



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 PETTERSSON (Deputy Chair)
MS B CODY
MR A COE

PROOF TRANSCRIPT OF EVIDENCE

CANBERRA

WEDNESDAY, 11 JULY 2018

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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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Amended 20 May 2013

The committee met at 10.01 am.

DOCKER, MR ROBERT, Chief Executive Officer, Tradies Group

THE CHAIR: Good morning and welcome to the second public hearing of the Standing Committee on Public Accounts inquiry into Auditor-General's report No 3 of 2018: *Tender for the sale of block 30 (formerly block 20) Section 34 Dickson*. Today the committee will be hearing from Mr Rob Docker, the Chief Executive Officer of the Tradies Group. Welcome, Mr Docker.

Before we begin, I advise you that today's proceedings will be recorded and transcribed and that they are subject to parliamentary privilege. After the hearings you will receive a proof *Hansard* from the committee secretary for comment. I ask whether you have read and understood the pink privilege statement.

Mr Docker: I have, thanks, Mrs Dunne.

THE CHAIR: Thank you very much. Good morning, Mr Docker, and welcome to these hearings. Would you like to make an opening statement?

MS CODY: Before we begin, I would like to declare that I have known Mr Docker for probably 20 years. I would like that recorded in the *Hansard* before we get started.

THE CHAIR: Thank you.

Mr Docker: Thank you, Mrs Dunne. I am the CEO of the Tradies Group in Canberra. Thank you for the invitation to make an opening statement. If you would bear with me, it will probably take six or seven minutes.

THE CHAIR: That is fine.

Mr Docker: And, of course, I also have a hard copy for each of the members of the committee. This is my opening statement in relation to the inquiry into Auditor-General's report No 3 of 2018: *Tender for the sale of block 30 (formerly block 20) Section 34 Dickson*. Before I start, I would like to say very clearly to the committee that I appreciate what the objects of the committee are and that this inquiry does not necessarily relate directly to the Tradies Group but is focused on the content of the Auditor-General's report with regard to the transaction.

I open by saying this: the Tradies are pleased that the Auditor-General's report confirms that the Tradies behaved in an entirely appropriate manner in the course of this transaction. It is disappointing that some have sought to politicise this transaction for their own purposes and that the media has chosen to report on the transaction in a manner which the Tradies regards as unfair and inaccurate. In particular, it is disappointing that unsubstantiated allegations, found by the Auditor-General to be unproven, have been carried through by the media.

By way of summary, I note the following: this transaction was not a direct sale. The Tradies wanted to buy block 30 directly from the government. However, the government refused our application for direct sale in favour of a public tender process.

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The valuation relied on by the Auditor-General is inherently flawed. I repeat: the valuation relied on by the Auditor-General is inherently flawed. Property valuation is a matter of opinion about which competent experts may disagree. In fact, the market is the best indication of the value of the property and the views of the market are reflected in the only two tenders submitted for the block—that is, the true value of the property was, at best, between \$1.6 million and \$2.22 million.

While there were 20 parties who initially expressed interest, only two parties submitted a response. Of the two tenders, the best value for money outcome was for the Tradies to be selected as the preferred tenderer, as the Auditor-General acknowledges very clearly in her report.

Having been selected as the preferred tenderer, the negotiations with government, which are a normal post-tender process, resulted in the Tradies increasing its offer by almost \$1 million in return for some concessions from the government. The Tradies were able to offer an additional benefit to the government by negotiating the sale to include land that the government was interested in acquiring. I will come to what that has now turned into a little later.

From the Tradies' perspective, this was an entirely ordinary commercial transaction. There is nothing extraordinary about it; it was an entirely ordinary commercial transaction. We have been ready to settle—we continue to be ready, willing and able to settle—and have always wanted to settle for it, but for a range of other issues we have not been able to do that.

There are now some other matters I want to address in more detail. Value for money: the Auditor-General's report spends considerable time considering the value for money of the transaction. The discussion of the report is particularly centred around the initial MMJ Real Estate valuation, which was relied on by the government in setting its reserve of \$3.18 million for block 30, and the subsequent valuation by Colliers International of \$2.75 million.

I refer to section 3.25 in the auditor's report, which, for the committee members' benefit, appears at page 82. There are footnotes in my opening statement that you can rely on at a later date. It is apparent that the Auditor-General has treated the valuations as statements of fact that are definitive of the value of the block. However, valuations are only expressions of opinion and an area where capable experts might well disagree. It is commonly accepted that the value of a property is best measured by what the market is willing to pay, and that may well be less than the valuation.

It is wrong to assume that the difference between the market and what is set out in a given valuation constitutes a loss. I wish to repeat that: it is wrong to assume that the difference between the market and what is set out in a given valuation constitutes a loss. It is nonsensical.

The Tradies were, and are, of the view that the territory's initial valuation represented a significant overvaluation of the block. The offer submitted by the other tenderer, which was Fabcot—a subsidiary of Woolworths—suggests that they shared the same view. Certainly, there was no-one in the market who thought that the valuation was

accurate.

The market assessed the value as being somewhere between \$1.6 million and \$2.2 million, and the range is likely inflated, noting that our offer—and likely Woolworths' as well—included a premium to recognise the particular value to us that the land had by virtue of its close proximity to the land that the Tradies owned and still own.

Notwithstanding that we disagreed with the reserve price set by the territory, the Tradies were well prepared in negotiations to increase the offer by approximately \$1 million to meet the reserve. But the Tradies preparedness to make this concession was in response to an offering valuable enough to warrant an increase in the purchase price, noting that absolutely no-one was willing to pay any more than us. That was very clear.

Of course, as part of negotiations, concessions will be made by both parties, and this is not uncommon. Such concessions, as I have said previously, are not losses. The Auditor-General's conclusions on the value of the transaction entirely ignore this commercial reality. Nor does she understand that the market response to the RFT was compelling evidence of the true value of the block, which would inevitably have informed the territory's negotiating position.

Instead, she assumes that the original valuation was the actual value of the land and that for any concession the Tradies should pay more than that. This reflects a total misunderstanding of how commercial businesses such as my organisation, being the Tradies, operate.

We also disagree that the transaction did not yield a positive result for the government. In particular, we were prepared to pay substantially more for the block than the value as determined by the market. Further, the government obtained an additional benefit from the Tradies as preferred tenderer, as in the course of negotiations we were able to offer land that we were previously aware the government wanted to obtain for other purposes. This was a benefit that no other respondent could have offered.

Further, the government has already settled and owns those blocks. In contrast, we have been disadvantaged in the transaction as we have not been able to settle on block 30 because of the government's determination to remain in total control of when settlement is to occur. This is clearly not a positive outcome for us, the Tradies, and demonstrates the extent of the disadvantage we face when seeking to purchase a block from the government.

I now want to turn to the thoughts about the possibility of something which looked like a direct sale. There was no direct sale and no impropriety in the negotiation. The Tradies rejects the suggestion that the RFT was not advertised appropriately. The fact that there were 20 interested parties initially indicates that the promotion of the block was appropriate.

That only two of the interested parties ended up submitting tenders indicates the limited market for the block. In the end, the only parties that submitted responses were those who had an interest in separate parts of the neighbouring land, being the

Tradies and Woolworths. They were the only two. It is entirely unsurprising that the Tradies were selected as the preferred tenderer on application of the selection criteria. Of the two compliant tenders, the Tradies offered more for the block than Woolworths.

Even when the offers were standardised with respect to the number of replacement car parks, our offer was still significantly more and represented better value for money for the government. Indeed, the Audit Office concluded that the selection of the Tradies as preferred tenderer was the only possible outcome of that process.

Having selected the Tradies as the preferred tenderer on the criteria, it was then also completely appropriate for the government to negotiate with the Tradies to reach an agreed position to secure the transaction. It is standard business. It is difficult to understand how it can be said that there was any impropriety in the tender process when the statutory framework for procurement in the territory did not apply to the transaction.

In respect of those footnotes, I refer to the Government Procurement Act 2001, the Government Procurement Regulation 2007 and related policies, and I also refer to section 1.37 of the Auditor-General's report.

The Tradies approached the negotiation as we would have approached any ordinary commercial transaction. We expect that Woolworths would have done exactly the same had they been the preferred tenderer. Ultimately, the negotiated outcome was to the satisfaction of both parties. If it were not, it would have been open for the government to return to the market and start the process again, weighing any such decision against the fact that there was very limited interested in the block to start with.

In negotiating a final deal with the successful tenderer, there was no obligation on the vendor to go back to the unsuccessful tenderers to check if they would offer the same deal. The suggestion that this RFT process may have given rise to a direct sale is—I choose my words carefully—nonsensical. Indeed, it is difficult to understand the basis for that conclusion. There is no definition of “direct sale” in the relevant legislation.

The Auditor-General's conclusion appears to be based on advice that suggests that at some undefined point in negotiations a sale that proceeded by way of RFT may somehow transmogrify into a direct sale. This is all apparently a matter of degree. There is no legal authority cited for that position.

The facts of this transaction are simple. The Tradies have always wanted to buy block 30. The Tradies had previously applied for direct sale for the block. Our applications were roundly refused by the government in favour of a public tender process. The Tradies were required to, and did, compete against the world at large in order to be selected as a preferred tenderer. Having been successful in that process and negotiated from that position, it defies logic to redefine that process as a direct sale, in part by reference to rules and policies that do not apply to this transaction.

I conclude by saying that it is deeply disappointing to the Tradies that this transaction has been misrepresented and turned into an object of political point-scoring at our expense, the Tradies expense. We are an organisation that does much to support the

local Canberra community; we have a demonstrable track record in that regard; and we employ many Canberrans.

In particular, it is disappointing that, in the course of the audit, allegations have been made of political influence and/or favouritism. The Tradies fully rejects these unfair allegations and notes that the Audit Office found absolutely no evidence to substantiate any allegations of political influence. We approached this transaction as we would have any commercial transaction, and we are pleased that the Auditor-General has vindicated our conduct in the course of that transaction. That is my opening statement.

THE CHAIR: Thank you very much, Mr Docker. May I begin by going a little into the history that comes before this transaction?

Mr Docker: Sure.

THE CHAIR: You said that the Tradies has for a long time wanted to purchase the block, which you have now become the successful tenderer for but which you have not settled on. For how long has the Tradies harboured, coveted, or whatever, a wish to acquire the block that is now block 30 section 34? What sort of discussion had you had with the government over that period of time about acquiring that block?

Mr Docker: There are two parts to my answer. First, in respect of how long, let us deal with the fact that I have been the CEO of the Tradies Group since 2009. Since my tenure commenced at the Tradies I have always had aspirations, along with my board of directors, to acquire the block.

Prior to that, my understanding clearly is that the Tradies organisation had for some previous 10 years to that wanted to acquire the block as well. So it has been probably for the best part of 20 years that it has been quite public that the Tradies wanted to acquire that block.

In regard to discussions which you asked about, Mrs Dunne, about who I might have spoken to in government about that, I have not really ever had specific discussions myself with government. I have relied on people who work for me, such as my chief finance officer.

THE CHAIR: I did actually ask—not you—what discussions had the Tradies organisation had?

Mr Docker: I think there have been informal discussions from time to time. There is nothing I can add to that because certainly I had no direct discussions with government about acquiring that block in a direct sale. There may have been informal discussions, as I said, by way of my CFO, but that was the extent of my knowledge of any discussions with government.

THE CHAIR: So was there ever any formal application for direct sale of land for the block?

Mr Docker: I would have to take that on notice because there may well have been

prior to my tenure at the Tradies.

THE CHAIR: And your tenure began in 2009?

Mr Docker: Yes, 2009.

THE CHAIR: But you said in your opening comments that the proposal for a direct sale to the Tradies had been—I think you used the words—“roundly refused” by the government, so there must have been at some stage a request?

Mr Docker: Absolutely. And, as I say, prior to 2009 there certainly had been inquiries, as I understand it, from our organisation to government for a direct sale. My comments are that my understanding is that that offer was roundly refused.

THE CHAIR: Can you get back to the committee on notice in relation to the questions of when those approaches were made, who in government roundly rejected them, and on what side were they of the beginning of your tenure?

Mr Docker: Yes, sure.

THE CHAIR: I also want to ask about the land at Downer in Rosevear Place. Prior to the negotiations over block 30, had you ever had discussions with the government about relinquishing those leases in any way, shape or form?

Mr Docker: I certainly have not.

THE CHAIR: So has anyone in the Tradies organisation had discussions with the government?

Mr Docker: Not to my knowledge.

THE CHAIR: I asked the Auditor-General this when she was here, and she did not have a clear steer on when this happened. Can you identify when the land in Rosevear Place became part of the discussion?

Mr Docker: My understanding is largely—I want to use this word—anecdotal because my chief finance officer was the person leading the negotiations with the government in acquiring the car park, which is the one we are talking about today. As the negotiations progressed it became clear that the valuation issues were a great conjecture from the government side and our side. It was at that particular point, as I best understand it, that the government’s acquisition of Rosevear Place came to bear in the negotiations more broadly.

THE CHAIR: So could you roughly pinpoint that? August?

Mr Docker: I presume that once we had been identified as the preferred tenderer it was sometime thereafter, once the negotiations commenced.

THE CHAIR: Who was your CFO?

Mr Docker: Mr Stephen Brennan.

THE CHAIR: Is he still with the Tradies Group?

Mr Docker: No, he is retired.

MR PETTERSSON: Could you tell me about the process of negotiations once you were selected as the preferred tenderer?

Mr Docker: Can I get some clarification to that question, Mr Pettersson?

MR PETTERSSON: The number of meetings, the substance of them.

Mr Docker: Like with all things, as the Chief Executive Officer of the Tradies Group, in a broad sense I was very aware of negotiations when they commenced. I was not involved in those negotiations directly myself; the chief finance officer had carriage of those negotiations with government. It was over a prolonged period. There was frustration on our behalf because you could not get definitive responses from government in a timely way, and we all know it turned out to be quite a convoluted negotiation process.

It is on record in the Auditor-General's report and from the Assembly's public accounts committee hearings that a wide number of meetings occurred between the Tradies and government. I never was part of those meetings; it was very clearly delegated to my CFO. I can only speculate about how many meetings, telephone calls, there might have been. The exact number I do not have any specific knowledge of.

MR PETTERSSON: You mentioned it was frustrating dealing with them. Can you expand on that? Why was it frustrating for the CFO?

Mr Docker: There is one thing which underpins all frustration with negotiations of this nature. This was a commercial property deal and, of course, as we all know, in property, irrespective of your aspirations to immediately do something with a piece of land you might be buying, time is money. This started in 2012 and we are now in 2018, let alone that period of negotiation of a couple of years in there. The frustration had reached boiling point on my behalf because, quite clearly, we were being massively disadvantaged in the way we ran our business. You go to our balance sheet; the development possibilities and all the processes you go through with that and the community consultation, it stalled our work in planning for the future, whether that future was five years, ten years or longer than that. So the frustration largely related to timeliness about the whole transaction.

THE CHAIR: In relation to the history of the transactions, it was reported that soon after the Dickson land deal transactions were concluded the Tradies transferred \$3.8 million to the CFMEU. Can you confirm that that was the case and say why it happened?

Mr Docker: Firstly, that is my understanding of what occurred. Secondly, the only comment I can make about why that happened is that it was part of the final negotiated position.

THE CHAIR: The final negotiated position between whom?

Mr Docker: Between our organisation and the government.

THE CHAIR: But why did you transfer \$3.8 million from the Tradies Group to the CFMEU?

Mr Docker: I beg your pardon. I would like to bring some—

MS CODY: Sorry, at what point does that come into play with the—

THE CHAIR: It was reported, and I am seeking clarification.

MS CODY: In the Auditor-General's report?

THE CHAIR: No.

MS CODY: I did not see that in the Auditor-General's report.

THE CHAIR: Sorry, Ms Cody, at the moment I am asking questions. I said it was reported in the media that there was a transaction soon after the conclusion of the land settlement in relation to Downer where there was a transfer of money from the Tradies Group to the CFMEU. My question was: did that take place and, if it did, what was the purpose of that transaction?

MS CODY: I am not sure what that has to do with the Auditor-General's report.

THE CHAIR: We will know whether it has anything to do with the Auditor-General's report if it took place and if it was for a particular purpose related to this, which is why I have asked Mr Docker the question.

Mr Docker: I now understand the question you are asking, which I did not initially.

THE CHAIR: Sorry.

Mr Docker: So your question is why did we—

THE CHAIR: I asked: did you transfer money between the Tradies and the CFMEU and, if so, what was the purpose of it? Did it relate to this land deal?

Mr Docker: I will deal with the last part of your question first. It had no relationship whatsoever to the land deal. The purpose of our organisation is very clearly articulated in the constitution of the Canberra Tradies club and our object is very clear: it is to provide the necessary support to our core object, which is the CFMEU. That is why we exist. The fact that money is transferred from time to time to the CFMEU—we do it on a regular basis—has no bearing whatsoever with regard to this transaction.

I now understand the question you have asked, but in one sense I do not understand

why I would receive that sort of question today, to be quite frank with you, because one—

THE CHAIR: Because the money closely approximated the amount of money you received for the land swap.

Mr Docker: There is a word I would use—that is totally and absolutely coincidental. We transfer money and have for a long period of time, as we rightly can, with regard to donations and so forth. That has happened over the 10-year period since I have been the CEO. That was quite clearly coincidental and had absolutely nothing to do with the land deal that was done.

MR COE: To follow up on that, the Tradies received \$3.9 million from the government in December 2014 for the sale of block 6 section 72.

Mr Docker: Yes.

MR COE: So, in effect, you have received the money for this land swap but you have not yet paid out money for the car park? That is correct, is it not?

Mr Docker: That is correct, yes.

MR COE: And then, several months later, \$3.8 million is transferred to the CFMEU.

Mr Docker: Well, you are saying that, Mr Coe. As I just said a moment ago, that has absolutely nothing to do with the land transaction and is completely coincidental. I am not entirely sure what you are getting at here.

MR COE: What was the reason for the deal to sell block 6 happening so quickly? How did the Tradies manage to negotiate with the ACT government to exchange contracts and then sell so quickly?

Mr Docker: My simple answer to that is that maybe we are quite good at negotiating ordinary commercial transactions. Perhaps it is me, rather than the way in which you have asked the question, but I am not really understanding what you are getting at, to be honest with you.

MR COE: Well, the contract for the sale of block 6 section 72 was signed on 15 December and settlement for \$3.9 million happened four days later.

Mr Docker: Sure.

MR COE: Four days later.

Mr Docker: Yes.

MR COE: That is not a usual period for settlement to occur. What was the reason for the government being so willing, do you think, to get this deal done and dusted?

Mr Docker: Let me say this: it is not unusual that something is settled quickly after a

negotiation process, depending on what sort of transaction it is. Quite clearly we had been through a convoluted process with government in negotiating this deal, and it reached a point where we were steadfast in progressing it. We made that, if you like, demand in our negotiation process. And clearly with advice, which I trust the government took from the Government Solicitor and so forth, it was considered to be quite an acceptable thing to do.

MR COE: Had the government ever come to the Tradies and said, “We would like to purchase block 6 section 72”?

Mr Docker: As I said a few moments ago, in the course of negotiations, whether it was the government or us, the Rosevear Place block was brought on to the table because at that particular time my understanding is that it became clear that the government had an interest in those blocks of land. Of course, when you are negotiating a commercial transaction, there will be a range of things you might cover. At that particular point clearly it was in the interests of both the government and the Tradies to work along those lines.

MR COE: So did the government bring block 6 section 72 into the mix or did the Tradies bring it in?

Mr Docker: I have no definitive answer to that. But in the course of the transaction, and once we started to look at the element parts of it, the government had an interest. One point I can make, going back to my opening statement: the Tradies were able to offer an additional benefit to the government by negotiating the sale to include land the government was interested in acquiring. Now that we look at the value of that land and what it has been settled at—again, please note, valuations are an opinion only; they are not fact—the speculation could well be that that block of land now is worth beyond \$10 million to the government.

Clearly somebody in government had a view about the future prospects of the worth of that land, which leads to my point that there was certainly some interest from the government to acquire that block of land. Maybe the Tradies were outsmarted in the negotiation process when it came to the valuation of that block. Remember, the government, through basically a swipe of a pen, can do all the lease variations and things they may wish to do to increase the value of that block at—

MR COE: They can do that to any block.

Mr Docker: Yes, they can.

MR COE: And they could do that to the ovals next door and not pay a dollar for it.

Mr Docker: Sure, and that point is well made, Mr Coe. But there is one big difference: the Tradies owned those blocks of land; the government did not.

MR COE: That is right. Which begs the question: how is it that that particular block was purchased by the government and other blocks surrounding it were not purchased?

Mr Docker: I cannot answer that question, as you would appreciate. You would have to ask people in government.

MR COE: Do the Tradies and/or the CFMEU have special access to the government?

Mr Docker: In my time I personally have had no special access to government on any issues. I have been in this town for a long time, as you well know. From time to time I meet a lot of people, from the Chief Minister downwards. But I can further add that if the suggestion is that this was raised with government informally and privately, the answer is categorically no.

MR COE: The Tradies and the CFMEU have special access to the Labor Party, do they not?

Mr Docker: I want to make some qualifications to that. I have a very clear answer to that: the Tradies has no special access to any side of government and, certainly on my watch, never has.

MR COE: I did say the Labor Party.

Mr Docker: Yes, but please—how the CFMEU operate with regard to their activities and what relationships they might or might not have back into the Labor Party is their business.

MS CODY: Mr Docker, can you actually answer for the CFMEU at all?

Mr Docker: No, I cannot.

MR COE: You just give \$3.8 million gifts. So with regard to scenarios 1 and 2 in the Colliers valuation, one is based on vacant possession and one is based on a rent back. How did the Tradies manage to negotiate vacant possession, thereby getting the higher price of the scenarios but then getting a \$1 per year lease for 42 months?

Mr Docker: Firstly, again, in any negotiation process there is going to be give and take. I have very clearly provided you an answer with regard to the valuation of the car park block. It was clear that—

MR COE: I am talking about block 6.

Mr Docker: Yes, I know you are. But I am answering your question, which is that the market told you the valuation was between \$1.6 million and \$2.2 million. A government reserve, based on valuations which we disagreed with, was struck at \$3.2 million. During the negotiations what did the Tradies do? We increased our price which we were paying for the block to \$3.2 million. In that negotiation process there is always going to be give and take. The exact specifics of the concessions made during the negotiation process to do with vacant possession and, as you said, the 42 months, that was all part of the negotiation process. A value was quite clearly placed on those concessions and then in the wash the deal became the deal that it was.

Again, I say categorically that the deal was obviously to the satisfaction of both

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parties. The transaction had been struck over a 12 to 18-month period of long negotiation, and the deal became what it was. I think you can see from what I am saying that the valuation, firstly, was wrong. The worth of the car park block—

MR COE: Again, I am talking about block 6 here.

Mr Docker: Yes, but it then goes back to Rosevear Place and what concessions might or might not have been made by government. The next part, which winds into this complex transaction and which nobody makes comment on—the Auditor-General makes no comment about it either—is that we cannot settle the value of the car park block that we own but that all the revenue generated by the car park block over the last four or five years has gone straight to government.

MR COE: You do not own it yet, though.

Mr Docker: No, we do not own it yet. But when it is—

MR COE: So you do not own it.

Mr Docker: It is easy to pick out small bits and pieces of the transaction, but in totality there are elements which come together.

MR COE: Okay. So if the 42 months rent free or \$1 per year is, in effect, part of this broader deal, what is the value of the 42 months rent free you received which offset other amounts?

Mr Docker: Somewhere in the Auditor-General's report, or somewhere in papers which I have, a value was placed on what the annual rent would be on a property of that nature. I have a figure in mind: that it was about 15 grand a month. If you multiply 15 grand out, my mathematics tells me that it is about \$180,000 a year. The expectation was that we would not get the car park settled for 42 months, which is the best part of 3½ years. You multiply \$180,000 by 3½ and, if I am doing my mathematics right, that is about \$630,000. So there is a value which both the Tradies and the government thought was in the transaction with regard to us staying in occupation and paying \$1 a year. That is the only broad answer I can give you.

MR COE: Do you think a negotiation between the Tradies and the ACT government, both closely linked to the CFMEU and the Labor Party, is really an arm's-length transaction?

Mr Docker: Yes, I do. My clear understanding of the way we approached it was exactly that. I believe the sensationalism and all the media reports about this transaction have been driven for reasons other than looking at purely the transaction itself. Again I repeat—and the Auditor-General has made this very, very clear—there was no impropriety in the way the Tradies conducted its business with the ACT government. What has happened, unfortunately, is that over the course of time, as the media has picked up these stories and run with clearly very one-sided views, it is almost like fiction becoming fact.

I do not take offence at your comment about arm's-length transactions. But I have run

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the Tradies Group in a pristine fashion for 10 years—a demonstrable record—and I indeed take offence at the suggestion that I as the CEO of the Tradies Group may have been involved in dealing with government in an improper way with regard to the transaction.

MR COE: Do you think public servants were put in a very difficult situation by ministers and the government at large in dealing, in effect, with someone they knew was close to the government and to the Labor Party?

Mr Docker: No, I do not.

MR COE: Even though the Auditor-General's report clearly says there is evidence from one person that it was clear the government wanted the Tradies to win.

Mr Docker: I think you will find the Auditor-General rejected that evidence.

MR COE: Or could not substantiate it, I think is actually—

Mr Docker: Because such evidence does not exist.

MR COE: With regard to the sublease the Tradies had with the CFMEU, over the last 42 months did the CFMEU pay the Tradies rent for block 6 section 72? It is a government-owned facility; it is a public facility that is leased to the Tradies.

Mr Docker: Yes, the Canberra Tradesmen's Union Club.

MR COE: That is right. So did the Tradies then sublease that to the CFMEU and to the Stockade gym?

Mr Docker: The commercial relationship between the Tradies and the CFMEU, given the purpose of what the constitution very clearly says, is that we provide the necessary financial and other support to our core objects. And how we manage those finances and that support is an internal matter for the Canberra Tradesmen's Union Club and the CFMEU. If you are asking whether I raised an invoice for the CFMEU to pay the Tradies with regard to the occupation, the answer is no.

MR COE: Therefore, the CFMEU got 42 months of rent-free occupation of an ACT government building.

Mr Docker: Mr Coe, I need to respond to that and I need to be very, very clear in that response. We were the lessee. What we chose to do with regard to that lease, and who was to occupy that, was clearly the business of the Canberra Tradesmen's Union Club. Now, it just so happens that we have a number of organisations who conduct their business out of Rosevear Place, be it the Stockade, be it CSI—Creative Safety Initiatives—be it Construction Charitable Works or be it the CFMEU. That is neither here nor there. The relationship with regard to this deal was not through the CFMEU; it was between the Canberra Tradesmen's Union Club and the ACT government.

MR COE: If there was an agreement, were you obligated under your sublease with the ACT government to notify the landlord, being the ACT government—in effect,

the taxpayers—of any sublease arrangement that you had in place?

Mr Docker: I would have to take that on notice, but I believe it was all so transparent. It was clearly understood that it was going to be business as per usual, given that the occupants of Rosevear Place prior to the transaction, prior to the sale, were the CFMEU, CSI, Construction Charitable Works and Stockade, and that we were going to continue in situ until the complete transaction of the car park was completed. The anticipation was that everything would be completed within a 42-month period.

MR COE: Now that it has not been completed, as of right now that lease has expired. Have the Tradies or the CFMEU entered into a new lease agreement with the ACT government?

Mr Docker: The Canberra Tradesmen's Union Club has entered into a new lease for 13 weeks with the ACT government.

MR COE: For 13 weeks?

Mr Docker: Yes, correct.

MR COE: And how much is that for?

Mr Docker: It is approximately for \$31,000 a month.

MR COE: A month?

Mr Docker: Correct.

MR COE: Therefore, the value of the 42 months that you have received is in the vicinity of \$1.2 million?

Mr Docker: No. I explained to you a moment ago how that calculation was done, as best as I remember it in the transaction. The value which I best recollect was around \$15,000-\$16,000 value. Whether we agreed with it or not, that was what was put to us by the ACT government in the course of the transaction. I said that I thought the value was somewhere around \$630,000. So this bit about the \$1.2 million, as I understand you have done your calculation, if you were right, still relates back to the inflated value which we clearly paid for the Dickson car park. In the course of a good commercial transaction, we could well have reached the point at the Tradies where the advice to my board of directors may well have been: "This transaction has reached the stage where it is not value for money for the Tradies, so we do not do it."

Were we close to reaching that position? In one sense, we were; in another sense, we were not. The other sense which I am dealing with now is that there were a range of things to do with that car park which related to our business, our day-to-day operational business, and to what degree that car park being occupied by somebody else would impinge upon our business.

During the negotiations, we knew damn well that there would be some rights which we had in owning the adjoining block, being the Canberra Tradesmen's Union Club,

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which no other tenderer, no other purchaser, could have because we own the block. So we had rights. We brought all those things to bear on the way in which we negotiated this deal, Mr Coe. I know that deep down you understand what I am getting at because it is not a simple transaction. It is a transaction which took time to come about. We got to the stage where we were happy and the government was happy.

MS CODY: Mr Docker, I have some follow-on questions. I note the time, but I still have quite a number of questions.

THE CHAIR: Yes, I know. I am mindful of the time.

MS CODY: Mr Docker, I am a little confused by Mr Coe's line of questioning. You are the CEO of the Canberra Tradesmen—

Mr Docker: I am the Chief Executive Officer of the Tradies Group.

MS CODY: Does that mean you also run the CFMEU?

Mr Docker: No. I have no involvement with the operation of the CFMEU and I never have.

MS CODY: As the CEO of the Tradies Group for the last nine-ish years—

Mr Docker: Over nine years.

MS CODY: have you been involved in other transactions of land?

Mr Docker: Commercial transactions?

MS CODY: Yes.

Mr Docker: Yes, significant ones. As an example, the IQ development down in Northbourne Avenue, where, through a joint venture partnership arrangement, we built 228 apartments and a lot of commercial space for a development of about \$80 million to \$90 million. We are just concluding that development at the moment with our final sales. We commenced that, from memory, back in about 2013-14.

MS CODY: During those sorts of things, did you have to negotiate with the ACT government to purchase blocks of land et cetera, or did you have to negotiate with other parties to purchase blocks of land?

Mr Docker: That was a negotiation with other parties, that particular development which we did. But we did not, as such, purchase land from the ACT government; it was purchased from another entity.

MS CODY: In your years of experience prior to becoming CEO of the Tradies, you were involved in a lot of negotiations as well, I would imagine?

Mr Docker: Yes. Just by way of background, I will make this point: I do not come here in an adversarial way at all. I just come here to be able to state the Tradies

position in this transaction. But I add that I was in the public sector as a senior officer until 1989. I have certainly been familiar with efficiency reviews, all sorts of things—Auditor-General’s reports and so forth. So I have a great reverence for the role of the Auditor-General in government.

But to fast forward through negotiations in my commercial life, yes, I have been involved in countless numbers of negotiations, be it for the Liberal government—the then Prime Minister; the Treasurer, Peter Costello; and others—back in 1999-2000, when I was intricately involved in the implementation of the GST in this country by way of education of the small business and not-for-profit sectors. These were complex negotiations. A lot of government money had been spent, so I was on the other side of things. Do I have some expertise in this area? Yes, I do.

MS CODY: You said earlier in testimony that you personally were not as involved in this particular negotiation as you have been in other negotiations.

Mr Docker: Yes.

MS CODY: But as CEO of the Tradies Group you were kept abreast of what your CFO was working on?

Mr Docker: Absolutely. Ms Cody, when you go into negotiations—this was a very technical transaction, quite clearly. Firstly, there was disagreement on the valuations. Secondly, it was clear that we had aspirations for the block. Thirdly—rightly so from our side—we wanted to get the best value for money outcome for the Tradies Group. There was a wide range of technical things which needed to be negotiated in the course of that transaction.

I have made observations that the government was slow in response to a lot of that stuff. But, equally so, we may have inadvertently contributed to the time line on that as well because, yes, we were demanding. There is no question about it. We were demanding in another sense. We were extraordinarily well represented, as we are in any commercial transaction, by lawyers and so forth. In this case, Clayton Utz were our lawyers. They managed many aspects of the negotiation with government—dealing with the Government Solicitor’s Office and the list goes on; all of those things.

Was I across all the nitty-gritty, granular parts of the transaction? No, I was not. And nor should I be, because that was left in the hands of the chief finance officer. I have obviously a great regard for that person’s capability to progress the transaction in a favourable way for the Tradies.

MS CODY: Were you involved in hiring your CFO?

Mr Docker: Yes, I was.

MS CODY: So you would assume that the decisions your CFO was making would be in line with your direction/recommendation/support?

Mr Docker: Absolutely. When I went to the Tradies, for me to accept the position which had been offered to me, there was great clarity given to the Tradies

organisation that I would not take the role on and maintain the current financial management support framework which the Tradies had.

It was on my terms that I wanted a new CFO. I knew exactly who the CFO was going to be. I proudly say that I have worked with, in this case, Mr Stephen Brennan in a variety of capacities over a 30-year period in this town and nationally, and on multinational consultancy work. He is a very capable chartered accountant.

MS CODY: Following on from Mr Coe's line of questioning, did Mr Brennan have—I am trying to think of the words that Mr Coe used here—exceptional access to either members of the government or, therefore, members of the Labor Party?

Mr Docker: So just—

MS CODY: I just ask you the question.

Mr Docker: Can I clarify that question? You are asking me whether I am knowledgeable about whether Mr Brennan has access to the government. The only access which Mr Brennan and I have to the government is in the day-to-day, week-to-week or month-to-month dealings where we might need to. In regard to political access, the answer is clearly no.

I think that I can speak clearly on Mr Brennan's behalf. He would be absolutely mortified to think that somebody would have a view of him with regard to politicisation of process and so forth. That is just not Mr Brennan. He would never need access. He would not seek access. He would be just looking at the transaction as it was and to represent the Tradies in the best possible way from a commercial perspective.

MS CODY: All of the negotiations, as far as you are aware, that Mr Brennan undertook were happening at departmental level?

Mr Docker: Correct.

MS CODY: Or directorate level, I should say.

Mr Docker: Correct; correct. That is my understanding.

MS CODY: To your understanding, there were no meetings with ministers or—

Mr Docker: Absolutely not.

THE CHAIR: I am very mindful of the time. The committee—

MS CODY: I still have a few more questions, Mrs Dunne; sorry.

THE CHAIR: All right. We do have a private meeting—

MS CODY: Mr Docker, do you have a few more minutes to spare or are you—

Mr Docker: No, I am more than happy to.

MS CODY: One or two more questions should probably cover it off. The Auditor-General's report has mentioned that there were a high number of meetings that were—I am just trying to find the exact place in the Auditor-General's report because that is what we are here to talk about. There were a number of meetings where the Auditor-General felt there was not much documentation taken care of. To your knowledge, Mr Docker, when Mr Brennan was involved in these meetings—I know it is very difficult to say because Mr Brennan was involved in these meetings—were the meetings held appropriately? Were there records kept that you are aware of, or did you leave that completely up to Mr Brennan in his dealings with the directorate?

Mr Docker: Answering the last part of the question first, I would leave that to Mr Brennan to maintain necessary records.

MS CODY: Yes.

Mr Docker: There are two other parts. The second part you are alluding to, potentially, is record keeping by the other party. I cannot comment on that because I do not know.

MS CODY: Yes.

Mr Docker: But can I say very clearly that my records in regard to how this transaction was managed are pristine, and understandably we were well represented throughout every bit of communication with government through our solicitors, backwards and forwards and so forth. They are commercial-in-confidence documents, but most certainly I would be disappointed if I did not have a full account of written records of all the bits and pieces which we did.

Furthermore, it would be very unlikely that I would not have a copy of every email, every transaction which occurred between us and government through our solicitors because that is the way I operate my organisation—with transparency, honesty, integrity—I suppose as part of my training. What the government did on the other side, which is largely what the Auditor-General is focusing on, I cannot comment on because I do not know.

THE CHAIR: But you have extensive records of your side of the transaction?

Mr Docker: Of course I do. And those things are commercial-in-confidence. Obviously we have had great legal representation in any normal commercial transaction. But it is not right to suggest I would not have records of communiques on all the issues. I remember one particular email, which I think the Auditor-General looked at, where from our side of things we had about 40 or 50 particular issues in the negotiation process that we wanted to be looked at by the government. Then those issues become singular and then they become a telephone call and then there is an email exchange and so forth. What government did or did not do I cannot comment on. On our side, yes, of course we have it all.

THE CHAIR: And the Auditor-General had access to those during her investigation?

Mr Docker: The auditor did. We were very clear that, where possible, we were able to provide to the Auditor-General the material we held at the time. But, of course, we have solicitors who look after the transaction. They look after a lot of our record keeping, as you would well appreciate, because we pay them commercial dollars to do that. Our legal firm in this case is Clayton Utz, who, understandably as a very reputable and a very good law firm, kept those records on our behalf. Of course, we pay commercial fees for those things.

MS CODY: Do you feel the report represents quite well your dealings with the Auditor-General? Did the Auditor-General take into account the things you discussed?

Mr Docker: I was not summonsed by the Auditor-General to give evidence. The Auditor-General was very kind and decent to me because she knew, obviously, that I am the Chief Executive Officer of the Tradies Group. Right throughout, where she thought it was appropriate, she asked for comment on the draft reports and so forth. From time to time I provided responses to her questions.

I thought the report was narrow; I thought it was naive in places. But, as I said earlier today, I am very reverent of the processes of government and the role of an Auditor-General. The Auditor-General could only react to the evidence as best as she was able to glean. She gleaned that evidence. She came to a conclusion. I do not criticise her process.

I certainly do not agree with some of the statements she has made, an example classically being that a valuation is an opinion only and she turned that into fact and then extended that by saying, "Well, that is a fact. The Tradies paid this. The government was denied this. This is a loss." I sit back and say that is all nonsensical stuff. But I appreciate that the Auditor-General is not a commercial person; the Auditor-General has other skills which I am very respectful of.

MR PETTERSSON: Is this a political attack on the Tradies?

Mr Docker: No, I do not believe it is a political attack on the Tradies. Do I believe it is a political attack on the CFMEU? Most certainly I do. And the evidence quite clearly demonstrates that. Right throughout, the media has connected the CFMEU owning the Tradies. I understand the political nature of our town. I understand where political point-scoring can occur. As I said in my opening statement, I do not like that being made at the Tradies expense, and it has been made at the Tradies expense.

I have been steadfast. The media came to me right throughout this process, prior to the Auditor-General's report being published, and I refused to engage because I do not believe the Tradies should be doing our business on the front page of the media. Because we have chosen not to comment, the stories continue to run.

Rightly, wrongly or indifferently, there are ways in which questions are posed, there are ways in which stories are told, and it is all colourful language. I recollect that a couple of weeks ago a question was asked, in this very room, of the Auditor-General,

and the question was something along the lines of: “Can you rule out criminality?” When the Auditor-General responded, “I can’t rule it in; I can’t rule it out,” I sat back and thought, “Well, how’s this going to be picked up?” It is going to be picked up in a way which all of a sudden now the Tradies are associated with that word “criminality”.

You can imagine the great offence I took at that, but I qualify that by saying also that I understand the nature of this town, the nature of politics, the nature of how we all do business from time to time. I understand that. But I tell you what, it is not much fun for me sitting back and listening to, bluntly, that crap appear in the press relentlessly.

Can I give you another example of something which I found extremely offensive in this whole process? There was an ambush interview done of a previous Auditor-General of the New South Wales government on the radio one morning and comment was made by that gentleman that if something like this had happened while he was the Auditor-General for the New South Wales government he would have referred what he knew about it straight to an ICAC body: “This is criminal,” blah, blah, blah. Little did people know that he was a member of the Canberra Community Voters party and had political nuances or bias, if you like. I found that deadset offensive. It was wrong.

I understand how the town works, but there are things which have been stimulated in other areas with regard to this whole process which are wrong. I have known Mr Coe for quite some time; I know Mr Coe’s family. Mr Coe has a job to do; we know what that is all about. But when I see things appear on the Liberal Facebook page—copies of government documents which are meant to be commercial-in-confidence—and they appear either before or during the course of an Auditor-General’s investigation, I have to say to myself, “Well, I, Rob Docker, wouldn’t do that. But others choose to do that.”

I have copies of those things, and it is said on the Liberal Party Facebook page, “These documents were sourced from the government.” “God almighty,” I am saying to myself. “Here we are, going through what we are going through.” So at a personal level, I feel very wronged in how the Tradies have been brought into this, but I understand the process. I understand why that has happened. Yes, that is good, but I would be failing in my duty if I did not make that point strongly to the committee today.

THE CHAIR: I have a couple of issues to follow up on. Firstly, you referred to the fact that you had a 13-week lease with the government over the occupation of the premises in Rosevear Place. When did that begin?

Mr Docker: That began on 19 June 2018.

MR COE: And when was it signed?

Mr Docker: I would have to check that for you, Mr Coe. But it was signed around that time, prior to that time. In actual fact, with that—

MR COE: It was before, was it?

PROOF

Mr Docker: I need to check that. I have been dealing with departmental officers; I have been dealing with Mr Bruce Fitzgerald and Mr Geoff Rutledge on that, and I have been personally managing that process. The issue there, too, is that the government had not been able to give me, even up until 18 June, a clear and specified rental amount, and they were getting valuations done. But I had met with Mr Rutledge and Mr Fitzgerald a number of times, and once the valuations were done—the middle part, the two valuations—we agreed to pay that. I did not know at the time what that amount would be, but, yes, I did that transaction myself.

THE CHAIR: For my own clarity, I want to put a proposition to you and let you run with it. In the discussion between you and Mr Coe about the give and take in relation to Rosevear Place and the 48-month rent-free period or—

Mr Docker: Forty-two months.

THE CHAIR: The 42-month rent-free period—and this is just the thought that I had listening to the discussion—would it be fair to say that the rent-free period in Rosevear Place was a trade-off for not being able to settle on the car park in Dickson?

Mr Docker: It would be an element of that, but there is give and take in a range of ways. Undoubtedly it played in everybody's mind about how the transaction would be valued, if you like. Yes, we would have undoubtedly made demands from our side and said, "Well, look, if you want us to do this, we need you to do this." That is part and parcel. So, yes, my understanding—recognising that I was not the person actually negotiating—would be that of course you would be bringing those things into play as best you possibly could in any commercial negotiation.

MR COE: Mr Pettersson, do you have a conflict of interest here?

MR PETTERSSON: It is not appropriate to ask questions of committee members, and we have discussed this previously.

MR COE: Ms Cody, do you have a conflict of interest?

MS CODY: It is not appropriate to ask questions of members of the committee.

THE CHAIR: I am mindful of the time. Thank you, Mr Docker, for your appearance today and your indulgence in staying longer than was scheduled. Dr Lloyd will provide you with a copy of the proof transcript. That concludes today's hearing in relation to the Auditor-General's report No 3 of 2018.

The committee adjourned at 11.05 am.