



LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON PUBLIC ACCOUNTS

(Reference: [Inquiry into Auditor-General's Report No 3 of 2018: Tender for the sale of block 30 \(formerly block 20\) Section 34 Dickson](#))

Members:

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

TRANSCRIPT OF EVIDENCE

CANBERRA

WEDNESDAY, 30 MAY 2018

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

By authority of the Legislative Assembly for the Australian Capital Territory

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

WITNESSES

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

STANTON, MR BRETT, Director, Performance Audits, ACT Audit Office**1**

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Amended 20 May 2013

The committee met at 9.32 am.

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

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

THE CHAIR: Good morning. Welcome to the Standing Committee on Public Accounts inquiry into the Auditor-General's report No 3 of 2018: *Tender for the sale of block 30 (formerly block 20) Section 34 Dickson*. The Auditor-General, Dr Maxine Cooper, and the Director of Performance Audits, Mr Brett Stanton, are with us this morning. Thank you for your participation. Today's proceedings will be recorded, transcribed and broadcast. Witnesses will receive a proof *Hansard* transcript from the secretary and may request corrections.

Good morning, Dr Cooper and Mr Stanton. Before we begin, I am sure that you recognise and understand—you have been doing this for long enough—the privilege statement. Would you like to make an opening statement?

Dr Cooper: Thank you very much. I think for the opening statement, for the benefit of those listening and watching, if you do not mind, I will simply read the summary and the overall conclusion, if that is all right?

THE CHAIR: Yes.

Dr Cooper: On 15 December 2014 the territory sold block 30, formerly known as block 20 section 34 Dickson, to the Canberra Tradesmen's Union Club, the Tradies, for \$3.18 million excluding GST, and the exchange of contracts following negotiations resulted in the parties agreeing to payment occurring via a land swap arrangement. Settlement has yet to occur and contractually can only take place within 30 days after a certificate of occupancy is issued in respect of improvement works affecting the nearby car park on block 21 section 30 Dickson. A request for tender, RFT, was initiated and publicly advertised in the *Canberra Times* on 8 September 2012.

Two tenders were received by the closing date on 26 November 2012, one from the Tradies offering \$2.2 million excluding GST, and one from Fabcot Ltd, a solely owned subsidiary of Woolworths, offering \$1.6 million excluding GST. The Tradies were identified as the preferred tenderer in December 2012 and protracted negotiations occurred over a two-year period resulting in the land swap arrangement. Specifically, the Tradies agreed to pay the territory \$3.18 million excluding GST for block 30 section 34 in return for the territory agreeing to purchase from the Tradies block 6 section 72 for \$3.55 million excluding GST and block 25 section 72 for \$45,000 excluding GST. The territory will end up paying the Tradies approximately \$414,000 which is the difference in the value arising from the land exchange. That is the background material.

The audit overall conclusion is: the economic development directorate did not conduct the tender process for block 30 section 34 effectively. It did not achieve the sale objectives of pursuing an open, contestable and transparent market process, and there are indications that it did not achieve value for money from the sale. Significant weaknesses in the directorate's management of the tender means there is a high risk it

has relinquished considerable financial value to the Canberra Tradesmen's Union Club, Tradies. There is also a high risk that the directorate sold block 30 section 34 to the Tradies in breach of the Planning and Development Act 2007. There is no evidence that the decision to proceed with the transaction in the circumstances gave sufficient regard to these risks.

Systems need to be implemented to prevent this from occurring in the future. Importantly, all staff involved in undertaking land transactions also need to have clarity regarding expected behaviours through well-articulated values, particularly with respect to managing the integration of probity and commercial considerations.

THE CHAIR: Could I begin by going to one of the things that arise in your overall conclusion that the sale of block 30 section 34 could have been in breach of the Planning and Development Act? Could you, for the benefit of the committee and the benefit of the public, outline what is the Auditor-General's role in this when you find that there may have been a breach of the law? You do not make definitive findings that there was a breach of the law. Why is that and what is it exactly that you do in these circumstances?

Dr Cooper: In this instance we look at a probable situation, and to determine a breach of the law is the next question legally. So we stop at the probability being there and, as we said, there is a risk and now there may be information we did not have access to. We think we had access to everything. There may be other circumstances that other people will look at and say, "But this applies to it."

We have carefully said there is a high risk based on what we have got and our judgement is that the RFT process was breached to the degree that it was a direct sale. If it is a direct sale—and Mr Stanton will refer you to the part in the document—it then requires the government or the minister to give approval rather than the agency being able to execute that transaction.

Mr Stanton: That is right. I would add to that by referring to paragraphs 2.104 to 2.107 of the audit report, and they refer to or encapsulate the advice from the Australian Government Solicitor. We received advice from the AGS for the purpose of this audit, and it was the Australian Government Solicitor's advice that, with the departures from the RFT, it would be reasonable to conclude that the eventual sale departed so far that it would be regarded as a direct sale. That is the AGS's opinion. We included that in the audit report.

Dr Cooper: It was also our opinion. We had auditors look at this. We had AGS independent from the ACT system advice, and then I and the director also looked at this and said, given the departures—and that is always a judgement—there were not just one or two, there were so many that we felt that it was a significant departure. Also, there is a quote from the ACT Government Solicitor. Could you refer to that?

Mr Stanton: In October 2014 there is advice coming through from the ACT Government Solicitor's Office, and a representative of the ACT Government Solicitor, to individuals within the economic development directorate which highlighted the risks of the process to date and that the departures from the changed process could reasonably be inferred to be no longer offering to the market.

Dr Cooper: We refer the committee to 2.98, and for the benefit of the record I will read this out:

On 28 October 2014, in an email to the former Land Development Agency Director of Sales, former Deputy Director-General, Economic Development Directorate and an Economic Development Directorate Officer—

THE CHAIR: That is three members? That is three separate people?

Dr Cooper: Three separate people in that email.

THE CHAIR: Some people sometimes wear multiple hats. I just wanted to clarify.

Dr Cooper: My understanding is that these are three separate people in the organisation. I continue:

... the ACT Government Solicitor's Office advised:

... These divergences from the initial offering in the RFT can possible be viewed—

it is not definitive—

as the normal post tender negotiations that the Territory engages in with most transactions.

This really only becomes an issue if a reasonable person (say the Auditor General) considers that negotiations have gone so far that the terms of the sale no longer reflect the offering to the market ...

As you know, section 240 of the *Planning and Development Act* ... prohibits ACTPLA issuing a Crown lease via direct sale except in circumstances set out in the Act and Regs. If the terms of sale are so divergent from the terms of the RFT, it may be considered a direct sale rather than the outcome of the RFT process.

The question we had was: what would be some of the normal things you would expect from a negotiation? Our AGS colleagues—if I can find it—actually outline that. It is usually to do with timing.

Mr Stanton: Yes. In paragraph 2.105 the AGS advised:

Tender negotiations are common in clarifying tender responses ... Clarifications are typically in relation to matters that have arisen during the tender evaluation, or variations or alternatives identified by the tenderer in its tender response ...

That is some of the advice.

Dr Cooper: Over the page there are some clear dot points. The types of things that are occasionally negotiated—their experience—include:

- delayed completion dates

- tenders submitted subject to zoning changes
- tenders submitted subject to development approval
- tenders submitted subject to detailed due diligence

The key constraint on tender negotiation in any context is that the items of negotiation are identified as part of the tender evaluation.

THE CHAIR: What you and the ACT Government Solicitor touched upon and what AGS touched upon in more detail is that the table of changes, which is table 2.5, a substantial three-and-a-bit pages of changes, was so significant from the request for tender that it no longer resembled a request for tender?

Dr Cooper: That is why we have come to the indication that it was a direct sale, yes, akin to a direct sale.

THE CHAIR: And if it became a sale who exercised the decision-making power to transfer the lease? This is not a reflection upon the purchaser. It is a reflection on the vendor. Is that right?

Dr Cooper: That is absolutely correct, yes.

THE CHAIR: The purchaser can ask to his heart's content?

Dr Cooper: A purchaser can ask for an enormous number of changes, an enormous number of things. The responsibility sits with the agency selling or purchasing something to have due diligence and probity of highest regard.

THE CHAIR: Just before I hand over to other members of the committee, one of the take-out messages from this—and I suppose this committee is dealing with a number of issues in this space—is: do you see parallels between the processes here and the processes that we saw in certain land acquisitions of the LDA in terms of paperwork and paper trails that explain why things were done?

Dr Cooper: I think I can summarise it in what I am about to say: governing agencies' responsibilities include the basic obligation to demonstrate—and I underline the word “demonstrate”—prudent use of public resources, in the former case and in this case, to adequately document their processes, the analysis, the range of considerations and the rationale for their decision and actions. And in both cases that was missing, that clear documentation.

THE CHAIR: Because both this report and the previous report refer to people by their title, not to individuals by their individual identity, is there a commonality? Are the same players involved? I know they are different agencies.

Dr Cooper: At the executive level the same person was in charge of the organisation over both audits.

Mr Stanton: I do know that this process, run for the purposes of this audit, was an

economic development directorate process. And the EED along with the LDA reported to senior executives.

THE CHAIR: The one senior executive? Were they the same people across this entire time frame?

Dr Cooper: This one did not involve one of those people to the same degree as the previous one.

Mr Stanton: To the same degree as the previous one. This process was undertaken between 2012 and 2014. There was a departure from the organisation of one of those senior executives in the period.

Dr Cooper: I think the issue for us to focus on, or audit has tried to, is the systems in place. Regardless of who sits where, the systems should be so robust—

THE CHAIR: That they should drive themselves?

Dr Cooper: that any issues should be able to be picked up. And in both cases there are issues continuously in terms of the processes. It is not like somebody had a moment one day and things did not go right. There are just many issues that should be looked at in a systems way.

MR PETTERSSON: In the report the valuation of \$3.18 million for block 30 is disputed by some. Did you look into the valuation at all?

Mr Stanton: We did, to the extent that we understood that valuation was done in November 2012. We note that advice was sought by the EDD officers in relation to that advice in April 2013, from another firm. We understood those pieces of advice. Then we got advice ourselves from Capital Valuers, a valuation firm who provided advice to us. I do not want to put words in their mouth but the valuation was comprehensive and detailed and the assumptions were clearly explained.

Dr Cooper: However, whether that is the absolute, precise valuation, audit would not make a comment on. The really important thing from audit's perspective if you go to paragraph 1.29 is that the director-general agreed to particular prices for the different blocks. Our starting point is: \$3.18 million was agreed to for block 30 and we took that as a basic premise. We did not go and say, "No. Actually the valuation is wrong." We did not do that. The only time we used that valuation was to ask the fundamental question: if it was \$3.18 million and then all these changes occurred through the RFT, would that affect the valuation? That is a very different question audit is asking from: is this the right valuation? We were accepting the agency's valuation. Did the changes make a difference to that value? And that is the important audit question.

I would emphasise that the people questioning that valuation actually in this audit were people who could have had another valuation, if I am correct. They were the people in charge who are questioning that valuation now. The questions for audit are: why was it not questioned at the time? And why was there not another valuation? It is a process issue. If they are questioning it now why was it not questioned then?

THE CHAIR: The \$3.18 million was determined by valuation at the time a request for tender went out?

Mr Stanton: Correct.

THE CHAIR: But they received only one valuation?

Mr Stanton: That is correct. I believe the date of the valuation was 5 November. The RFT had already gone out and the valuation was in train and received prior to the tender responses on 26 November.

Dr Cooper: And for the listeners' benefit who want to look up something, it was the MMJ valuation, and we have never questioned that because that is the basis on which the agency then progressed.

THE CHAIR: Because nobody else questioned it either?

Dr Cooper: No, and it is not audit's role to question that particular issue.

MR COE: Just broadly, did the ratepayer or taxpayer get a good deal out of what has transpired?

Dr Cooper: We have raised doubts about that, but that actually is tied up with not necessarily the probity issues and moving away from the RFT but what was just mentioned by Mr Pettersson, the value of what was put there. That we have questioned and it has to do with two key variables, one being access and one being car parking, as to what ends up on that site.

Mr Stanton: The third variable is: the audit conclusions or key findings talk about potentially up to \$2.4 million to \$2.65 million in value being relinquished. Up to \$1.57 million or so relates to car parking for block 30. \$200,000 to \$300,000 relates to an easement on block 30 that is no longer required. And \$830,000 relates to changed circumstances for block 6. It was valued on the basis of an 18-month rent-free period. It has ended up as a 42-month rent-free period.

Dr Cooper: Would you like us to go through where they are in the report, to assist you?

MR COE: No, that is fine. In terms of the potential relinquishing of that value, does the territory have any control over what it amounts to or is that all in the hands of a new owner of the site?

Dr Cooper: I want to emphasise that the territory had total control over what they could achieve or could not achieve in that negotiation. It is what they then accepted. In terms of going forward, the car parking issue is the one area that the territory needs to focus on.

Mr Stanton: The negotiations with the Tradies unfolded on the basis of the Tradies offering 84 replacement car parks. For the site itself the initial RFT indicated that the existing public car spaces needed to be replaced in addition to any car spaces that

needed to be put in relating to the development.

If you put in a mixed use development for residential units going up five levels, ground floor retail, that is supposed to come with a certain amount of car parking. And there is a formula in the codes and the like, planning codes, as to what that needs to be. They needed to provide those car spaces relating to the development and the RFT identified that they needed to put in replacement car parking for what was lost with the existing surface car parks.

An addendum to the RFT was put out by the economic development directorate which identified that, notwithstanding that the RFT asked for the full replacement amount, EDD would support a figure of 84. The Tradies' offer in response to the RFT clearly stated that it was conditional on the basis of providing 84 replacement car parks.

If the Tradies provides 84 replacement car parks then that figure of \$1.57 million is the figure that we are working off. If the Tradies offers anything more than 84 replacement car parks, that would ameliorate or reduce potential loss.

MR COE: Was there any potential for corruption or ill-gotten gains in this process?

Dr Cooper: The audit did not interrogate people's bank accounts or any of that kind of thing. We actually took it on the evidence that we had within the agency.

MR COE: In effect, because you have not looked at absolutely everything, you cannot answer that question?

Dr Cooper: That is correct, and it would not be audit's role to interrogate absolutely everything in terms of looking at bank accounts, whether anybody received anything. We had no evidence put before us that gave us an indication to do that but we cannot exclude anything.

THE CHAIR: Whose role would it be?

Dr Cooper: We would refer it to the police if there was a shred of evidence in that direction.

MR COE: Was there any evidence?

MS CODY: But there was not?

Dr Cooper: No, we did not specifically look for that, but in what we had we did not see anything. If we had seen something in the evidence we had, we would have referred that to the police. But that does not mean there was not. It is just that in the material we had we did not see anything.

MS CODY: That is all you can really comment on, though, the material you—

Dr Cooper: Yes, exactly.

MR COE: In light of that, what was the motivation for relinquishing so much value

from the taxpayer or ratepayer to a third party?

Dr Cooper: I think that question is best put to the officials who were in charge at the time. But we also saw quite a strong imperative to try and get closure on the deal. Instead of taking a deep breath as an organisation and saying, “Should we go out to retender,” it was, “Let’s try and finish this.” And although they were trying to do it, it took them years. They would have been better off retendering. The momentum seemed to be great to finish the arrangement.

Mr Stanton: The audit conclusion talks about a strong and ongoing focus on achieving a negotiated outcome with the Tradies.

MR COE: You discussed that, but what was the actual motivation or reason for that? Did you see any documentation which gave any idea why that might be the case?

Dr Cooper: It is put forward by one person that the market was not that good at that particular time; so they were taking the opportunity while they could. That is my paraphrasing one of the responses. But no, considering it took so long, it is perplexing why it had to continue the way it did continue.

MR COE: Who, in effect, was driving that?

Dr Cooper: I think the people within the organisation collectively. I think it is a collective thing, a collective momentum.

Mr Stanton: There were different executives and staff involved over the entire two-year period. It was kicked off with some people and some executives. December 2013 seemed to be a marker. After the RFT went out in September 2012, December 2013 was a marker where the basic terms of the deal were struck, the dollar amounts, what was to be provided in exchange and the like. And then after that through to December 2014 the so-called details were sorted out. There were different people, executives and officers, involved over that period.

Dr Cooper: It seems momentum within the culture of the organisation was: we have to conclude this particular one.

MR COE: And was there reporting back to the minister or to cabinet throughout?

Mr Stanton: In chapter 2 the evidence that we have got or the advice that we have got is that, specifically in relation to whether the former director-general had sought and/or received permission from cabinet or the minister for the changes to the original RFT, the former director-general advised, “I would never have in those cases gone to cabinet.” They would not have made any commentary on that. They would have let the process go through.

Dr Cooper: That, for the benefit of listeners, is at 2.116.

MR COE: But were there memos or briefings, decisions or directives that came from the minister or ministers or their offices regarding the sale of this block?

Dr Cooper: There was a directive about the process to be used. That was very clear. And we have quoted there “open, transparent process”. But in terms of who should be selected as part of that process, we found no evidence of any direction, and in fact, we talked to a minister—and I think it was the Chief Minister—when the minister’s name was mentioned in some material. Let us go directly to where that is. The minister responded that they did not give directions specifically for the tender to be given to any particular person. I think if we could just—

Mr Stanton: Paragraph 2.123 states in relation to discussion with the Chief Minister as part of this audit:

The Chief Minister also emphasised and reiterated the government’s intentions for the sale, which were to maximise value through an open and contestable process.

That is in paragraph 2.123.

MS CODY: Can I bring you back to 2.122, where it says:

The former Director, Sustainable Land Strategy advised that there was no interference in the tender process by the government.

That seems like a relatively important point to be made. Was that point raised with you and, if so, how was it raised with you? Was it put forcefully that there was no government interference? Was that just an offhand comment?

Dr Cooper: It was a comment amongst many comments but, once a government or minister’s name is mentioned in any form like that, we seek complete clarity by talking to the person to whom it is referenced. We have done that. We hope 2.123 provides that clarity.

MS CODY: 2.123?

Dr Cooper: Yes.

MS CODY: But in 2.122 there are definitely comments that say there was no interference in the tender process by the government.

Dr Cooper: And the question for audit is: why are you telling us this?

MS CODY: Sorry?

Dr Cooper: The question for audit when people just give out information—and you wonder why this kind of information is being provided right now—is that we just need to be very clear, if other names are mentioned, that their perspective is the same.

MS CODY: I did not see a name mentioned there; I just saw a comment. Following on from Mr Coe’s line of questioning in regard to money, you were mentioning that there could be a potential loss of valuation. Has the Downer site that was also included in the deal been taken into consideration? I note in your report it was, I think, a very modest price paid by government for that particular site, which is quite a large

site, from memory. There used to be the observatory on that site, and the club was on that site. From my memory, it was quite large and to pay, I think it was, \$40,000 seems like a—

Dr Cooper: \$45,000.

MS CODY: \$45,000?

Dr Cooper: Yes.

MS CODY: That seems a very small price to pay. Has that been included in your variations in—

Dr Cooper: That has been respected and, as I said before, we did not question the \$3.18 million in terms of: that valuation—was it correct? If you go to paragraph 1.29, the starting point for this audit was the director-general agreed for block 30, \$3.18 million, and for block 6, \$3.55 million, and \$45,000 for block 25. The starting point for us was: this is what they agreed to at that moment in time.

In terms of the \$3.18 million there were things that changed relative to that. There were concessions made. We had no reason to see that there were any concessions made relative to the other two prices. The variables did not change from our perspective in terms of the value of that. If they now view \$45,000 as particularly low, they would probably have viewed it at that particular point in time and should have documented and justified it so that you had transparency.

MS CODY: I would personally imagine—this is a personal view—that \$45,000 for a huge block of land in Downer would be a very small price to pay.

Dr Cooper: Yes, but it is a concessional lease which puts it into a different category. I think it is all around the concessional lease difference which is a bit different from walking in and just buying a block of land that does not have a concessional lease.

Mr Stanton: And the market value of the block was in the order of \$636,800 and the payout of the concessional lease status was \$594,535.

Dr Cooper: So we are assuming—

THE CHAIR: To de-concessionalise it would take another half a million dollars on top?

Dr Cooper: Yes. So we are imagining that, when they did the work that the director-general signed off on, they would have considered all that, yes.

MR PETTERSSON: One of the things I find strange listening to this is that you talk about a messy process and a lack of process but the valuations remain fixed. Inherently with things changing, you still keep the initial conclusion there has been a loss of taxpayer money?

Dr Cooper: Based on their own calculations. If they had thought, as the process went

over years, “We’d better get some more valuations,” they should have done that and it would have given everybody transparency. It is not audit’s role to look at the value of the land now and say, “Comparatively, you did or you did not get a good deal.” It is their job to do that when they are doing the negotiations. Then if things change, as is the case with block 30, they should make clear what those changes mean in terms of value. They need to do it.

MR PETTERSSON: Why did you say things are massive, things have changed, but you keep the initial valuations in place to determine a loss of taxpayer money?

Mr Stanton: I will just elaborate. With reference to block 6—and I will just draw your attention to chapter 3 of the report and paragraph 3.56 onwards—in April 2013 a professional services firm provided a valuation report in relation to that particular block. It valued it on two scenarios: leaseback with 18 months, net rent-free period, and vacant possession. If it was a leaseback with 18 months, they valued that block at \$3.25 million. If it was vacant possession, they valued that block at \$3.55 million. We did not have any basis on which to question that valuation. Our own Capital Valuers came in and advised us that that valuation, as far as they were concerned, was—I do not want to put words in their mouth—sound. That is fine.

There was a value of \$3.25 million or \$3.55 million but neither of those scenarios was what was actually agreed to at the end of the day. It was not vacant possession. It was not leaseback with 18 months; it was a leaseback with 42 months. That took that value down. Using their figures, using the figures in the April 2013 valuation report and the methodology outlining that April 2013 report, a figure of \$2.42 million was provided in relation to block 6.

Dr Cooper: At paragraph 3.60.

Mr Stanton: The difference between \$3.25 million, which was the lower amount, and \$2.42 million is \$830,000.

Dr Cooper: We have tried to use their own figures that they had at the time of the negotiations.

MR PETTERSSON: My central point is this, though: you are using the numbers that were agreed in the initial valuations but then you go on to say that things are materially different because of poor processes. But then you keep the initial valuation as the number you determine as the loss to the territory. I find that a strange juxtaposition.

Dr Cooper: Let me just explain if I can. I will have another go. The \$3.18 million is for a parcel of land that somebody agrees to sell right now. Then what happens is: there are changes made that allow uses on that. It was a million dollar bond, the planning things were locked in. They are all freed up. What we asked was: “Do they make a monetary difference?” And the valuer said yes. We have no evidence whatsoever that things changed for these other blocks of land at that particular moment in time when the negotiations were being held.

MR PETTERSSON: In those examples you talk about things that potentially

increase the price but this report alludes to things that would have decreased the price—things like having to maintain a road on a block, the use of private car parks. Those valuations have not been taken into account in what is going on here.

Dr Cooper: I think they have. Yes, all of them.

MR PETTERSSON: In the context that there were very poor processes here?

Dr Cooper: And if you go to table—let us go through it. I am happy to go through it definitively. We have taken everything into account that we could in terms of the fundamental question: did this affect?

MR PETTERSSON: The two things that stand out to me are the road on the block and the car park. It is well reported in your report there is no real documentation about that which, due to the poor processes reporting on it, is entirely believable. But if you are saying that there are entirely poor processes around here—and they have got initial valuations and things are changing but we are just going to keep this initial valuation even though with the poor processes things are completely out of whack with those initial valuations, and you talk about how things are changing and there has been value surrendered to the Tradies—there are numerous instances in here where they are talking about value being surrendered by the Tradies to the government but none of those are ever getting considered; yet the initial valuation is just given the rock solid: this is how much money has been lost by taxpayers.

THE CHAIR: What values were surrendered by the Tradies to the government?

MR PETTERSSON: That is a catch on the terminology. The valuation according to a couple of references in here did not have a road on block 30 which to someone that was not the Tradies would be required. And then there were references to—

Dr Cooper: If it is possible, could we go to the specific part? That would help us.

MR PETTERSSON: 3.64 which is at page 90 of the report.

MR COE: 3.26.

Dr Cooper: Thank you, we will go there. At 3.64 there is a lot being said and it is not our words. Could you highlight the part?

MR PETTERSSON: Let us go to 3.26, as Mr Coe just said. This one is about the car park. There is talk in your report of the Tradies utilising their current private car parks and turning them into public car parks to make sure Dickson has the right number of car parks. Everyone knows Dickson has got car park strains. Due to the poor processes that you continuously allude to, is it possible that those conversations were occurring and then the valuation would have changed but that has not been reported?

Mr Stanton: What we do know is that there was discussion in relation to the temporary parking arrangements. Whilst I believe it is block 21, block 21 was expected to be redeveloped. They were certainly looking for short-term arrangements for parking in the Dickson precinct. And there was a discussion with Tradies with

respect to their site being accessible for those short-term parking arrangements. We have not seen any evidence in relation to longer term arrangements for that parking, for the replacement parking.

It has been advised or asserted that the Tradies' response was predicated on 84 replacement car parks and we also note, and we quoted in chapter 2, that the Tradies indicated that this was—I will just try and find the wording for us—in paragraph 2.30, words to the effect of a consolidated redevelopment, “critical mass for a substantial mixed use development” and allusions to or discussions of a broader sort of development involving some of the other Tradies' blocks. So we know that that was asserted but there is no detail on how that is to be undertaken or when that is to be undertaken. It is certainly not in the RFT tender response.

To get back to your initial question, we did not see any information or any evidence of longer term car parking arrangements. We certainly did see discussions about short-term parking management whilst block 21 was to be redeveloped.

THE CHAIR: One of the caveats on the sale of block 30 is that it is not finalised. Has there been a deposit paid?

Dr Cooper: We do not know.

THE CHAIR: It has been agreed that it is not finalised and it is dependent upon work on the other side of Dickson being completed before the block can be sold or before the block can be developed—or both?

Mr Stanton: Before the sale can be settled.

THE CHAIR: Is there any legal impediment to the government pulling out of the sale?

Dr Cooper: I think we would have to leave that for the government to advise on. Just on that, we did make a recommendation, committee members, that consistent with recommendation 1 the current entity accountable for the ongoing activities, the Environment, Planning and Sustainable Development Directorate, should develop and implement mechanisms to mitigate them. But we also have spoken to them in terms of briefing the minister on the Planning and Development Act and any implications for that. We have actually said that we did not answer the questions you were asking. We put it back to the agency.

MR COE: What evidence did you see regarding the negotiations and the leaseback of block 6 section 72?

Mr Stanton: Little evidence, and we make the point in the latter part of chapter 2 about the lack of documentation associated with the negotiation process. We refer to the number of meetings that have been asserted occurred between representatives of the Tradies and the government. We certainly know activity was happening over that period. As to the basis of those negotiations, how it unfolded, why this was being considered and discussed, we make the point in the report that there is very little documentation to support that.

Dr Cooper: Just on that—and Mr Stanton may know the exact number—I recall through various documents the Tradies actually advised they must have had around 40 meetings. We would have expected some documentation about what was happening at those in terms of the negotiations.

MR COE: With regard to the scenarios about the leaseback and vacant possession where, in effect, the amount paid or offset was based on vacant possession—obviously a lease was then drawn up for 42 months—that to me seems to be a black-and-white situation whereby somebody somewhere has consciously deviated from the valuation?

Dr Cooper: We made no comment. We just put the facts out and so—

MR COE: Is there any information or any evidence whatsoever to support why you would pay for vacant but then give a lease back?

Mr Stanton: We did not find contemporaneous documentation and evidence in relation to that but I would bring your attention to paragraph 3.64 and the “Material for an interview under oath or affirmation”. This interview was clearly conducted in October 2017. It was years down the track. It was not contemporaneous. It might provide some insight as to the thinking at the time.

Dr Cooper: But we do not have information from the time that displays any evidence in that regard.

MR COE: But who actually made the call as to what price was paid or was offset for block 6?

Mr Stanton: In December 2013 the terms of the deal, the blocks, the prices, that advice came from EDD executives through to the director-general and that was agreed to in December 2013. The director-general endorsed the financial terms of the negotiated land swap and then the so-called details were sorted out over the next 12 months.

THE CHAIR: That is the \$3.1 million, the \$3.3 million and the \$45,000?

Dr Cooper: The whole package, yes.

MR COE: In terms of the amount payable or offset to the Tradies, have any payments actually been made to the Tradies as yet?

Mr Stanton: We do not know.

Dr Cooper: We did not ask that question.

MR COE: If they have not actually settled on the block and there is an amount owing on it, the offset could potentially remain for years as opposed to an instant transaction. With regard to the whole operation, was it engineered or did anyone believe that it was engineered to be sold to the Tradies?

Dr Cooper: We have put the evidence here as far as audit can but that kind of a question, I think, is outside the scope of audit.

MR COE: Did you review any of the other valuations that were conducted on the section 72 block?

Mr Stanton: Yes, we sought advice from Capital Valuers in relation to those valuations and Capital Valuers—I will try to find the precise wording.

Dr Cooper: Just give us a minute and we will find the wording and give you the paragraph.

Mr Stanton: Capital Valuers did not question those valuations or provide any advice that they were not sound.

Dr Cooper: They looked at the method and there was nothing in the method that they could see was not sound.

MR COE: Did you see any of the other valuations for block 25 especially that were not accepted or not used as a basis?

Mr Stanton: We are aware of the April 2013 valuation for both block 6 and block 25 and they were the ones that were referenced in the negotiation detail.

MR COE: But block 25 section 72, the February valuation?

Mr Stanton: February 2000 and?

MR COE: 2011.

Mr Stanton: We are aware of that but that was not referenced during this particular negotiation process; so we did not consider that in detail.

MR COE: I guess the relevance of this is, given that the government had been in discussion with the Tradies for some time with regard to transfer of land, including publishing a master plan that talks about the expansion of the Tradies into the adjacent car park, is it plausible that people within government knew that it was the minister's intention that the master plan would be implemented and facilitated by the sale to the Tradies?

Dr Cooper: That is a question I think you would have to ask the people within government at the time and also the minister.

MR COE: Did you look into the proposed Territory Plan variations for Dickson?

Dr Cooper: No, we did not. We focused on the transaction.

THE CHAIR: Could I ask: the government sent block 30 out for request for tender because the government had decided that it wanted to decouple—there had been a

discussion, as Mr Coe alluded to earlier, about a land swap. And you touched on that. Then there was the request for tender for block 30. Where in the process did you see that the land swap was back on the table?

Mr Stanton: Precisely when that occurred between December 2012 and December 2013 is not clear to us—sometime during that period.

THE CHAIR: Sometime in that first year of negotiation it was back on the table but you have no documentation, you have cited no documentation?

Mr Stanton: No.

Dr Cooper: No.

THE CHAIR: The decision made by the director-general about the values, \$3.1 million, \$3.3 million and \$45,000 in December 2013, was that the first time we see a discussion of the land swap or was there stuff before that?

Mr Stanton: I cannot recall. I can state that there was little documentation over that two-year period. There was some documentation and we did have access to some emails. The terms of the swap did arise sometime between December 2012 and December 2013, and I cannot tell you precisely when. There might be some documentation, might be some email where it is first mentioned, but I do not know that offhand now.

THE CHAIR: Could I go to the issue of documentation. There seems to be a constant theme that there is no documentation. It has been asserted to the committee that there was documentation, that an officer who left partway through had all his stuff boxed up and it was sent off somewhere. If that is the case and you cannot find it now, are we looking at breaches of the Territory Records Act?

Dr Cooper: That is a question for the agency if it absolutely exists. We will say that we looked ourselves. We went to emails. When somebody said, “That really exists,” and they gave us some specific time, we would go back. We actually asked the current agency to go and see if they could find it because it is in audit’s interests to get as much as we can. And we simply could not find some of the material people are saying exists. If it is in a box somewhere, that is really an issue for the agency in terms of what has happened to it.

MS CODY: But there was some documentation of the RFT?

Dr Cooper: We have had—

Mr Stanton: Particularly the RFT—

Dr Cooper: Yes.

Mr Stanton: and the processes in late 2012. Just to support Dr Cooper there, we asked for TRIM documentation and G drive or shared drive documentation. We got that and we took that material away, analysed it. We sourced additional emails,

contemporaneous emails, at the time between key offices. And then we asked the directorate, “Is there anything more? Can you help us?”

Dr Cooper: One of the documents we had real problems finding and that we really hunted, and eventually I think we got it, was the signed contract. We even sourced legal material to try and put the sequences of events together.

MS CODY: There is documentation of the—

Dr Cooper: Yes, there is documentation but—

MS CODY: But there is some lacking?

Dr Cooper: A lot lacking, not some. I would say a lot in this case. For instance, with the 40 meetings or whatever, you would expect some notes to help you understand why things were evolving through discussions. As I said before, that is a fundamental issue around governance arrangements and integrity of a process. It is more than—

MS CODY: You would only expect notes if it was directly relevant to either the RFT or negotiations thereof. If it was meetings on another matter you would not expect—

Dr Cooper: With the Tradies, as far as the advice we have is concerned, those meetings were focused on this issue. Yes, I would support you fully if they were on something else. But when we talked to Tradies, these were focused meetings on this.

Mr Stanton: The negotiation.

MS CODY: On the negotiation?

Dr Cooper: On the negotiation.

THE CHAIR: Do the Tradies have records of those meetings?

Mr Stanton: Maybe. We did not ask for those.

THE CHAIR: You did not ask for those?

Dr Cooper: I am not sure.

THE CHAIR: Is that outside your remit?

Dr Cooper: No. We could have asked for it. I do not know whether we did or did not. I would have to go back.

THE CHAIR: But you would expect that if officers attended a meeting that they would have a notebook or some—

Dr Cooper: Or just an email. You send an email. The—

THE CHAIR: Did you see officers’ notebooks?

Dr Cooper: Apparently there is some material in this box of material that might be somewhere but we have not had access to it. That has been put to us too, that—

THE CHAIR: There might be notebooks?

Dr Cooper: Somewhere, but we cannot find them and nor can the agency. Since we are talking and there may be public servants listening, I think the most efficient thing you can do is send yourself an email and then take a copy of the email and put it somewhere in an electronic system. Then you have got it time stamped and your memory of the meeting immediately. It is not a big ask.

THE CHAIR: Could I ask a completely different question. I think I know the answer to this. There was discussion about the role of the probity officers in this. Do you have a feel for how engaged the probity officer was or officers were in this process?

Dr Cooper: There are two issues there. We have presented material about the probity officers, and we have taken the GSO's advice that they were providing advice on an as-needs basis, I think I am categorising correctly. And one of the things that we do raise is, with one person, the probity advice was such that they were assuming there was only one tenderer and that therefore that person constructed their advice accordingly. That went back to the agency. Somebody in the agency should have said, "No, my probity adviser, there were two entities," and I know you would have got very different advice.

As legal people, as technical people, the accountability rests with the agency to blend that and make sure there is effective communication back and forth all the time, and if a probity adviser were to give advice around one tenderer, and the person receiving it goes, "There were two," you then do not accept the advice because it is a different circumstance. I think there is some of that.

There is also misunderstanding of roles. Again, those roles were not, as you would expect for a project like this, clearly articulated at the beginning, and there was confusion.

THE CHAIR: There are some questions for the Government Solicitor. I am mindful of the time. If members have other questions I am sure that the Auditor-General will be prepared to take them on notice. Thank you very much for your attendance here today. As you know, there will be a proof *Hansard* which will be made available to you for comment and correction, if necessary. Thank you very much for your attendance today.

Mr Stanton: Thank you.

The committee adjourned at 10.32 am.