



LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON PUBLIC ACCOUNTS

(Reference: [Inquiry into Auditor-General's Report No. 8 of 2018: assembly of rural land west of Canberra](#))

Members:

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

TRANSCRIPT OF EVIDENCE

CANBERRA

WEDNESDAY, 18 JULY 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

BROWN, MR JONATHAN, Senior Manager, Performance Audits, ACT Audit Office **1**

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 10.10 am.

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

BROWN, MR JONATHAN, Senior Manager, Performance Audits, ACT Audit Office

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

THE CHAIR: Welcome to the first public hearing for the inquiry of the Standing Committee on Public Accounts into Auditor-General's report 8 of 2018, *Assembly of rural land west of Canberra*. Today the committee will be hearing from the Auditor-General and her officers. You know about privilege, Dr Cooper. Would you like to make an opening statement?

Dr Cooper: Yes, I would. The audit on the assembly of rural land west of Canberra was a large and complex audit that took around a year to undertake. Securing documentary evidence was a challenge and was complemented by interviews, some under oath or affirmation, with those who may have had firsthand recollections of events, including property vendors and prospective vendors, valuers and agents, as well as former executives and board members. It has involved examination of documentation and interviews with a range of those people that I have just mentioned. We also sought advice from the Australian Government Solicitor on legal matters. We also engaged a subject matter expert in the planning arena.

The audit examined the purchase of nine rural properties to the west of Canberra by the former LDA. When we say "purchase", they initiated them; they may not have all been completed, but they certainly set the purchase in process and commitment between 14 June 2014 and 1 July 2017. This period is the time in which the Planning and Development (Land Acquisition Policy Framework) Direction 2014 (No 1), notifiable instrument NI2014-264, was in place. It is referred to in our reference to it as "the framework" from here on in.

The former Land Development Agency committed \$43 million to securing 3,378 hectares. Of this, 3,274 is in—and this will receive a bit of attention today—the western edge study area, which, in the 2012 ACT planning strategy, is referred to as "the subject of future investigation". While properties were purchased as a potential urban development front, there is no certainty that they will become part of an urban area, as at present they are "the subject of future investigation". This investigation has not commenced. The purchases can be viewed as pre-emptive of planning considerations or as offering "certainty that the land will be available if it is in the scope for inclusion in the next Planning Strategy". Regardless of how they are viewed, there is a need now for clarity regarding their long-term land use.

Given the ACT government's ownership of such a large rural area, it is important that planning studies be guided for the long term across the territory and that they be independent of existing land tenure. The Chief Planning Executive has advised the audit that existing land tenure will not be considered in the relevant planning studies. I consider not only that this needs to be undertaken in terms of being independent, but that evidence be available to the broad community that this is occurring.

Findings in the audit indicate a disconnect in the priorities of the work undertaken by the former Land Development Agency and the Environment, Planning and Sustainable Development Directorate. Such a disconnect creates one of two risks: either delays in the identification and release of potential urban development fronts; or suboptimal use of resources in securing and maintaining properties that may not become a future urban development front.

In the future, priority needs to be given to better managing the integration of the timing of planning studies and land purchases. I emphasise the words “the integration of the timing of planning studies and land purchases”.

The audit found that probity was lacking and there were probity risks in some of the actions of the former Land Development Agency in the purchase of the properties. There was also inadequate clarity and documentation provided for how the former Land Development Agency applied the framework. While the application of the framework improved as purchases progressed, some were made in response to what you can consider market dynamics, which are not covered by the framework. It would have been more prudent to clarify, review and amend the framework if needed, but that did not occur. Thank you for listening to me.

THE CHAIR: The committee has agreed that the Audit Office will give a run-down on the report. Could we hand over to you, Jonathan.

Mr Brown: I am the engagement lead for this audit. I turn your attention to page 27, the colour map of land to the west of Canberra. This map shows the western edge—that is the dotted grey line—and a number of properties that were the subject of acquisition by the LDA and the subject of this audit. The largest of these is the property in the north-west corner, the Huntly estate, which is 1,605 hectares. As Dr Cooper said, the totality of these purchases is 3,378 hectares.

The audit considers the LDA’s purchase of these properties and the authority it had to do so. The authority is the land acquisition policy framework. The audit looks at how that policy framework was applied to provide the authority to purchase these properties.

I would just add that when the audit started, we were unaware of all these properties. One or two of these properties were still in the process of being approved, by 30 June, which was the point of the discontinuance of the LDA.

Going to page 171 and page 172, table 5-2 shows you the LDA board consideration of the properties. You will see there that the board’s record of initial consideration of Pine Ridge, for example, is 27 April 2017 and that the LDA had agreed to purchase this property with the deposit paid by 30 June 2017. But it had not been settled. In other words, as the audit commenced, it was not clear which properties would be the focus of the audit, but once we were into 2017-18, it became clear that there were nine properties in total.

Chapter 2 looks at the application of “the framework”. The framework contains a statement that “all tests must be followed for an acquisition”. There are nine tests in the framework. These are set out in the report at paragraph 2.9. I point out that tests 6

and 7 are either/or tests, so in essence we are looking at eight tests. Our examination was on whether these eight tests were followed.

Going to page 84, table 2-6, this is the summary of the Audit Office's consideration of the application of the framework tests. You will see ticks and crosses, a tick being "followed" and a cross being "not followed". From this you will see that none of the purchases followed all the tests. I refer to my earlier comment that the framework says that "all tests must be followed".

Of interest in the report is the application of the tests, though there are also other matters in the framework, but I would like to focus very briefly, in chapter 2, on the area that perhaps had the most coverage in the report. That was the application of tests 1, 2, 3 and 4, which are to do with policy alignment with the proposed outcome, and test 5, which is the value for money test.

In terms of tests 1, 2, 3 and 4, none of the acquisitions followed these tests, with the exception of Wintergarden. So one of the eight properties we examined followed these tests.

Dr Cooper: That is tests 1, 2, 3 and 4, for clarity?

Mr Brown: Tests 1, 2, 3 and 4. Going to test 5, value for money, again there is a specific table looking at these tests. That can be found at page 68, table 2-4. Four of the eight properties followed the test. Again, you will see from this that we have looked for four components in this test. If one component is not met, it does not follow the test, in our assessment. For four, there was an independent market valuation—test 5—and the price was consistent with that independent market valuation. In four cases that was not the case.

Chapter 3 considers probity and probity risks. The audit considered a range of documentary sources: primarily, and initially, the LDA board's minutes, agenda and reports; and then, on property-specific information, paper files, electronic files and emails. When there was a clear gap in the understanding as to how a transaction had been administered, we supplemented the paper record with interviews under oath.

Dr Cooper: Or affirmation.

Mr Brown: Or affirmation. The areas that we provide commentary on include the engagement and management of agent services and the negotiation and decision-making leading to the purchase of Fairvale. We concluded that there is a lack of transparency and accountability in these aspects. There is commentary in the report on Fairvale of around 40 paragraphs that explains who the stakeholders were, who the people were—

THE CHAIR: I am sure the committee has questions on that.

Mr Brown: Who the parties were to the negotiation and eventual transaction of that sale.

Dr Cooper: And that we come to the terms that it is a probity risk; that one in

particular.

THE CHAIR: Yes.

Mr Brown: We considered the probity of the activity of the LDA, not the probity of the other parties to the negotiation and the eventual sale.

Dr Cooper: However, we make it very transparent as to what we have been advised by the other parties. We have respected the other parties' views, and they are included in the audit.

Mr Brown: Chapter 4, a shorter chapter, considers the management of the purchased rural land. Once the LDA had purchased the leasehold on this land—in the case of Fairvale, it became unleased land—what arrangements were put in place to onward land-manage that land, bearing in mind that the rural properties to the west of Canberra are in the bushfire abatement zone.

We identified that early purchases—by early purchases, we mean Lands End, Milapuru, and Fairvale—were not subject to executed licences and subleases, although former owners, in the case of Lands End and Milapuru, remained on the properties. The idea of a leaseback arrangement had been discussed, but the arrangements were still being progressed over the past three years and rent had not been collected, or rent had been forgone, of possibly around \$200,000.

MR COE: If I might just tune in there: just to clarify, there is no rental agreement and it was not negotiated at the time of settlement; it is just, in effect, a handshake agreement to stay there until—

Dr Cooper: It depends on which property you are talking about. We can go there in detail in a minute.

MR COE: Sure.

Mr Brown: There are certainly different circumstances for Milapuru, Fairvale and Lands End.

In all cases, land management agreements needed to be executed for these properties. These have been in progress, and that has been the case for the past three years in terms of the first acquisition.

Dr Cooper: I would like to record a few comments in support of my colleague and for the benefit of the community listening. It is important for the citizens of Canberra to know that, with respect to bushfire issues, the Suburban Land Agency now has included all purchased lands in its bushfire operational plan. It has done that since 2016-17. So while there may have been some properties not included in the former LDA's at some time, right at the moment we have looked at that and they are all in there. I think that is important for the Canberra community to know.

In terms of executed land management agreements, it has taken a protracted amount of time for whatever has occurred between the former LDA, the Suburban Land

Agency and environment and planning. The issue that the audit has put forward there is that there needs to be some analysis, which we did not do, as to why it was taking so long. It is more than one agency.

We have also suggested, given the opportunity of the holdings of the land, that with arrangements per site, in terms of the ongoing management of those sites, it may be a better approach to look at it strategically and offer a collective of the sites; they might get a better rental outcome. Jonathan, can you go to the next chapter.

THE CHAIR: I am mindful of the time. Could we move to the planning context?

Dr Cooper: Yes.

Mr Brown: Chapter 5 considers aspects of the planning context up to and following the publication of the current spatial strategy, the ACT planning strategy, in 2012. Significant events such as the government's introduction of the 99-year leases in 2000, the 2004 spatial plan and the impact of the Glenloch purchases were examined and set out in chapter 5.

There is a focus on how the western edge study area emerged in the 2012 plan, and how it was subsequently responded to by ACTPLA, the ACT Planning and Land Authority, and the LDA. The two entities place different priorities on their actions with respect to the western edge, including the urgency to identify the next development front and the need to commence the western edge study area investigation.

The audit concludes that, as a matter of priority, the ACT Planning and Land Authority should progress planning studies above the level of the western edge and identify options without the influence of land tenure for the government's consideration.

THE CHAIR: I would like to start with some questions, and there are many. First, I want to go to the criteria for the framework, which are discussed for tests 1, 2 and 3, particularly those areas that are on the southern skirt of Belconnen, the properties being the Vines, Wagtail Park and Lands End.

There is a great deal of discussion in the table that relates to this about whether or not these lands were actually available for urban development. I recollect clearly that, along with Mr Gentleman and Ms Porter, I was on the planning and environment committee that recommended that that area of central Molonglo be removed in perpetuity, and that the government agreed to that in the run-up to the 2008 election. Has there been any evidence that you saw that the government has changed its position about removing central Molonglo in perpetuity from urban development?

Dr Cooper: That is on page 134 in the planning chapter; that is clearly addressed. The answer to that in a nutshell is: no, we did not come across any evidence that that had been changed.

THE CHAIR: But there seems to be some discussion, especially discussion—

Dr Cooper: Interpretation.

THE CHAIR: Interpretation as—

Dr Cooper: As to whether it was 20 years or however long it could possibly last.

THE CHAIR: My recollection of the chronology was that the government agreed to a 20-year moratorium; that the planning and environment committee recommended removal in perpetuity, they being the words from the planning and environment committee; and that the government, in its government response, agreed to removal in perpetuity. The short answer to my question is that you saw no evidence that that had been changed since 2008?

Dr Cooper: No, we did not. That is covered, for the public record, on pages 134 to 136. There were—

THE CHAIR: As well as in the table in chapter 2.

Dr Cooper: That is right. And, of course, that was one of the criteria that were examined.

Mr Brown: We identified in LDA records the use of the words “20 year” and “moratorium”. That set us looking for where that came from. We then identified the announcement in May 2008 of the Chief Minister and Minister for the Environment, Water and Climate Change where the words “moratorium” and “20 years” are used. But by the time a recommendation is tabled in August to do with Territory Plan variation 281, those words are not used. As you say, chair, the words used are very specific, and they refer to central Molonglo being “removed in perpetuity from being considered as a future urban area”.

THE CHAIR: Thank you.

Mr Brown: We found nothing from that point onwards to—

THE CHAIR: To modify that view?

Mr Brown: To modify that view.

MR COE: With regard to the genesis of all these purchases, this spate of purchases, what actually motivated the LDA to start acquiring property west of Weston Creek?

Dr Cooper: We can outline for you the events prior to them starting the acquisitions, whether that is their total motivation or not. It is at 2.137. Jonathan has it open.

Mr Brown: After the commentary on the tests in the report—this is in chapter 2, table 2-6, which I have already referred to, where the results are presented—the LDA responded to a draft of this report, and provided an explanation as to its motivations for making these purchases.

For example, page 85, and this is part of the information the former board members

provided in a written statement, explains the risks of not acting on the approaches being made to the LDA, with landowners presenting an opportunity for the LDA to acquire land. It says:

The risks of not acting on the approaches being made to the LDA were:

- The land may be purchased by private developers speculating in the area and therefore locking the Territory out of potential uplift should the land be rezoned or required for other uses; and
- If the land were rezoned for residential use following the planning studies, the land prices would be significantly above the prices paid by the LDA.

There are other reasons that are provided in chapter 2, para 2.137, but that one is a key one.

Dr Cooper: I will support Jonathan with further information, from 2.138. It says:

... the former Board members also advised:

During the period that the acquisitions were made, Board membership included extensive expertise and professional qualifications in public law, engineering, economics, business, town planning, architecture, land valuations and public administration. All members were professionally recognised in their relevant field ...

When they have given us that information, they want attention drawn to the fact that there was a multidisciplinary group of high quality professionals giving advice to them in what they were doing.

MR COE: If a landowner approached the LDA—and even how that comes about is pretty odd; to even know that that is an option—especially in the early days, and said, “Would you like to buy my property?” what happened after that, according to the documentation?

Dr Cooper: We can only talk about the specific properties we have.

MR COE: Let us take Lands End, for example. What happened?

Mr Brown: The issue of how an opportunity arises was, first of all, looked at.

Dr Cooper: On that, for complete transparency we actually tried to look at whether the LDA approach people or people approach them. For the public record, we found that the LDA were approached, primarily; they did not go out knocking on doors.

THE CHAIR: Primarily.

MS CODY: By all properties?

Mr Brown: If I can qualify that?

Dr Cooper: Yes; thank you.

Mr Brown: If I may qualify that, there is commentary in chapter 5 where we examine each property that was acquired in turn. That is not to say that properties that were not acquired may have been treated differently. But for all those that were acquired, we found no evidence that the LDA had approached the vendor. The vendor had approached the LDA. And there was evidence on record to demonstrate that that was the case in the Lands End situation.

Dr Cooper: And we go on to say:

As landowners contacted the former Land Development Agency this indicates that there was an awareness that the former Land Development Agency was interested in purchasing properties.

MR COE: It is interesting that these landowners knew about it but it seems that nobody else in Canberra knew about it. Is it possible that someone either in government or someone working for the government gave a tip-off to particular landowners, either voluntarily or for a fee, to approach the LDA?

Dr Cooper: That was not an audit avenue of investigation.

MR COE: Do you know whether there were any sellers' agents involved?

Dr Cooper: Yes, there were. We can go there on a case-by-case basis. Thanks, Jonathan.

Mr Brown: The LDA board agreed on 11 December to initiate—

MS CODY: That is 11 December of what year?

Mr Brown: Sorry; 11 December 2014.

MS CODY: Thank you.

Mr Brown: They agreed to initiate contact. They agreed that; it is on record in a board minute, 11 December 2014, that—

Dr Cooper: We will give the reference again for the public record.

Mr Stanton: I draw your attention to pages 44 and 45 of the audit report. Paragraph 2.5 refers to the meeting of 11 December 2014 and the former LDA board's consideration of the district of Stromlo acquisition strategy paper. Out of that meeting it was agreed that the former LDA should pursue the purchase of three properties identified in the strategy. Paragraph 2.5 goes on to say:

This decision is a marker of the commencement of purchases to the west of Canberra ...

THE CHAIR: Mr Stanton, could I just clarify. That was the paragraph that had an addendum to it that it is not the Canberra Equestrian Centre but the National

Equestrian Centre?

Mr Brown: That is right.

Dr Cooper: That is right.

Mr Stanton: I beg your pardon, yes.

THE CHAIR: A rookie mistake, but yes. They are very close to each other.

Dr Cooper: We apologise for that error.

MS CODY: Sorry; I missed what you just said.

THE CHAIR: There is an addendum that went out that covers this paragraph. Where it says that the properties identified in the strategy were “Milapuru, Fairvale and the Canberra Equestrian Centre,” it should say “Milapuru, Fairvale and the National Equestrian Centre”.

Mr Stanton: Correct.

Dr Cooper: Yes; we apologise.

Mr Brown: So there is the green light. The question is: what happened next? Did the LDA directly engage with these and other properties, or were these other properties already, for example, on the market?

We examined the acquisition activity for the properties that were put to the LDA board meeting on 11 December. The first evidence that we could identify that there was activity, let us say, in the marketplace on behalf of the LDA was for 29 July 2015. That was an agent, working on behalf of the LDA, discussing it with a seller’s agent. We are talking about Fairvale. In other words, we did not identify any agent activity on behalf of the government until 29 July 2015.

MR COE: So who actually negotiated the purchase of Lands End?

Mr Brown: Who negotiated the purchase?

MR COE: Yes.

Dr Cooper: Was it an agent?

Mr Brown: There is no evidence that anyone other than LDA officers and executives engaged with the former owner and negotiated the purchase of that property. The LDA.

THE CHAIR: But did the former owner of Lands End approach the LDA?

Mr Brown: Yes.

THE CHAIR: The first approach came from—

Dr Cooper: The records indicate that it was—

Mr Brown: The record identifies that the approach came from the former owner.

THE CHAIR: Can I just clarify that, for these eight properties, there is no indication that the LDA was the first approacher in any of the cases?

Mr Brown: That is correct, in the case of all those properties that were purchased.

Dr Cooper: Under their way of working, they pursued the opportunity when somebody came to them, or they considered the opportunity.

THE CHAIR: We have no evidence one way or the other as to whether the LDA approached the National Equestrian Centre to see whether they were willing sellers?

Mr Brown: That is a question I do not think we answer in this—

Dr Cooper: We did not answer because it was not a purchase.

THE CHAIR: Not part of the audit; that is fine.

Mr Brown: It is not one of the nine that was purchased.

THE CHAIR: Okay; that is fine.

Mr Brown: It is of clear interest, as you can see on page 45, table 2-1:

... the LDA Board resolved ... to initiate discussion with the owners of ... block
418 ...

THE CHAIR: They did. But because it is not part of the audit, because it was not purchased, you do not know anything?

Dr Cooper: We did not interrogate it.

Mr Brown: In chapter 5, we talk about who contacted whom; we do not include that one within the scope of that question.

MS CODY: From what you were saying in your opening statement, isn't it better that the land, if it is eventually rezoned for future development, is in the hands of the government rather than them having to purchase it in a later time when possibly land values will increase?

Dr Cooper: That is a risk analysis. As we have put out, the issue there is: does it pre-empt planning or does it not? It depends upon your perspective. I hope the audit has presented the two opposing views. But it also presents risks. Either you are holding onto land and have invested resources into something that may not eventuate

as anticipated, or else, because of the link with the planning study, the studies have not been done to allow timely release of land. It is a matter of how you see these purchases.

MS CODY: I note that, in a lot of the recommendations, you have discussed that there is no longer the LDA. We have the SLA. When did you start the audit?

Dr Cooper: The audit was started in May 2017.

MS CODY: I am assuming the audit went through to when the SLA came into effect?

Dr Cooper: And not beyond. We are not auditing the SLA.

MS CODY: I noticed that in some of your recommendations, you have referred to the SLA.

THE CHAIR: “Although the audit does not cover the SLA, we recommend the SLA—”

MS CODY: “We recommend the SLA.” You did not actually look at what the SLA is doing; you are just saying that this is what the LDA did and you think the SLA should probably not do some of those things.

Dr Cooper: Yes. There are always lessons. The area where we went a bit further, and we have had long conversations with the SLA about it, is where there are ongoing issues around the land management. They advised us recently that the LMAs were sitting with the planning arm for consideration. Of course, if that happened, we would update. It is the same as with the bushfire operational plan. We make sure that on some of those issues that the community might be particularly concerned about, they are not just historical but are there for the public record. So we did do that.

But really we were looking at the LDA. The audit’s role is to pull levers for improvements. We hope that all the recommendations will be agreed to because, even if you did not have this audit, they are recommendations that are dealing with matters of substance as to how things are done. We looked at what would help going into the future.

MS CODY: I note that at the beginning of the report you talk about nine audits. On some pages I note that there is reference to only eight audits and nine properties. Have all of those acquisitions been settled? Is nine the total number? Have we looked at all nine audits, and are they all settled?

Mr Brown: On the first question, about the eight and the nine, there is a little confusion. We mention eight, but we mention nine tests. I have explained about one test being either/or.

When it comes to properties, by the time the fieldwork was well underway, there were clearly nine properties. Why have we only undertaken the assessment on eight? The reason is that Wagtail Park was acquired under a decision of cabinet in 2014. Paragraphs 2.11 on page 48 to 2.15 explain this nuance. With three of the

properties—Wagtail Park, the Vines, and Pine Ridge—in terms of their intended purpose, enabling second electricity supply infrastructure, a decision of cabinet was made in 2014. When we asked the Australian Government Solicitor whether this framework applied to the cabinet, the answer was: no, it does not. The cabinet had made its decision. In that respect, Wagtail Park was exclusively for second electricity supply infrastructure. A decision had already been made in 2014.

For the Vines and Pine Ridge, although the cabinet decision was made about electricity supply infrastructure, a larger area of those properties was purchased or the whole property was purchased not just for the second supply infrastructure but for other purposes as well. So they were caught by the framework.

In that respect, we finish up with the Vines and Pine Ridge in the analysis but Wagtail Park not in the analysis. All that argument is laid out, perhaps more articulately, in paras 2.11 to 2.15.

MS CODY: Thank you. Mr Coe was talking about the Lands End approach to the LDA and that some other property owners approached the LDA to purchase properties. I note that you have the 99-year lease stuff in here as well. Was that any part of the audit on the sale side?

Dr Cooper: No; it is a context issue. If you look at what the audit covers in a context way, you had the 99-year leases, then you have the acquisitions, then you have planning sitting there, and then you have land management. As I said in our private session, if you get up in a helicopter and look at this as a whole system, it is not that well connected.

MS CODY: If people were applying for extensions of their 99-year lease, they probably would have gone through the LDA.

Dr Cooper: I could not answer that. I think that would sit with the environment, planning and sustainability arm.

MS CODY: You talked about table 2-1 on page 45 a few moments ago. You said that these were properties of interest but not purchased by the LDA. Can you explain why they were properties of interest?

Mr Stanton: I refer to the December 2014 strategy paper and the decision of the board as to those three properties: Milapuru, Fairvale and the National Equestrian Centre. As to why they were properties of interest—

MS CODY: I am talking about the other three properties. I am talking about the Canberra Equestrian Centre and Riverview—and obviously the National Equestrian Centre falls into that—in table 2-1.

THE CHAIR: If you would like to look at my colouring in, you can see that they are all conjoined.

MS CODY: They are all conjoined. I know them very well. As a horse owner, I know most of the rural land around the ACT. I do know them very well. I just wanted to

understand, from an audit perspective, where they were looked at and how they were looked at. Did you go into immense looking?

Dr Cooper: No. It was contextual, again. We only looked at the properties that ended up being purchased.

MS CODY: By the LDA?

Dr Cooper: By the LDA or with the LDA initiating, committing to the settlement of them. The National Equestrian Centre, the Canberra Equestrian Centre, while it was on the district of Stromlo strategy paper—

MS CODY: That is correct.

Dr Cooper: That is important, because that is information going forward, should we consider it. And while it is clearly said that they should pursue these, it is a context issue.

MS CODY: I just wanted to know. In the table it just leaves it a bit broad. I just wanted to get a bit of further information.

THE CHAIR: That is why I coloured it in. Then you can see all those blocks.

MS CODY: They are very close to each other. Absolutely.

THE CHAIR: They are all contiguous; it does change the look of it.

MS CODY: Yes. As I said, I know them all very well. I have ridden my horses through 90 per cent of them. I used to keep them at Milapuru many moons ago.

THE CHAIR: Could I go to the probity chapter and ask questions about the purchase of Fairvale. Auditor-General, you said that you looked at this as a probity issue from the LDA's point of view.

Dr Cooper: Yes.

THE CHAIR: You did not look at whether or not there were probity issues for anyone else in the equation?

Dr Cooper: No, we did not make comment on that. My team will walk you through, because information was declared to the LDA. Having declared that information, the accountability for managing things rests with the LDA.

Mr Stanton: We simply set out the context in 40 paragraphs or so, the narrative of how that unfolded from May and June through the next couple of months, and the parties that were involved.

THE CHAIR: My threshold question is: who in the ACT government approved the subdivision of Fairvale into blocks 517 and 518?

Dr Cooper: We would have to take that on notice. I do not recall saying who approved it. I do not recall that we asked that question and got that answer. For complete accuracy, I would have to go to the planning arm.

Mr Brown: May I ask a question about the question? Do you mean who approved the principle?

Dr Cooper: No, I think it actually—

THE CHAIR: Actually, I think I need both. Somewhere along the line, someone had to make a decision that this was a reasonable proposition—

Dr Cooper: To make it legal.

THE CHAIR: and that we should pursue it. But somewhere along the line, presumably somebody in—

Dr Cooper: Planning.

THE CHAIR: Presumably someone in ACTPLA actually approved the subdivision. There are a couple of issues around that. The rural leases make it very hard to approve the subdivision of rural land. I am presuming that Fairvale was outside the holding period; there is a holding period which I think is usually the first 10 years. I am presuming it was outside the holding period; otherwise it would have been absolutely illegal. But also, there would have had to be some communication between the LDA and ACTPLA. I presume that it is ACTPLA who actually agrees to the—

Dr Cooper: As far as any of the material I saw is concerned, I cannot give you a definitive answer.

Mr Stanton: That is correct in terms of the approvals. Paragraphs 3.120 through to 3.122 discuss the former LDA and its seeking advice from the ACT Government Solicitor as to how to effect the sale of two separate parts of Fairvale.

Dr Cooper: But as to who approved it, who signed on the dotted line and said, “You have a subdivision,” we did not look at that. Would the committee like me to—

THE CHAIR: You can take that on notice, but you may not have the answer.

Dr Cooper: We will probably call the head of the planning arm and ask them to respond directly to the committee.

THE CHAIR: It may be that that is something the committee has to explore in other hearings.

Dr Cooper: Yes. We will contact Mr Ponton and ask him to provide that information direct to you.

THE CHAIR: Thank you. In relation to the decision to subdivide and forgo a part of Fairvale, do you have any understanding as to why this was agreed? It seemed that

back in December 2014 the LDA wanted all of Fairvale. Then suddenly they gave up a large piece of it which could be construed as being the most valuable part of it because it has the road frontage, et cetera.

Dr Cooper: We posed those kind of comments.

Mr Stanton: That is right. How that unfolded over the weeks from May and June through July, August and into September, as best we understand and know, has been put forward in the audit report. We have included testimony or advice from interviews under oath or affirmation. Clearly we have gone back to source documents as well. We have also highlighted, where appropriate, where there is perhaps a different recollection of events from participants. We have noted, as I recall, in a couple of paragraphs, where the recollection by this person may be a different recollection from that of another person.

As best we know and as best we understand, these are the events that transpired over that period of time. We have put all of that there in the audit report for transparency. This includes the considerations from the former LDA, as they were asserted to us, as to why, and I will paraphrase, they might not have been interested in that part of Fairvale.

Dr Cooper: But they were not documented reasons from the time.

Mr Stanton: Correct.

Dr Cooper: They have been reflections from now. And even with those reflections, and given some of the comments we were given, it is hard to see how that correlates with some of the other information that we then sourced.

Mr Stanton: That is correct. The key finding for the audit report was that there is no evidence that the former LDA identified and assessed the risks related to not pursuing the entire purchase of the block.

Dr Cooper: In terms of your other question about the probity of those involved, we do go on to say:

The former Land Development Agency had knowledge of the Director's roles as a valuer for the vendor and as a prospective purchaser ...

They made that known, yet the former agency directly supported the subdivision, for no apparent reasons or need.

Just because somebody asks does not mean you give it. In public office, you have to have a good reason for doing something or not doing something. You would need to document that given this kind of area. There is a map of their planning later; let us go to that. It is on page 195. Although this is conceptual, probably for conversations, you can look at that area and say, "If you are purchasing strategically important areas—"

THE CHAIR: "Why did you give up that block of land?"

Dr Cooper: The question is about the why. There are no contemporary documents saying why. Also, we did look at the impact of the river corridor. It raises a question beyond audit.

THE CHAIR: Yes. Just to reinforce, you did not look at the probity issues associated with the valuer, the director of Knight Frank.

Dr Cooper: No, we did not. We just made it transparent for the committee, members of the Assembly and the Canberra community as to what we found.

THE CHAIR: You did not consider whether, when you come across these issues, that required reference to another agency for investigation?

Dr Cooper: We do consider those things. In this case, we felt that it was about making it transparent. There was no evidence at hand to us directly of anything inappropriate by that person per se. The issue for us was: why did the LDA agree with this person to pursue this rather than pursuing what they originally intended, which was the whole purchase? It is more an accountability issue for the LDA to justify not doing something. You can always ask, but it is not up to a government agency to agree.

THE CHAIR: The other probity issue that you raise in this chapter is the issue about the management contract to find a sub-lessor for Huntly. I found that very confusing, I may be of very small brain, but I found that extraordinarily confusing. Could someone talk us briefly through it and answer the question: did the person who was identified as having a conflict of interest ever end up with any of the contracts at the end of the process?

Mr Stanton: The short answer to that is that, as far as the—

THE CHAIR: There is not a short answer? Are you saying that, Mr Stanton?

Mr Stanton: As far as that Huntly estate is concerned, in the middle of chapter 3 we talk about the selection and the appointment of CBRE in order to manage and run that particular process. We make the key finding about how that selection and appointment process unfolded in terms of the “single select” process for the selection of that contractor without demonstrating why this exemption outweighed the benefits of complying with the tender and quotation requirements.

Dr Cooper: Again, this is an LDA issue; it is not their issue. The LDA, at this stage, should have sussed this out.

Mr Stanton: That is paragraphs 3.51 and 3.52 in relation to the documentation associated with selecting a particular provider. In the unfolding paragraphs there is some discussion about the proposed terms on the part of this particular contractor and what I would characterise as some disagreements and questioning as to the nature of the terms and the payments to be made. There are certainly different views as to the payments; what was involved in actually undertaking those services and providing those services; and the value for money that was provided to the territory. It was asserted that it was a unique, interesting and particular service that required their

specialist skills; that they undertook those services and provided those services; and that the territory got a benefit out of it.

Dr Cooper: Also, from memory, the person involved—correct me if I am wrong, colleagues—actually told the LDA, but there is no documented evidence of that.

Mr Brown: If I can just illuminate that point, during the conduct of the expression of interest, and it was open for about four to five weeks, around 22 July—

THE CHAIR: In 2016?

Mr Brown: In 2016. Three weeks into the process, there are two prospective bidders who identify to the LDA that they have concerns that there may be a conflict of interest for the agent running the process. That left 10 days before the close of that competition to resolve how to handle this conflict of interest. The LDA turned to the Government Solicitor for advice and acted upon that advice.

Dr Cooper: But it was very late.

Mr Brown: It was very late in the day. The question then was: why was this conflict of interest not flagged early on? In response to the draft report, the agent said, “Actually, I did. When I was engaged, I did flag this conflict of interest, but the LDA advised that they thought it was a manageable conflict of interest.” So in April when he was engaged—

Dr Cooper: That is at 3.67.

Mr Brown: That was when the agent advised that they told the LDA they had a conflict of interest.

Dr Cooper: We could not find a record, but the LDA’s records are not exemplary.

THE CHAIR: I think we have heard that before; that is probably one of the politer versions. Did the agent from CBRE ever end up as a beneficiary of a contract to manage Huntly?

Mr Brown: No. Again there is commentary on this in the report. The bid that they were a subcontractor for, providing management services to the bidder, was knocked out in the first round, one of five bids knocked out in the first round.

THE CHAIR: Was CBRE paid the full fee, seeing that it was unable to participate in the selection process because of this conflict of interest?

Mr Brown: We did not find any record that there was any adjustment to the fee basis because a component of the service was not provided. That is stated in the report.

THE CHAIR: I refer you to paragraph 3.52, the last sentence. It says:

The decision to procure the services—

that is CBRE's services—

was not justified and the conduct of the process was poor.

What do you mean by “not justified”? Was it that there were no reasons given or that it was not justifiable?

Mr Stanton: Paragraph 3.52 talks about the basic procurement requirements that I was outlining a little earlier. That was the documentation to request the quotation. The engagement of those particular services, the documentation associated with that, the justification for that, were certainly not good.

THE CHAIR: I just want to make clear that—

Dr Cooper: He is answering your question—

THE CHAIR: The question is about there not being enough documentation to answer the questions rather than it not being a supportable decision?

Dr Cooper: That is right.

MR COE: I have a question about the information submitted to the Chief Minister for Milapuru. The settlement date was 31 July. I was wondering whether you are able to advise what information was submitted to the Chief Minister for his consideration.

Dr Cooper: Could you please give us the paragraph?

MR COE: Table 2-2.

Dr Cooper: Sorry, Mr Coe; could you give us the question again, to clarify?

MR COE: It says that the approval for Milapuru, for block 19, was given by the Chief Minister and Treasurer. Are you able to advise what information was presented to the Chief Minister?

Mr Stanton: The report certainly talks about considerations, the former LDA's consideration, of the application of the framework. We talk about how those principles and tests were applied in the framework. As far as the specific documentation that was provided to the Chief Minister and Treasurer is concerned, no.

THE CHAIR: So you did not see it?

Mr Brown: We will have reviewed the documentary evidence from initial contact through to settlement for this transaction, for this purchase. Because it is over five million, there will have been a business case. We will have reviewed the business case. If it is over five million, it will have been a decision that was endorsed by the minister, and we will have reviewed that.

Dr Cooper: The answer, succinctly, is that the team has seen that information. If we could clarify, is there a particular issue that we might need to go back and clarify?

MR COE: I am keen to find out whether the fact that there was a speculative value included for Milapuru, and that the valuer stressed the fact that it was a speculative value, was indeed passed onto the Chief Minister as part of the decision-making process?

THE CHAIR: What you are looking for is what was in the brief?

MR COE: That is right.

Dr Cooper: I think we will have to take that on notice.

THE CHAIR: Yes, sure.

Dr Cooper: If I can, for transparency. We will look at it. If it is not in the report, I will have to clear it with the agency in terms of factual process, to give them a chance if we misinterpret it.

MR COE: That is fine.

THE CHAIR: Could I just interpose here. It is a quarter past 11, and we were supposed to conclude at 11.00. There are many more questions. Can I check with you, Auditor-General, on your availability?

Dr Cooper: We are available. Can we have a one-minute break?

THE CHAIR: Could we suggest that we go through until midday?

Dr Cooper: Definitely, with a one-minute break, if that is all right.

Short suspension.

THE CHAIR: We will reconvene.

MR COE: Have the witnesses finished in terms of the information provided to the Chief Minister?

Dr Cooper: No; we have to come back to you.

MR COE: Yes, but in terms of anything you want to say in response?

Dr Cooper: I think so, yes.

MR COE: Could that question apply to Milapuru, Huntly and Winslade, because each of those is listed in the table as being a decision approved by the Chief Minister and Treasurer.

On a separate note, with regard to the acquisitions by the government, are they all unleased territory land now, or do some of them have LDA or other custodianship?

Mr Brown: They are all leased land with the exception of Fairvale.

MR COE: Which was surrendered.

Mr Brown: Which was surrendered. It is now unleased territory land.

MR COE: In terms of the lease conditions that the ACT government must now comply with, given that they are the lessor of government land, are there any restrictions with regard to renting those properties?

Dr Cooper: We did not go into that detail. That is beyond where we would stop in the audit. The Suburban Land Agency would need to provide information around what the lease conditions are, since they are the custodian of those lands.

Mr Brown: In chapter 4 we considered sublease arrangements and licensing arrangements. When we examined what arrangements were in place, we were not advised that the leasehold was a problem in terms of putting a licence or a sublease in place.

MR COE: Do you have copies of those leases?

Mr Brown: We do.

MR COE: Given that they are public documents in that they can be obtained from the titles office, are they able to be provided to the committee?

Dr Cooper: We will check with the agency, and if the agency concurs, we will provide them to you, since they are public, yes.

THE CHAIR: Thank you.

Dr Cooper: But we will, I emphasise, respect the agency; it is their material.

MR COE: Sure, noting that you can go to the titles office.

Dr Cooper: Yes, I respect that, but it is just out of courtesy in our relationships.

MR COE: Sure.

MS CODY: I want to take a step back for a moment and talk about the application of the framework. I know that we were talking at length about that in an earlier period. I was wondering if you could expand on that for the purposes of today's hearings, please.

Dr Cooper: Certainly. Would you like us to go through each test?

MS CODY: Yes. That would be very good.

Dr Cooper: Okay. The easy one is test 1. Test 1 was met. There was a documented statement that an intended outcome had been identified for every site. The LDA was

clear in terms of why we want that particular site. Tick.

MS CODY: It is always very good to be—

Dr Cooper: Clear as to why you are doing something?

MS CODY: Yes.

Dr Cooper: Yes, absolutely. With respect to the other two, I am going to share that between my colleagues. Jonathan, maybe you can do policy alignments and planning, and then Brett can do value for money.

Mr Brown: In relation to policy alignment, there are three tests. This looks to the first test to check whether the stated policy aligns to the intended outcome. In the case of the properties we looked at, the difficulty was with test 2 and test 4. Test 2 is:

The intended outcome for the proposed acquisition advances the Government's land development policies as set out in the ACT Planning Strategy and any other relevant Government strategic spatial planning documents and requirements.

It is very much focused on spatial planning, strategic planning. That is test 2. In the introduction, I explain that test 2 was not met, not followed, in some cases.

Test 3 is to do with the alignment of the intended outcome with the statement of government policy for the Land Development Agency. In all cases, test 3 was met.

THE CHAIR: That is the table on page 84.

Mr Brown: Test 4 is a catch-all. It says:

The intended outcome for the proposed acquisition is consistent with any other relevant Government policies.

The government policy that particularly was looked at for test 4 was the government policy on central Molonglo, which we have already talked about. In that respect, some of the properties did not satisfy that test; they were not in accordance with the government position on central Molonglo.

Mr Stanton: As far as the value for money principle goes, that is tests 5, 6 and 7, noting that tests 6 and 7 are either/or: you would apply 6 or you would apply 7.

As far as test 5 goes, the requirement for test 5, the purchase price (the proposed purchase price) must be consistent with the independent market valuation. From about paragraph 2.65 onwards in the audit report, we talk about how we have interpreted and applied that particular test, that independent market value. We sought advice from the Australian Government Solicitor in relation to that. We referred to some of the other advice that is out there from the valuation property standards and the like.

Taking all that into consideration, we came up with a way to apply that particular test. We have outlined that from about paragraph 2.79 onwards, at page 68 of the report, and what we were looking for as far as consistency with the independent market

valuation was concerned.

We broke that down into four parts. The first part was that we were looking for something that was written from a certified practising valuer. Secondly, we were looking for a market valuation that was stated as being on the basis of highest and best use of the land as it was. Thirdly, we were looking for a market valuation that was independent. Fourthly, we were looking for plus or minus 10 per cent. That is how we applied consistency with the independent market valuation, something within 10 per cent.

Table 2-4 shows those properties that were purchased, the valuation reports and advice that was available from the former LDA. We have given the ticks and crosses there as to how we have applied those particular elements of that test.

I will break it down from paragraph 2.81 onwards. With Milapuru and Wintergarden, we found that the purchase price was not consistent with highest and best use. The former LDA sought advice on highest and best use at the time; additional advice was requested after that. That was in relation to and in response to the market dynamics. We have gone into some detail in relation to that from paragraph 2.85 onwards: whilst the valuation was sought on the highest and best use of the land at the time, the former LDA or the respondents to the audit asserted that there were other activities going on; there was other interest in the particular property which was—I will paraphrase the words—putting the price of the property up; and they needed to be responsive in relation to that. We have identified that, and we have gone into some detail as to the toing and froing, the negotiations, and the information that was available or that was put to us in relation to those market dynamics.

THE CHAIR: On that issue, all of these properties were rural leases with a long lease, with 80-plus years on their leases. What would be a higher and better use? Given their current status, how would they be valued as anything other than rural land?

Mr Stanton: As far as Milapuru goes, going to paragraph 2.85 onwards, what was provided was updated valuation advice on the basis of speculative value. Going to the first dot point on the top of page 71, the advice noted:

... ‘We refer to our recent valuation of abovementioned property ... and your subsequent request to provide advice on the “Speculative Value” ... on the basis that it has Future Urban potential. We note there are currently no town planning overlays for such use ...’ ...

The next dot point says that the valuer, Knight Frank, stressed that the speculative value only applies in the event that future urban development becomes a real potential.

THE CHAIR: This is my problem, and it is also the problem I had in a previous audit in relation to the Glebe Park land: there are specified things that you can use that land for, and you are saying that you are actually looking for something beyond that.

Dr Cooper: Absolutely.

THE CHAIR: Why would you look beyond the stated purpose for the land,

especially when there is nothing in the offing? I am going to be speculative in a slightly different sense here: to go to a higher and better use, surely you are actually speculating on what might happen in the future. With Fairvale and Milapuru, all of those were rural leases. They have constraints on what you can do on them because they are rural leases. They have land management agreements over them. Some of them are in river corridors, which constrains what you can do with them. Why would you value them at other than rural land values?

Dr Cooper: That is really a question for the LDA. It is about their risk analysis. It is about documenting their reasons for doing exactly what has occurred. And because there is not that documentation, it would be imprudent of us to guess their answer.

THE CHAIR: But the Audit Office in a sense has condoned looking at a higher use by using these criteria.

Dr Cooper: I do not think condone is the word. What we are saying is that these were their rules or their framework. They said that they had to follow their framework. As auditors, we go in, we look at that framework, and we say, “Did you follow it?” The answer for us is: “No, you did not follow your own framework.” We also say somewhere in a recommendation or a finding that if it is an inappropriate framework, it should have been changed. It should have been reviewed. And we, I hope, have even respected their view by saying that the framework did not accommodate market dynamics, which is what they are arguing.

Mr Stanton: Yes.

Dr Cooper: But they are still outside their framework from our perspective as to what they did.

Mr Stanton: I draw your attention to paragraph 2.110, which was advice in relation to the final proposed report from the Suburban Land Agency. The second paragraph of that identifies and talks about other factors that were going on at the time:

In all cases, the LDA Board decision to proceed with land acquisitions was on the basis of a proposed purchase price that was consistent with the independent market valuation. In some cases, this did not achieve a purchase and further negotiation was undertaken with the vendor to determine a mutually acceptable value for the land.

We have applied the test. We have applied that. We have come up with our conclusions. We are simply respecting the advice that was provided in response to the report.

Dr Cooper: We do go on to say:

... what was required to meet Test 5 was a strict application which means the effect of the Framework is limiting and does not expressly facilitate market dynamics being incorporated.

That is beyond the framework language. That is audit’s role, to go to that point.

MS CODY: But then we talk about the four properties in table 2-5: Lands End, Milapuru, Fairvale and Huntly. The table sets out fair value, date of valuation and purchase price by the former LDA. The fair value and the purchase price for three of the four are spot on.

Dr Cooper: The second one, I think, is a bit different.

MS CODY: Yes; that is why I said three of the four.

Dr Cooper: Sorry, three of the four.

Mr Stanton: Earlier I was talking about Milapuru and Wintergarden and the basis for the valuation being not on highest and best use. As far as Fairvale goes and the Vines, there are different considerations there. That is outlined in table 2-5. For the purchase of Fairvale, it was asserted to us that the former LDA had a market valuation that was prepared. That market valuation was prepared for the owner of the property and it was prepared by a valuer who had an interest in purchasing the property. We could not locate that particular valuation advice.

THE CHAIR: Did you ask the valuer?

Mr Stanton: We could not locate it on LDA documentation, but we received that valuation advice from other parties associated with that. We could not be sure; there is no record of that advice on LDA files. It was certainly referred to us as being an independent market valuation. But first, we could not locate it on LDA files; and second, it was prepared by a valuer that had an interest in purchasing the property.

Dr Cooper: So how independent is it?

THE CHAIR: It was not independent.

Mr Stanton: Correct.

Dr Cooper: That is our view.

Mr Stanton: So with Fairvale, we gave them crosses in that table for different reasons from Milapuru and Wintergarden. Then we have the Vines. There we had a valuation report sought by the former LDA. It provided a valuation of about \$1.2 to \$1.4 million. It was asserted to us that there was a counter-offer, another offer, for that property. Therefore, the LDA went and sought further valuation advice in relation to that counter-offer. It is paragraph 2.107 onwards.

The SLA advised that an offer of over \$2 million had apparently been received and this was subsequently presented to the LDA's part of the business case. The former LDA paid in the order of that, \$2.2 million. But we did not find evidence of a valuation in that range of \$2 million or so. So you had the original valuation report, 1.2 to 1.4. You had an assertion that there was a counter-offer for the land. And that assertion about the counter-offer was referred to in reasoning and discussion for the purchase of the property.

MS CODY: Again, if you are looking at land, again referring to your map in the report, Wintergarden and Milapuru are very close to current residential developments. I know Milapuru extremely well, and it is extremely close to a very well-known residential area. You could imagine that there would be other people wanting to make offers on those properties. To be able to be rural and that close to suburbia would be very attractive.

Dr Cooper: That is why we went to market dynamics, but that is not within the framework. Also, they certainly have not done themselves any favours in not fully documenting and having that evidence. While we can all speculate—

MS CODY: Make assumptions.

Dr Cooper: Audit is not allowed, really, to do that. We actually look for the evidence that we can find.

MS CODY: Was there evidence of the other offer, the \$2 million offer? Or was it assertions?

Mr Brown: There was no record that we identified on file.

MS CODY: Within the LDA?

Mr Brown: We did not know about this until this assertion was made that in fact there was a counter-offer of \$2 million and that is what set a market value. We did not make the connection that the \$2 million offer was what was being relied upon as a market value. We had assumed that the valuation that had been undertaken by an independent market valuer was the valuation, not that an offer had status as setting market value.

Dr Cooper: You may wish to ask the Suburban Land Agency for their evidence for what they understood, how they understood that. Was it from corporate memory? If so, who? Otherwise, where is the documentation?

MS CODY: You do not often put in formal written offers when you are making offers on properties.

Dr Cooper: Usually there might be a file note somewhere, I would imagine, in a government agency, saying so and so, that you could track back.

THE CHAIR: File note? Novelty! Could I go back to paragraph 2.107? It says:

The former Land Development Agency subsequently purchased the property for an estimated \$2.2 million.

Do we not know what they paid?

Mr Brown: This is a property that was approved prior to 30 June 2017 but did not then settle until late June 2018, in other words, about three weeks ago. We were running with the figure that had been approved and upon which a deposit had been

paid.

Dr Cooper: Because of the timing of the audit.

Mr Brown: Yes.

MS CODY: Your report was out prior to settlement.

Dr Cooper: Yes, 29 June.

THE CHAIR: I just thought it was odd phrasing. That explains it.

Mr Brown: There were two settlement dates. I think one was 22 June and one was 27 June 2018 for Wagtail Park and for the Vines. When we have estimated, it is because we have not confirmed the final settlement figure.

THE CHAIR: You have not actually seen the final deeds, yes.

MS CODY: Would you, as an audit office, go back to look at those again now that your audit is complete, your audit is finalised?

Dr Cooper: Our audit, yes.

MS CODY: You were looking at the processes followed to make the purchases, not the finalisation of the purchases, so to speak?

Dr Cooper: Unless it occurred in that time, yes.

MS CODY: The other seven properties were all finalised during the process of—

Mr Brown: Actually six. One was settled in September 2017. Pine Ridge was settled during the fieldwork, so we took account of the final settlement figure in our numbers.

MS CODY: So you looked at both the processes undertaken to purchase the properties and settlement where it had occurred prior to your finalising your audit? Is that correct?

Dr Cooper: Yes. We included the accuracy of figures for settlement where the audit actually overlapped with that activity.

MS CODY: So not the process of settlement itself?

Dr Cooper: No.

MS CODY: Just the process of purchase?

Dr Cooper: Yes.

THE CHAIR: I have a couple of issues related to the purchase price. Paragraph 2.87 quotes the Suburban Land Agency as saying that the purchase price for Milapuru

was negotiated. It goes on to say:

The request for consideration of a 'speculative value' was in direct response to a nearby land purchase made by a private developer.

Do you know what is the nearby land purchase, or is that something we need to take up with the SLA?

Dr Cooper: I think, for accuracy, you should ask them. We think we know, but it would better to clarify with them.

THE CHAIR: I think I know, too. In relation to Wintergarden, it was subject to an auction, and it did not meet reserve. Then the LDA went in and negotiated a price because they were one of the under-bidders. Presumably, the LDA went to the auction with its valuation in mind, which was not enough to purchase on the day. How do you marry that? You have worked on a written valuation, but in a sense the valuation was overturned by the auction process.

Dr Cooper: It is a problem of their framework. It is a total problem of their framework. That is why we have said that the framework does not deal with market dynamics. There should be a process in place, if you are going to use market dynamics, whereby, when you are outside your framework, there is a process that allows you to pursue what you want to pursue, and you document it.

THE CHAIR: Ms Cody, have you finished asking questions about the framework tests? I would like to go back to test 1, if you are finished.

MS CODY: I may have further questions as we go.

THE CHAIR: Test 1 says:

An intended outcome has been identified for the proposed acquisition site.

That is paragraph 2.9. Then you go on, in paragraph 2.46, to outline what the intended outcome was. Do you agree that all of those are tests that meet the requirements? They have stated a reason, but do those reasons add up given the planning context?

Mr Stanton: The test is what it is as far as simply requiring an intended outcome to be identified is concerned. On a strict application of that test, we certainly gave it a tick and agreed. As far as planning considerations and the like are concerned, whether that was consistent with the plan in the context of the planning overlays, we applied that thinking in the policy alignment tests, tests 2, 3 and 4.

THE CHAIR: What you have said is that they have thought about it enough to give a reason for buying the block of land.

Dr Cooper: And did they document, and is it clear? That is really important to the audit. It is really: why are you purchasing this? If you say, "We think it can go residential," that is fine; your thoughts are clarified. It was a non-judgemental call. It was an audit: did you state something?

THE CHAIR: So you gave them a tick for having stated something.

Dr Cooper: Because they stated something; that is right.

THE CHAIR: But then you—

Dr Cooper: Question it later.

THE CHAIR: Then 2, 3 and 4 drill down into that, and that is more of the test.

Dr Cooper: That is right. How do they justify it? “Thank you for telling us all, but how do you possibly come to that?” “Okay; look at the planning context.” It did not align for us.

MS CODY: In all cases?

Dr Cooper: Let us go to the table.

THE CHAIR: I think Wintergarden was the only one that did.

Dr Cooper: It did not.

MS CODY: It did align?

Dr Cooper: No. All of them aligned, all the rest, but we thought it did not align.

Mr Stanton: Tests 2, 3 and 4 were—

THE CHAIR: So 2, 3 and 4. The only one that got a tick all the way across was Wintergarden.

Mr Stanton: Wintergarden, correct.

MR COE: With regard to Glenloch, what is the reason why that was not included? Is it because it pre-dates the audit?

Mr Brown: That is correct.

MR COE: You had to draw a line somewhere, and you drew a line at the framework?

Dr Cooper: Yes, that is right.

Mr Brown: At 14 June 2014.

MR COE: At the beginning of the framework.

Dr Cooper: Because clearly there was a policy context that we could use to help audit.

MR COE: That was a very expensive purchase by the government and, again, it looks

as though there was a bit of speculation there or speculative pricing in that valuation. In light of that purchase, was there any documentation that led to the development of the framework?

Mr Brown: Why have we included Glenloch in this report? Its planning context. It was recited as being influential in the need for the framework. Although the direction was given in June 2014—from that point, the auditor’s interest was in how it was applied—the framework’s genesis was in October or November 2011. So the idea of the framework was during a time when Glenloch had not been approved or finalised. Two interviewees related the significance of the Glenloch experience with the need to develop the acquisition policy framework.

Dr Cooper: That is quoted there, too: the response of some of the board members about how that shaped their consideration.

Mr Brown: It is 5.52.

MR COE: Given that we have a Lands Acquisition Act for purposes such as these, why was the government so unwilling to go down that path?

Dr Cooper: I think that is a question for the government. We did not explore that.

THE CHAIR: Could I clarify, in that context, that all of these rural leases had withdrawal clauses in them?

Mr Brown: There is a table in the report.

THE CHAIR: That table at the front, yes.

Mr Brown: With the property-by-property analysis of zoning and withdrawal; what area is under a withdrawal clause.

Mr Stanton: It is table 5-1, page 160 of the audit report.

Mr Brown: Can I just add one comment on Mr Coe’s question. Paragraph 5.59 is to do with the government acquiring land compulsorily under the Lands Acquisition Act. We recite here an aspect of the decision-making documentation at the time:

The ACT Government Solicitor’s Office provided a ‘compendium of risks’ which:

Len[t] support to a negotiated outcome as the preferred course of action.

Mr Stanton: I also draw the committee’s attention to some commentary in the Audit Office’s report on the Glebe Park transactions in relation to the former LDA’s consideration of the land acquisition legislation at the time.

MR COE: That was the key risk: time. Time is something that is clearly on the government’s side with regard to developing land west of Canberra. I can understand that for Glenloch it might not have been so, especially given that they had already put

the overlay onto the land before they had acquired it. Obviously, you cannot comment on it.

Dr Cooper: No, we cannot.

MR COE: I would imagine that the compendium of risks is primarily time related.

THE CHAIR: Could I just clarify that that table on page 160 answers my question, and that there were not withdrawal clauses or there were limited withdrawal clauses?

Mr Brown: Table 5-1?

THE CHAIR: Yes.

Mr Brown: Yes.

THE CHAIR: I would like to ask a question about the valuers, Knight Frank. They were the valuers involved in most, if not all, of these transactions. Was it the same valuer on every occasion or was it a panel?

Mr Brown: It is the same valuer.

THE CHAIR: That makes the committee's approach to Knight Frank so much easier.

Mr Brown: I would just add that the valuation reports, I believe, have two signatories. One signatory is the same on those valuation reports; I cannot confirm that the second one is always the same.

Dr Cooper: Just for clarity, the one who did the valuations is the same.

THE CHAIR: Yes.

Dr Cooper: I am just clarifying Jonathan's response.

THE CHAIR: Just for clarity, the person who did the valuations in all those cases was the person who ended up purchasing part of Fairvale?

Mr Brown: Yes.

Dr Cooper: Yes. To comment, the former LDA, the Suburban Land Agency and the person concerned made it very clear how difficult it is and how few valuers there are for rural land.

THE CHAIR: I want to go to the rural land study that was offered to the LDA by Colliers. At some point there is discussion about how the LDA paid for part of that: the costs appear to have been shared between the LDA and other people who were interested in land around. Did you verify that? It was stated, but did you verify that other landowners contributed to that?

Mr Brown: No. The statement came from Colliers that the 50,000, as identified in the

invoice, that was to be paid by the LDA, was only part of the cost of a larger piece of work, and that that larger piece of work was paid for, in part, by a third party. Initially I think the figure was 5,000; on further investigation, it is stated as 50.

THE CHAIR: It became 50.

Mr Brown: We did not confirm that \$50,000 was paid by the third party.

Dr Cooper: We took it from Colliers.

THE CHAIR: My understanding from reading the report, and I would like some clarification, is that this was an unsolicited offer from Colliers to the LDA.

Dr Cooper: There are three things.

Mr Brown: There are three. We will call them pieces of work, but they come under different names in the report. One is a letter, a “project consolidation” letter. The second is the district of Stromlo acquisition strategy paper. The third is the Stromlo future urban land study. They were prepared in sequence: the first in August or early September 2014; the second in November 2014, which then went to the Land Development Agency board—

THE CHAIR: On 11 December?

Mr Brown: That is the one. The third piece of work was commenced in January and was the one that the LDA paid \$50,000 towards. None of these three was explicitly requested by the LDA. On asking the question, “Where did these come from?” it was confirmed by Colliers, and this is in the report, that the work was “on our own doing following announcements that, you know, there were potential future land shortages in Canberra in 20 or 30 years”.

Dr Cooper: Paragraph 3.28.

THE CHAIR: Again, this was work that was not done on the initiative of the LDA? In the same way that the LDA did not initiate the purchases—people came to the LDA—someone has come to the LDA saying, “This is our thinking,” and in a sense, it was adopted by the LDA as LDA thinking?

Dr Cooper: It had an inference.

THE CHAIR: It goes to the board. Although the board did not fully accept that paper, they did accept some aspects of it by sending them out to go to negotiate for those three specified blocks of land, of which they acquired 1½.

Mr Brown: Yes.

THE CHAIR: And then there was the relationship with Colliers, having come to the agency and said, “Here is our thinking.” What did you discover about the relationship between Colliers advocating for this strategy in particular and then their representing the LDA in particular purchases?

Mr Brown: The word “advocate” is an interesting word, and it is a word we refer to in terms of API conduct: the role of an advocate versus the role of an expert. It is not clear, and we do not make it clear in this report, whether the work that was undertaken by Colliers was pitched as an expert independent impartial analysis of land development fronts across the ACT or whether it was advocacy: “This is what you need to do.”

In other words, because we do not have a clear statement from the LDA or from the LDA board of what it is they want Colliers to do, and then a commissioning process to achieve that, we do not know what the basis of that advice was. Was it expert advice, independent advice, that was being provided unsolicited, or was it actually advocacy?

THE CHAIR: Thank you, Auditor-General and officers, for your attendance here today and for your extended attendance. As usual, there will be a transcript, and there have been issues that you have taken on notice.

Dr Cooper: Can I just check? We have taken the following on notice, from my memory. Who agreed the subdivision? We will be speaking with Mr Ponton to see if he can send information on that. For Milapuru, Huntly, and Winslade, the information that was sent to the Chief Minister, we will identify that in our own system, but we will speak to the Suburban Land Agency and let them see what our comment might be before sending it back. And then there are the lease arrangements.

THE CHAIR: Yes. Before we conclude, I put on the record that I think this is the Auditor-General’s last public appearance before the public accounts committee. I put on record my personal appreciation of the Auditor-General’s work in the ACT over the past many years, particularly as the Auditor-General over the past seven years, and my personal thanks to you for your work during the time I was Speaker and now as the chair of the public accounts committee. Thank you.

Dr Cooper: Thank you very much.

The committee adjourned at 11.59 pm.