



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)
MS T CHEYNE (Deputy Chair)
MS B CODY
MS N LAWDER

TRANSCRIPT OF EVIDENCE

CANBERRA

WEDNESDAY, 5 DECEMBER 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.

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Amended 20 May 2013

The committee met at 9.30 am.

DAWES, MR DAVID, former Director-General, Economic Development Directorate, and former Chief Executive Officer, Land Development Agency

THE CHAIR: Good morning and welcome to the public inquiry of the Standing Committee on Public Accounts into Auditor-General's report No 3 of 2018, *Tender for the sale of block 30 (formerly block 20) section 34 Dickson*. Today we will be hearing from the former Director-General of the Economic Development Directorate and former Chief Executive Officer of the Land Development Agency, Mr David Dawes; the former Chief Financial Officer of the Tradies Group, Mr Stephen Brennan; and the former Director of Sustainable Land Strategy, Mr Greg Ellis.

Today's proceedings will be recorded and transcribed and will be live streamed and available from the committees on demand service. Witnesses will receive a proof transcript of proceedings and they may ask for corrections to be made. If any questions are taken on notice, say, "I will take that question on notice." Questions taken on notice are to be answered within five days of the witness receiving the proof transcript from the secretary, Dr Lloyd.

I welcome you this morning, Mr Dawes, as the former Director-General of the Economic Development Agency and former Chief Executive of the Land Development Agency. You have read and understood the privilege statement?

Mr Dawes: I certainly have.

THE CHAIR: Do you have a brief opening statement to make or do you want to go directly to questions?

Mr Dawes: I think I am happy to go directly to questions. If, for example, there are some things that I need to raise I will raise them at the end, with your permission.

THE CHAIR: That is great. Just to set some context, could you explain for the committee how you came to be wearing two hats—the Director-General of EDD and the Chief Executive Officer of the LDA—and how were conflicts dealt with in that process?

Mr Dawes: I had three jobs at that particular time—Coordinator-General as well. I had a number of different jobs to do while I was in government. I think this was a result of the Hawke review that came out back in 2011 or 2012. I ended up wearing the two titles and the two jobs. There was not really any conflict of interest. If, for example, there was, those duties would be separated and either one of my deputies or one of the other executive directors in the organisation would deal with those particular matters.

THE CHAIR: Were there any instances where there were conflicts of interest between the two agencies?

Mr Dawes: Not that I can recall. I was also on the board of the LDA, as well as being

the chief executive at that time and I had not declared any conflicts of interest at all. I think everyone knew what my past was, being involved in the property industry for most of my life, and I knew most of the developers and builders in the territory. There is not only that side of it but also the professional groups that were attached to the property industry.

THE CHAIR: And in that time you do not think that you had any conflicts of interest?

Mr Dawes: No.

THE CHAIR: The audit report covers the issues around the sale of block 30 Dickson but also covers issues related to the Rosevear Place site and the land swap associated with that. Why was this piece of work—the negotiation of the sale, the operation of the tender—done by EDD rather than the LDA?

Mr Dawes: It was done as part of that major projects unit within Economic Development and that was the task they were doing. There were a number of different things that were occurring at the same time. There was the other car park at Dickson that was going to the market for Coles—that Coles ended up purchasing, I should say. It was not targeted at Coles. But that went out to the market and Coles—

THE CHAIR: When did that go out to the market?

Mr Dawes: I have forgotten the date. I would have to go back through my records. I have not been in the job now for some time, for nearly 18 months, and these transactions date back to 2012 and 2013. But they were around the same time.

THE CHAIR: While we are on the subject of the Coles car park, the sale of the Dickson block was constrained because of the sale of the Coles car park?

Mr Dawes: Yes. I think the very unfortunate part of this whole saga—if I can call it that—is that the car park in front of the Tradies club, different to the car park that is in front of where Woolworths and McDonald's are, had a restriction that that could not be developed until the development of the Coles car park was done because there was an issue around car parking and obviously we were respectful and mindful of the traders in Dickson. We were looking at that time for a number of different alternatives for car parking to accommodate the loss of that car park while that was being developed. And, as you are aware, there were two supermarkets to go into that—Coles and ALDI—and possibly other speciality stores and some apartments on top.

While that was being constructed—and there was a two-car basement underneath that particular car park because they had to comply with and replace the car parking, plus whatever that development generated from a retail perspective—that had to be accommodated. We were very concerned about the two blocks going out and we just wanted to make sure that one could not be developed before the other. As we know, that particular DA had been held up. It was first declined by ACTPLA at the time. Subsequently a new one was lodged, was approved by ACTPLA and ended up in ACAT. It is very unfortunate; otherwise we would be shopping potentially in a new supermarket and the Tradies might be looking at what they could possibly do with

that site.

THE CHAIR: Why did block 20/block 30 go to sale at the time, given that the commencement date was so constrained?

Mr Dawes: It was part of the land release program, part of the whole sort of strategy of trying to renew Dickson at the time. We knew there were potentially a couple of buyers in the market at that particular time that were interested. So we thought we would take it to the market at that particular time.

THE CHAIR: I presume that the people who put in a request for tender for the block knew that they could not activate anything on that until the Coles process—

Mr Dawes: Correct; the site was developed.

THE CHAIR: Because Coles had already won the tender for the other block of land?

Mr Dawes: It was around the same time, I think. I would have to just double-check the exact time.

THE CHAIR: But, in some way or other, anyone who was tendering for the block next to the Tradies would know that they could not activate that until the other car park works had been completed?

Mr Dawes: Correct.

THE CHAIR: Would that have made that block of land particularly attractive or unattractive? Would that be a constraint on what people might be prepared to pay because there was a certain amount of uncertainty about when they could start?

Mr Dawes: Yes and no, I would say. I think again you have got to look at it in context as well. I know the Auditor-General talks a bit about advertising and one thing and another.

In regard to the site in Dickson, there were about 20 people who picked up the documentation. A lot of real estate agents that have got a national and an international presence picked up the documentation. And when you look at that particular site to be developed as well, there were some constraints on the site. There was a pocket park that had to be delivered there, and that was going to be handed back to the territory.

That has probably led to only two tenders coming in. There was a tender that came in from the Tradies club for \$2.2 million and one from Woolworths for \$1.6 million. Obviously the Tradies is there and Woolworths is opposite. So it made sense for both those parties to be the ones that ended up tendering. We were disappointed that there were not some others, as you often are, but we got a \$2.2 million and a \$1.6 offer. If the offers had been reversed, I wonder if we would be having the same discussion, because it is like any auction process. If something is passed in, you deal with the highest bidder, and that is actually what happened here. It is probably timely.

The thing that has probably appalled me in all this is some innuendo or whatever

about public servants. All the time that I dealt with public servants prior to my joining government and while I was in government, in the 10 years I was there, they were beyond reproach. Whether some people are more competent than others is a question. But as far as integrity and honesty go, I have to actually stick up for the public servants in this particular case and in many of the dealings that I had in the 10 years and even prior, when I was at the MBA for 14 years.

THE CHAIR: Just before I go to Ms Cheyne, I want to touch on something you said: you had an expectation of a higher price than the \$2.2 million. What was the expectation?

Mr Dawes: The reserve price that was set was \$3.18 million. That is one thing I have got a good memory for, numbers.

THE CHAIR: The difference between \$3.18 million and \$2.2 million is—

Mr Dawes: \$980,000—in round figures, \$1 million.

THE CHAIR: It is substantial. It is \$1 million. That is close to 30 per cent of the—

Mr Dawes: And if you look at it compared to the Woolworths price it is 50 per cent.

THE CHAIR: Were there discussions about walking away from the deal at the time because it was so—

Mr Dawes: No. Like any transaction, you deal with the highest bidder. I was not involved in the direct negotiations on the site. Obviously I was getting feedback at the appropriate times and I signed off on some briefs at the appropriate times, but I was not there in the day-to-day discussions. We relied upon a very competent tender panel as well, across government, including treasury. Unfortunately, the government architect is no longer with us, but he was on that panel as well. It was a very competent panel. I relied upon them and the negotiations with the officers.

THE CHAIR: But at no stage did you or anyone that you were dealing with in the bureaucracy, in EDD, say to you or did you think, “Wow, we are taking a 30 per cent haircut here. Is this the time? Do we walk away from this tender?”

Mr Dawes: I suppose that may have been in discussion. It was not raised with me personally. Negotiations went on, and at the end of the day the Tradies came up to the \$3.18 million. That was the reserve price. So they actually paid the price.

MS CHEYNE: So the Tradies was originally identified as the preferred tenderer because it had put in a higher offer?

Mr Dawes: The highest price, yes.

MS CHEYNE: And were any similar discussions or negotiations undertaken with Fabcot?

Mr Dawes: No. They were the under-bidder—sorry—yes, the under-bidder at 1.6.

Obviously if, for example, negotiations had been exhausted with the Tradies and they had walked away, perhaps there would have been a discussion then about: “Do we need to go and talk to Fabcot or Woolworths?” to see if they were prepared to pay that price.

MS CHEYNE: In terms of exhausting discussions, is it normal for two years of negotiations to take place?

Mr Dawes: Unfortunately, that is a long time and that—

MS CHEYNE: I just wonder about when it is the right time to say, “Yes, we are exhausting it. It is taking too long.”

Mr Dawes: Yes, there was dialogue, obviously, between the team that was doing the negotiation from Economic Development and the Tradies on that basis. We also had the Government Solicitor’s office—I understand you are meeting the Solicitor-General tomorrow as well—acting on our behalf and were involved in the various meetings. Clayton Utz was the legal team that was acting for the Tradies at the time.

MS CHEYNE: I am particularly interested in what happened between September 2014 and November 2014. On pages 19 and 20 of the Auditor-General’s report it is stated that the Tradies had raised a number of issues with the crown lease for block 30, section 34, and had requested a number of concessions to expand the permitted uses of the land. That month I believe you had rejected most of the Tradies’ claims. However, by November the Tradies had been advised that you had agreed to most of their requests. That is at the top of page 20. What changed? Why did your directorate decide to accept these concessions?

Mr Dawes: There were a number of moving parts to this at the time. I just cannot recall fully all of the conversations. But you are referring to the meeting that was held with the Government Solicitor’s office in November, around 19 November, for clarity?

MS CHEYNE: All I have is what is in front of me. It is written in the passive tense or voice, so I do not know. It states:

20 November 2014—Advice to Tradies that the Director-General Economic Development has agreed to accept almost all requested concessions.

Mr Dawes: Yes.

THE CHAIR: This is in the time line which is set out in the Auditor-General’s report on pages 19 and 20.

Mr Dawes: Yes. Look, unfortunately, I do not know what happened to the latest version but, anyway, at the end of the day there were a number of concessions that were agreed to on the site. I think what we have got to remember is that the Tradies paid \$1 million, in round figures, more. At the same time, we had another transaction which the Tradies was not aware of. That is the Salvation Army site or Mancare site that is between the Downer Club and the CFMEU headquarters and CIT training

headquarters. So all of a sudden we were looking at developing 2.2 hectares or getting 2.2 hectares. That was one of the other reasons why getting and consolidating those three blocks was quite valuable. It was in the order of that coming back into the territory for us to sell at highest and best use, somewhere between \$22 million and \$25 million. So there were these sorts of considerations going on at the time as well.

MS CHEYNE: Did you become—

Mr Dawes: The Tradies never knew that we were dealing with Mancare, but I was aware.

MS CHEYNE: No, they did not know, but is it around that period that—

Mr Dawes: Yes. It had been ongoing for a little while, but we were getting to the point. That actually is why I am probably disappointed in the overall report of the Auditor-General. I respect that she has a job to do to look at process and all those sorts of things, but one of the things in some of my statements to her was that you have to look at the transaction as a whole, not individual bits.

You can argue a bit about the car parking here having a certain value or that rent-free has a certain value, or whatever. But in the overall transaction the territory has done quite well, if you consider that, even when the Tradies consolidate the whole block—as you know, they own all of that land on that side of the street where the gym is, the garden centre and all of that—I think they have been trying to assemble that for some 20 years.

They still have to actually change the use on all of the site, pay an LVC on the site—all of those sorts of things. Where we get leases surrendered we can actually then issue a new lease. If you go back even to 2015, I recall Meredith Clisby writing an article on it. Parts of the LDA and Economic Development thought we could get 800 units. You can imagine the backlash from the community when we were out doing the negotiations about 800 units. So just on those two sites alone, they were talking 200, from memory of that article. That is on those two sites, without the Mancare site. All of a sudden, look at what the unit sites were selling for at that time: either \$50,000 a unit site or \$65,000 a unit site. So it means those two sites are somewhere between \$10 million and \$13 million.

I was disappointed about this, and I asked the Auditor-General to do it: why did she not do a valuation and review the Downer Club site, which we paid \$45,000 for? There was some offer at the time of around \$1.5 million for that site because it was not a concessional lease. It actually had some other uses in it. I believe there was a property trust looking at developing that for a medical centre as well. At that time—it is up to the various entities to do their due diligence—I knew it was not a concessional lease, on the advice that I was given. That is actually what I think is missing here. You have to look at all of the components and put in the values.

THE CHAIR: Could I go back to that, Mr Dawes, just for clarity? You said that you were negotiating with the Salvos over a site. Where is that block of land?

Mr Dawes: Sorry?

THE CHAIR: Where is the block of land?

Mr Dawes: The—

THE CHAIR: Where is the block of land, the Salvation Army block of land?

Mr Dawes: It is in between the two blocks. It is actually—

THE CHAIR: Between which two blocks?

Mr Dawes: I will tell you what block it is. It is block 22 of 72. You know where Rosevear Place and the Downer Club are?

THE CHAIR: So it is in Rosevear Place, is it?

Mr Dawes: Yes, correct. It is a battleaxe entrance off Rosevear Place. That is 9,531 square metres. So all of a sudden, if you looked at the Mancare site, it was 9,531 square metres, the Downer Club was 6,968 square metres and the CFMEU site was 5,233, so it is—

THE CHAIR: It is 20,000 metres.

Mr Dawes: It is 21,732, roughly 2.2 hectares. It is very developable land in the heart of Dickson.

THE CHAIR: But you also said that it should be used for its highest and best use. Is community housing its highest and best use?

Mr Dawes: No, let me make that clear, madam chair. Highest and best use was in the order of 22 to 25. If the government was to have a mixed use site, there could be some community uses. One of the other drivers, if you recall, was that we were doing some work with Community Housing Canberra at Downer. This is what I was saying; there were so many moving parts at the time on the old Downer school site. One of the things that we were encouraging there was providing affordable accommodation for older women in the inner north. That was also one of the objectives that we were looking at doing in section 72; so there were a whole range of things.

The government had already made some announcements, I understand, on potentially what they might do on that site for affordable housing and some community housing there, which I think is a wonderful thing. But it also would be mixed use. It would also have some highest and best use value, because you would want to make sure that you actually had genuine mixed use on that particular site, which was obviously close to Dickson and very close to, or within walking distance of, the light rail project.

MS CHEYNE: To continue that line of questioning—

THE CHAIR: Yes, sorry.

MS CHEYNE: overall the whole package, for lack of a better word, of all those sites

represented value for money, in your view?

Mr Dawes: In my view it did. That was always what we were looking at doing: ensuring that the interests of the territory were being protected. I believe that is what the bureaucrats who were working on this particular case, and in my case, were considering.

Look at the differential. I think I admitted this with previous ones when I worked for government. Not having proper files is not a wonderful thing. I had already moved to fix some of those things with Ian McPhee, getting him in to do some of the work. I understand that the departments, the CRA, the SLA and EPSDD, are still implementing a lot of those sorts of things as well. But, in saying that, the overall transaction should have been looked at as a whole, not as individual things.

There were discussions. I know there have been discussions with the other various parts of government regarding car parking, because that is an issue that is raised. Again, if you look at the instructions to the valuer to look at those sorts of things, everyone forgets that the Tradies, as existing, has a car park. They can actually trade off some of their car parks to make up for some of the car parks that are there.

When you look at the planning, they wanted a pocket park, with deep-rooted trees. How can you put a car park underneath a deep-rooted pocket park? So there were some concessions made there, but they were being substituted. The officer in the relevant department acknowledged that and said that the trade-off could be with a car park in the existing car park of the Tradies.

I certainly did not wear the hat of the planner. A lot of the things—when the development and the consolidation of the site went into planning for approval, for whatever development the Tradies might do on the whole site—would be dealt with through planning.

THE CHAIR: I have a multitude of questions, but I will hand over to Ms Lawder.

MS LAWDER: The Auditor-General's report says it was open to the Tradies to propose amendments during negotiations and that it was incumbent on EDD to set clear expectations on the scope of matters that could reasonably be negotiated. I think you alluded to this earlier: that you might open negotiations with the highest bidder. But if I was the losing bidder at an auction I would not expect the owner to go on to include other blocks, for example. If I had known other blocks were on the market, I might have increased my bid. So with respect to that—

Mr Dawes: I am confused about that. We did not own the other blocks.

MS LAWDER: No, I was giving an example of opening negotiations with the winning bidder. You do not go back to the losing bidder and explain what is now open to negotiation, as you did. I will get to the question; I am just trying to set the scene.

Mr Dawes: I am just trying to follow.

MS LAWDER: The Auditor-General went on to say that there was no evidence that

EDD sought government approval prior to dispensing with the RFT requirements. To your recollection, did you go back to anyone for approval to change what was being negotiated as part of that process?

Mr Dawes: No, I did not. I kept government informed of what the negotiations were. There are always the things you do on question time briefs and all of those sorts of things that you provide. All of that was well known as far as I was concerned.

MS LAWDER: Who did you go back to in government?

Mr Dawes: The relevant minister at that time—

THE CHAIR: Who was?

Mr Dawes: The Minister for Economic Development, Andrew Barr. He was apprised. I have to put on the record that he was not involved in any way, shape or form in the transactions. He did not give us any direction at all about the way we proceeded, but I kept the government informed of where the negotiations were. They were also aware that the other block was in play because that was a separate transaction.

But, coming back to your point, if, for example, we did not actually do a land swap and they paid the \$3.18 million, would we be having this discussion? The territory has certainly come out of this transaction far better than the Tradies club.

MS LAWDER: That is not necessarily the Auditor-General's comment.

Mr Dawes: We can agree to disagree.

MS LAWDER: That is right; absolutely. Was there anything that you or other staff members or the government said was off limits in the negotiation? Were any parameters set or was it just an open negotiation process?

Mr Dawes: As I said, I was not involved in those direct negotiations. The team kept me informed.

THE CHAIR: Did you give directions about what was in and out?

Mr Dawes: No. I allowed that process. I think also—

THE CHAIR: It is a very hands-off process. You said the minister did not give any instructions and you did not give any instructions.

Mr Dawes: I would not say I was not giving any instructions; I was not involved in the day-to-day negotiations with the Tradies.

THE CHAIR: No, I did not ask you that before. I asked: did you give any direction?

Mr Dawes: I did not give them any major direction of “this is what has to happen” or anything of that nature. Obviously I would have liked to see the transaction concluded; it did take two years.

MS CODY: But as the senior executive you would trust that your staff would manage those negotiations in the best interests of the territory.

Mr Dawes: Correct. Very competent officers were involved in these negotiations who I trusted explicitly. The director of the sustainable part within the organisation answered to a deputy director-general in my area. It was hands-on; obviously I met with the team from time to time.

MS LAWDER: Your staff were keeping you informed. Did you at any time express that there could be any probity issues with an open-ended negotiation like that which departed from the RFT information?

Mr Dawes: I was relying upon the probity officer advising me if at any point we were stepping away from any of those issues. That was not raised with me at the time. As I said, the Government Solicitor at no time spoke to me about us getting way off track or anything of that nature. If, for example, either the Solicitor-General or the deputy director-general of GSO had given me a call or sent me an email or wanted to seek a meeting with me, I would have met and I would have complied with their thoughts. There was no indication to me at all.

MS LAWDER: Generally, in your department's tender evaluations are the probity officers asked specific questions? Are they involved at all times in all parts of the negotiations?

Mr Dawes: They would not have been involved in all parts of the negotiations. But as we worked through the various elements they would have been advised or asked questions. I think it is fair to say that we had an arrangement with the Government Solicitor's office where we had an outposted legal team working some days a week at the LDA and Economic Development to provide advice on instruction or whatever. The GSO or the representative of the GSO would have been involved in the negotiations with Clayton Utz, for example, for the Tradies. We would never have gone to a meeting with a law firm acting on the other side without our legal representation being there either, as far as I know.

MS LAWDER: You have taken the opportunity to say that the public servants you worked with were hardworking and had integrity. With regard to this case and some of the other purchases—for example, Glebe Park and some of the rural leases—there has been significant criticism of the organisation you led and of public servants. You obviously feel that that is unfair.

Mr Dawes: I do, strongly.

MS LAWDER: If the criticism levelled at you is not warranted then who is to blame? Who is at fault?

Mr Dawes: At the end of the day we have to look at the totality of the transaction. The territory—

THE CHAIR: That is not the question Ms Lawder asked.

Mr Dawes: Excuse me, I had not finished my answer, madam chair.

THE CHAIR: I am asking you to be directly relevant to Ms Lawder's question.

Mr Dawes: I will continue. As I said, you have to look at the overall transaction. We acted in the best interests of the territory at all times. You raised the issue of rural properties. The report will be handed out this week. If you look at the number of blocks available as greenfield sites, we did that work back in 2014 and 2013. It was a great concern to me as the CEO of the LDA and to the LDA board that we potentially did not have enough land. So we acquired land that could be developed at a future stage by future governments, which allowed us to extend beyond the 2031-32 that was reported in the paper this morning to 2055. Is it not prudent to do that to ensure that we have an adequate supply of land for the territory?

You raised the Glebe Park issue. That transaction was going to assist a \$2 billion development. In the scheme of things that was a small price to pay for that particular parcel of land.

I do not disagree with the Auditor-General on record keeping; there no excuse not to have proper records. I said that while I was a bureaucrat and I said that in a previous appearance before the committee. There is no excuse for that. But as the chief executive or the director-general I relied upon my officers to keep those files. I did not go and check every folder. Perhaps in hindsight I should not have worried about any other business and should have focused on the files. I do not know.

MS LAWDER: Was it your decision to pursue the purchase of the rural land and Glebe Park or was it a direction of the government or a particular minister?

Mr Dawes: No, it was also discussed with the LDA board at the time. It was discussed with government. We never went out knocking on doors looking for land; a lot of these property owners approached us. We also knew the private sector was buying. Probably the plum site was bought by a private sector individual in the Weston Creek area. That is one that was offered to us first but we did not react as quickly.

MS LAWDER: So the LDA board was making decisions for the future of Canberra—

Mr Dawes: Correct.

MS LAWDER: without any reference to the government of the day?

Mr Dawes: No, the government were aware. That is why the strategic acquisition policy was brought into being. This is where there was confusion about Glebe Park—whether it was a project purchase or a strategic acquisition purchase. I always believed Glebe Park was a project acquisition cost, but time has revealed that that was a wrong assumption and I have admitted that. But the whole idea of the strategic acquisition policy was set up for the LDA board, where appropriate, to make those strategic purchases if the opportunities presented themselves. The board did not do it

in isolation or I did not do it in isolation to that particular document.

THE CHAIR: But you said, Mr Dawes, that you did not get direction and you did not give direction. So I think that—

Mr Dawes: That is a different question.

THE CHAIR: But it all boils down to the same thing. You were making decisions about the purchasing of land—

Mr Dawes: I was making decisions, not directions necessarily. It is slightly different, in my view.

THE CHAIR: We might beg to differ. We had better go to Ms Cody; I am mindful of the time.

MS CODY: I want to catch up on a couple of points you made earlier. You said that the ACT government came out ahead in the transaction. Can you give us an example of why you believe that is the case?

Mr Dawes: Why? I have probably looked at it from a Tradies perspective and an ACT government perspective.

MS CODY: Absolutely.

Mr Dawes: If you bear with me, with the car park, approximately, they paid \$1 million more, and they cannot develop it until the Coles development is completed. It has been held up in ACAT, which is unfortunate; it would have been nice to have seen that building there and developed, but I understand the concerns that the community had. They will have to pay a lease variation charge, an LVC, with the consolidation of their blocks and whatever developments they do. There is a master plan there in place for Dickson. They have to comply.

I think one of the reasons why there were probably only two bidders is that setback requirements would have been required if, for example, they had been developed by another developer, because there would be setbacks between that development and the club. Obviously Woolworths would have been able to develop a box supermarket on that site and transfer their business across the road. They were not looking at anything other than, probably, a supermarket, and that is the reason why the offer might have come in at 1.6. I do not know; I was not involved in their thinking or their bid.

When we look at the car parks, when the Tradies lodge a plan to redevelop all of their site, they will have to comply with the rules on the day, with EPSDD, around parking, setbacks and all of those requirements. There is a pocket park to be delivered, and that will be developed and handed back to the department as an asset.

We talked a bit about the concession of car parks. The Tradies were going to open up their car park for free while that development was being done. So during the day's trading, the people that patronise Dickson would be able to park in the Dickson Tradies car park for free. I understand that officers dealt with it with from a planning

perspective and there were the teams at the time that might have been handling the car parking issue. There were discussions going on between all the relevant officers. The territory, to this very day, I understand, is still getting the parking revenue from that particular site, so we have not lost any income there.

From a territory perspective, I said we paid \$45,000 plus GST for the Downer club site. We know that there was someone else looking at purchasing it for \$1½ million. We know that with the block being surrendered, we will be able to create a new lease and it can be redeveloped. I talked about highest and best use. If the government chose to do it as highest and best use, we would get high value. But that, again, is a guide. Again, you have to balance the right elements. It is not always about the highest price, either; it is about the community benefit, in my view. I think some of the things that the government wanted to achieve—and what we were wanting as bureaucrats as well—were to make sure we had the right planning outcomes and the right social outcomes there.

As I said, we were concurrently dealing with the Salvation Army, Mancare, on that particular site. That was quite key to that, because it meant that the two sites—the Rosevear Place and the Hawdon Place blocks—were joined completely so that it was one parcel, 2.2 hectares. Again, when you look at that, you can get more development because you do not have to have the setback requirements, because it can all be integrated. I have probably rabbited on enough about it, but I believe that if you look at the total transaction, the territory is out in front.

MS CODY: Did the Tradies approach the directorate prior to the announcement of the RFT to buy the car park?

Mr Dawes: Yes; that has been on the record. I think they did try to do a direct sale. The government did not want to do a direct sale; they wanted a process to go through. As I said, would we be having the same conversation if Fabcot or Woolworths had paid 2.2 and the Tradies were at 1.6? We probably would not be here today.

MS CODY: Possibly not. I want to just touch on a couple of things you said from a public service perspective. I note that I did jump in and say that as a senior executive, you would generally let your staff manage the projects that they were left to manage, in this case a negotiation for a tender. I know what I would do as a senior executive, and I am assuming that, by the sound of things, you would do the same thing. It is normal just to let them run with it a bit. They have the expertise; that is why they get these jobs. Is that correct?

Mr Dawes: Correct. As I said, I had great confidence in the team that was doing the negotiation, the deputy director-general and the director of planning. I did rely upon those officers. I trusted them, and I think that at the end of the day they achieved a good outcome for the territory. That might be not perceived; that is the way it has been portrayed by the Auditor-General, and I respect that. Perhaps we did not tick enough boxes, as she would say to me on a number of occasions: “You have got to tick the boxes, David, as well.”

I was disappointed that, overall, with the whole of the transaction, even if you forget

the Mancare site, if you just valued the two blocks and what we could do with them overall—Hawdon Place and Rosevear Place—the highest and best use has a value of somewhere between \$12 and \$14 million. If you look at it in that light, the territory is still in front.

MS CODY: Currently the Tradies still do not have possession of the cark park?

Mr Dawes: They do not. I understand it still has not been settled.

MS CODY: So the ACT government is still receiving revenue from the parking?

Mr Dawes: Yes. You would have to clarify that with the department.

MS CODY: But to your understanding?

Mr Dawes: That is my understanding, yes.

MS CODY: When was the sale? I know that we have not completely finalised it, but when were the negotiations finalised?

Mr Dawes: I think 14. Either 15—

MS CODY: So they still have not got use of that site?

Mr Dawes: Correct; they still have not got use of it. And they cannot get use of that site or cannot take possession of that site until Coles is completed. If that was to get started next year, it is a two-year build, so—

MS CODY: It is a long time for money to be tied up.

Mr Dawes: It is 2021.

THE CHAIR: Could I come back to a question that I think I asked the Auditor-General when she was here. When did the request for tender turn into a request for tender plus the purchase of the block 72 site?

Mr Dawes: I cannot recall exactly; other officers would be able to answer that question.

THE CHAIR: Could you give us a ballpark? Was it early in the piece? Was it late in the piece? This was a two-year process.

Mr Dawes: Yes. It might have been some months after; it might have been six months. I am not a hundred per cent sure.

THE CHAIR: Was it at the time that you were negotiating with the Salvos?

Mr Dawes: The Mancare site, yes; correct.

THE CHAIR: When was that?

Mr Dawes: It would have been around 2012-13. Actually, it started off when we were land and property services originally. Mancare approached us. Land and property services was in being in about 2011 and 2012; that then carried over to Economic Development.

THE CHAIR: On another issue, you said earlier, Mr Dawes, that at no time were you told by anyone from the Government Solicitor's office that you were departing from the request for tender process. But the Auditor-General clearly states, at paragraph 2.103:

The former Land Development Agency Director of Sales, and Deputy Director-General, Economic Development Directorate were provided with advice by the ACT Government Solicitor's Office in October 2014 that indicated accepting the Tradies' requested concessions posed a risk as it could result in the transaction being so divergent from the RFT that it was a direct sale rather than the outcome of the tender process. Representatives from the ACT Government Solicitor's Office and the Land Development Agency met with the Director-General—

that is you—

on 19 November ... to discuss the Tradies' requested concessions and how to proceed.

There are two dates there in October 2014 when your subordinates were advised; then there was a date on which you had a meeting with the Government Solicitor's office. Do you hold to your view that you were never told that you were departing from the RFT?

Mr Dawes: Correct; and I will explain that. The first time I saw that particular email was when the Auditor-General interviewed me at the time, because I was not copied in to that particular email. It went to a couple of other officers within the department, so I was not aware of it.

THE CHAIR: Your 2IC did not tell you this?

Mr Dawes: I was about to say that, at a meeting subsequently, my 2IC did tell me that the GSO had raised a potential issue. I organised the meeting on 19 November to get everyone around the table to discuss that particular issue. At that point, even though there was that particular email, at no time did those officers from GSO say, "We have moved too far away from the RFT. We should go back to square one." After everyone had their discussions, I did make the decision to proceed with the sale, and that is quite clear. And we proceeded. The contracts were drawn up for that et cetera.

Again I would have thought that—and this is me assuming—the officers from GSO may have gone back to the Government Solicitor's office—and this is a question you might want to ask the Solicitor-General—and reported the discussion they had and said, "Danger, danger; can you please give David Dawes a call?" No-one from the GSO rang me to say, "David, you have departed too far." So I relied upon that. At the end of the day, GSO finalised the contract and we settled on that particular land. So

I was relying upon advice.

THE CHAIR: Can I clarify: officers of the GSO wrote to your 2IC. Do you know who those officers were who wrote to your 2IC?

Mr Dawes: I assume it would have been Brendan Ding at the time. I am trying to recall. I only saw the email once because the Auditor-General would not give me a copy of that.

THE CHAIR: You said that you did not know about the email?

Mr Dawes: I was not aware of it. I did not know.

THE CHAIR: But you said that your 2IC—who was your 2IC at the time?

Mr Dawes: Dan Stewart.

THE CHAIR: Dan Stewart told you at some stage after you received the email that the GSO was concerned.

Mr Dawes: Yes.

THE CHAIR: When you had a meeting with the GSO, were the people who sent the email in the room at the time?

Mr Dawes: As far as I know, yes.

THE CHAIR: You are saying that they raised an issue in an email but they were not prepared to—

Mr Dawes: Correct.

THE CHAIR: But they did not raise it with you face to face?

Mr Dawes: Exactly. We had a conversation. There would have been records kept from the GSO side—it would be interesting to see what they wrote—and records would have been kept from my side. I did not take the notes. Again I was relying upon people at the meeting to do that.

MS CODY: If the GSO thought there was a problem, you would assume they would not have settled the deal?

Mr Dawes: Correct. That is my assumption. Perhaps I am a bit naïve, but that is what I would have assumed. I had a very good working relationship with the GSO and we were in contact quite regularly. I would have expected a phone call, and I have said that on several occasions to the Auditor-General. I think I even raised that in my statement to the Auditor-General in written format.

MS LAWDER: According to the Auditor-General's report—and I refer to your earlier answer as well about the involvement of the probity officer from the GSO—the

GSO advised:

... the involvement of the Probity Officer was limited and confined to responding to specific requests for discrete advice from representatives of the client. From our records ... there was no involvement of the Probity Adviser during the tender evaluation phase, and only very limited involvement in the tender negotiation phase.

How does that statement from the GSO gel with your recollection?

Mr Dawes: That is an interesting statement. I read that as well. Normally, the probity officer would have been at the tender evaluation. I was not on the tender evaluation scheme, so we would probably have to ask that question. But that was the first time I read that.

MS LAWDER: Do you have any records about the involvement—the LDA or the EDD? The GSO do have records.

Mr Dawes: There would be files. The Auditor-General, when they come in to do something, have complete access to everyone's emails, back and forth from anyone. If it was emailed, there would be emails there as well. Even though they might not be in a box, the Auditor-General has access and can go back and check everything, because you cannot delete anything, as you know, from emails.

MS LAWDER: Earlier you said the probity officer was involved all the way through, yet that comment from the GSO does not appear to support that view.

Mr Dawes: No, it does not, but I will stand by what I was told by my officers at the time.

MS CHEYNE: Mr Dawes, I appreciate very much that a lot of these things happened a long time ago, and you have mentioned a few times needing to check your records.

Mr Dawes: I do not have any records. They are all government records.

MS CHEYNE: Yes; that is what I wanted to clarify. What records would you be checking, if they are all stored on the government system?

Mr Dawes: I would not be able to check them, to be quite honest with you, Ms Cheyne. I would be relying upon—if I have taken things on notice, I would have to write to the department and ask them if they could find something.

MS LAWDER: On page 57 of the Auditor-General's report it identifies the probity officer's response to a question, which appears to show a misapprehension that there was only one tenderer, not two. It talks about the fact that, when there were changes, both tenderers should have been given the opportunity to comment on those. In this instance your organisation at the time was negotiating only with the Tradies club?

Mr Dawes: The highest bidder.

MS LAWDER: Did this happen in other instances, to your knowledge, while you

were at the EDD or LDA—that only one tenderer was negotiated with?

Mr Dawes: Again, it probably would have happened on a number of occasions, whether we auctioned things or did things via tender. They would always deal with the highest tenderer. It would have been a normal process, the same as any normal auction that you go to.

MS LAWDER: But where you depart from what was in the RFT quite significantly, or dispense with the RFT?

Mr Dawes: It depends on what you mean by “departing”. As I said, you can agree to disagree on some of the points of the departure.

MS CODY: Mr Dawes, with the tender and the process now being the subject of an Auditor-General’s report, are there things that you think could have been done differently?

Mr Dawes: Yes. Actually, I recognised that a long time ago. It was why I instigated the McPhee report—the investigation by Ian McPhee to look at some of our systems and things of that nature. As we went through, there was the misunderstanding about what was a strategic acquisition and what was a project. If you talk to all the officers—and even in discussions and debates—in the officers’ minds and in my mind, we had that. Obviously, there had been some things, particularly, changed in that document, and we did not pick up on those nuances. If you look back at all of the records when that was instigated—because that was instigated by the LDA board—we were relying again on officers, and there were a couple of words changed which changed the nuance of the strategic acquisitions. Glebe Park should have been treated as a strategic acquisition, and I admitted that some time ago. After that, obviously, that is what triggered our doing a bit of a review of our other systems—our record keeping and all of that. I am very pleased that we implemented a lot of things before I left the government. I believe that is ongoing today, which I think is good; it can only be good.

The whole idea of the McPhee review was that it could be used not only across economic development and LDA but more broadly across the whole of government, to make sure that record keeping is done well, and much better than it was done in the past. If I had one regret, that was it. As I said, should I have checked every file? Perhaps; but you do rely on people to do those tasks for you.

THE CHAIR: Thank you, Mr Dawes, for appearing before the committee today. You will receive a draft proof *Hansard* in the next couple of days, and you can raise any issues in that with the secretary. Thank you very much for your appearance today.

BRENNAN, MR STEPHEN, former Chief Financial Officer, Tradies Group

THE CHAIR: Thank you for your appearance here today. I understand that you have been given a copy of the privilege statement, which is the pink laminated card.

Mr Brennan: Yes, I have.

THE CHAIR: And you are aware of that? Do you wish to make an opening statement?

Mr Brennan: Yes, I do.

THE CHAIR: Thank you.

Mr Brennan: I was the Chief Financial Officer of the Tradies Group when the Tradies were selected as the preferred tenderer for the sale of block 30, section 34, Dickson. I have now retired from that role. I still work for the Tradies Group on a casual basis as required.

Prior to the RFT for block 30 being issued in September 2012, the Tradies had made several applications for the purchase of the car park by direct sale, which were noted in the Auditor-General's report at paragraph 1.10. The Tradies wanted the block, and accordingly, when the RFT was released, the Tradies submitted a tender, even though we were dissatisfied with some of the terms of the request for tender.

After the Tradies were selected as the preferred tenderer in December 2012, having submitted the highest of only two bids, they participated in negotiations with the directorate which extended over a 12-month period. As CFO, I was primarily responsible for those negotiations.

By around December 2013, the Tradies and the directorate had reached an agreement as to the broad terms of the sale. Those negotiations occurred over five years ago and during a 12-month period. Unsurprisingly, I do not have a precise recollection of those meetings. I cannot recall how many meetings there were. I do recall that there were various meetings over an extended period of time. I am, of course, happy to answer questions as best I can within the limits of my recollections.

There has been some suggestion in comments noted in the Auditor-General's report and during this process that the Tradies had special access to members of the government in this negotiation or otherwise had special treatment. This is completely untrue, and I strongly refute any such allegation.

My meetings and discussions in the course of negotiations were with the responsible directorate staff. Sometimes at key meetings we would also be joined by valuers on behalf of both the Tradies and the directorate. At no point did I meet with any ministers in relation to these negotiations. It is very disappointing that some have chosen to express and repeat these beliefs, and I am pleased that the Auditor-General expressly noted in her report that there was no evidence in support of those beliefs, at 2.123.

Once agreement in principle was reached, further negotiations occurred over a period of approximately 12 months with the respective lawyers for both the Tradies and the directorate. The final contract terms were documented by Clayton Utz and the ACT Government Solicitor's office. Ultimately the agreement reached between the Tradies and the directorate was a result of protracted negotiations on both sides, as could be expected from any ordinary commercial transaction.

After the Tradies was selected as the preferred tenderer, the Tradies was asked in negotiations to increase its offer by approximately \$1 million to reach the directorate's reserve, which was based on a valuation by MMJ of 3.18. The Tradies was of the view, and I remain of the view, that this was a significant overvaluation of the block that did not fully or fairly take into account the conditions sought to be imposed by government, particularly in relation to car parking.

Certainly the view of the market, as evidenced by the two tender responses, was that the value of the property was significantly less than the MMJ valuation. Further, both responses to the RFT, which were for 1.6 and 2.2 respectively, were from parties who owned land adjacent to the block, further indicating the likely narrow market that existed for this block. In any normal environment, these bids by arms-length parties would be considered evidence of market value.

Notwithstanding this issue, the Tradies agreed to raise its offer by close to \$1 million in the course of negotiations and, unsurprisingly, aspects of the transaction were also the subject of further negotiations. The agreement that was negotiated should have resulted in a transaction to the satisfaction of both parties. In particular, the negotiated outcome should have seen each party obtain land that it saw value in. The Rosevear block was sold to the government because the Tradies was to obtain block 30.

However, the Tradies is yet to benefit from these transactions. While the government has had the benefit of settling on the land it purchased from the Tradies and now deals with that land as it sees fit, by contrast the Tradies has suffered loss by virtue of the delay in settling on the block it purchased and has not been able to plan the use of the block. The Tradies has made it clear that it is able to settle and finalise the transaction.

THE CHAIR: I will start at the end of your comments. You commented a couple of times that, over the period of time, the Tradies upped what it was prepared to pay by \$1 million for the Dickson car park block. Why did you do that, and what were you seeing that you were getting for that extra \$1 million?

Mr Brennan: We were keen, obviously, to get the car park, because it is adjacent to our block. Did we see the value in the money that we eventually paid? No, we did not.

THE CHAIR: But did you see value in being able to consolidate all of that block?

Mr Brennan: Yes, but the block was not offered on a consolidation. We had already been refused a direct grant, so we could not value that into it.

THE CHAIR: But what you ended up with is—

Mr Brennan: It was a whole transaction. Rosevear Place, the Hawdon block and our acquiring the car park were a whole transaction, and we saw benefit in the whole transaction.

THE CHAIR: When did the Rosevear Place and Hawdon Street part come into the arrangement? You were originally negotiating on the request for tender for the Dickson block. When did that other part come into the equation?

Mr Brennan: It was after the request for tender had been finalised.

THE CHAIR: Finalised?

Mr Brennan: The whole transaction was negotiated. There was already a process, and things just emerged. I became aware that the government or the directorate were interested in the Salvation Army block. We had previously put that on the table.

THE CHAIR: Mr Dawes said that was a big secret.

Mr Brennan: I do not know how it was a big secret. Commercial people in the town knew that it was happening. I did not know whether it was fact, but it came to my attention that they were interested in it. We had previously proposed that as one of our direct sales. I would not recall what year, but we had made a couple of direct sale grant approaches, and that was one of the options we had.

THE CHAIR: August 2010, according to the Auditor-General's report.

Mr Brennan: Okay. I am assuming that is correct. It just emerged from the discussions. Can I recall exactly when it emerged? No, I cannot. But it was certainly there, and clearly, when it started to come onto the table, there was interest from the directorate.

THE CHAIR: You said that the land swap part of it, the Downer part of the negotiation, came after the request for tender was finalised. What does that mean? Does that mean when you became the preferred tenderer or when you had agreed on the terms and agreed to pay the extra \$1 million?

Mr Brennan: We had not agreed to pay the \$1 million in isolation. The transaction was negotiated as a whole transaction.

THE CHAIR: From the outset of the negotiations?

Mr Brennan: Not from the outset, no. It emerged. You are talking about a 12-month period. The request for tender was November 2012, I think, and we became the preferred tenderer just after that point, just before Christmas, I am assuming. Then we started to negotiate the process, and we did not finalise the transaction until 2014, I think it was, when we did the contracts.

That is quite a protracted period to negotiate. I appreciate that I am dealing with governments and it is a bit different, but in most commercial transactions that I have negotiated in the past, the thing would be dead in the water before 12 months had

expired or it would have happened. This was protracted and lengthy. But during that period, interest in the Rosevear Place and Hawdon Place properties was certainly expressed by the government.

THE CHAIR: By the government to acquire it? And who made the suggestion? Did the government say they wanted to acquire it or did you suggest?

Mr Brennan: That is what I cannot recall. My memory is not good enough to say to you that Greg Ellis, Richard Drummond or I raised it. It certainly emerged in the discussions. I cannot be any more specific than that.

THE CHAIR: You cannot be specific about when it arose or who raised it?

Mr Brennan: During that 12-month period.

THE CHAIR: Okay. During the first 12-month period? It was definitely on the table by the time you got to the end of 2013?

Mr Brennan: Yes.

THE CHAIR: And then it rested the next year because you did not settle on Rosevear Place et cetera until December 2014.

Mr Brennan: I believe that is correct.

THE CHAIR: So there was another year's protracted process going on.

Mr Brennan: Yes.

THE CHAIR: Can I go back, just to clarify: the Tradies in Dickson owned most of that block?

Mr Brennan: We own that whole block, yes.

THE CHAIR: Except for the car park?

Mr Brennan: Except for the car park.

THE CHAIR: Including the garden centre?

Mr Brennan: Including the garden centre.

THE CHAIR: And the gym and all that?

Mr Brennan: Yes, we own all that.

THE CHAIR: There was substantial advantage for the Tradies to further consolidate that block by acquiring the car park area?

Mr Brennan: Yes.

THE CHAIR: At the time did you know that you would be constrained in commencing until the Coles deal had been finalised?

Mr Brennan: We were prepared to settle straight away. It was the directorate's response because of the Coles and ALDI development and because of the pressure that would put on parking within the Dickson—

THE CHAIR: Precinct?

Mr Brennan: Precinct. Because of the pressure that would be on the Dickson precinct for parking, they wanted to control the parking. We did offer to provide guarantees or to not develop the property in that period but the government were really quite firm on the fact that they wanted to control the parking and that we could not settle until the C of O was issued on the Coles development.

THE CHAIR: That part of the agreement is not satisfactory to the Tradies?

Mr Brennan: We would have preferred to do it otherwise, but we were cognisant of the pressure that parking had. And parking is important to the club as a business.

THE CHAIR: It is in the long-term strategic interests of the Tradies to have that block?

Mr Brennan: Yes, it is.

MS CHEYNE: Going back to your earlier statement, did you say that there had been numerous times that you had approached government to acquire the block?

Mr Brennan: Yes. It is not inconsistent with government mandates, I suppose, to do direct grants of car parks for clubs where the car park is adjacent. We felt we were an adjoining block and we were entitled to a direct grant. For whatever reason, the government determined that we were not and they went to the RFT process.

MS CHEYNE: How many times would you think that you approached them?

Mr Brennan: I started in 2009 and one of my initial mandates was to try to get the car park lot, because it was important. The Tradies have been on that site for 50 years and you run the risk of a developer coming on the site beside you and destroying your business by developing something that is inappropriate or not suitable to an adjacent neighbour such as us. The boundaries are difficult over there as well, because our club building basically sits right on the boundary. Probably you have setbacks in modern developments, but 50 years ago that was the way it was done. That creates other issues in terms of our business.

MS CHEYNE: That is helpful to know. In terms of you really, really wanting it, why would you put in a bid for something that you thought was overvalued and why were you prepared to be in quite protracted negotiations for so long?

Mr Brennan: We wanted it, but we also were not prepared to be silly with our

members' money and pay too much over. We were prepared to pay a premium because in reality the price that we put in the RFT was a premium on the valuations that we had been getting from our advisers.

MS CHEYNE: That is helpful. As part of your negotiations with the directorate, did you feel that the directorate set clear expectations in terms of the scope of the negotiations?

Mr Brennan: I do not understand what you mean by "clear expectations". I am an accountant of many years and I have done many negotiations in terms of deals. My expectation is: you are either a buyer or you are a seller. I probably do not have any understanding of government procurement regulations but from my perspective I am a buyer; I would like to buy it.

MS CHEYNE: And from your perspective it is not up to you to work out what the scope is; you need to be told if there is one?

Mr Brennan: No. My objective is to try and get it and get it. We obviously wanted it. We were prepared to pay a premium but we did not want the premium to be ridiculous either and a negative to our members.

THE CHAIR: You say you were a willing buyer. Did you get the feeling in the negotiations that the government was a willing seller?

Mr Brennan: It is hard to tell, I have got to say, because we to-ed and fro-ed over such a long period and we had been disappointed before. I was probably prepared to be disappointed again but I certainly was not prepared to give up on the negotiations.

THE CHAIR: But did you feel at any time that it was going nowhere?

Mr Brennan: Probably on several occasions, because we never had a meeting where there was a positive outcome. It was typically, "We've got to go back to the board," or "We've got to go back to the chief," or "We've got to go back to someone else." And then you would wait.

THE CHAIR: You were told from time to time that they would have to go back to the board and that they would have to go back to the chief. When you say "the chief", do you mean the people negotiating had to go back to their line managers or they had to go back to the Chief Minister?

Mr Brennan: No. I assumed the chief was David Dawes, not the Chief Minister.

MS CHEYNE: That is helpful to clarify.

Mr Brennan: Sorry, I probably used the wrong word there.

MS CHEYNE: Head honcho.

Mr Brennan: Yes.

MS LAWDER: To follow up briefly from Ms Cheyne's question, in your opening statement I think you said the Tradies were yet to benefit from the deal. Ms Cheyne talked about the long, protracted negotiations, as did you. Why were you willing, why were the Tradies willing, to sign up to a deal that took so long before you gained possession?

Mr Brennan: We did not expect that it would be so long. The Coles site was already in DA process; we would have expected the DA process would take, say, six months and the build would take probably two years; and then we would have it. Within 2½ years we should have had possession. I did not expect the Coles site to go DA 1, DA 2, DA 3, ACAT and then the longest ACAT hearing that I think anyone has had. It is still going and now they are back to the DA stage again. Neither the government nor we expected the thing to take that long.

MS LAWDER: My substantive question is: when, how and why did the actual land swap deal emerge from a request for tender through to the quite complex negotiation for a land swap? Whose idea was it and at what point in the negotiations—

Mr Brennan: I already answered that when Mrs Dunne asked that question. I cannot recall how it emerged but it did emerge in the process. As I said, it was an iterative process. I was probably buoyed by the fact that they had an interest. As I said, we had put it up before in one of the direct grant applications because there had been interest in that site for quite a while. The fact that I had heard on the grapevine that they were interested in the Salvation Army site—

MS LAWDER: Do you recall how you heard that or—

Mr Brennan: Just discussing things with our valuers, and they had heard that they were looking at the site.

THE CHAIR: Who are your valuers?

Mr Brennan: Knight Frank.

MS LAWDER: And you do not view the dollar a year rent as a value or a benefit to the Tradies?

Mr Brennan: I think it was a benefit to the government because they got the opportunity then to plan for the site. They had people occupying the site. We had the experience on the Woden block site of having a vacant building and it is nothing but issues and problems.

MS LAWDER: A dollar a year? Do you have any other property that you managed to get for a dollar a year?

Mr Brennan: Over my career I have had transactions where there have been peppercorn rents go into the deal because it benefits both the vendor and the purchaser.

MS LAWDER: With the numerous car parks, how many car-parking spots are we talking about all up, do you know?

Mr Brennan: I was hoping you would not ask about that. I get totally—

THE CHAIR: We are hoping to get some clarity on the car parks.

Mr Brennan: I have read the Auditor-General's report and there are car park numbers going everywhere in the report: 154, 139, 84. There are a lot of them. But my advice by my valuers and town planners was that 154 replacement car parks were not treated appropriately in the MMJ valuation. They also had not taken account of the boundary, and the 6,000 GFA that they had offered in the RFT was unlikely to be used because of all the setbacks and the easements. When you combined all those things, the value just was not there.

I did a clarification letter to the RFT which was about three pages long, somewhere between the start of the RFT and before it finished, and there were a lot of questions about the car parks, the setbacks, the easements, the pocket park, whether you could go subterranean under the pocket park. The directorate, in one of the responses, said to all persons who expressed interest that they could work on 84. And that is the way we did it.

MS LAWDER: Do you have that correspondence?

Mr Brennan: The Auditor-General would have it or the government would have it. I do not have it now because it would be with the Tradies. But it would be there.

THE CHAIR: Whom would you suggest we go to at the Tradies to attempt to acquire that documentation?

Mr Brennan: If you just go to the CEO, Rob Docker, he could help provide it.

MS CODY: Thank you for joining us, Mr Brennan, even though you have retired. It is much appreciated.

Mr Brennan: It is the job that keeps giving.

MS CODY: I hope you are enjoying your retirement, if not today. I want to pick up on a couple of things Ms Lawder was talking about. The Auditor-General stated that this transaction was not value for money for the government. Mr Dawes earlier stated that it definitely was value for money for the government. Can you give me your opinion about where you think that sits?

Mr Brennan: I think it was very good value for the government. They got those two blocks at Rosevear Place and Hawdon Place, combined them with the Salvation Army site and, with the stroke of a pen—which I know is what the government do—they increased the value significantly. They have had the opportunity in that period to plan for that site. They have just released the urban renewal on section 72. To me, that is a good win for the territory. In terms of dollar value that property would be increased significantly.

MS CODY: In what year did you retire?

Mr Brennan: July 2017, I think it was.

MS CODY: Up to your retirement, the Tradies had not gained use of the car park?

Mr Brennan: No.

MS CODY: And up to your retirement the ACT government was continuing to take the revenue from the car parking from that site?

Mr Brennan: They collect all the moneys, yes.

MS CODY: Would you have sold the Rosevear Place site if you could not acquire the car park?

Mr Brennan: No.

MS CODY: I have heard statements that the car park was critical to the Tradies' continuation.

Mr Brennan: It is not critical to continuation but it is critical in terms of future development plans. The Tradies club is an old club; it has been there 50 years. Obviously we have done lots of patch work and bits and pieces and whatever, and the hotel is getting old as well. So ultimately we would like to develop that whole site. So the car park is critical to future plans. It is not critical to going on in terms of what we do today and what we continue to do. But to give us a blueprint for going forward it is an important piece of the puzzle.

MS CODY: You just explained to Ms Cheyne the Tradies doing a direct sale. But you said there had been cases where clubs were able to do a direct sale of their car parks.

Mr Brennan: That is my understanding. It is my understanding that if you have contiguous blocks of land adjacent to the car park you are entitled to get a direct grant. Clearly that went to government and it was not considered appropriate, so that is why they went to the RFT.

MS CODY: And you felt it was important for the future development of the Tradies to continue to bid on the car park and to continue negotiations.

Mr Brennan: Correct.

MS CODY: You said there were times where you felt negotiations were not going anywhere, but you continued in good faith?

Mr Brennan: We continued in good faith. The director and officials never said, "No, it's all over," but it was protracted. Coming from the commercial world and not having dealt with government, I just took it as part of the landscape that this is how it is when you are dealing with government—it is a slower process.

MS CODY: I understand it was quite some time ago when this all started but, from

your recollection, were you the main negotiator for the Tradies Group?

Mr Brennan: Yes, I was.

THE CHAIR: And from your recollection, Mr Brennan, who did you negotiate with in the government?

Mr Brennan: Greg Ellis and Richard Drummond.

THE CHAIR: From my recollection, Mr Ellis left at the end of 2013. Who did you negotiate with after Mr Ellis's departure?

Mr Brennan: Mainly Mr Drummond.

THE CHAIR: Were other people at those meetings?

Mr Brennan: Sometimes we had meetings where there were a lot more people there. It was Dan Stewart at some point at one of the meetings that we held over at the thing. When we had key meetings I would have my valuer there and they would have their valuer there.

THE CHAIR: Were there lawyers there?

Mr Brennan: No, the lawyers did their things once we had got to a commercial arrangement.

THE CHAIR: So you did not have your legal representatives in those meetings?

Mr Brennan: I cannot recall ever taking my legal representative to a meeting.

THE CHAIR: The Tradies have a lot of businesses. They have the club, the hotel on the site, and various other bits and pieces on that site. Was there anything else going on at the time that the Tradies were involved in? They are from time to time substantial developers.

Mr Brennan: We were in the process of developing the IQ apartments on Northbourne Avenue.

THE CHAIR: That is the old Country Comfort—

Mr Brennan: I do not know whether it is the Country Comfort, but there was an old motel on the site.

THE CHAIR: So that was going on at the same time?

Mr Brennan: At the same time.

THE CHAIR: Anything else?

Mr Brennan: No, not that I can recall. Do you have something specific in mind?

THE CHAIR: No. The people who were originally developing the IQ were also doing the old Canberra Club building. You were not involved with that, were you?

Mr Brennan: No, that was PrimeSpace. PrimeSpace were developers doing various projects. They needed some equity into the IQ, so that is where we put in the—

THE CHAIR: So you came in as an equity partner?

Mr Brennan: As an equity partner.

THE CHAIR: What time frame are we talking about?

Mr Brennan: That started in about 2012—the negotiations. It took about two years, so it would have been finished in about—

THE CHAIR: The negotiation or the project?

Mr Brennan: The project.

THE CHAIR: You brought equity into that arrangement?

Mr Brennan: Into that joint venture.

THE CHAIR: You became a joint venture partner?

Mr Brennan: Yes.

THE CHAIR: Did any of the negotiations over the Dickson land or the Downer land help you to become an equity partner in that arrangement?

Mr Brennan: No, we did not need any help. The transactions with the directorate had no impact on the JV.

MS LAWDER: Were you ever approached to increase your equity in IQ during that two-year project?

Mr Brennan: No. We negotiated the original position back in 2012.

THE CHAIR: Sorry, I missed that. What did you negotiate?

Mr Brennan: We negotiated the original position back in 2012.

THE CHAIR: What do you do with the Tradies these days? You said you still have an association with the Tradies.

Mr Brennan: They are looking at another development, which I am working on with them at the moment. I do some casual work on that, and things like this.

THE CHAIR: Things like this; okay.

MS LAWDER: Hopefully, not too many of them.

Mr Brennan: No, hopefully not.

THE CHAIR: Thank you very much, Mr Brennan, for your attendance here today. You will receive a proof *Hansard* through Dr Lloyd, the secretary of the committee. If there are any issues that you wish to raise about your evidence, you can take them up with Dr Lloyd.

Mr Brennan: Okay.

THE CHAIR: Thank you for your attendance today. We will have a brief suspension.

Hearing suspended from 11.00 to 11.16 am.

ELLIS, MR GREG, former Director, Sustainable Land Strategy, Economic Development Directorate

THE CHAIR: Mr Ellis, have you read and understood the pink privilege statement?

Mr Ellis: I have, madam chair.

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

Mr Ellis: I would like to make an opening statement. I realise the statement I have written is too long and I will not seek the committee's indulgence to that extent. I will speak to some of the more salient points of that to keep it shorter, but is it okay if I table the whole document?

THE CHAIR: Yes, that is perfectly okay if you table the whole document.

Mr Ellis: The Auditor-General has made five allegations against my conduct of the tender: one, it was not advertised widely enough in the print media; two, the tender evaluation process was poorly guided and documented; three, the negotiation relinquished value of between \$2.4 million and \$2.65 million; four, there was a mistake in a memo sent to the former director-general in December 2013 which underestimated the costs of the proposed rental concessions—the rent-free period; and, five, there was a risk to probity due to what is termed inappropriate administrative processes from December 2012 onwards, which includes a substantial part of the period when I was responsible for the management of the tender.

My submission to the PAC demonstrates that, with the exception of point 4, the Auditor-General's report is comprehensively wrong. With respect to point 4, I note that an error was made in the brief I sent to the director-general which underestimated the value of the rental concessions which formed part of the negotiated settlement. On page 53 of my submission I have apologised to the former director-general, and I am happy to do so again today.

However, as I further argue in my submission, a proper analysis of the December 2013 negotiated agreement shows that this underestimate of \$300,000 did not alter the fundamental advantage to the territory, given that the negotiated settlement represented an increase in the Tradies' winning bid of between \$1.4 million and \$2 million. In other words, my brief did no more than overestimate those advantage figures.

I will not go into details on the other criticisms my submission has addressed and, I believe, comprehensively countered. However, I will summarise in relation to point 3—the alleged loss of value—that when the false accusation made by the Auditor-General regarding the losses of car spaces and the pedestrian easement are removed and the values which the Tradies agreed to pay are tallied against the agreement to grant the Tradies free rent on block 6, section 72, it can be seen that, far from losing \$2.65 million, the agreement extracted an additional \$1.385 million from the Tradies above their winning bid of \$2.2 million. This is based on using the same car space value used by the Auditor-General.

This means the Auditor-General's accusation of lost value represents a baseline error of just over \$4 million. On a more complete analysis of the deal it can be shown that this error is probably closer to \$5 million because of the failure of the Auditor-General to take account of the costs embedded in the RFT, the uplift in value on block 25, section 72, and her failure to consistently apply the discounted cash flow analysis she has used selectively in her report. This is all detailed and justified comprehensively in my submission.

Before leaving the question of lost value, in light of the discussion of this issue by the committee with Mr Brennan, I will touch briefly upon the issue of the replacement car spaces. The Auditor-General is entirely wrong about the replacement car spaces when she claims they represented a loss of value of \$1.57 million. It was never in the gift to the EDD to reduce the number of public car spaces; that was always the prerogative of the ACT planning authority. There is absolutely no evidence that EDD ever suggested otherwise.

Despite my strenuous efforts asking her to produce evidence for her accusations, she failed to do so in either the second and third iterations of her report. Quite unforgivably, the evidence she produced was not evidence she showed me in advance of publication of the final report. This meant she published what she took to be definitive proof when it is nothing of the sort and is otherwise contradicted by much firmer evidence to the contrary which she completely distorts to fit her erroneous theory.

I refer in particular to her bizarre claim that my decision in April 2013 to ask Colliers to review the MMJ valuation on the basis of the full 154 car spaces is not, in her view, prima facie evidence that I was continuing to negotiate on the basis of 154 spaces but that I had somehow failed to have the valuation changed to 84 spaces, which she insists is the figure we had been using since November 2012.

This belief was based on her misreading of an email sent by my colleague to interested parties in the tender in which he notes, notwithstanding the EDD support for a lower number of spaces, the overriding importance of speaking to the planning authority to establish the required number and of all bidders conforming to the Territory Plan when it came to the number of spaces to be replaced. The Auditor-General pretends these words were never uttered. While it might be reasonable for the Audit Office to misunderstand the email at first, it was not reasonable for the Audit Office to wilfully ignore my explanation of the context of that email, the reality of the planning authority's prerogative or the counter evidence demonstrating that we had not lowered and could not lower the number of car spaces.

THE CHAIR: Thank you very much, Mr Ellis.

Mr Ellis: I have not finished, madam chair.

THE CHAIR: You have an allotted three-quarters of an hour, and you have just taken up seven minutes of that three-quarters of an hour. Could you bring your opening remarks to a conclusion?

Mr Ellis: Okay. Briefly, madam chair, the report fails to address several other key issues. I will go through the headings. It fails to discuss the significance of the administrative restructure which took place, which confuses many of the lines of authority. It makes many statements about missing records and, while some of them are valid, I feel that she has misinterpreted a great deal, which leads people to erroneous conclusions about things.

Fundamentally, the major problem with the report is the claim that the government had only one sale objective, which I dispute. Critically, the report, I think quite unfairly, has sought to discredit and scapegoat me and other members of EDD by allowing the Chief Minister to be the sole arbiter of truth on certain questions which I have addressed in my submission. I am also highly critical in that submission of the contributions made to disparage my efforts, my commentary, by the outside consultant employed, Mr Des Pearson AO.

THE CHAIR: Could I just stop you there?

Mr Ellis: Yes.

THE CHAIR: We are here today, Mr Ellis, inquiring into the Auditor-General's report. There are other matters which you are aware of which are associated with that, and they are specifically not the topic of discussion today.

Mr Ellis: Madam chair, with respect, may I make the point that—

THE CHAIR: No, I will finish my comments, thanks, Mr Ellis. You have been interviewed in camera along with the Auditor-General in relation to those other matters, and they are discrete from the hearings today. I will have to ask you to refrain from referring to those matters.

Mr Ellis: Madam chair, I will not speak about it anymore, but when you say they are discrete, they are in the Auditor-General's report. They are in paragraphs 1.85 to 1.87.

THE CHAIR: The committee is dealing with those separately and discretely from the transactions in relation to the land.

Mr Ellis: May I ask why, madam chair?

THE CHAIR: That is my ruling, and I am not going to take up time here today, because we have a limited amount of time. Before we proceed, I want to make it very clear that the hearings today are about the Auditor-General's report as it relates to the land transactions. If you stray from those matters, I will have to close you down on those matters and draw you back to the matters that the committee is inquiring into today. As you know, you have already had a hearing on those other matters. Is there anything you want to conclude on?

Mr Ellis: Yes. I strongly urge the PAC and the Assembly to move to seek official withdrawal of the report, as it is based on erroneous assumptions which, by their publication, have done unnecessary damage to those of us involved, and to me in particular. I note that my submission has yet to be published, despite being rewritten

for the PAC in September, at its express request. I look forward to the day when all the details around this inquiry and its subject are made freely available to the public, rather than the slow leak of information and innuendoes that we currently have.

THE CHAIR: I will not take that as a reflection on the committee. Mr Ellis, can you tell us when you started working in EDD and how you became the director of sustainable land strategies in EDD?

Mr Ellis: Yes. I was with EDD from the beginning, at the creation of EDD. I was originally a senior policy officer in the Chief Minister's department, working in the areas of land development and land strategy. The division that I was in was then hived off and the Department of Land and Property services was created. That, in turn, was amalgamated with the Land Development Agency to create the Economic Development Directorate. At each stage I went with those agencies. I was there essentially from day one of EDD. Essentially, I had the same responsibilities in many ways that I had carried with me, although they were not identical. There were some changes. Essentially, it was about dealing with direct sales, land release issues and the like.

THE CHAIR: What did "sustainable land strategy" mean?

Mr Ellis: One tries not to be cynical about the use of the word "sustainable" in public service titles. Sometimes that is difficult. Fundamentally, it meant that—

THE CHAIR: I think that is why I asked the question.

Mr Ellis: Yes. It was not the same way as the word was used in the Environment and Sustainable Development Directorate. It was essentially about what we could sustain as a land release program. In other words, in a small jurisdiction like the territory, certainly under a government-controlled system, there was only ever so much land that could be put out at one time. Obviously, there was an imperative to get out a lot more land than was often got out, but, by the same token, it was not always actually possible for the private sector to respond to the amount of land that we might want to get out in as timely a way as we could.

"Sustainable" in that sense meant: how much could the private sector develop over, say, a five-year period? What was the most we could get out? My area did a lot of statistical analysis of the capacity of the market and the industry to develop land. We would put that together in a program and say, "We could get out this much." We could put out more. We could say we were going to put out a thousand more blocks, but the fact is that we just would not get the take-up. There is too much happening in Sydney at the moment. The industry just cannot respond. In that sense it was sustainable. It was economically sustainable; I think that would be the closest thing.

THE CHAIR: You said that you started off as a senior policy officer. This was policy work at a high level about what the land supply should look like?

Mr Ellis: Yes.

THE CHAIR: What led you to be a negotiator on this particular land development?

Mr Ellis: I often had a role in negotiating direct sale outcomes; that was a function I had carried from the Chief Minister's department. When the former Chief Minister, Jon Stanhope, introduced his supermarket policy, I had responsibility for that. It became my job to negotiate outcomes with some of the key commercial players on that, with ALDI and with Coles—trying to increase competition, identifying blocks of land and then negotiating, often, rental outcomes with them.

If I can anticipate a question, madam chair, when the LDA came together with LAPS—land and property services—the LDA's land sale portfolio operations were essentially pretty much over-the-counter block sales. They were not what I would call policy-rich issues. They were a lot more straightforward, without wanting to denigrate it in any way; whereas I was dealing with a situation where we had to try to get outcomes to achieve a government policy, as with supermarkets, and as with a lot of the community sales of land. It naturally fell to me to do some of the more complex things which were related to the supermarkets.

The Tradies, being close by, was seen very much as being like that. There were also the questions which David Dawes and Steve Brennan spoke about earlier today, regarding the possible development of Rosevear Place. For instance, it was my job to find alternative accommodation for the community tenants there, if we were ever going to realise the consolidation of all of those blocks. That meant I had to talk to them, find blocks, and say, "We want to find you a new place. Let's see what we can do to find you something so that you can vacate that block and we will realise its full commercial potential."

That was the kind of complex, policy-rich land sale and land negotiation thing that I had been involved in for a number of years, particularly since the supermarket policy got up and running. That is why it fell into my lap.

THE CHAIR: For all this time you never worked for the LDA?

Mr Ellis: No.

THE CHAIR: What was the relationship, the reporting guidelines and the chain of command between those two agencies, as you saw it?

Mr Ellis: Initially, the only person who wore two hats was David Dawes. He, of course, had to report to both the minister and the LDA board. I never had to report to the LDA board. I had to report to David Dawes. Of course, he would say to me, "The board's looking for this," or "It's looking for that." How can I put this? I never had to answer to them. Occasionally, I would give them an information brief, but there was no-one on the board who could ever instruct me or anything like that.

THE CHAIR: So you were writing briefs for the LDA board, although you were not working—

Mr Ellis: I would not say I never wrote one, but it would have been very much by way of background. It was more likely that I would write an information paper or something occasionally, but that was really quite rare. Most of my work was always

done for the minister. I would be in regular contact with ministerial staff. I do not know how David, and later Dan Stewart, who also became what we call two-hatted, managed it, but that was their problem, not mine. My concern was that I would report to Dan and to David, and I would often speak directly to the minister's office. The fact that the board had an agenda was something I did not have to worry about. The LDA were constantly running around and looking after the agenda items for each monthly LDA board meeting. That was something that I was not concerned with.

MS CHEYNE: I appreciate if there were issues with this quote, but according to the Auditor-General's report, in response to the second final proposed report, you said:

... if we didn't finalise the deal because—for reasons I have outlined previously—it would have been difficult to restart the process given the various risks that were involved in doing so.

That is at page 70. What were those risks?

Mr Ellis: In relation to the risks of restarting the process, there were several, but the most obvious one was that the market had already been informed. The way the market works is that it had already been informed that only two people were interested and that the highest bid was \$2.2 million.

MS CHEYNE: How had the market been informed?

Mr Ellis: These things get out. People know. It does not take long for these things to get out. That was the first issue. The market had already established a figure which was much below the \$3.18 million, which MJJ—well, the piece of paper I had in my hand. Secondly, the market was pretty dire at that time, which was another reason, quite apart from anything specifically related to the site, as to why there were not too many bidders putting their hands in their pockets to bid. That was risk No 2.

Risk No 3 was that there was already a great deal of sunk costs in this process. I am talking about several agencies spending a hell of a lot of time on this, not just us, the planning authority. Restarting a process means essentially going through that whole process again. You have to ask yourself, "Would we get a better outcome?" And you have to think, "Well, no. The risk of getting a better outcome with everything we have to consider is not great. And that is money we have wasted. Is it worth it?"

MS CHEYNE: So because the market was aware of the \$2.2 million, if you had restarted the process, potentially you would not have even got that as a starting offer?

Mr Ellis: I think it just would have influenced the price. These people are all pretty hard bitten. They would have said, "Well, if you pay over \$2.2 million, you are a bit of a mug." That is the way they think, and with justification. So that was a huge risk. There were other risks, but I would have to go through my report in detail. But they were the main ones.

MS CHEYNE: How did the \$2.2 million and there only being two tenderers get out? Wouldn't it only be EDD who knew that?

Mr Ellis: Yes, but it is like any small community; there are always whispers. People ask—not us—within the market. I have always been amazed how quickly people within the market will say, “I heard they only paid such and such for something.” You do not give anything away, but there always seems to be a grapevine of information. I am not sure why. For instance, a losing bidder might say, “We were only willing to pay X dollars.” They probably would not feel as though that was information that they needed to withhold. It is entirely up to the bidders if they want to disclose to other people in the industry what they paid. I do not think it is too hard, in a lot of real estate and other journals, to find speculation from different writers about what people paid. People talk. When someone pays a much lower figure, you assume there is only so much time before people start to say, “It is just not worth that.”

MS CHEYNE: They did not pay that; they proposed that.

Mr Ellis: Proposed that, yes. But the other thing—if I can just go slightly beyond the point of your question, though on a relevant point—is that there were only two conforming bidders. Most of the other 18 people who expressed interest did their sums and decided that, because they did not have the kind of long-term investment that the two neighbouring blocks had in that block, there were just far too many costs involved in developing the block, particularly the parking spaces, to make it worthwhile. It looked like a good prospect, but when you actually interrogated the documentation you found that there was so much you had to do that it just did not stack up for most people.

THE CHAIR: Could I just clarify? Were you involved in the request for tender?

Mr Ellis: I was required to approve the request for tender. I did not draft it. That was drafted by a cross-agency team of people, including my consultant offsider, people from LDA, and people from the planning authority and treasury.

THE CHAIR: So there were people across agencies who signed off on that? There was the valuation figure of 3.18. You were aware at the time that that was the valuation figure. At the time did you think that that was a reasonable figure?

Mr Ellis: I knew it was high because, contrary to what the Auditor-General says, there were, in fact, two valuations done. We had to do two valuations under treasury instructions. We had a separate valuation done which was much lower, but we were compelled to always take the higher valuation, so we did. That did not bother me, because as far as I am concerned, that just means that I am negotiating from a position where I say, “This is what it’s worth and you have to meet my figure.” As a public servant, I cannot do anything else. So that was that.

But to get back to your question, madam chair, I knew that was high because I understood the assumptions in it, and the assumptions in it did not make allowances, which would have cost the potential bidders quite a bit of money. It did not take into account any of the factors for roadworks, which Colliers estimated at a minimum of \$430,000 in 2013 dollars, and it did not take into account any of the RFT restrictions on the delay on development, which are a very significant factor for developers. Essentially, the MMJ valuation said quite explicitly that it did not take into account these things. I have noted that in my submission.

Anyone who goes in to bid will say, “Oh, wait a minute. The RFT says we can’t start building for at least four years.” The valuation says we have not factored that in. They are going to say, “The time value of money, and me not getting a return on my investment, is a significant cost to me. I will lower my bid.”

MR COE: Mr Ellis, doesn’t that beg the question why it was sold at that time? If it was a dire market, as you said, and you could not develop it for four years, why would you put it on the market?

Mr Ellis: I think that is a perfectly legitimate question, Mr Coe.

MR COE: Who did make that call to put it on the market?

Mr Ellis: Who made the call? I would have been told that it was to go on the land release program. I would have been told by Mr Dawes that it was to go on the land release program, that it was something I needed to schedule in the land release program.

MR COE: As somebody not familiar with the land release program, who would put it on the land release program?

Mr Ellis: We drafted it up.

MR COE: I know the document, but who would have actually made the call that this is going to be sold?

Mr Ellis: The land release program was ultimately approved by the minister.

MR COE: By Minister Barr?

Mr Ellis: I believe so. The LDA board had its input, but ultimately what went on did get the tick off from the minister, as far as I can recall.

THE CHAIR: I know that Ms Cheyne has a supplementary question, but I want to go to the timing. The Auditor-General’s report says that it was advertised on 8 December, but there were also issues where the tenderer sale was agreed on 11 September and there was a plan to advertise but you did not actually advertise initially because the government had not ticked that off. And it turned out that the government eventually ticked it off just before the caretaker period.

Mr Ellis: Just to clarify that—I think it is clarified by me in the appendix to the Auditor-General’s report—fundamentally what happened was that there was a stuff-up there. It was embarrassing. Cabinet was meeting, I think, at that stage, a couple of times a week. We wanted to get it advertised before the close of the caretaker period. What happened was that there was a miscommunication between the sales area which did this advertising and us. At one stage I asked them to pull the ad. They told me that it had been pulled. And lo and behold, for whatever reason, it had not been pulled. It was actually advertised on the Saturday, even though cabinet had not, as we had anticipated, agreed to the approval beforehand. I thought it had been

pulled. It had not. I go in on the Monday morning and Dan Stewart is telling me, “The ad went in on the weekend.” I said, “You’re kidding.” He said, “Yeah.”

MS CHEYNE: Is this related to asking for the AFR ad to be pulled? Had you asked for both ads to be pulled but one was and one was not?

Mr Ellis: What happened was that, because of the tensions around this issue and the stuff-up and the embarrassment—we advertised it in the *Canberra Times* before the government had actually approved it; they subsequently approved it on the Monday—we were embarrassed but there was not a great deal of fallout. The government seemed to regard it as just an unfortunate glitch, fortunately.

We had anticipated that it would be advertised in the AFR shortly thereafter, but we had already started getting a lot of interest, emails coming in, as a result of the ad on the weekend. I cannot remember all the details of why, but I remember talking to Dan Stewart about this. He was in charge of both areas. It had caused a great deal of tension. Advertising any further did not seem to be warranted, particularly as it had caused this problem. He just decided that it was not necessary, and I told them, as I recall, to not worry about it.

MS CHEYNE: So Mr Stewart decided it was not necessary?

Mr Ellis: Yes.

MS CHEYNE: Can we just get the facts right? Originally, in terms of the advertisement, it was supposed to go into the AFR and the *Canberra Times*?

Mr Ellis: That is correct.

MS CHEYNE: Then the intention was that both were to be pulled because cabinet had not yet signed off?

Mr Ellis: Correct.

MS CHEYNE: The AFR was pulled but the *Canberra Times*, for whatever reason, was not pulled?

Mr Ellis: That is right.

MS CHEYNE: The *Canberra Times* went on Saturday?

Mr Ellis: Yes.

MS CHEYNE: On the Monday, cabinet approved the sale?

Mr Ellis: Yes.

MS CHEYNE: Then Dan was the one who decided that there was not a need to advertise further in the AFR?

Mr Ellis: That is correct.

MS CHEYNE: Because there had already been decent interest?

Mr Ellis: Because we were already getting a significant amount of interest.

MS CHEYNE: Interest does not necessarily mean interest at the right price.

Mr Ellis: No, but you never know that, with respect.

MS CHEYNE: I appreciate that, but given that you have said a few times that you knew the market was dire and the timing of the advertisement was not necessarily at the best time of year, I am struggling to see why you would not advertise nationally, particularly when you would advertise nationally for other blocks.

Mr Ellis: Because we were already getting responses in from all over the country. Again, with respect, there seems to be a rather old-fashioned view about the significance of newspaper advertising in commercial real estate. Even in 2012 we had moved way beyond that. The LDA had extensive networks of real estate agents around the country and even internationally. You advertised on websites; you went through their networks. That was a far more responsive network. Advertising in the media was really a formality from a previous era. That is really demonstrated pretty comprehensively.

THE CHAIR: Can I then ask: when did the advertising on the LDA's extensive network begin? Did it begin on 8 September, when the *Canberra Times* ad did, or after cabinet approved the sale on 11 September?

Mr Ellis: It would have started on the—I believe it started on the weekend of the—

THE CHAIR: When it went in the *Canberra Times*?

Mr Ellis: Yes.

THE CHAIR: Okay.

Mr Ellis: I believe so.

THE CHAIR: This is actually an aside arising from Mr Coe's question, which was: who approved the sale? The answer is the government approved the sale of this block of land in cabinet?

Mr Ellis: Yes.

MS CHEYNE: After the advertisement.

Mr Ellis: Yes, they did. Yes, in the cabinet meeting in September.

THE CHAIR: The Auditor-General's report says 11 September.

MS LAWDER: The Auditor-General's report has a bit of a transcript of a discussion between, I presume, you—the former director, sustainable land strategy—

Mr Ellis: That is right.

MS LAWDER: and the Audit Office. It says, for example:

... there were perceived risks associated with the negotiations and not reaching an agreement with the Tradies:

I will paraphrase, but you have said you felt there was perhaps an unstated willingness to reach an agreement with the Tradies. I will read you what it says so that I am not misquoting you.

Mr Ellis: Sure.

MS LAWDER: It says:

... we were doing everything we could to get the best price we possibly could ... but, I mean, we don't have to be naive here. I mean, it was clear that the government wanted the Tradies to win. So if it turned out that the commercial process—

Et cetera, and there are few pages of comment.

Mr Ellis: Yes.

MS LAWDER: Did you have any formal or informal discussions with any of your colleagues about that belief that the Tradies—

Mr Ellis: Only with my consultant colleague. That was really the reflection that I had with him, that it would obviously be politically awkward for the government. But that did not influence it. That was completely out of our hands. It was like an afterthought: "Gee, there's so much riding on this. But if they don't have deep enough pockets to win, well, someone else is going to win. It will be interesting as an observer." That was my view. I imagined it would have been very disruptive to the relationship between the Tradies and the government, but it was not my concern in terms of the job I had to do.

THE CHAIR: Sorry, who was your consultant colleague?

Mr Ellis: Richard Drummond.

THE CHAIR: So he was not an employee of the ACT government?

Mr Ellis: No—well, he was employed as a consultant on a long-term contract because of his commercial expertise.

MS LAWDER: Further down in that same transcript, you said:

I know that ... the head of the Tradies, was very confident that he had the

government on side.

You were asked which minister it was at that stage. You responded:

... the Minister for Economic Development, and—and he was Treasurer. And the—and Minister for Planning ... there's no document to find which says there's political influence.

When you talked about the head of the Tradies being very confident that he had the government on side, again, was that explicit in a conversation you had with the head of the Tradies?

Mr Ellis: We had one meeting with the head of the Tradies, Mr Hall—Dean Hall—when Mr Brennan was also present, where we—

MS CODY: Sorry to cut in; can you repeat that? The head of the Tradies, who?

Mr Ellis: It was Mr Dean Hall who was at the meeting.

MS CODY: Yes, was he with the Tradies at that point?

Mr Ellis: I believe he was, yes. He was the chair of it, I recall, yes.

MS LAWDER: Director, I think. He signed the contract?

Mr Ellis: Yes. Look, it was very generalised comment. He just said, “We’re going out and selling.” Look, it is wrong of me to try and recreate exact words, but basically he was saying that they were keen to get it and that he felt the government wanted them to win. I think he might have been saying that to me as if that might influence me. Our response was—we used these words explicitly—“If you are going to win, you are going to have to have very deep pockets to win.” In other words, you are going to have to be the highest bidder and that’s the only way you’re going to win.

Now, Mr Hall did not say anything else. He did not pressure us. In fact, he said something in response like, “Yeah, we know.” It was not pressure. It was not some sort of hairy-chested expression of political power or anything of the sort. It was: “Mr Ellis, you do know that this is important to us and the government wants us to get this.” I basically said, “Yeah, fine, but you’ve got to win the way everyone else wins—by bidding more.” That was it.

MS LAWDER: You said further on in that same transcript:

Woolworths were certainly no friend of the government.

The Auditor-General had raised concerns about probity in those negotiations—that with the Tradies departing from the terms of the RFT, Woolies were not given the opportunity to participate.

Mr Ellis: With respect, Ms Lawder, we need to be very precise about this. The Auditor-General’s report indicates that the ACT Government Solicitor identified that there was a risk of contaminating the RFT as a result of decisions made to accept

requests for changes to the RFT from the Tradies in mid-2014. Right? I was gone by mid-2014. This is one of my objections to the report. It is that the Auditor-General conflates the period when I was negotiating—let us say up to the agreement in December 2013—with events which happened after. I categorically reject—and I think that the ACT Government Solicitor’s statement categorically shows—that there was no compromise of the RFT when I was negotiating the outcome. I do not accept the premise of the question.

MS LAWDER: I had not actually asked a question at that point.

Mr Ellis: Sorry for anticipating the question.

MS CODY: Mr Ellis, you were talking to many people about the timing of the sale, and Mr Coe asked, if the market was in a bit of a slump, why the government went to a tender process at that time. Was the Coles redevelopment underway at that point?

Mr Ellis: Yes, they were very contemporaneous. It was actually a much bigger part of my agenda at the time because it was even more complex and more difficult. I seem to recall that they were advertised if not on the same day then a week apart, so it was that close. It was all happening.

MS CODY: What was the kicker to get the Coles stuff started?

Mr Ellis: It was very much part of the whole supermarket competition policy agenda. Although the new Chief Minister by that stage had decided not to continue with the policy in terms of it being extended anywhere else, there were four legacy projects which had to be finalised and then, “That’s it; we’re going to with the free-market approach.” The Coles site in Dickson, block 21, was one of those legacy projects, along with Kingston, Casey and Amaroo, I think. They were the four we had to get done. They had already been on the agenda; they were considered a priority by Mr Stanhope and his successors.

MS CODY: So the Coles development and the Tradies car park were basically advertised together?

Mr Ellis: Close together, yes.

MS CODY: There is discussion in the Auditor-General’s report and we have heard this morning evidence from a couple of witnesses to say that the Tradies had approached the directorate or the government for a direct sale of the car park. Had any other businesses approached the directorate or the government in regard to acquiring that block of land?

Mr Ellis: I do not believe so, and I am pretty confident in saying that. No, there would not have been. I would have been involved in the direct sales back in 2010, certainly the last one. I would be surprised if I was not. The answer to your question is no, no-one else.

MS CODY: There seemed to be quite a number of interested parties and you ended up getting two bids from two parties. I know the general principle in most sales is that

you negotiate with the highest bidder. Was there any discussion about talking to Woolworths as well, as there were only two bids?

Mr Ellis: Certainly, when it looked like the negotiation was going to fall over. I think Mr Brennan gave some feel for how fitful the negotiations were and how protracted they were, but from our perspective it got much worse than that. It got to the point in October 2013 that I was convinced we were not going to get an agreement because it was going nowhere. I would have casually said something to my superiors about this and asked, “What do you want me to do?” They probably said, “Well, see where we’re up to and where they’re up to and then we’ll make a decision.”

So it got that bad. It was like, “This is not going to work. They’re not going to pay the extra money. They’re not going to deliver all the car spaces. They’re not going to do all this.” And that was when they came up with their innovative notion of substituting car spaces in their existing car spaces rather than replacing them with new ones underground. We got approval from the planning authority and that was the game changer that allowed the deal to go through.

It was still going to fall over if the planning authority did not agree to it, and it was only at the eleventh and a half hour that they did. It was that which allowed me to write my email to David Dawes on 13 December, I seem to recall, saying, “They have approved it and that means they will deliver the 154 car spaces and they will pay the headline figure of \$3.18 million.” Unfortunately that is what the Auditor-General has failed to understand.

MS CODY: So at that point the second property had not become part of the negotiations?

Mr Ellis: No, it had. I think my recollection of this is a bit better than that of either Mr Brennan or Mr Dawes, although it essentially confirms what they are saying. It happened after the Tradies became the preferred tenderer, so it was in early 2013. I cannot—

THE CHAIR: They became the preferred tenderer in December 2012.

Mr Ellis I remember initially nothing happened. New Year came; I contacted the Tradies and they said, “Look, we just need to get our figures together.” Something like six to eight weeks passed. They came back and we were at that part of the negotiations where we were a million miles apart: “You know, you want us to pay a million dollars. You want us to put in all these car spaces. You’re kidding. We just won.” “Well, sorry it doesn’t work that way. We’re just public servants; we can’t negotiate outside certain parameters.”

So that all happened and it was around about that time that David Dawes said to me, “One of the things we could look at would be a land swap with that block down there.” David saw a great deal of development potential to realise that block for affordable housing, particularly for older women in the area. It was around about the time that we were getting Colliers to do an independent review of the MMJ valuation, a review which I must underline again was one where I told him that the review had to be based on 154 car spaces.

MS CODY: In the Auditor-General's report there were a lot of different numbers about car spaces and we have heard evidence this morning that 154 was really the number that everyone was working on, once it got clarified. The Auditor-General claims that it was quite a substantial loss to the government, taking into account the loss of car-parking spaces. We have heard other witnesses this morning say that that is not the case, that the government actually got quite a good deal. You were quite key in negotiations for this. What is your opinion?

Mr Ellis: Fundamentally, once you realise that the Auditor-General is incorrect about public car spaces then you have to say what is left—and I can go over the point about the car spaces again—is that she says \$1.57 million has to come off her alleged loss of \$2.65 million.

I maintain that the other component of that, the pedestrian easement, is also not the loss of \$300,000, as she claims. There is no obvious reason why that is the case. All that happened in that instance was that I agreed that the Tradies could review the requirement for a pedestrian easement near their car down ramp. I think it is quite extraordinary that I am then accused of giving away \$300,000 worth of value for such a thing when I was only giving them permission to seek the planning authority's review, and of course the planning authority's review, even if agreed, does not necessarily mean that they will not be charged for the uplift. The planning authority will decide that.

Secondly, what would have happened if a small child had been killed in a motor accident and it had come out that EDD refused to even allow the Tradies to have the decision reviewed by the planning authority? The whole notion that I would be accused of giving away this money, to me, is quite appalling.

You take those two into account and all that is left is the question of the rental concessions. And there are fair questions that can be asked about whether or not we were justified in agreeing to the trade-off in those rental concessions. My answer to those fair questions is yes, because they gave us more in cash and we also realised additional value because of the land swap. I am not saying that there are not questions that cannot be asked, but they have been conflated with two, what I consider to be, gross errors in relation to car parking.

If I may just quickly say this about the car parking: it was never in our gift; we could not do anything. But what also needs to be understood is that the planning authority had not made a decision. They were in the middle of draft variation 311, the Dickson master plan. They were reviewing all these issues about parking requirements.

When we advertised, in a period when there was no certainty around these issues, the question of how many car spaces would have to be replaced was not clear, because normally you have to replace all the car spaces. But the planning authority made a decision to cut this block by 54 per cent with the pocket park and the road easement. You ask yourself as a developer, as a person in EDD, as anyone, "What does that mean for the policy?" There are 154 spaces on it. You have got to replace them all if there is nothing. But the planning authority has just come along and cut the block by more than half. Surely that policy means they are going to have to replace only those

ones that are left on the site.

All the bidders looked at this and we looked at it and we said, “There will be 84 still in the building envelope that you will have to replace underground but”—and this is the important caveat; it is in the correspondence that Mr Brennan referred to this morning, which the Auditor-General relies upon for her interpretation—“you need to speak to the planning authority about this and you have to conform to the Territory Plan.” That Territory Plan confirmation did not come until 23 June 2013. In April 2013 I told Colliers to review the valuation on the basis of 154 spaces because there was no reason for me at that stage to think otherwise. The planning authority still was sticking to the policy that everything had to be replaced.

In June it became clear that they would not budge from that, and it was at that point that the Tradies were virtually saying, “How on earth are we going to afford this?” All along they were hoping that the planning authority was going to turn around and say, “Of course we got rid of all those spaces by our park and our road easement. Okay, it is only 84.” That was what they were hoping; that was what we all assumed.

THE CHAIR: But Mr Brennan said today that all through the process they were working on the assumption, the written assumption that they said that they had, of 84 car spaces.

Mr Ellis: I heard that testimony and, with the greatest respect to Mr Brennan, whom I regard extremely highly, Mr Brennan also noted that his memory of events was not exactly the best. How I would answer that is to say that the document that he is talking about, which I presume is the document that the Auditor-General also relies on, is the email that my colleague sent, with my approval, on 6 November 2012, in which he said, “The EDD will support 84 car spaces. However, you need to talk to the planning authority and you will have to conform to the Territory Plan.”

The reason we said that was that it was still an open prospect. Once we started to understand the incumbencies on this site, the enormous number of car spaces that had to be replaced, the fact that there were hardly any studies that had to be done at the bidder’s risk—studies normally done for blocks that are sold by the LDA—and also the long delay before you could get a return on your investment, we were really starting to worry that there would be any bidding whatsoever. When people asked us, we would say, as we were telling the planning authority at the time, “We think 84 is a reasonable number. In an environment where these things are still up in the air and undecided, we think 84 is something that you could plan on. But don’t ask us; we don’t know for sure. You need to speak to the planning authority. You will have to conform.” As I say, that was always the basis of what we said.

THE CHAIR: I am very mindful of the time. We have gone over a quarter of an hour. Members have commitments. Thank you very much for your attendance here today. I think that there is an appetite to ask you back to conclude your testimony, and I will ask Dr Lloyd to negotiate with you a time. We have scheduled hearings next week and also in February. I will ask Dr Lloyd to negotiate that. The committee is meeting privately tomorrow. We might discuss it then as well.

Can I thank you for your participation today. You tabled your full statement, which

Dr Lloyd will take, and then we will decide whether or not to publish it. I conclude the hearings for today. Thank you for your attendance. You will receive a draft transcript of today's hearings and Dr Lloyd will be in touch about reappearing at a later date.

Mr Ellis: Thank you.

THE CHAIR: Thank you very much for your attendance.

The committee adjourned at 12.15 pm.