it felt. We were just the little guy.

MR COE: With regard to Mr Parsons’s fees, did you have any idea about that negotiation or the quantum?

PROOF

Ms Edwards: No, I suspected it would take place, but it was not something—

MR COE: But you were not at all involved in that?

Ms Edwards: No.

MR COE: It was not part of your contract of sale or anything like that?

Ms Edwards: No, it wasn't.

MR COE: No?

Ms Edwards: No.

MR COE: And did you ever explore or learn about how Mr Parsons knew Mr Dawes? You said that--

Ms Edwards: Yes, he told us.

MR COE: You mentioned earlier that he told you that he had met Mr Dawes.

Ms Edwards: Yes.

MR COE: Did he ever say or did you ever find out how he knew Mr Dawes?

Ms Edwards: Yes, he said. The first time we met Mr Parsons, he told us that he had been interested in buying a house in Canberra and one of the houses he looked at possibly buying happened to be owned by Mr Dawes. So it was not a business dealing; he had just met him. He did not end up buying that house anyway, but they had met.

MR COE: Okay.

THE CHAIR: I am conscious of the time. Are there any other questions? Is there anything that we have not touched on, Ms Edwards, that you think we need to be aware of before we conclude this evidence?

Ms Edwards: I do not think so, thank you.

THE CHAIR: So when did you settle on the block?

Ms Edwards: 1 February 2016.

THE CHAIR: And you put on the record that you think that you and your husband eventually got a good outcome in that settlement?

Ms Edwards: Yes.

THE CHAIR: My understanding is that the settlement was for the acquisition of the

PROOF

block and that the business had a peppercorn value, a notional value. Is that the case?

Ms Edwards: I am not quite sure what you mean.

THE CHAIR: That the bulk of the payout was for the block and only a very small amount, from my understanding—a dollar, or a small figure like that—was for the value of the business. Is that—

Ms Edwards: I think that is right, yes.

THE CHAIR: And did you mind that the business was valued at such a small amount or did it not at that stage matter to you?

Ms Edwards: It did not matter to us at all by that point. We were at the end of an incredibly long, hard road at that point. No.

THE CHAIR: From your account, it was July 2011 when Lincoln Hawkins first contacted you?

Ms Edwards: Yes.

THE CHAIR: And this was eventually concluded in February 2016?

Ms Edwards: Yes.

THE CHAIR: So that is the best part of five years?

Ms Edwards: Yes.

THE CHAIR: And when did Mr Parsons come on board, just to refresh my memory?

Ms Edwards: It would be late 2015—no, maybe August 2015, something like that. It would be pretty as much as soon as I was on radio.

THE CHAIR: If that was the case, we are still talking about another six months to conclude it?

Ms Edwards: Yes. There was a lot of work. It is quite possible that the LDA's lack of paper trail was made up for in the last six months by Mr Parsons's incredible paper trail. He certainly has a persistent and calm approach to the way he works and he does not really allow a nil response to stay a nil response for very long. He is just back in there saying, "Can we just confirm again that this is what we're doing?" It was copied to everyone—very open, patient, with attention to detail again and again.

I suppose one thing that I find striking when I do read in the media the cases of other players who have been paid out for the same project is that—I am not saying we were not paid out with a generous approach at all; I am not complaining about the figure—there are other players who just seemed to have got also a generous figure, boom, with very little to substantiate it. And we did everything, I think. I think we provided everything that needed to be provided.

PROOF

THE CHAIR: And in the period from 2011 to 2016 when you finalised the transfer, how was your business going?

Ms Edwards: Strong, very strong.

THE CHAIR: Still strong?

Ms Edwards: Still growing.

THE CHAIR: It was not particularly suffering?

Ms Edwards: We suffered personally but we did our very best to never show that. I can tell you my husband aged. He can tell you I have aged a lot. He has lost a tooth from grinding his teeth. We suffered in other ways, but we did our very best not to allow that to flow on to the clients.

THE CHAIR: So you were still running a viable business?

Ms Edwards: Yes; it was still growing.

THE CHAIR: When you sold it?

Ms Edwards: Yes.

THE CHAIR: When you sold it, you sold it lock, stock and barrel; the government acquired the building and the bikes?

Ms Edwards: The bikes, everything, yes.

THE CHAIR: And the cafe and the fittings?

Ms Edwards: Everything.

THE CHAIR: And do you know what has happened to the bikes?

Ms Edwards: No. The government had an operator running it for a little while. My understanding was that they were not on any lease; they were just going to run the service and they could be told at any moment, "Right, you can't open from next Monday onwards because the diggers are coming in." But I do not think that has been operating for some time now. I think it has completely gone.

THE CHAIR: I am very mindful of the time. Thank you very much for your attendance here today. As I said at the outset, there will be a transcript issued for you to review, and if there is anything that you think you need to clarify or correct, you can be in contact with Dr Lloyd, the committee secretary. Thank you very much for your attendance today.

Ms Edwards: Thank you.

PROOF

PARSONS, MR BEN

THE CHAIR: Thank you for your attendance today, and welcome to the inquiry into the Auditor-General's report on certain land acquisitions of the Land Development Agency. Have you had an opportunity to read and do you understand the privilege statement on the pink sheet?

Mr Parsons: I have and I do.

THE CHAIR: Do you wish to make an opening statement?

Mr Parsons: No, I do not.

THE CHAIR: You have been in the gallery and you have heard some of the evidence. Could you, for the committee, outline what brought you to make an offer to the owners of Mr Spokes, to act as an advocate, a mediator, a go-between—I do not mind which word—how you came to do that and what prompted you to think that you should do that?

Mr Parsons: I was driving back from having dropped my daughter at school and was listening to ABC 666 and heard an interview between David Dawes, Philip Clark and Jillian in relation to the Mr Spokes Bike Hire business. I had lived in Sydney for the last 30 years and only recently returned to Canberra. I have family in Canberra and used to come back regularly and, in fact, had used the Mr Spokes business. I was just, I think, touched by the frustration, the stress that I could hear coming through from Jillian.

The fact is that I detected that both of them actually wanted the same result. When I say "both of them": David Dawes and Jillian Edwards. In that communication between them, they seemed to be talking a little bit at cross-purposes during the interview and I genuinely felt for Jillian and thought that I could offer some assistance in bringing the parties back to the negotiating table and achieving a result that would work for all parties but, most importantly, for Jillian and her husband.

THE CHAIR: Are you in the habit of randomly ringing up people and offering assistance on the basis of radio interviews?

Mr Parsons: Not necessarily radio interviews but certainly in my business. I will give you a bit of background. I was for over 20 years a lawyer in one of the large national legal firms, a partner for over 10 years. In 2004 I left the legal partnership and became an owner and director of a trans-Tasman boutique investment bank, and in that role seeking work was very much an opportunistic endeavour. You would see an opportunity and take it up. A lot of the business that I did in that enterprise was as a result of cold calls. I am very used to making cold calls to people, seeing an opportunity and taking advantage of it.

But in this case my motivation was not a personal motivation. I just felt very much for Jillian. The committee would have seen her this morning. The stress and the frustration that I felt that she and her husband were facing from the situation prompted me to offer to help.

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I had recently retired from full-time work. I had lived in Sydney for 30 years. Unfortunately and tragically my wife had unexpectedly passed away at the end of October 2014. I was father to a then seven-year-old girl and I decided to move back to Canberra, relocate to Canberra, where I had family, and I was not intending to necessarily work. As it is, I have continued in a retired fashion, aside from helping Jillian and her husband with their negotiations with the LDA.

MR COE: So you moved back to Canberra in 2015?

Mr Parsons: No, I moved back to Canberra on, I think it was, 22 December 2014.

MR COE: In terms of your professional work, had you done work with the ACT government before?

Mr Parsons: No, I had not.

MR COE: When did you first come across Mr Dawes?

Mr Parsons: Having moved to Canberra at the end of 2014 and needing to find accommodation for me and my daughter—I was ideally wanting to live in the inner north—a friend of mine who lived in Reid told me that David Dawes was building a house five or six up from his house and that he actually owned the house that he was currently residing in in Reid, that his new house was just about completed and that he thought that David Dawes's current house would make potentially a good house for me.

I actually cold-called David Dawes and asked him if he was looking to sell his house. He indicated that he would be. I inspected his house a couple of times. His wife actually arranged those inspections. I had a couple of conversations with David in relation to the house. As it was, for various reasons it did not suit me. I did not pursue that. I recollect that David Dawes had indicated, which is the case, that my brother, who had come to one of those inspections—when I say “inspections”, it was not open to the public; it was a private inspection—who had a Mr Fluffy house was also interested in the house. I looked on his behalf to negotiate a possible sale with David Dawes. David indicated that he had decided to take the house to auction. He did take his house to auction on, I think it was, 8 August 2015. My brother bid at the auction and he was actually the under bidder at the auction.

MR COE: So prior to making the call to Mr Spokes or to Ms Edwards, had you discussed this situation with Mr Dawes?

Mr Parsons: No, I had not. The first information I had on it was from the interview on 666, which was on, I believe, 17 August.

MR COE: When did you first make contact with Ms Edwards?

Mr Parsons: It was either the day of the interview, which was 17 August, or possibly the next morning. I think there may have been a front-page article in the *Canberra Times* on 18 August, and I think it was on 18 August that I called her.

PROOF

MR COE: Was the first time you heard about it on the radio?

Mr Parsons: That is correct.

MR COE: Between making contact and hearing about it for the first time, did you do any research? Did you make any calls or have any conversations at all?

Mr Parsons: I made some investigations into the Mr Spokes business. I googled the Mr Spokes business. I looked up the Lands Acquisition Act to see the principles that would apply to an acquisition under the act.

MR COE: But you did not chat with anyone about it?

Mr Parsons: No, I did not. I did some preparation in terms of being able to approach the owners of Mr Spokes.

THE CHAIR: Were they surprised to hear from you?

Mr Parsons: They were.

THE CHAIR: Were you expecting that they would be surprised to hear from you?

Mr Parsons: I was but, as I say, it is something that I have done often in my career. I genuinely believed that I had a skill set that could assist them. And that was my motivation—to help them.

THE CHAIR: After you established your bona fides with Ms Edwards and Mr Shanahan, what happened?

Mr Parsons: They engaged me on 23 August.

THE CHAIR: Formally—with an exchange of letters—or a shake of the hand?

Mr Parsons: A shake of the hand was the basis on which they engaged me. At the time I was engaged I said, “I know David Dawes.” I told them the circumstances in which I had met him. I said I saw that as a positive in terms of being able to make an initial contact with David Dawes. I told Jillian and Martin that my motivation was to help them, that I would not seek to charge them anything, that I would look, consistent with the principles under the Lands Acquisition Act, to secure a fee from the LDA, but to the extent to which the LDA was unwilling to pay me a fee or a result was not achieved—and therefore a fee would not have flowed—that was my risk. Really, my motivation was not about being paid; my motivation was about helping Jillian and Martin.

MR COE: After making that initial contact—I think Ms Edwards said this—did you meet a couple of times?

Mr Parsons: Yes; I think we met at Edgar’s in Ainslie.

PROOF

MR COE: What was your first port of call?

Mr Parsons: After being engaged?

MR COE: You were not actually engaged, though, were you? Because it is not like you had a contract or anything, did you?

Mr Parsons: We had an understanding, yes. I was representing them.

MR COE: But they were never paying the bills.

Mr Parsons: They were not paying the bills. In my business, I have always operated on the basis of results. I often have told my clients, "If you're not satisfied with the result, don't pay me."

MR COE: It is a low-risk proposition for them in that you have come and said, "It's not going to cost you a cent and I'll try and pick up a fee from the other side, but one way or another, it's not costing you a cent." What did you do? What was your first part of call? So far as you read the situation, was it just a communication breakdown? Or was it actually a point of law or an administrative-type issue?

Mr Parsons: It was probably as much a communication breakdown. The first thing I asked Jillian to do was to provide me with some of the correspondence that she had received and her lawyer had sent in the previous couple of years that negotiations had been dragging on. Reading the letters that had been sent and received, I could see that they were often at cross-purposes. I also knew that a valuation of the business had been conducted on financials for the three preceding years from 2009 which undervalued the business because it had grown significantly since then. The lawyer who was advising Mr Spokes had been setting up, on instructions, conditions for the release of the more recent financials. The LDA had indicated that the conditions which had been imposed on the release of those more recent financial statements were unacceptable to the LDA.

I could see that it was in the interests of the proprietors of Mr Spokes to release their more recent three years financial trading. It would give a larger valuation figure and a valuation figure that was more representative of the value of the business. My opening proposition to the proprietors of Mr Spokes was that the best way to conduct this was to be open and cooperative with the LDA, to seek to work with them to get a valuation of the business, which would underpin any payment. I had indicated to them that, as an organisation spending government money, they needed to do things according to a process and that we needed to engage in that process to allow the optimum outcome.

MR COE: Obviously you are quite astute at this. You are able to make a call about different situations. Did you identify different personalities in the LDA as to who you had to deal with? If you suddenly opened up negotiations or conversations with the wrong person, you could be bashing your head up against a brick wall.

Mr Parsons: I heard that David Dawes was on the radio. I think on the radio he had indicated that he was taking over responsibility for that. Having had some of the

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connection—a reasonably remote connection—with David Dawes that I had previously identified, I told Jillian and Martin that dealing with Mr Dawes would be a strategy. Effectively, dealing with the CEO you are going to get the best result.

MR COE: How did you go about doing that?

Mr Parsons: First of all, on 23 August I provided a detailed analysis to the proprietors of Mr Spokes of essentially my assessment of the value of their business based on my review of their financial statements for the three years. I indicated the principles which would apply under the Lands Acquisition Act for the acquisition of their business. I indicated that, as I said earlier, I believed we should be approaching the LDA on an open and cooperative basis.

I then indicated to them that I thought it was best in terms of the strategy that I should approach David Dawes to look to set up a meeting to try to get a result. I said to them, “I’m very happy if you want to be there, but I think it would probably be better, given the history of mistrust and frustration that had grown up over the last few years, that a new face would perhaps achieve a better and a clearer result.” I drafted for them a short letter under which they authorised me to represent them. I asked them to send that letter to David Dawes. In that letter it disclosed that they were aware that I had previously met David Dawes recently.

MR COE: Did you meet with any other public servants?

Mr Parsons: I had a number of meetings with David Dawes. In at least one of those meetings was David Gray from the Government Solicitor’s office.

MR COE: What about—I cannot remember the timings exactly—Dan Stewart or Ben Ponton?

Mr Parsons: No, nobody else from the LDA. The only other contact I had with the LDA was with Mr Dawes’s personal assistant.

MR COE: So the authorisation went through. And then you had a meeting?

Mr Parsons: No; the authorisation went through on the 23rd. On 24 August I spoke to David Dawes for the first time in relation to the Mr Spokes business. On that day I followed up with an email providing David Dawes with the last three years financial statements, which had been a sticking point previously and had not been provided. I did an analysis for him of those. David Dawes indicated that he was going to use those to get updated valuations.

MR COE: Had you chatted with David Dawes between the auction and that date?

Mr Parsons: No.

THE CHAIR: In summary, Mr Parsons, the only person you negotiated with in the LDA was Mr Dawes? You negotiated with him directly. Was there at any time a meeting that included Ms Edwards and/or Mr Shanahan?

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Mr Parsons: No, they were not in meetings. One of the meetings, as I said earlier, did have David Gray, who did contribute some comments and direction to David Dawes in the meeting.

THE CHAIR: How often, in that period from August till the conclusion of the contract in February, were you in contact? How many meetings or communications would you have had with Mr Dawes?

Mr Parsons: I can go through the chronology if it helps you?

THE CHAIR: That would be fantastic; thank you.

Mr Parsons: As I said, on the 24th I spoke to him, sent him an email with the last three years financials. Having not had a response, I followed up on 7 September with an email. On 11 September I had a telephone conversation with David Dawes. During that conversation David Dawes acknowledged that there had been some fault on the LDA side, which was one of the reasons why he was taking over the matter. He indicated that three valuers were looking at the business and the land--PwC, Herron Todd White and MMJ. He said all the valuers wanted extra information, and two of them wanted access to inspect the premises.

David Dawes asked me whether I was okay to deal directly with the valuers to furnish them with the additional information and arrange for site inspections. So with PwC, between 11 September and 29 September, I provided them significant further information to complete their valuation. That information, for example, included financials for the years 2004, 2005, 2006, which were the three years prior to the purchase of the business by Jillian and her husband. And then there was a raft of other questions on the accounts that I answered.

With the two property valuers, I provided them with similar information--the six years of financial statements. I answered questions with them and arranged on-site inspections with them. Tim Heaton of MMJ was at 10.30 on 29 September, which was a two-hour site inspection; and David James from Herron Todd White was the next day at 9 am. So, having over that period provided all the information that had been requested by the three valuers during September, on 1 October David Dawes sent me an email thanking me for all my efforts in providing the information and answering the questions of the three valuers and said they were going to be working on their valuations. He noted that he was going to be overseas between 3 and 17 October.

On 22 October, as a result of a number of follow-ups, David Dawes's personal assistant emailed me the copies of the three valuations that had been prepared. On 23 October--the next morning--at 11.30 I met with David Dawes at TransACT House. I did send an email that day to Martin and Jillian summarising the meeting. If it would be useful I am happy to read out to you that email about what transpired during that meeting.

THE CHAIR: Yes, it would be useful. Thank you.

Mr Parsons: This was an email sent to Jillian and Martin on 23 October at 9.52 pm, on the evening of the day that I had met with David at 11.30:

PROOF

Jillian and Martin, thanks for your text. It's easier for me to reply by email as I type faster than I can text. In response to your text, the position was as follows:

1. David Dawes was very keen to see if he was able to keep your business operating and paying you some compensation for the disruption of moving locations. I made it clear to him that this was all too uncertain and stressful for you and that you would prefer to be bought out.
2. This led to a discussion about a potential buy-out price.
3. David Dawes started by saying he was limited by the valuations and could only make an offer consistent with them being at circa \$650,000.
4. I said your starting position was as in the Vandenberg's letter—

Vandenberg having been their legal advisers up to the date that they were able to pay them, and that valuation was, I think, as disclosed in the auditor's report, circa \$3 million. I had indicated to the proprietors of Mr Spokes that I did not believe that that was a supportable figure—

and that it was up to him and I to work out a solution where both parties were satisfied with the outcome. He acknowledged that.

5. We then looked at ways we could the valuations. I suggested the following:

Firstly, increasing the earnings reflecting that, as is the case with most small cash-based businesses, not all income is necessarily reflected in the accounts. He said he had experience with small businesses and agreed that this did happen.

Increase the earnings to reflect the potential to run a café, as has been permitted under the terms of the lease.

They had previously run a cafe and, indeed, sold gelato, which had been a very profitable part of the business. But they had given that up when Jillian's mother, I think it was, became ill. The email continued:

Increase the earnings multiples that the valuers had used on the valuations and include an amount for disturbance, which is provided for under the Lands Acquisition Act. I pushed the fact that you would be both unemployed as a result of the acquisition of your businesses and it would take two years to get a job and they would need to be retrained in the time.

6. David Dawes felt that it might be possible using the items in 5 above to perhaps, though with no certainty, get the valuers to support a figure closer to \$1 million. I told him that would obviously be a move in the right direction but I felt that this would still be short of where we needed to be. I told him I did not know what you would accept but that it needed to be more than the sum of what Pat was getting—

Pat Seears—

PROOF

on the basis that you had a better business and a bigger block of land and a longer lease. He acknowledged yours was a better business but said that the paddleboat land was more valuable because it was on the water and the lake infill would mean it would no longer be on the water. The valuers had used this to justify a higher valuation of the paddleboat land.

7. He said then if he did buy the business he did not want to run a bike hire business and asked me if I thought that you would be interested in operating the business on the basis they would provide you with a site and not charge rent and you would be able to keep all the profits. I said I would raise it with you.
8. In summary, no formal offers were made, but at the moment David is looking to see if he can move up the valuation to support paying you circa \$1 million, whatever figure he was able to justify. He would then give you the option to run the bike hire business. I am hoping we might be able to get him a bit higher than the \$1 million, though acknowledging that whatever payment is made needs to be supported by a valuation.

Hope the above is clear. If not, please call me.

I also on that day had sent a more detailed email to David Dawes summarising the basis on which I thought we could increase the amount the valuers had provided.

MR COE: Did Mr Dawes respond to that email?

Mr Parsons: He did, and we then had a subsequent meeting at 11.30 on 27 November. During the period from 23 October to 27 November, I understand that Mr Dawes—or somebody else in the LDA, because the valuations on the face of them indicated that they were instructed by Mr Hutch—was raising questions with the valuers.

MR COE: And those valuers were PwC—

Mr Parsons: Herron Todd White and MMJ.

THE CHAIR: Could I go back to the first point in that email, where it said, “We need to look at how we can have a valuation that supports a higher price and there are various ways of doing that.” One of them was to address cash non-accounted for income. Can you expand on that?

Mr Parsons: The valuations had been done on the financial statements. I do not know what the position was with the Mr Spokes business, but Mr Dawes acknowledged that it is not uncommon in a business which receives a large portion of its revenue by cash to not have reported all its revenue in its accounts.

MR COE: Quite aside from that specific issue, in that the committee is not inquiring into the bookkeeping practices of any businesses, how can you possibly do a valuation based on undeclared cash earnings?

Mr Parsons: In terms of giving a—

PROOF

MR COE: How can you?

Mr Parsons: Ultimately that one did not get up.

MR COE: I understand that, but was the LDA open to informing or asking valuers to consider undeclared cash earnings?

Mr Parsons: The impression I got was yes, but what they did and what conversations they had with the valuers and what the valuers responded, I do not have the basis of that.

MR COE: How do you know the undeclared cash earnings were not factored into the valuations?

Mr Parsons: As I understand it, between the meeting of 23 October and our next meeting, David Dawes had indicated in an email to me that he was having difficulty getting the valuers to move from their previous figures. I think he said the valuers were comfortable with the valuations they had previously given.

MR COE: Then there is a question about the multiplier, which is obviously a pretty easy way to crank the total.

Mr Parsons: Yes.

MR COE: And there are conventions, I gather, of price to earnings of various businesses in various industries. So how could it possibly be that you could increase a multiplier for the price to earnings?

Mr Parsons: Valuations, as you know, are an opinion; it is not an exact science.

MR COE: But there are Australian standards, though.

Mr Parsons: Yes, but you make an assessment of the appropriate multiplier to be used. The valuers all actually used a different multiplier; they did not all use the same multiplier. For a small business like this, typically the multiplier you would use would be between two and five. The multiplier you would use would depend on your assessment of the strengths of the business.

The things we indicated as the strengths of the business were that it was a growing business, so the revenue line was going up, indicating strong business since they had bought it, and that was established through an examination of the accounts in the three years prior to purchase and the three years prior to valuation. There was significant repeat business, particularly from school groups. There was no real competition and no ability for a competitor to come into the market because you needed a site on the lake in order to be able to operate the business. There were opportunities to expand the business which had not been fully explored yet; for example, the business did not operate in the evenings and there was a belief that the business could successfully operate in the evenings during summertime. There was an ability to exploit the hotel trade by delivering bikes to hotels which had not yet been fully taken up by the Mr Spokes business, and the other big one was to run a cafe from the premises, as was

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permitted under the lease.

I think you can all imagine that if a family have been out riding bikes in the hot sun, they are going to come back and want a cold drink or an ice cream. Jillian had indicated to me that previously when they ran a gelato business their profit on gelatos was 300 per cent. There was no extra labour component needed. The person who gave you the bike could give you the gelato when you came back and it did not need a lot of space to run it.

There was a restriction under the terms of the lease. I think the cafe was limited to 17 square metres. It was not a big cafe they could run but, again, anything that would add to the income would obviously then be subject to the multiplier and anything which could indicate that the business had a strength that had not been appreciated by one of the valuers would allow them to increase the multiplier that they had used in assessing the value of their business.

MR COE: In effect, isn't this all just going the wrong way round? Don't you do the valuations to establish the price rather than reverse engineer a valuation to suit a million bucks?

Mr Parsons: As it was, I do not believe the valuers changed their valuations, despite my advocacy. So the valuations did remain at the 650 or 700 level. I did an inquiry into how the LDA got to the figure which they ultimately got to, but one of the areas where they could have got to is under the disturbance head. I don't know if the committee is familiar with section 45 of the Lands Acquisition Act?

THE CHAIR: Not intimately.

Mr Parsons: Would you like me to—

THE CHAIR: Thank you, yes.

Mr Parsons: Section 45(1) provides the guiding principle. It states:

The amount of compensation to which a person is entitled under this part in respect of the acquisition of an interest in land is such amount as, having regard to all relevant matters, will justly compensate the person for the acquisition.

Section 45(2) actually looks at a number of issues. It states:

In assessing the amount of compensation to which the person is entitled, regard shall be had to all relevant matters, including ...

The relevant matters that are relevant to our discussion here are the market value of the interest in the land on the day of acquisition, which is subparagraph (i) and subparagraph (ii), which states:

... the value, on the day of the acquisition, of any financial advantage, additional to market value, to the person incidental to the person's ownership of the interest ...

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That allows you to value the business. Then further on there is reference to any legal or professional costs incurred by the person in relation to the acquisition, which was where I had assumed the LDA would meet my fees. But also paragraph (c) states—and I will paraphrase it—“any loss reasonably incurred by the person, having regard to all relevant considerations, including any circumstances peculiar to the person, suffered as a direct and natural consequence of the acquisition of the interest”. This is what is referred to as the head of disturbance.

Under this head, the points that I had made to the LDA were that Martin and Jillian were 48 and 50, I think. Martin had previously been employed in the building industry but he had had a hip replacement in about 2005, just before he had bought the business. In fact, they bought the business because he was unable to continue to work in the building industry. They had run the business for 10 years.

The ability of somebody in their late 40s or 50s—particularly Martin, who was unable to work in the area that he had previously had skills for—to find employment again quickly was difficult. Therefore, I had put the proposition to the LDA that it was appropriate under this head that they should be compensated for the disturbance that had been caused to them. I think the figure I had used was \$100,000 a year for each of them for two years, which equated to \$400,000.

I note that one of the valuations—I cannot remember; it might have been the MMJ one—specifically says that it did not investigate amounts in respect of disturbance. So the valuation was not taking that into account. Obviously, my concern was to get to a level that was going to deliver Martin and Jillian a fair result for them. How the LDA got to that figure was not my concern. As long as they got to that figure, it was not my concern. I provided them with all the bases that I thought we could move the dial on. As to which of those bases they used to move the dial, I do not know.

THE CHAIR: You were not interested in the mechanisms. You were interested in the outcome?

Mr Parsons: Yes. Following that meeting on 23 October and the reverting to the valuers, I then had another meeting on 27 November, about a month later, again at 11.30, again at TransACT House. This was a meeting with David Dawes, and David Gray was definitely at that meeting. During that meeting and a couple of subsequent telephone calls with David Dawes, two offers were actually put on the table.

The first offer was that the LDA would pay \$1.1 million plus GST for the business assets and the surrender of the lease and the Mr Spokes proprietors would walk away from the business. The second offer was that the LDA would pay \$900,000 for the business assets and the surrender of the lease and then grant the Mr Spokes proprietors a licence over the premises and the assets for a peppercorn rent so that they could continue to operate the business and keep the profits, though at some stage there would need to be a relocation. There was not necessarily a great deal of certainty over what that future involved. I put both options to Jillian and Martin and they selected the first option. They just wanted out at that stage.

THE CHAIR: When was that? That was October?

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Mr Parsons: No, that was 27 November.

THE CHAIR: 27 November.

Mr Parsons: It was the meeting. It was followed up by a couple of telephone conversations and then on 30 November I actually sent an email to David Dawes and summarised the terms of the agreement that we had reached, which had been accepted by the proprietors of Mr Spokes.

THE CHAIR: Do you have a copy of that email?

Mr Parsons: I do.

THE CHAIR: Would you like to read that out for the—

Mr Parsons: Yes, this was an email sent to David Dawes on 30 November at 2.32 pm.

David, I refer to our recent telephone conversation. I confirm that I have spoken with Jillian Edwards and Martin Shanahan and they have agreed as follows.

1. JE & MS Pty Ltd as trustee of the JE & MS Trust will sell to the LDA or a government entity nominated by the LDA the Mr Spokes bike hire business for the sum of \$1.1 million plus GST. The business includes the lease over the premises.
2. The sale will not include the Subaru Forester, which will be retained by the vendor.
3. Some of the items listed on the depreciation schedule previously provided to the LDA and attached for your convenience are no longer part of the business. Below is part of an email I received from the vendor.

This was the email they sent.

We have had another close look at the schedule provided by Stuart—

which was their accountant—

to you earlier in the process and apart from the car the only items we want excluded are the hedge trimmer, chest freezer—

I will not go into the details. There are just a few. It states:

So in summary the following items would be deleted from the sale. Subaru, hedge trimmer, chest freezer, paint sprayer, cash register 1, laptop 1 and 2.

4. Settlement of the sale will take place as soon as possible and before Christmas 2015. But the vendor will, at their option, be permitted to carry on running the business and retain all income until Sunday, 31 January 2016.
5. The LDA will pay the costs of the vendor, being my costs in negotiating the

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settlement, \$43,000 plus GST, being 4 per cent up to \$1 million and 3 per cent above \$1 million, and the reasonable legal and accounting costs of having the sale documentation reviewed.

I would appreciate it if you were able to confirm your verbal advice that this is acceptable and arrange for formal documentation reflecting the above terms to be prepared and issued.

The basis on which the legal review was to be done, and which the LDA was to also pay for, was a very limited legal review because I have a legal background, as I have previously indicated. While I do not have a practising certificate any longer, essentially I said to Martin and Jillian that I would review the documents but that they should have them finally checked by their lawyer.

THE CHAIR: Someone with a practising certificate.

Mr Parsons: Yes. The accountant provided advice on how the \$1.1 million should be allocated between the various components, so \$1 was allocated to the business assets and the balance to the surrender of the lease. That was on the advice of the accountant for Mr Spokes. The accountant's fees were paid. From memory, they were \$3,500 or in that vicinity. The LDA also agreed to meet the very limited legal review, which was \$1,500 plus GST.

THE CHAIR: Who pays for the conveyancing in these circumstances—the LDA? This probably is not really—

Mr Parsons: The ACT Government Solicitor prepared the first drafts of the documents and all the drafts. They were negotiated through January and February. I negotiated those and got them to a level that I was satisfied with before getting the final sign-off from the accountant and the external legal adviser.

THE CHAIR: Actually, this is a question I have asked a lot of people and I think I might have now got the answer. Why was the business valued at \$1?

Mr Parsons: You would have to ask the accountant.

THE CHAIR: Yes.

Mr Parsons: The way it transpired was that the ACT Government Solicitor sent me the documents and said, "The consideration for the two components is \$1.1 million. Please let us know how you would like that reflected in the documents."

THE CHAIR: So that was the client's choice, not the LDA's choice?

Mr Parsons: That is right. It was the client's choice, based on the advice of their accountant.

THE CHAIR: It is interesting that I have not been able to get an answer from anyone else about that, so thank you.

MR COE: You said initially that you had a peruse of the Lands Acquisition Act to

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get the principles of the act and to understand it.

Mr Parsons: Yes.

MR COE: Do you know what policy or legislative framework the acquisition was made under?

Mr Parsons: I have not got it here, but it was a—

THE CHAIR: Disallowable instrument?

Mr Parsons: Yes, that set up the—

THE CHAIR: The Planning and Development (Land Acquisition Policy Framework) Direction 2014 (No 1).

Mr Parsons: various levels of authority. I cannot remember what they were, but I assumed, based on my reading of it, that it would need to get board approval of the LDA. But, again, I just did that so that I could understand the process. My view would be that if the CEO had authority to do it, you would get a quicker response than if the CEO had to go to the board.

MR COE: You noted your fee: four per cent up to a million and three per cent thereafter. I was curious that you include that in that email which summarised the sale. When did you negotiate that percentage and who did you negotiate that with?

Mr Parsons: I negotiated it with David Dawes. The very first email—where is it? In the very first email that I had sent to Jillian and Martin on 23 August I set out the legal basis of the payment. I analysed section 45. At one point in that email I said:

Any legal or professional costs which are reasonably incurred by you in relation to the acquisition are covered. This is merely a cost recovery and should be reasonably uncontroversial. This head should cover the legal fees you have incurred to date. Indeed, I understand the LDA has already paid or agreed to pay these. Is this correct? Also under this head it should allow me to seek to get paid a reasonable fee by the LDA. As my main motivation is to help you, I would only look to address this with the LDA if and when we were close to agreeing a payment, whether with or without a possible relocation which you were both happy with.

The reason I wanted to do that is that I did not want any fee that was payable to me to have any impact on or factor in what may or may not be payable to the proprietors of Mr Spokes.

MR COE: I am perplexed by the fact that you are trying to drive up the price for the person who has, in effect, brought you in, yet you are negotiating a fee with the buyer. It is an odd arrangement. Was there any sort of push back from Mr Dawes? Did you put to him four per cent and three per cent or did you put to them, you know, five and four and they squeezed you down to four and three?

Mr Parsons: No. The conversation I had with David Dawes was that we had agreed

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the parameters of the amounts that would be paid to Mr Spokes. I then said to David that I would expect that the LDA should cover my reasonable fees and David Dawes said to me, "Yes, as long as they are not hundreds of thousands of dollars, as you would expect from a Sydney person." He knew that I had come from Sydney. I said, "No." At that stage I said, "I think a reasonable fee is four per cent up to a million and three per cent over," and he said, "Fine."

MR COE: Okay. It is still interesting that the buyer is sort of negotiating that. In effect, you are sort of at cross purposes there.

Mr Parsons: I am not sure. Why is that? I mean, there is—

MR COE: Usually the seller has the incentive in driving up the price, so the seller is the person that the commission—

Mr Parsons: To be frank, when I had got to a position of \$1.1 million I was thinking, "What is a reasonable fee for me to be paid?" At that stage I probably had not anticipated that I was going to spend again—quite a lot of time—during December and January negotiating the documents. But I worked on this, as it was, for six months. I can tell you that I have 550 emails in my inbox related to this matter.

I came up with that figure. I used the four and the three per cent as a basis to give some parameters to it. I can hand on heart tell you that if David Dawes had said, "I do not want to pay you a brass razoo," I would have been disappointed, but I could not make him pay me something. I could refer to the legislation that allowed a reasonable fee to be paid, but my motivation at all times was to get a result for Mr Spokes. If David Dawes had said, "You will not be paid a fee," I would have continued. My motivation for doing it was not payment. It was a bonus.

MR COE: But you put an invoice in to the LDA?

Mr Parsons: Yes, I put an invoice in. It had to be readdressed. I think it was to the LDA and then it had to be readdressed to the Government Solicitor. I cannot remember, but I put in a formal invoice, together with the invoices from the accountants and the lawyers for the limited legal review.

MR COE: You put in an invoice. Therefore, whilst it was done at the same time as the disbursements for the property sale—

Mr Parsons: I attended the settlement of the sale for the proprietors of Mr Spokes, which was in the Government Solicitor's office in Moore Street, I think.

MR COE: But were you presented with a cheque and paid at that time or was it done separately?

Mr Parsons: If you let me answer the question, I will.

MR COE: Sure.

Mr Parsons: At that time, when I attended the settlement, I had prepared prior to the

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settlement a settlement checklist which indicated or listed all the things that I would hand over and all the things that I would receive. On the receipt side it included a cheque for \$1.1 million for the proprietors of Mr Spokes, it included a cheque for my fees, it included a cheque for the accounting fees and it included a cheque for the legal fees for the limited legal review. I walked away from the settlement with four cheques.

THE CHAIR: So all the fees were part of the disbursement?

Mr Parsons: Yes, they were all paid as part of the settlement. The settlement was the \$1.1 million and the fees were reimbursed on top of that.

MR COE: However, it was paid at the same time as the settlement, but it was not actually part of the contract for sale, though, was it?

Mr Parsons: No. The contract for the sale actually includes in there, I believe, the amounts that the purchaser, the LDA, would pay.

MR COE: But did it include your amount or—

Mr Parsons: It did.

MR COE: Why did you need to invoice then?

Mr Parsons: Because the LDA wanted an invoice for their records, I assumed for GST purposes, that you need a tax invoice in order to have GST. They just wanted a formal invoice from me reflecting what was in the sale of business agreement.

THE CHAIR: And that was also the case for the solicitor's fee and the accountant's fee?

Mr Parsons: It was.

THE CHAIR: In the terms of sale they said they would cover the solicitor's fee, which was X number of dollars, the accountant's fee which was X number of dollars—

Mr Parsons: They were all specified. The dollar amount of them was specified in the—

THE CHAIR: In the terms of sale and then you have backed that up with a tax invoice that—

Mr Parsons: Complied.

THE CHAIR: equated to those amounts.

Mr Parsons: Exactly.

THE CHAIR: Your fees, the solicitor's fees and the accountant's fees? Anything else?

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MS CODY: Which surely would be normal practice?

Mr Parsons: Yes.

THE CHAIR: Was there anything else that was in the terms of sale, apart from those fees and the actual sale price?

Mr Parsons: There were a lot of other conditions, but there were no other monetary amounts.

MR COE: But you are not on a government panel and you do not have a contract and you did not have a contract with the government, did you?

Mr Parsons: No.

MR COE: So it was never discussed as to—

Mr Parsons: And I was not acting for the government. I was acting for Mr Spokes and consistent with the section I had taken you to, section 45 of the Lands Acquisition Act, I had my fees reimbursed by the government. But I was acting for and representing the proprietors of Mr Spokes at all times.

MR COE: But that assumes, though, that the purchase was made under that act, because if it was not under that act then that is null and void, is it not?

Mr Parsons: No. The approach that I took and that was accepted by David Dawes was that we were reaching a negotiated settlement, but in reaching a negotiated settlement we were using the parameters of the Lands Acquisition Act, which sets out what would have happened. Under the Lands Acquisition Act you can compulsorily or voluntarily acquire land and those principles apply. So it seemed a sensible basis to use in order to establish what should be done.

MR COE: As far as you know, do all purchases of land actually have to comply with the Lands Acquisition Act?

Mr Parsons: I do not want to give legal advice, but the Lands Acquisition Act was not—

MR COE: In terms of how you were operating, the basis of your—

Mr Parsons: The principles of that act were translatable to what we were doing because we were doing it by negotiation. When you are doing something by negotiation it is sensible to look at the framework which would apply if a negotiation was not going to be successful and the government wished then to compulsorily acquire it. That is the process that they would go through. I think the government is on record as having said that it had a preference to reach a negotiated settlement because it was easier for all parties. You do not go to court and run up a lot of legal fees. You have more flexibility. I think that was the language used in the ACT Government Solicitor's letter.

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MR COE: Have you done any work for the government since?

Mr Parsons: No, I have not. And I did not do the work for the government; I did the work for Mr Spokes but was paid by the government. I think it is a very important distinction.

MR COE: But there was no contract with either? But you did have that letter of—

Mr Parsons: There was a—

MR COE: The agency agreement?

Mr Parsons: There was no written contract with the proprietors of Mr Spokes, but a contract can be formed through an understanding, and there was an understanding between them and us and that was the understanding on which I operated.

THE CHAIR: Just before we conclude, are there any matters that you think have not been sufficiently clarified or that have been overlooked by the committee that you would feel should be drawn to our attention?

Mr Parsons: No, I do not.

THE CHAIR: Thank you for your participation and attendance today. There will be a transcript which will be sent to you, probably midway through next week, for you to review. If there are any issues that you feel need to be clarified you can take them up with Dr Lloyd, the committee secretary. Thank you for your participation today.

Mr Parsons: You are welcome.

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SEEARS, MR PAT, former owner, Dobel Boat Hire

THE CHAIR: Welcome to the fourth day of hearings of the inquiry of the public accounts committee into the Auditor-General's report into certain land acquisitions of the Land Development Agency. I draw your attention to the pink laminated card. Have you had a chance to read that? Do you understand the privilege implications?

Mr Sears: All good.

THE CHAIR: Would you like to make a brief opening statement?

Mr Sears: You all know who I am, why I am here. I will be discussing the situation overall, to tell you the truth. The way I look at this whole thing is that David Dawes ran it through me and wrapped it up and made way for the development of the best parcel of land in this territory. I do not know why, but I think it might be more or less a political slap to try and hang the poor bloke. I can tell you, just sticking up for him, there is not one dishonest bone in that man's body. I have known him longer than all of you. I hope the Auditor-General and Kirsten Lawson are still around some day when that little man has made millions and millions for the territory and its people, and then I want to know why they gave me such a pittance for my prime piece of property.

There are some documents here, if you would like to have a look, but I want them back. You will see here, for example, back in 2003 we had a sale of the property that I owned for \$2.3 million. They knocked it back. And there are other bits and pieces here. There is a draft lease that we were offered to develop the site, if you are interested to have a look at them.

THE CHAIR: Perhaps at the end of your evidence, if you can provide those to the committee secretary, Dr Lloyd, he can copy them and then the committee will decide whether we need to use them or not. That is probably the easiest way of doing it. Could you outline for the committee how you acquired the business Dobel Boat Hire, how it was operated and how you came to surrender the lease?

Mr Sears: Yes.

THE CHAIR: In as brief terms as possible. It is a lengthy process.

Mr Sears: Yes. Back in, I think it was, 1997 or 1998, we were just looking around for little development things. I actually knew Bruce Wicks, from the battery factory, who owned that property, and I approached him to buy it. First of all I went and saw Malcolm Smith, ex-NCDA, the old National Capital Development Authority days, and asked him to check him out and if he had a development application applicable to it. I approached Bruce Wicks and bought it. I paid I think \$230,000, \$240,000 for the whole thing.

THE CHAIR: So what did you acquire?

Mr Sears: I bought it wholly and solely for the purpose of putting a development on

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the site. And with it came the paddleboats. My son, was doing his school here in Canberra at the time, so for economics I gave it to him to run, the paddleboat side, for a couple of years, and then he moved up and came to work with me. Then I leased it to my brother, and the trouble and the trauma and the fights and arguments started. The hundreds of thousands of dollars we spent in the next 10, 12, 15 years to try to have it approved was astronomical. At the end of it I was just glad to say goodbye to it.

THE CHAIR: You acquired the lease in 1997, did you say?

Mr Sears: I think it was 1997 or 1998, yes.

THE CHAIR: What did you acquire?

Mr Sears: We got the paddleboat hire and that parcel of land for buildings there, the kiosk and the—

THE CHAIR: So your understanding is that you acquired the land on which the kiosk stood?

Mr Sears: Yes.

THE CHAIR: So what sorts of ideas did you have in mind for the development of that site and what did you believe was available to develop?

Mr Sears: What we wanted to do and what we had in progress there was build a function room and a restaurant. We actually had the Doyles people in Sydney involved in it for years, and in the end they dropped out because bureaucracy, as you know, stifles everything. So they dropped out, and I continued to do it then alone.

We were offered a draft lease in 2002. We went and drank a couple of bottles of champagne. We were happy. But then we read the fine print and saw where the government, if there was ever a land reclamation—city to the lake was just in its infancy then—would not be liable for any development on the site. So we went back to school again and tried to get it eliminated, but with little luck.

THE CHAIR: You had your own plans to develop the site which you eventually put on hold?

Mr Sears: Yes.

THE CHAIR: When were you approached by anyone in relation to the city to the lake, saying that they would need your site?

Mr Sears: There were rumours. I had consultants working for me. I had Malcolm Smith and Walter Stuko and then we had Peter Dunn from GHD. They were the people who had knowledge of what the government intended to do there, but there were rumblings about it way back. I remember going to some meeting and there was just draft legislation that they would eventually bring in for the city to the lake. That was a fair while ago.

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THE CHAIR: When were you or your representatives first approached to acquire or discuss all the—

Mr Seears: To discuss the acquisition? I think the rumblings started in around 2015. The years go so quickly. But I had no negotiations with anyone whatsoever on the acquisition. I probably spoke to or saw David Dawes once and once only in the 18 months leading up to that. I had no conversation with him or anyone. I had a few meetings. The consultants did most of my work.

When the acquisition and the offers started, they were interested in taking it back, but I did not take it seriously. Peter Dunn, the consultant, had a lot of meetings with Richard Hutch and Tim Xirakis, and I think Peter Gray. I went there twice, and that was the only association I had whatsoever with any of the whole proceedings.

THE CHAIR: That was roughly when?

Mr Seears: In 2015, I think it was. In the end, when it all took place, my lawyer, Ben Aulich, got a letter to say that they were not prepared to make an offer. Then the offer came through and that was it; we just accepted it. I had no dealings. I never saw Richard Hutch or Xirakis or anyone within the six, eight, 10 months leading up to that.

THE CHAIR: When did your lawyer receive a letter saying that there was an offer in the offering?

Mr Seears: I had Ben just to keep an eye on the whole situation because, as you know, I was arguing and fighting with my brother there because he never paid his rent and this and that, and he was carrying on. So I just said, “Keep in touch and find out what’s happening.” So he did most of the negotiations. But there was not much. It was pretty swift. The whole thing was pretty swift—the acquisition. Actually, just let me think about something. Was it Richard Hutch that wrote me a letter? No, I think Richard Hutch might have written to Ben Aulich—this was obviously the last one that I think we paid out—and said, “This is the offer and we accept it, yes.”

THE CHAIR: What was the offer for—for the land, for the business or for both?

Mr Seears: It is confusing here because what my brother had was part of what I had. I knew not long after he signed that lease that it was illegal. I went and saw my solicitor to clarify it and he said, “You have got no right to sublease it.” We just let it go. That was part of what I bought—the paddleboats and the kiosk there too.

THE CHAIR: You were aware—perhaps not at the time that you sublet it but soon after—that you probably should not have sublet the thing?

Mr Seears: Correct. We tried to resolve that.

THE CHAIR: When was that? Where does that fit into the context?

Mr Seears: Probably three to four years after we did it.

THE CHAIR: Sorry, when did you sublease to—

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Mr Seears: It would have been 2000, probably around there. There was no lease or anything in place at the beginning. My brother liked the business and he was the one that went and had a lease drawn up. I just signed it.

MR COE: How long was there to run on your crown lease?

Mr Seears: I think it was a five plus five.

MR COE: With the government?

Mr Seears: Yes.

MR COE: Your government lease, I mean.

Mr Seears: My lease was for a 25-year period.

MR COE: And how long was left to run on that?

Mr Seears: Until 2028. I have to correct what my brother said the other day that they paid all those legal fees. The government never paid one cent of my legal fees. And I did not want it anyway. But there you are; it was a bit vague.

THE CHAIR: So your lease had some time to run, but what you are saying is that you did not have any particular negotiations with the government. They made you an offer, which you accepted?

Mr Seears: Yes. We were still deeply involved in the process of trying to get development happening there, even right up to the last six or eight months before this happened. It was only when the city to the lake got serious—

THE CHAIR: Whom were you talking to about your own development plans?

Mr Seears: I was involved with Peter Dunn—

THE CHAIR: No, who in the government were you talking to about your own development plans?

Mr Seears: In negotiating with the people, I am not sure who. If I go back and find the records, it is all there. It was out of my hands. I left it to him to do that. He knew that he had the—

THE CHAIR: You had a consultant and he was negotiating, still on a function centre-type arrangement?

Mr Seears: Exactly, yes.

MR COE: There were public toilets upstairs?

Mr Seears: Yes.

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MR COE: Did you actually own those toilets?

Mr Sears: No, it was public. They would come and open them in the morning and close them at night. They used to come.

MR COE: They managed it?

Mr Sears: Yes.

MR COE: You did not own them?

Mr Sears: No.

MR COE: With that in mind, how could you develop the site if, in effect, you owned the—

Mr Sears: We had surveyors come in and survey parts of the land, nearly 1,500 square metres. That was all approved by the ACT government to be given to us to develop the site.

MR COE: So they would, in effect, surrender—

Mr Sears: That was all to come down. We had to facilitate new toilets on the site and disabled access and all the rigmarole that goes on to do that as part of the deal. Yes, put new toilets in.

THE CHAIR: I am a big one for timetables. I must think in a linear way. I am trying to get a timetable. You or your solicitor received a letter from a representative from the government that there was going to be an offer in the offing?

Mr Sears: Yes.

THE CHAIR: When was that?

Mr Sears: Probably six months before it all happened.

THE CHAIR: And when did you receive an offer?

Mr Sears: In late November or December the year it happened, which would have been 2015, I think. Yes.

THE CHAIR: How long did it take? Did you accept the offer? Did you think the offer was reasonable? Did you negotiate with the government on the offer?

Mr Sears: No.

THE CHAIR: What happened?

Mr Sears: At that stage the offer was reasonable enough. It would not cover the

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costs involved immediately, but the way things were I did not think that this was all going to happen and that they were serious with city to the lake. When it got to that stage—and I talked to Martin and Mr Spokes and I knew then that they were serious—I just thought, “Well, there’s no good me hanging round here; it’s time to go.” So I just let it go. I will give you the money back if you give me back the land.

THE CHAIR: It is not in my power—

Mr Sears: I will give you the green light.

THE CHAIR: When you received the offer from the government, you essentially accepted it?

Mr Sears: Straightaway, yes, my legal fees and the consultancies through the whole thing.

THE CHAIR: Your offer was for the head lease on Dobel Boat Hire?

Mr Sears: Yes.

THE CHAIR: Did your offer include the office in relation to Lake Burley Griffin Boat Hire, or was that separate? Was that a separate offer made to the other Mr Sears?

Mr Sears: I think that they had settled with my brother and they had paid that. What was left there was just Dobel Boat Hire, which actually controlled all that was left there. I actually was of the understanding that the government was going to get it up and running and get the paddleboats going again. But nobody told us.

THE CHAIR: So your understanding is that the government had already settled with your brother, Mr Jim Sears?

Mr Sears: Yes.

THE CHAIR: And you were not party to those discussions.

Mr Sears: I have not spoken to my brother for about 12 or 15 years.

THE CHAIR: And the offer that you received and accepted was entirely in relation to the head lease?

Mr Sears: Yes.

THE CHAIR: In the course of what appear to be non-negotiations, whom did you talk with in the LDA or whom did your representatives talk with in the LDA?

Ms Sears: As I said, it was only Peter Dunn and Ben Aulich. But the only people I had any association with in the whole thing was Tim Xirakis and—who was the other fellow up there? I just said his name.

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THE CHAIR: You mentioned his name and he had written a letter.

Ms Sears: Peter Hutch. They were the only two people I had any association or dealings with whatsoever.

MR COE: But the Auditor-General's report makes mention of the fact that there were two valuations done by the LDA in April and May 2015. One came to a valuation of \$50,000, and another came to a valuation of \$100,000.

Mr Sears: They might be missing one there.

MR COE: No, this is April and May here.

Mr Sears: That is right.

MR COE: And then in November 2015 you get to \$900,000 to \$1 million and that is done by Colliers?

Mr Sears: I never saw that document. I have got another valuation I did in that period you are talking about, the 320.

MR COE: But my question, what I am getting at here, is: there was \$50,000 or \$100,000 that the LDA did and then there was \$900,000 to \$1 million done six months later. Did you reject the \$50,000 or \$100,000 one?

Mr Sears: I never had any knowledge of these valuations whatsoever.

MR COE: If the buyer has got a valuation saying it is worth \$50,000 or \$100,000 I am just wondering: what is the catalyst for them to go and get another valuation in November if they were not negotiating with you?

Mr Sears: Nobody negotiated with me.

MR COE: I just do not know why you would get it.

Mr Sears: Just a second. There is another thing I want to make a point of here. I do not know how much business acumen you people possess but the value placed on an article is not necessarily always what it will be sold for or what you have got to pay to gain that asset—the property or whatever it might be. But, besides that, the last time, the only time, I spoke to David Dawes he called me and told me that they had reached an arrangement with my brother and they were looking at my situation. There was not one mention—I would like him to have told me but I did not ask him—of what I was going to be offered and not one mention of what my brother had apparently been paid out.

MR COE: Do you know what could have sparked the LDA getting a third valuation six months later, despite already having two?

Mr Sears: When were the first valuations done?

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MR COE: April and May 2015.

Mr Seears: Who asked for those?

MR COE: The LDA. The LDA commissioned two valuations: April and May 2015. The sums of \$50,000 and \$100,000 came in. Six months later, in November 2015, Colliers came back with \$900,000 to \$1 million, which was used as the basis.

Mr Seears: Just as well they came up with a bit of a deal, because we would still be in court. If they had offered me that I would have sued them. It is ridiculous.

MR COE: I am not asking whether it is fair or not; I am just curious about this. If you were not in negotiations with them, do you think somebody second guessed: “Mr Seears isn’t going to accept that”?

Mr Seears: Maybe Ben Aulich knew. But I was not involved in any of this. I was only made the one offer of the whole deal. I was never offered any amount up until that day, until they offered me the money they paid me.

MR COE: In contrast, you had lessees just up the road—the Mr Spokes people—who had a tremendous barney it seems, going for months if not years, trying to get near that \$1 million. How, on one hand, are they having it out with Mr Spokes and seemingly struggling to acquire it but, on the other hand, not even engaging in conversation with you?

Mr Seears: I know what you are saying.

MS CODY: I am not sure how Mr Seears could answer that question if he did not know of the offers. I find that an odd question to ask Mr Seears.

MR COE: But that is the situation that we are in: the government say they want to buy this land, yet they are negotiating with only one of the lessees and not with the other.

Mr Seears: My lawyer, Ben Aulich, might have been involved in it. When David Dawes advised me of the proceedings, David said to me that they were looking at my situation. I was not involved in any more conversation with him because it was not my business to ask him, for example, what he paid my brother. I did not ask him that question.

You have got to remember—I live by these rules—in life I dislike dishonesty, incompetence and fools. I do not have any friends around me who fit that category. What I tell you here today is the truth. David Dawes is a friend of mine. That does not put him that category. It amazes me to think we are doing this. This is the richest piece of gravel on this planet and we cannot turn the power on. My friend, if I did not have kids and a beautiful family in business I would not live in this country. If you made me Prime Minister for six months I would straighten the joint out.

THE CHAIR: Can we get back to the issues, which relate to the acquisition of the land? I summarise: you owned this block of land from 1997-98 and you acquired it for

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the purposes of perhaps developing something on the lakeshore.

Mr Sears: Yes. Exactly.

THE CHAIR: You had explored a function centre over a period of time. I need to put on the record that I can attest to that because I worked for the planning minister at the time when the proposal first came up. That was quite clearly in 1998, or 1990 at the very latest. You negotiated with the government over a period of time. You thought that you had reached some sort of arrangement in about 2002.

Mr Sears: Correct.

THE CHAIR: But you did not. All that time the actual business was operated by someone other than yourself personally—either your son or your brother?

Mr Sears: Yes.

THE CHAIR: When it was your son, he was acting as your agent, essentially. But at some stage you sublet the boat hire business to your brother. There are issues about that. Your account of it is that your legal team was approached in late 2015 to say that there was an offer coming. You eventually received an offer through your legal team.

Mr Sears: Through Peter Dunn, the consultant.

THE CHAIR: Through your consultant team. Not to you directly?

Mr Sears: When the offer came through, Ben Aulich rang me.

THE CHAIR: Was it sent to you?

Mr Sears: Not to me directly; it came to my lawyer's office.

THE CHAIR: It went to your lawyer's office.

Mr Sears: Yes, correct.

THE CHAIR: You received the offer and you accepted it soon after. Did you mull on it?

Mr Sears: At that stage I had had enough. I just took it, accepted the offer.

THE CHAIR: But you were also aware, at least unofficially, that your brother had settled on his part of the business prior to that.

Mr Sears: David Dawes told me. That was the only conversation I had with him in probably 12 or 18 months. Just out of decency, he told me that he had reached a settlement with my brother. There was friction. I was involved in a lawyer situation with him in a lease in Melbourne. He said, "You can forget it all; it's part of the job."

THE CHAIR: There was an issue—as I recall and you touched on it earlier—in

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relation to outstanding rents owed to Dobell Boat Hire. Was there anything in the settlement that covered outstanding rents?

Mr Sears: No. That is still owing to me. I never got it.

THE CHAIR: Pardon?

Mr Sears: I never received it; it is still owing.

THE CHAIR: The outstanding rents?

Mr Sears: About \$27,000.

MR COE: The Auditor-General said that there was a rental arrears of \$17,000 paid. Is that correct?

THE CHAIR: That is what I have heard. That was the advice.

Mr Sears: Let me think about this. They might have considered it, but I do not think I ever got that money. I can check this for you, but I doubt I got it. That was only part of what was owing. I do not think I got that money. I do not think the government paid me that money. I can check this for you, but I am not sure I did get that money. It was just a clear one cheque for the thing. I will check that for you.

MS CODY: Could it have been included in your final cheque?

Mr Sears: No, because I am pretty sure my cheque was a neat round-off. But I will check that for you and I will let you know.

THE CHAIR: Thank you.

Mr Sears: If I was sure I would tell you, but I am not sure about that.

MR PETTERSSON: Might have found yourself some more money to come. Well done.

Mr Sears: I do not need a million for this headache, I can tell you. And I do not think Graham Potts, who is worth hundreds of millions of dollars, needs four million either; it's just a headache.

THE CHAIR: That is a summary. You were going to go back and check in relation to the rental arrears.

Mr Sears: I will check that for you today. I will do that.

MS CODY: You talked about the fact that you personally were not aware of any offers made on the property from the government prior to the offer you received.

Mr Sears: Yes, there was only that one offer. I knew that they were negotiating. We gave up negotiations to try to get the thing with Xirakis and Kim Hudson—Richard.

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But then the lawyers were made aware of it. They said, “We’ll just sit there now.” At that stage we knew they were fair dinkum about it. That time when David told me that James had been paid out, he said, “We’re working on your situation.” I thought, “I don’t know how long it’ll go on.” I did not expect it to be quick. But, yes, that is what happened.

MS CODY: Mr Coe mentioned that the Auditor-General found that there were three valuations done on the property. You mentioned that you yourself had a valuation done on the property. We had your brother appear last week. He mentioned the fact that he was aware of some other valuations. Could it be the case that he was aware of those valuations but you were not?

Mr Sears: I am just trying to think. I have got them. I am trying to think why we did those valuations now. That was early in the year. I am just trying to find the date on this one. But they were all done at the same time. This was May 2015.

MS CODY: And that was one that you undertook—you did yourself?

Mr Sears: Did myself, yes.

MS CODY: You organised it yourself?

Mr Sears: The consultant said to get some valuations on it. Maybe he had some insight that the whole thing was on the way to acquisition; I am not sure.

THE CHAIR: Your legal adviser suggested that you should get a valuation?

Mr Sears: No, the consultant. Peter Dunn told me this.

THE CHAIR: So it was part of your consultancy team. And you got how many valuations? Just one?

Mr Sears: We had three.

THE CHAIR: What were the ballpark figures?

Mr Sears: I cannot find the other two. The one I have here was \$320,000. The others were close to it. This was done by Knight Frank. They were close to that. I can find them if I—

MS CODY: Was that for the lease and the business?

Mr Sears: Just the lease.

MS CODY: When you were made your offer, that was just for the lease too?

Mr Sears: Yes.

MS CODY: Because the business offer was made to the other Mr Sears, your brother, yes.

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THE CHAIR: What were the terms of the valuation? What was the valuer asked to look at when they looked at it?

Mr Seears: I am not sure. It was left in the hands of Peter Dunn, and he—

THE CHAIR: So he would have briefed the valuer?

Mr Seears: Yes.

MR COE: Have you been kept in the loop by the people who own Mr Spokes?

Mr Seears: I have not spoken to or heard of Martin or the girl since long before this all happened.

MR COE: What about when they were going through their negotiations?

Mr Seears: Probably Martin came out and saw me once and was carrying on about, “I want this and that,” about the problem he was having. I said, “I’m not in any negotiation, Martin.” I said, “If I have to get out too, I’d like to get fair money, because there’s potential there.” I think it was something like \$3 million he wanted, and, “I’m not going; they can kick me out.” Then he went on the radio and this and that, and I was having—

MR COE: But you were not being kept abreast by him of the situation or anything?

Mr Seears: No.

MR COE: It was just the occasional chat?

Mr Seears: Yes. On probably one occasion he might have rung me up and said he was stalling, they were not playing the game, but that is about all. We never had a close association.

THE CHAIR: Mr Seears, thank you for appearing today.

Mr Seears: That is okay.

THE CHAIR: If there is any matter, apart from the state of governance in Australia, that you think the committee has not inquired into, has not touched, and you would like to draw it to our attention, this would be a good time to do so. If you do not have anything to add, there will be a transcript provided for you to review and to return to the committee secretary, Dr Lloyd. If there is anything you feel you need to clarify, that is an opportunity to do so. You did specifically take on notice that you would check the issue about the underpayments.

Mr Seears: I will do that for you, if you give me someone I can contact.

THE CHAIR: You can contact Dr Lloyd.

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Mr Sears: I will try to do that this afternoon. I have got the sale documents and I will give you an answer immediately.

THE CHAIR: At the conclusion of this, you will give Dr Lloyd some documents, and he is going to copy them and that sort of thing. Thank you very much for your attendance.

The committee suspended from 12.06 to 1.17 pm.

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KALENJUK, MR EUGENE, Partner, PwC

THE CHAIR: Mr Kalenjuk, welcome to the fourth day of hearings of the public accounts committee's inquiry into certain land acquisitions that were in the report of the Auditor-General. Have you had an opportunity to read the pink privilege statement, and do you understand the privilege provisions in the statement?

Mr Kalenjuk: Yes, I have read them and I am aware.

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

Mr Kalenjuk: I would like to, yes.

THE CHAIR: Thank you.

Mr Kalenjuk: Thank you for the opportunity to make an opening statement. PwC was engaged by the Land Development Agency in April 2015 to provide certain valuation services. I am the partner at PwC who predominantly worked on this engagement. PwC provided three pieces of work in relation to the business known as Mr Spokes Bike Hire. Our first report in relation to Mr Spokes Bike Hire is dated 21 April 2015, the second is dated 4 September 2015 and the third report is dated 6 October 2015.

The scope of our services was limited to providing comments surrounding the valuation of the business known as Mr Spokes Bike Hire rather than a formal opinion of value. The different reports reflect the different information available at each point in time in relation to the business. The work undertaken in relation to these reports did not include verification of the financial information being provided. We did not perform an industry analysis or any valuations of the improvements and we did not visit the business premises.

On this basis our report contained a high-level analysis of the financial information on the business operations. Pursuant to our engagement letter of April 2015, PwC also provided some advice to the LDA in relation to the valuation of Lake Burley Griffin Boat Hire. I provided comments to the LDA in July 2015 in relation to a valuation advice letter provided by James Harvey dated 13 December 2014.

The report provided our opinion on the reasonableness of the James Harvey methodology and calculations, and high-level commentary on the assumptions adopted. In that document we also provided a high-level view on value. In August 2015 we also provided some follow-up comments, having received from James Harvey comments on our report through the LDA.

THE CHAIR: Thank you. What you have said, Mr Kalenjuk, is that you, as a partner of PwC, provided advice or, to use your words, comments around the valuation and high-level comments about the value of these businesses, Mr Spokes Bike Hire and Lake Burley Griffin Boat Hire.

Mr Kalenjuk: Yes.

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THE CHAIR: I am presuming from that that they were the terms of your engagement, that you were not actually engaged to provide a full-blown valuation?

Mr Kalenjuk: Correct.

THE CHAIR: Do you have an understanding of how it was that you were engaged to provide comments or a high-level view but not a full-blown valuation?

Mr Kalenjuk: Yes. We were contacted by Mr Richard Hutch from the LDA, who requested whether we had experience in carrying out valuations of small to medium enterprises, which I said we did. We then had a discussion on the potential scope of the services to be provided in and around limited-scope valuations.

From that verbal communication on the telephone, I asked that he put down the requirement via email, in writing. We would then translate that into an engagement letter. Then that engagement letter would be represented or emailed to Richard in draft for his sanity check and fact check, and then we would sign off that once everyone agreed to the scope and the terms and the pricing. As part of that we also provided an indicative cost range to perform the services.

THE CHAIR: In your conversations with Mr Hutch did you discuss the purpose for which these comments or this high-level view would be used?

Mr Kalenjuk: Yes. From that discussion, my understanding was that it was part of the acquisition program of the city to the lake program.

THE CHAIR: Was there any discussion at any time between you and anyone from the Land Development Agency about compulsory acquisition?

Mr Kalenjuk: Not that I recall.

THE CHAIR: You outlined three sequential pieces of work that you did in relation to Mr Spokes Bike Hire: one in April, one in September and one in October. What did you provide in April, how was it augmented in September and October and what led to that augmentation?

Mr Kalenjuk: Usually when we perform the services we provide a list of information requirements: financial statements, tax returns, copies of any forecasts and business plans. Our initial list is pretty comprehensive. Subsequent to that request we received very little information. All we received in the initial report was a set of financial statements for the 12-month period—it was unusual—ended March 2009, with comparatives for March 2008. I expressed concern over the fact that there was not a lot of information to perform—

THE CHAIR: And by that time it was six years out of date as well.

Mr Kalenjuk: Yes; correct. Regardless, we pushed on and provided our advice based on that limited information, which led to a range of, from memory, somewhere between \$220,000 and \$550,000. It was just impossible to tie down based on what we had. In September we received further information by way of financial statements for

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the period 2013 to 2015, which included comparatives for 2012, which provided a great deal of further information so that we could provide a further revision on our original estimate. So we performed a revision of our original advice of April 2015 and updated it for the additional information provided, which led to a more succinct number, a narrowing of the range.

THE CHAIR: Which was?

Mr Kalenjuk: Around \$550,000 was the midpoint, from memory. Subsequent to that we were in communication with Mr Ben Parsons, and I requested further information to see if there could be further revision of that number. My questions were around additional information, any history or pattern of projections of growth, a history of the business and what the owners sensed as growth paths they had not taken yet. We corresponded via telephone and email communication. That information provided us with a bit more of a pattern around what growth might look like. We incorporated that into a further revision. That resulted in a third report, which I think derived a midpoint of about a \$650,000 valuation.

THE CHAIR: After the third report in October 2015 did you have any more communication with the Land Development Agency or Mr Parsons or the principals of Mr Spokes?

Mr Kalenjuk: We had a meeting subsequent to that with representatives of the LDA. I think Richard Hutch was there. I think David Dawes was there, and it was me and the two other valuers, from memory. There were questions around whether there was room to move the value, if there was any additional information we could provide to perhaps improve the valuation result. I seem to recall we all concluded that, "Based on what we have, this is where we've landed."

THE CHAIR: So this was a meeting subsequent to October, with only officials?

Mr Kalenjuk: Yes.

THE CHAIR: Not representatives of the sellers?

Mr Kalenjuk: No.

THE CHAIR: Representatives of the Land Development Agency and the two other valuers as well.

Mr Kalenjuk: The two other valuers, yes.

THE CHAIR: Is that unusual?

Mr Kalenjuk: It is not common. But it is not unusual to have a further discussion with a purchaser in respect of: "Have we assessed everything? Have we missed anything? Can we double-check the facts?" It is not uncommon to have that sort of final discussion and robust testing of what we have put on paper.

THE CHAIR: But if you are dealing with a buyer are they not usually saying, "Are

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you sure you've got that right? Can't we get the price down," rather than, "Are you sure you've got that right? Can't we get the price up"?"

Mr Kalenjuk: It is not always the case, Mrs Dunne.

THE CHAIR: In your discussions at that post-October meeting did anyone suggest to you that you might look at undisclosed cash as a means of increasing the value of the business?

Mr Kalenjuk: I think in that meeting there was a discussion around undisclosed cash, and all of our views were, "Well, how can we take that into account?" You cannot verify or substantiate that. If you cannot substantiate it, how can you document it and rely on it?

MR COE: So in effect it was that—

Mr Kalenjuk: Sorry, was that in relation to Mr Spokes?

THE CHAIR: Mr Spokes. Well, were you asked the same question about—

Mr Kalenjuk: No, because I was only there for the meeting for Mr Spokes.

MR COE: But a question or an issue was raised about whether you could include undeclared cash earnings?

Mr Kalenjuk: Testing my memory of two years ago, I think it was presented hypothetically that if there was undisclosed cash could you incorporate that into a business valuation or a limited scope valuation? The answer was no, because it cannot be verified and what is the sum of undisclosed cash?

THE CHAIR: Do you recollect whether you raised that at the meeting?

Mr Kalenjuk: No.

MR COE: But it was the client, the ACT government?

Mr Kalenjuk: The client, yes.

MR COE: I apologise if this has already been raised in my absence, but was the question of the multiplier also raised?

Mr Kalenjuk: Not that I recall.

MR COE: What was the purpose of this meeting? Was it, in effect, to see if anyone was willing to adjust their valuation upwards?

Mr Kalenjuk: My interpretation of the meeting was to test the robustness of our valuations or our reports and whether we had factored in all of the information that we had appropriately and, as a result of the robustness, was there any change or anything we had missed that might result in a different number. Again, to my recollection, after

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giving it serious thought, three of us said no.

MR COE: When you found out—I imagine you did through the media or through the Auditor-General's report—that \$1.1 million was paid for the Mr Spokes site, did you feel that was substantiated?

Mr Kalenjuk: I cannot answer that, Mr Coe. There are a whole range of circumstances as to why or why not your client might pay or more or less than your valuation.

MR COE: Was it ever an issue or a concern or a relevant factor for you as a valuer as to whether the ACT government had the ability to purchase a business?

Mr Kalenjuk: No.

MR COE: The instructions that you received for the valuation, as far as you recall, were pretty standard instructions?

Mr Kalenjuk: Yes, they were pretty standard.

MR COE: They were nothing out of the ordinary?

Mr Kalenjuk: No. As I explained to Mrs Dunne prior to you joining us, we went through a telephone conversation with Richard Hutch around the scope. We then asked that our client put that in writing, via email, so that we were on the same page. Then we sort of sent a draft engagement letter agreeing on that draft before we had the draft sent off and issued as a final. It details what we are doing, what are the limitations, and this made it clear.

MS CODY: And that is the standard practice?

Mr Kalenjuk: Yes.

THE CHAIR: In your discussions or your considerations of the value of the land, was there any discussion, especially at this post-October meeting—the meeting post your third report on Mr Spokes Bike Hire—with you and the other valuers about perhaps increasing the value by looking at the inconvenience caused to the lessee by giving up their lease, the sort of pain and suffering clauses?

Mr Kalenjuk: Not that I recall, no.

MS CODY: Picking up on a couple of points Mrs Dunne raised, particularly around pain and suffering, you value businesses?

Mr Kalenjuk: Yes.

MS CODY: And land?

Mr Kalenjuk: I do not value land.

PROOF

MS CODY: You do not value land?

Mr Kalenjuk: No.

MS CODY: Only businesses?

Mr Kalenjuk: Correct.

MS CODY: Is it fair to say that you might value a business at a certain price but the business owner may see that business as being worth a lot more than your valuation?

Mr Kalenjuk: Certainly.

MS CODY: It is fairly standard, I would imagine.

Mr Kalenjuk: You rarely agree on the same number. It is not an exact science, but it does provide an objective means to get to a starting point for negotiations.

MS CODY: Absolutely. I owned several businesses in my life; I always think my business is worth more than people are willing to pay.

Mr Kalenjuk: Absolutely, yes.

MS CODY: So it is not unusual to have your valuations as a starting point: “Look, with all the facts we have at our disposal we believe this is a fair and just price”?

Mr Kalenjuk: Yes.

MS CODY: But when it comes down to purchasing a business, that fairy dust price might be blown out of the water and it might be 10 times that price, if that is what the purchaser wants to do.

Mr Kalenjuk: It could be higher; it could be lower. It depends on many factors, one of which is the negotiating power of the buyer and the negotiating power of the seller and whether it is a strategic acquisition. There are a whole range of factors, and they are different for every business you value and buyers and sellers.

MR PETTERSSON: You value businesses. Do you have any involvement in putting a value on the disruption that someone might experience? Does that fall under the scope of your work?

Mr Kalenjuk: Could you please clarify “disruption”, Mr Pettersson?

MR PETTERSSON: If you have to move your business from one location to another or your business is going to be put out of business because that site is no longer available, can there be a disruption payment?

Mr Kalenjuk: We value the business’s going concern on the assumption that it will continue to operate in the location it is in. I have team members who could, but I personally have not done one where you say, “What is the value of the business

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now? Pick it up and move it over here, and what is it the value over there?" There are a whole range of additional variables in that equation.

THE CHAIR: But you were not asked to do that at any time?

Mr Kalenjuk: No.

MS CODY: But it could be done?

Mr Kalenjuk: Yes, it could be done. There would be a lot of assumptions. You have got to prove your assumptions and test the reasonableness but, yes, it could be done.

THE CHAIR: But that was not raised as a possibility at the meeting after the third report?

Mr Kalenjuk: No. It was to assess the value of the business on an as-is going concern basis.

THE CHAIR: As there are no further questions, thank you for your attendance today. If there are any issues you think we have not covered that we should have covered, you have an opportunity to say something now. Otherwise a transcript will be sent to you, probably midway through next week, and you will have an opportunity to return that to the committee secretary with any clarifications if you think that is necessary.

Hearing suspended from 1.37 to 2.11 pm.

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JAMES, MR DAVID, formerly of Herron Todd White

THE CHAIR: I understand from Dr Lloyd that you have been sent a copy of the privilege statement in relation to committee privilege. Have you had an opportunity to read that and do you understand the privilege implications?

Mr James: Yes; that is fine.

THE CHAIR: I welcome you to this hearing of the public accounts committee into the Auditor-General's report in relation to certain land acquisitions of the Land Development Agency. Thank you for joining us on the phone today. I will begin by asking if you have an opening statement that you would like to make.

Mr James: Not as such. I completed two of the valuations there in Acton. That was early to mid-2015, some time ago. I think the instructions that we received were probably even a year or so prior to that. The amount of information that came through for us to complete the valuation was scant and it was a fairly long process. Given our initial quote of fees to do the job, we actually had to request that we get a higher fee at the end of it as we had taken so much time in trying to gain access to inspect the premises and in trying to get information from anybody. It was quite a difficult process, put it that way.

THE CHAIR: Could we go through this sequentially? You provided a valuation in relation to Mr Spokes. In relation to that, when were you briefed by the Land Development Agency about that task?

Mr James: I think they were both at the same time. You will have to excuse me because all I have up here are the reports. I do not have any of the files at all. Any information is on the files, if any at all. That is all held on file in Canberra. My recollection would be that it must have been mid to late 2014. It might have even been the year before, just thinking about it. It definitely seemed to go on forever.

THE CHAIR: Is there some way of your extracting from that information some sort of time line about when you were first briefed and when you first—

Mr James: Yes, we could do that.

THE CHAIR: signed an agreement with the LDA to undertake the valuation?

Mr James: I will have to get the guys in Canberra to get that information.

THE CHAIR: That would be handy. You were essentially briefed on both jobs, Mr Spokes and the boat hire—the bike hire and the boat hire—at the same time; is that correct?

Mr James: Yes, it was all around the same time. I am sorry but the information that was forthcoming from the LDA was not helped by the lessees either—the amount of information that we needed. In working out valuations they are quite a simple process in some respects. The land was leased. There was no value needed to be prescribed there. With the improvements, all we needed to do was inspect on each occasion both

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premises. It would have taken months, I think, to try and gain entry to the sites. I am trying to remember, cast my mind back, what information was provided at what time, but the information that was forthcoming about both premises was over at least a year, I am sure.

THE CHAIR: So you provided reports on the bike hire business. What did you value the business at and the land?

Mr James: There was no value apportioned to the land because there was a rental lease in place. When we looked at doing the valuation—and once again this went backwards and forwards in trying to get an understanding of what they held and what the government or what the territory owned—as far as we understood, Mr Spokes hire had a rental lease. They were paying a rent of \$10,850 per annum. There were improvements there of roughly 200 square metres. We were able to provide a value for that based on a cost guide, but really the approximate value of the improvements was just based on functional, physical observations of those improvements, and they were relative to cost guides that we hold.

In regard to the business, once again the information took a long, long time. In fact, I would suggest that we provided a draft report probably even nine months earlier that had limited numbers in relation to the business, until they trumped up with some financials. I think they had provided figures for even the last year or two years. So we were able to determine that there was a gross trading profit of around \$320,000 and a net figure of \$160,000.

We always value businesses on a long list. Given that we had actually sold our own business in Canberra, we knew what sorts of multiples had to be added up—earnings before interest, depreciation and amortisation, which we have used for smaller type businesses. In this case we used a multiple of 3.25, which gave then a value for the business of \$520,000. But, as I remember, we only had about one or two years of financials.

THE CHAIR: The value of the business is not in effect impacted by the time that the lease has to run? Would that be a factor in it?

Mr James: No. We do that. That multiple that we use takes into consideration numerous things, including the sustainable profit but also the time line as well, given that I think it was in 2028 that the lease was due to expire. Each year as we would be going along I would suggest that our multiple would reduce so that in the end the business would be worth essentially zero on expiration of the lease.

MR COE: We heard earlier, I am pretty sure, that the acquisition was made by the business being valued at \$1—this is Mr Spokes—and the actual lease being valued at \$1.1 million. However, what you are in effect saying is that because there is actually no title over the property—it is just a lease—you can just roll that into the business valuation and you do not need to actually separate it?

Mr James: Yes. There are no interests in the land. The territory own that land and they leased it to Mr Spokes Bike Hire until the year 2028. The tenant has rights over that property. Because there is nothing in the crown lease that provides for any sort of

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compensation, unless there is a default by the lessee, then we looked at it and said, “Well, there should be some sort of negotiation if one party wanted to acquire, for example, the territory.” I cannot see how a zero value could be put to the business. When you say \$1.1 million—to the land, was it?

MR COE: Yes. That is how it was technically paid, I believe, according to the contract. We were not told.

Mr James: I struggle to understand that.

THE CHAIR: In relation to Mr Spokes Bike Hire, you said that this was a very protracted process, but I understand there was a meeting between the Land Development Agency and the three different valuers and you sometime after 6 October 2015. Do you recall the meeting?

Mr James: I do. I do recall the meeting. I do not remember the actual timing of it but, yes, I just remember the LDA and the three valuers being present.

THE CHAIR: The committee was told this morning that there was a meeting between the three valuers and the LDA, that Mr Dawes and Mr Hutch were present and that the tone of the meeting was, “Well, we’ve got your valuations. Is there anything that you could do to augment the valuation to increase the price or to increase the value of the valuations?” Is that your recollection of the meeting?

Mr James: Yes.

THE CHAIR: Do you recall being asked at that meeting whether it was possible to consider undisclosed cash as a means of increasing the value of the business?

Mr James: No. I should probably mention one other point, which is that I got from the very start that we all knew that there was an acquisition. There is not one set value for bits of a business or bits of improvement. Three valuers will all come up with different numbers. But generally there is a discrete range for the value. We were under no illusions, but there was always that the value was to be at the upper end of that range.

THE CHAIR: So you felt that you were encouraged to sort of go to the upper end?

Mr James: Yes, I think so. I always had that feeling that there was no point being at the lower end. That certainly was not going to help them, but at the same time we could understand that when it comes to acquisition sometimes you have got to get somebody out. You have got to pay a little bit more. I know that, from my experience of having done a lot of valuations for a lot different assets, we are consistent in this sort of predicament. But what we tend to do is that there is always a range and we go to maybe that point in that range where we feel comfortable in releasing a valuation.

THE CHAIR: In that meeting with the three valuers and the representatives of the LDA was there discussion about perhaps increasing the valuation through taking into account the expense that might be incurred by relocating the business or discontinuing the business and the impact that that would have on the owners?

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Mr James: No, I do not remember there being that. I am just trying to cast my mind back, sorry. I do not think there was a relocation in mind for the bike hire. I do not think there were any other sites that were particularly convenient for either the LDA or the lessee.

THE CHAIR: Do you recall any other issues that were explored about how you might bump up the valuation?

Mr James: As I remember it, I am sure I did not talk to the other guys about their values but I have the feeling that—and I am not sure whether the LDA actually mentioned it—they said we were all pretty well in a similar range. I think one of the guys—I think he is at CBRE now; he is not a property valuer—was an accountant. We probably looked at things in different ways, but I think our final numbers were in a similar range. The only way that we could sort of do anything to help or increase the value was if we had more accurate information. Probably after that meeting some more of that information was coming. As you know, there were planning problems and the like, but we did not have that earlier on. I know that.

THE CHAIR: Was that meeting only about the bike hire or was there a discussion about the boat hire as well?

Mr James: Sorry, I cannot recall. I am pretty sure it was both of them, but do not hold me to that. I really cannot remember now.

THE CHAIR: In relation to the boat hire, how did you approach the valuation of the business and did you take into account the issues of the sublease and whether or not that was legal?

Mr James: On this one, again, the information took a hell of a long time to come through. In this case there was no interest in the land. The territory owned it. We agreed on the tenant agreement. We ascribed the value for that really after inspection, and it was a nominal little amount of \$50,000. The actual business operation, I am trying to remember. The financials that were provided were quite limited. I think all we had somewhere was an indication of an annual net return there of \$97,500. I do not think they provided any other information to confirm it. We sort of then analysed that out over a year and we arrived at sort of a \$90,000 potential certainty of income. And, once again, you can use those multipliers, but we came up with three and then came up with a value of \$270,000.

We had some other information on the purchase price of the business. I think it was stated earlier that in 1997 it was \$230,000, and I think the claim was for \$356,000. Our number was somewhere in the middle. That was probably the best that we were going to arrive at. But, once again, it was a very difficult job with very limited information.

MR COE: Going back to what you said earlier about the valuation factoring in the time remaining on the lease, that becomes particularly interesting with this boat hire site because the person who actually had the lease got paid for the property, and then the business operator got paid for the business.

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Mr James: I am not sure what occurred. From our valuation perspective, and I am not sure if you have a copy of our report there—

THE CHAIR: We do.

MR COE: The key question I am interested in is whether the \$270,000 that you valued the business at also valued the time remaining on the lease till 2028 or—

Mr James: Yes, it takes into account the expiry date of the lease in 2028. There was an under-lease for a term of five years, which was basically between the later family members, who, I believe, were not getting on. But in this particular case it was not registered correctly, so we did not take that under-lease into account at all. We just based it on what they had up to 2028 and essentially worked off the net profit that the valuers received. I do not remember the figures, or they were very brief. All we had was an end number of 97,500.

MR COE: What we know is that the person who had the lease, as distinct from the business operator, got paid \$1 million, and then the business operator got paid \$575,000, so in total \$1.575 million roughly was paid for the government to take over that site and that business. Are you saying that the valuation you compiled for \$270,000 is for the site and the business?

Mr James: Yes, if that business had been run by the original party, as in the person whose name was on the lease, rather than the under-lessee.

MR COE: And that was worth \$270,000?

Mr James: Yes. If any money had gone to that under-lessee, it would have to have come from the lessee of the premises. So if we had valued it at \$270,000 for the business then a portion of that might have been provided in turn to the under-lessee. But they were not getting on, as I remember.

MR COE: In terms of how the Auditor-General has presented it, it seems that the \$270,000 valuation that you did was used to pay the sublessee, except that they ended up paying \$575,000, and then they used another valuation for the crown lessee for, in effect, the building that was generating a couple of thousand dollars a month in rent from the sublessee.

Mr James: The under-lessee was operating a business which was not registered, and I do not believe they had a right to run that business. But the crown lease does allow that the original lessee has the ability to conduct business. It just becomes a little bit wishy-washy, given that there are different parties involved, different people operating the business.

MR COE: We also heard today that the person who had the lease with the crown had development plans and ideas to redo the site at some stage. Can something like that be factored into a valuation, given the lease that was in place?

Mr James: No, in short. I think we met at the property to inspect it, and the lessee

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mentioned, I think, a restaurant and a few other things that were being developed. But we valued based on the crown lease only.

THE CHAIR: You met with the head lessee?

Mr James: Yes.

THE CHAIR: That is Mr Pat Seears?

Mr James: Yes.

THE CHAIR: You said, and I do not want to misinterpret it, that the under-lessee did not have a right to operate the business. I cannot remember the exact words you used. That leads me to ask whether Lake Burley Griffin Boat Hire, the business operated by the under-lessee, was a registered business.

Mr James: I am not sure whether it was a registered business, but I have got in my report that it was registered incorrectly. At the back of my mind, my thinking is that it was not registered, so they could not operate. The brother of Pat Seears—I think it was a brother—

THE CHAIR: Yes.

Mr James: The crown lease is quite specific in its requirements. It mentions nothing about having an under-lease. With that one between Pat and his brother, because it was not registered and was not allowable under the crown lease, we said it was not in existence. So we disregarded it. But at the same time Pat Seears, who was the lessee, is entitled to conduct a boat hire business there. So we just said, “Even though he’s not operating it, he would be entitled to operate that business and, given that we have the figure of \$97,500, we can come to some analysis as to how that would derive over a year.” Then we adopted a multiple again and came up with a value for the business of \$270,000. There was no value in the land. I cannot see how they would have paid \$1 million to—was that the lessee or the under-lessee?

MR COE: The lessee. The lessee got \$1 million and the sublessee, it is reported, got \$575,000, plus legal and accounting fees of \$10,000 and rental arrears of \$17,000.

Mr James: Given the crown lease, I cannot see how that was possible. We certainly had nothing in our report. That \$575,000 would not have been—because it is not registered. He has got a lease. There is an under-lease between him and his brother till 2003 with options out to 2022 but it is not registered, so I cannot see how it is even legal, because—

MR COE: With regard to undisclosed or undeclared cash earnings, is there absolutely any way that they can ever be included in the valuation?

Mr James: No. We would not—no. I think it was mentioned at the time that there were other separate accounts, but we said to them, “When this is in, you’re going to have tax problems as well.” So we just took it as the information we were provided with.

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MR COE: Would it actually be legal for a valuation to include—

Mr James: No. I would not do it. I do not think it would stand up in court. You still have to have all the financials. I doubt whether you would be putting out proper financials where there is undeclared income.

MS CODY: Did you have access to the business records of either the boat hire or the bike hire business?

Mr James: No. For the boat hire I do not have access to the drive here but I do not remember there being any financials at all. If there were, they were minimal. For the bike hire we had nothing originally and then we had that meeting, all three valuers, with the LDA, and thereafter some more information was forthcoming. We ended up getting the financials. I am not sure if that was for one or two years. But all we could do was come up with a value based on what we had. We are dealing with small businesses and, having sold our own, we sort of had a good idea of what value it should be. It makes me wonder how they got to \$1 million. If I could do that with my own business, I would love to.

MS CODY: I guess that all business owners think their business is worth more than—

Mr James: Yes. It is the same as property, isn't it?

MS CODY: That is right.

THE CHAIR: Are there any issues that you think we should have covered that we have not covered?

Mr James: No, I think that is all fine.

THE CHAIR: Thank you for participating today. We will send you a proof of the *Hansard* transcript for you to review. If there are any issues that you wish to raise, you can raise those with Dr Lloyd. Thank you for taking part in today's hearing.

Mr James: Should I send the time line for the instructions to Dr Lloyd?

THE CHAIR: Yes, that would be great. Thank you very much.

The committee adjourned at 2.45 pm.