



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

PROOF TRANSCRIPT OF EVIDENCE

CANBERRA

THURSDAY, 6 DECEMBER 2018

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

By authority of the Legislative Assembly for the Australian Capital Territory

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

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Amended 20 May 2013

The committee met at 9.31 am.

PETERS, MR CLINT, former Director, Sales, Land Development Agency

FORNER, MS JULIA, former Senior Manager, Sales, Land Development Agency

THE CHAIR: Good morning and welcome to the next public hearing of the Standing Committee on Public Accounts inquiry into Auditor-General's report No 3 of 2018, *Tender for the sale of block 30 (formerly block 20) section 34 Dickson*. We will have to talk to the new Auditor-General about more interesting titles.

Today we will be hearing from Mr Clint Peters, the former sales director of the Land Development Agency, and Ms Julia Forner, the former senior manager, sales, of the Land Development Agency; Mr Ian Wood-Bradley, a former member of the tender evaluation panel; Mr Graham Mundy, project director with EPSDD; Mr Stephen Terracini, manager of valuations and estate management; and Mr Peter Garrisson, the Solicitor-General.

The proceedings will be recorded, transcribed and live streamed and are available from the committees on demand service. Could I ask witnesses to state whether they have read and understood the pink privilege statement. Witnesses will receive a proof transcript of our proceedings, and they may ask for corrections to be made. If any questions are taken on notice, please say, "I will take that question on notice." That is the approved formula, apparently. Questions taken on notice are to be answered within five days of the witness receiving the proof transcript from the secretary.

I welcome Ms Julia Forner, former senior manager of sales at the Land Development Agency, and Mr Clint Peters, former director of sales at the Land Development Agency to the table, and ask if you have understood the privilege statement.

Mr Peters: Yes, I have read the privilege statement.

Ms Forner: Yes, I have.

THE CHAIR: The committee has asked you to come here today because you are mentioned by title and we have, through the dark arts available to us, had people go back through the records. Although the Auditor-General identifies you by title, we have been informed that you were the people who occupied those positions at the time. We are inquiring, as you know, into the Auditor-General's report and looking at the processes that went on in relation to the sale of block 30 in Dickson and issues relating to the land swap arrangement in relation to the Downer blocks owned by the Tradies club as well.

Who is the most senior? Mr Peters, if you could, briefly outline for the committee your role, recognising that this was a number of years ago, in the processes outlined that the Auditor-General was interested in. What was your role and over what period?

Mr Peters: I guess the simplest way for me to put it is that I was the director of sales and marketing for the Land Development Agency at the time. We had a fairly diverse team, which also included some estate management work that was sort of managing

our estate presentation and the like. But the call for my role was definitely about the sales and marketing of land that was assigned in the indicative land release plan, the ILRP. Our role was really to facilitate sales contracts assigned to the ILRP and then to market and campaign those blocks out in the public domain. We used a number of methods and techniques for that. It would be tender, auction, ballot and variables. Each site was inherently uniquely different in the way we marketed and sold things.

THE CHAIR: And you, Ms Forner?

Ms Forner: I was the senior manager of sales at the time. My role was to focus on the sales, working primarily with the contracts.

THE CHAIR: You both worked for the Land Development Agency?

Mr Peters: Correct.

Ms Forner: Yes.

THE CHAIR: I think somewhere in the Auditor-General's report, Ms Forner, you said about this project—and I hope I have not attributed this to the wrong person, but I think it was you—this was a bespoke project but it was managed by EDD rather than the LDA.

Ms Forner: Yes.

THE CHAIR: Do you have an understanding of why it was EDD rather than the LDA?

Ms Forner: On occasion there would be sites where there were outcomes which were beyond the normal sales process and which were managed by the directorate. They included this site and also a couple of other sites under the supermarket competition policy. It was not unique but it was bespoke in that the management and the direction were coming from them. We were acting in more of a service role than an actual project role.

MS CHEYNE: This was common for supermarket competition roles?

Ms Forner: The supermarket competition policy was on the other sites, where I would align the same sort of process, yes.

THE CHAIR: Do I glean from what you said there, and I think something that was said yesterday, that the LDA was more process oriented about getting stuff out to market but you did not do anything fancy, so to speak?

Ms Forner: Yes. In the simplest terms, where there were sites where we were involved in a greenfield development or urban renewal sites where we had done the due diligence and the planning around those, we would deliver those. But where they were a little special, the direction and the main lead would be given by the directorate.

Mr Peters: The directorate had a policy position that needed to be developed, and

there was a framework to go with that. That was more efficient for the directorate to manage and carry that through because the policy was in place and it did not necessarily have a bearing on the standard contracts that we were facilitating. For the directorate to run and manage it, it was pretty much the design for them to pick up such a site like this and carry it and run it through, yes.

THE CHAIR: In your experience generally—and then I will ask you to reflect generally and then specifically—when you are putting businesses out to market, are there specific business plans that go with that? What sort of documentation would have gone out when you were putting something out to market?

Mr Peters: Not business plans as such, but there would be the development controls or certain objectives that would be annexed to contract documents. If there was something that was an opportunity to achieve a desire, whether it be through the built form or whatever the case will be, they generally would be annexed to contracts. It was fairly clearly stated as to what the term is or what the planning controls are of that outcome, if you like.

THE CHAIR: Part of the process of putting something out to market did not include a business case for why it was good to go out to the market?

Mr Peters: Not into the public domain. If business cases were prepared, they were usually back-of-house through—

THE CHAIR: But there may have been?

Mr Peters: Quite possibly, yes.

THE CHAIR: There may have been business cases. Was it a regular thing? I was not really expecting it would be something in the public domain, because it would be whether it was propitious to put something out to market at a particular time.

Mr Peters: Correct. And, again, it probably depended on the type of site, the timing, the market conditions and if there was a hand-back site or any of those. I guess moving parts is something that we have used a fair bit in our business, but it was dependent on the site and how many moving parts there were as to whether it justified a business case or whether it was a fairly standard type of sale that did not have any other hand-back sites or any other conditions or offsite works. It really did depend on the type of product you were putting on the market.

THE CHAIR: That is generally. In this particular case in relation to the car park next to the Dixon Tradies club, was there a business case or any similar sort of documentation, to your knowledge?

Mr Peters: Not to my knowledge.

Ms Forner: No, I would not be aware of that. Normally that would not be something that would come down to my level.

THE CHAIR: If there were, it would have been in the sort of bespoke area of EDD?

Mr Peters: Correct, if it was.

MS CHEYNE: Mr Peters, you and the deputy director-general of EDD, according to the Auditor-General's report, were given advice from the Government Solicitor's office in October 2014—

Mr Peters: Yes.

MS CHEYNE: that indicated that the acceptance of the Tradies' requested concessions started to represent a direct sale rather than an outcome of the tender process, given that the conditions were pretty divergent from the original RFT. What was your response to this advice from the solicitor's office? Did you express any concerns or raise this with the DDG or the DG?

Mr Peters: I think, if my memory serves me correctly, a conversation would have been had at the time that that information was presented saying, "We need to think about all the parts that are associated with this particular sale." But I do not think that it was ever formally put to the DG, the CEO or the deputy DG at the time. In part, that was because—I mean this without being flippant—this was not our project. So we could only advise to a point and say, "Make sure you understand what advice is coming in and how you should treat such advice." So to say the conversation was had, yes, I would be confident the conversation was had. Whether it was clearly articulated or understood, I cannot speak on behalf of the others that were in that room.

But, most definitely, it was our experience collectively, when we reached points for certain types of sales, that we would always make a concerted effort to engage with both the Government Solicitor's office or an appointed probity officer. That was something we actually took a lot of pride in, and still take a lot of pride in, in ensuring that we get the appropriate advice for such sales.

THE CHAIR: The Auditor-General's report says at paragraph 2.103 that you and the deputy director-general were provided with advice by the Solicitor-General's office in October 2014. What form did that advice take?

Mr Peters: Again, if my memory serves me correctly, I would suggest that it would have been email and possibly followed up in a formal notation. But generally that would have been through email correspondence to us.

THE CHAIR: You cannot remember specifically.

Mr Peters: Correct.

THE CHAIR: Did that come to you or to the deputy director-general, who was Mr Stewart?

Mr Peters: It would have come through either Mr Stewart or Mr Ellis; they had the leads on the project. As I have sort of stated to the auditors, our role was very much in the background or in the shadows of this project. That level of documentation or information that would come to me would almost be in the form of cc-ed advice or

putting me in the loop as the director of sales.

THE CHAIR: My understanding was that Mr Ellis was not there in October 2014; he had left already. The Auditor-General says it came to the director of sales—that is you—and the deputy director-general, that is Mr Stewart.

Mr Peters: Yes, that is the chronological sequence of events. It would make sense that, if Greg was not available or if there was not anyone backfilling his position, it probably would have defaulted to me, being in a role of a similar nature.

MS CHEYNE: In some of Mr Dawes's evidence yesterday, he mentioned the GSO and that they had a very good relationship, by his account, and that he would have expected them to be raising it with him directly and not just by a forwarded email, a cc-ed email or something like that. Would that be normal?

Mr Peters: Without my speaking on behalf of Mr Dawes, I would have an expectation that the communication lines would be open.

MS CHEYNE: Yes, and would one email be sufficient? Do you really need to bang people over the head with it?

Mr Peters: Again, having only a very small window into this particular project, I cannot speak on behalf of others that may have sought certain arrangements for communication. I just think it depends on the type of sale and the type of expectation of how much correspondence is shared.

MS CHEYNE: But generally within the LDA, if the GSO had written an email to you about any other project, would that usually have been sufficient for you or other senior officers to go, "Hold on here; we need to—"

Mr Peters: The LDA would normally set up a project working group or something similar that would have stakeholders in the room. You would methodically work through contract arrangements, contract terms.

MS CHEYNE: Right.

Mr Peters: You would seek out where challenges may present themselves in the future and try and wade through what that would look like in order to deal with it before it arrived. That is how we would manage our projects and we would consult internally. So for the LDA, yes, we would be engaging with either the government-appointed solicitor or with someone off the panel of solicitors.

THE CHAIR: Did that happen in this case?

Mr Peters: I am not sure.

THE CHAIR: I am just trying to get a feel—

MS CHEYNE: Yes, it is hard for us to picture at how arms-length you were.

THE CHAIR: That is the thing and—

Mr Peters: I think, for the absolute clarity of arms-length, we really were not in any detail of the project. We knew and were aware of what the project was as far as the site that was being sold. I think, to be honest, the bulk of our role was to perhaps place an ad and create a marketing space in the nominated papers; that was about it.

THE CHAIR: And after the ad was placed?

Mr Peters: No role in tender assessments; no role in anything—anything else.

THE CHAIR: But what about the drawing of the contract, when there was a handshake. Who did that?

Ms Forner: That was under instruction from the directorate. I did receive a copy of it for review in light of contractual terms and: “Is it consistent with the way we would normally draw up our base contracts?” I provided some feedback in that space but within the context of the fact that I had not been on the tender evaluation panel and I did not know what had been agreed to. I was given a scope of: “This is the agreement; does it deliver that?”

MS CHEYNE: You were acting under instruction without all the context.

Ms Forner: Yes.

Mr Peters: Correct, and there is a degree of separation between the tender assessment panel and the instructions that you are given to make an assessment on a contract.

MS CHEYNE: Which is pretty normal, right?

Mr Peters: Yes.

Ms Forner: Yes, absolutely.

MS CHEYNE: So when Mr Dawes subsequently agreed to the Tradies’ requested concessions a month after that advice from the GSO had been received, was there any internal reaction within the LDA, like: “This is not pretty consistent. You know, the GSO said one thing but Mr Dawes has decided to do another”?

Mr Peters: I do not think there was a reaction to that extent. I think it was just a known outcome of the arrangement once it was explained to us that that was the direction they were taking. As far as consulting us and saying, “We are seeking advice,” no, that was not sought.

MS LAWDER: I want to clarify in my mind what we are saying. Ms Forner said she would not normally have seen, at her level, a copy of the business case.

Ms Forner: No.

MS LAWDER: Is that what you said?

Ms Forner: Yes.

MS LAWDER: What about you, Mr Peters?

Mr Peters: If there was a business case from an LDA side of the fence, yes. Again, that would be completely dependent on what the objective was. Business cases could start at the commencement of an estate development plan, and that does a lot of things as far as the business case goes. We would get a sighting of that. Our view of the world in that would be sales strategies, marketing position, types of products going to the market. That is the type of detail we would be looking at. As I said, I had not sighted a business case or plan for this particular contract.

MS LAWDER: You had not seen it, but do you know if it existed? Was it just invisible to you?

Mr Peters: No, I do not know if it existed.

MS LAWDER: If you had not seen a business case or been told about a business case, how did you know what instructions you were working under?

Mr Peters: The instructions we were working under were fairly standard instructions, if I could use that term: "Here's the template contract. Here are the objectives of the contract as far as settlement time and term goes." That is about the level of detail we would have looked at in our role, where we were invited to make comment. We would not have unpacked any of the annexures to the contracts and we were not given the opportunity.

As I said, if it was a bespoke offering through the Land Development Agency we would almost have gone from cradle to grave, if you like. You have your standard template contract and the annexures sit as the objectives. We would probably unpack those a bit further in working through.

MS LAWDER: So in this case, in your limited involvement, who did you receive instruction from? Where did that instruction come from?

Mr Peters: The instructions would have come through Greg Ellis while he was there. That would have been in order for them to prepare documentation in preparation for any advertisement.

MS LAWDER: And after he left? Or was it finished by then?

Ms Forner: Primarily Dan Stewart, I believe.

MS LAWDER: It is documented in the Auditor-General's report and we heard some commentary yesterday that some participants felt there was an understanding that the government wanted the Tradies to win. Were you aware of that perception or was that discussed at all?

Mr Peters: No, that never came across.

MS LAWDER: You are saying you would not generally see a business case because it was being managed by the other agency. Was that common? Had that happened in a range of other instances as well?

Mr Peters: Not that I am aware of. But you get yourself in a certain position where you are not aware of other moments that are happening behind the scenes. So it could have happened, but not to my knowledge. For clarity, a business case or a business plan is designed to set a framework on the suitability of a certain site going to market, so they were not always used.

MS LAWDER: But in terms of EDD developing a business case and running the negotiations and then you working on instructions, was that relatively common?

Mr Peters: No, not in my experience.

MS LAWDER: What about you, Ms Forner?

Ms Forner: No. As I said, the only other ones I can think of are the ones where we were delivering a certain market competition policy.

MS CODY: Sorry, Mr Peters and Ms Forner. I missed your current roles.

Mr Peters: I am now back at the Suburban Land Agency. I had spent some time with the asbestos response task force, nearly three years. So when I went to the taskforce some of this particular moment was still happening. I have been back at the Suburban Land Agency since its inception. The structure of the Suburban Land Agency has virtually been realigned to some extent and there are a couple of different parts. I have carriage of the holding of the rural land we are currently managing, so that is fun.

THE CHAIR: You might be back.

Mr Peters: Note to self. You are guaranteed you are going to get honesty. Hopefully, I can help in that space. The agency also deals with asset divestments, working closely with our colleagues in property group. We are also looking at undertaking some built form, where we will have a very strong focus on affordable housing and high quality built form. It is very early, but it is a pretty exciting time for the Suburban Land Agency and my team.

Ms Forner: I am the senior manager, sales and client services, with the Suburban Land Agency. I have effectively stayed in a very similar role through the transition.

THE CHAIR: What sorts of qualifications and background bring you to these positions? Do you have experience or qualifications in real estate?

Mr Peters: I have been in government on and off for 22 years now, so I always assume there will be complications along the way in that space. I have a commercial and property background both in and out of government. I am trade qualified, hence the reason the built form and divestment areas are something I am quite passionate about and building capacity around skills within government and the like.

Ms Forner: I came from private industry, working in real estate, and worked my way up through the agency, basically, on the basis of experience and occasionally being the last person standing.

MS CODY: I want to get an idea of where you are now compared to where you were then. In your former roles you both obviously undertook a number of different types of sales with the LDA. That was not an unusual thing to do in your day-to-day job?

Mr Peters: That was very much our jobs. The land release program was our blood, sweat and tears to get it delivered. That was very much the role of the sales and marketing team.

MS CODY: And the land release program included this particular block of land?

Ms Forner: I cannot recall. It would not surprise me if it did.

MS CODY: It is long ago.

Mr Peters: Yes, I am not sure.

Ms Forner: The land release program typically is made up of a range of sites. So there will be the new suburbs, the greenfield suburbs, there will be urban renewal sites that the Land Development Agency was working on, but there will also be sites identified that are either special projects or direct sales.

Mr Peters: If it was a direct sale and an application was made that was unsuccessful, traditionally it may then be brought to market. So whilst it may not have appeared as a line item in the indicative land release program, from time to time sites can be added to the program. This may have been one of those. That is not unheard of; that is not uncommon at all.

MS CODY: In the limited role you played in the sale of the Rosevear Place block and the car park, were either of those sites something you had been involved in in any capacity prior to the limited advertising of the car park block?

Mr Peters: No. There will have been dialogue around whether the site needed any offsite works. Again, some of that was being managed in house by the directorate. Before you put a site to market you have to understand infrastructure arrangements, servicing costs and the cost of offsite works for the developer, if there are any. That was not part of our remit. Those sorts of documents would be annexed to the contract to say to a buyer, "Beware. If you purchase this site there are things you will need to do and they are at a cost."

MS LAWDER: Can you give me an example? What do you mean by "offsite works"?

Mr Peters: For example, if there was a piece of electrical infrastructure that was on the block and it impeded or impacted the development of the site, we would be talking with ACTEW to say, "This piece of infrastructure needs to be relocated." They would

generally support it and they would say that it would be at a cost of X. That cost would be known in the contract and it would be borne by the developers to relocate it. They would also upgrade aged infrastructure, sewer easements, electrical infrastructure, Telstra infrastructure or whatever it is.

MS CODY: Did you work closely with the planning agency as well?

Mr Peters: No.

MS CODY: In that side of the world? No?

Mr Peters: No. In other projects, most definitely, but, as I have said, in this particular instance, not at all.

MS CODY: Generally?

Mr Peters: Generally, yes. We would do that because it was important for us to understand what we were selling. When we engaged our selling agents, we would have to brief them and say, “You need to be mindful there are certain things associated with these sites, so please explain that to the market.”

MS CODY: We heard evidence yesterday that there was a lot of discussion between EDD and the planning authority because the car park block had easements that needed to be moved. It went a bit over my head; I am a hairdresser, not a carpenter. But it seemed to be—even between the EDD and, I guess, ACTPLA back then—taking a stab in the dark. There were a lot of discussions. You would have similar discussions for blocks you were responsible for?

Mr Peters: Yes. I will clarify. Julia’s and my role is really about packaging up the documents. The LDA has very skilled engineers and very skilled planners that are doing a lot of that work. We basically got it and said, “Okay, thanks for doing that. We now know what we need to do.” I am not an engineer, but we knew the requirement for engineering, so we had a good handle on that.

MS CODY: And that is why you engaged the professionals.

Mr Peters: Correct. Yes.

MS CODY: In regard to this particular sale, is there anything that you would like to add? Is there anything you think that we as a committee need to know about?

Mr Peters: Other than saying that I think what came out of the audit report was about training for staff and skilling up. I could sit here quite confidently today and say that a very high percentage of the Suburban Land Agency, if not all, started through new rounds of procurement training. They have been through a lot of new training sets that probably existed before but were not quite adhered to. We did not have full attendance. Now there is a real focus and push forward from the executive team to have all staff, including me as part of that executive, well trained. We are very mindful about how we do our business and how you do it properly. If anything can be said, it is making sure that everyone is well educated in what their responsibilities are.

THE CHAIR: Going back to your role, which was packaging up the contracts and advertising the sale, roughly speaking, when did you receive the packaged up contracts and when were you advised that this particular block of land was going out for sale?

Mr Peters: There are two questions there. Chronologically, we would have been advised that it was going to sale prior to any documentation being prepared, so I cannot give you those exact times. And then when the documents were being prepared, as Julia has said, Julia's role was really just to do a quick scope and review and say, "Yes, that is a contract form that works." As far as any of the detailed documentation goes, we really were not privy to those documents. In essence, we did not receive them.

Ms Forner: Just for clarity, we did not review the RFT that went out. The contract that I reviewed was actually post the tender close, when they were actually at a point of agreement.

THE CHAIR: Did you do the advertising for the RFT?

Ms Forner: Yes.

Mr Peters: We were asked to do it. If my memory serves me correctly, we had asked all the normal questions we ask when we are preparing for marketing. "Are the documents ready?", and that is every document associated with either the tender or the RFT. "Have you got the appropriate sign-offs?", whether it be through the relevant D-G delegates or otherwise. In this instance, whilst not privy to it, the question would have been asked: "Are any relevant ministers being advised and are there any other cabinet processes it needs to go through?" There was generally a bit of a checklist we would go through.

The advice at the time was that those things were occurring and we should expedite getting them advertised. I can remember quite clearly that we were a bit nervous about doing it, because those things were not in place. I also think that one of the ads was advertised and we could not stop it. When you book a space in the *Canberra Times*, that space is booked and the *Canberra Times* are not going to pull an ad and have a big white gap in the middle of their advertising page. So unfortunately that went through; we simply could not stop it.

THE CHAIR: That takes me to where I wanted to go. You were the people who placed the ads?

Mr Peters: Through the direction of Greg's area. It was at that point saying, "Are you ready to advertise?" The instructions were, "Yes." As it turned out, unfortunately, they were not quite ready; hence we pulled one ad, but we could not stop the other one.

THE CHAIR: There was an ad placed with the AFR but you managed to pull that?

Mr Peters: We managed to stop it, yes. It was because we have relationships with our

marketing agents and agents. We had to make some phone calls fairly quickly to get that stopped, and we were able to do it. Unfortunately, with the way the *Canberra Times* print media works and the timing of it, once it was locked it was locked and we could not stop it.

THE CHAIR: Do you have a recollection of that time frame? When did you place the ads? When did you discover that they should not have been placed and try to pull them?

Mr Peters: As far as the exact date goes, I cannot remember the time line, but I do remember there was a period of about a week from the instructions coming forward to us asking the questions, to being instructed that it was fine to go, to booking and placing the ads, and then being told that it was not okay and to pull the ads. It was kind of that chronological set within about five to seven working days.

Ms Forner: The *Canberra Times* advertising at that period closed on the Wednesday, so you had up until close of business Wednesday to either confirm or cancel an ad. The *Financial Review* ad was programmed to run the following Tuesday, so we had a bit more. That was how we managed it.

Mr Peters: They were not quite chronological in their dates.

Ms Forner: Without having the dates in front of me, I would assume the advice came in after close of business on the Wednesday, which was too late to sort the *Canberra Times* out, but was sufficient time to stop the *Financial Review* ad.

THE CHAIR: Do you recollect informing people up the line that you could not stop the *Canberra Times* ad?

Mr Peters: Yes.

Ms Forner: Absolutely.

MS CHEYNE: Do you know who you informed?

Ms Forner: Greg Ellis.

MS CHEYNE: When?

Ms Forner: It would have been when the instructions came through to pull it. I can check the file, but I am pretty sure that on the file there is an email back saying, "It is too late; you have missed the boat."

MS CHEYNE: I am interested in this because his evidence yesterday—

THE CHAIR: And you actually have access to the file?

Ms Forner: I would have my emails; I do not have the physical file. I am not sure if that is the director or the auditor, but both emails were provided to the auditor.

Mr Peters: When you look at the project in totality and all the moving parts that are happening there, I can completely understand where Greg was at. If he had instructions to get it advertised, he had his instructions. He probably did not have the opportunity to say to me and my team, “Are we ready to advertise?” If that conversation had been had, the pressures to get that advertisement underway would have been better managed.

MS CHEYNE: We are just interested in the time line and who told you. I will have to check—I do not want to miss the boat with Mr Ellis—but I am pretty sure he said yesterday that he rocked up to work on Monday and someone said, “You know that ad was in the *Canberra Times*”, and he was like, “Oh, no, was it?” And everyone was really embarrassed. That is certainly the impression that I got.

THE CHAIR: Part of the problem the committee has is that a lot of people no longer work in the ACT public service.

MS CHEYNE: And it is a long time ago.

THE CHAIR: It is a long time ago. Ms Forner and Mr Peters, if you can, on notice, go back and reconstruct that time line for us, that would be very helpful.

Ms Forner: Yes.

MS LAWDER: Do you know if that happened in other cases—that you advertised without all those things being in place?

Mr Peters: If that was going to be the case, the correspondence to any potential buyer would be: “Our expectation is that documentation will be ready by X.” It is not ideal, but it does happen because it allows the market an opportunity to understand what the site is, what the opportunity is.

MS LAWDER: I mean in terms of the advertising going ahead without the approval of the minister or D-G, or some cabinet approval.

Mr Peters: Generally not. No is the short answer. It would be more about the finalisation of documentation rather than the final approval.

MS CHEYNE: The AFR ad was pulled. There was the time line—satisfied with that. There was quite a bit of discussion yesterday, and the Auditor-General has reflected throughout the report, on competitiveness and whether it went out to a wide enough market. Was there any discussion, after the AFR ad was pulled, about re-placing it back into the AFR?

Mr Peters: Not directly with us. However, I will say that it was raised that it was odd that an agent was not appointed to support the release.

MS CHEYNE: It was raised?

Mr Peters: Yes.

MS CHEYNE: By whom?

Mr Peters: I raised it through Greg, and Dan Stewart, to say—

MS LAWDER: In writing?

Mr Peters: No. I remember there being a conversation, and that is a normal conversation you would have in the corridor, saying, “How come you haven’t got an agent appointed?” “We’re not going to do it for these reasons.” I cannot remember what the reasons were, but we would utilise the services of our agents to help saturate the market for such a site.

THE CHAIR: Mr Peters, are you saying that you would have appointed somebody like Colliers, Knight Frank or someone off the panel—

Mr Peters: Anyone from our agents panel, yes.

THE CHAIR: to be in charge of the marketing of—

Mr Peters: The sales.

Ms Forner: The promotion and the dissemination of the information, yes.

THE CHAIR: Do you recollect the reasons given to you for why that was not happening?

Mr Peters: If my memory serves me correctly, I do not believe there was ever a reason given other than, “We’re not doing it.”

MS CHEYNE: I think it was Mr Ellis yesterday who said that one of the reasons for not advertising it more broadly was that, after the *Canberra Times* advertisement was placed, they started to get lots of interest, even though, as things transpired, it turns out that that interest did not necessarily accompany an actual tender offer. Is it normal practice—I appreciate that it was all a little bit weird here, for a range of circumstances, some of which were quite accidental—to just say, “We’re already getting pretty good interest; no need to go out any further”?

Mr Peters: They may have had other strategies that they were utilising that we were not aware of, but consistently we would always use an agent.

MS CODY: In a normal sale that you would manage, would it always have ministerial sign-off?

Mr Peters: No.

Ms Forner: No.

THE CHAIR: I want to go back to a couple of other issues. Even though your involvement was limited, you did say that you would normally have access to some form of probity officer?

Mr Peters: Correct.

THE CHAIR: Did you consult a probity officer during your phase of involvement with this sale?

Mr Peters: No. The reason is that it was not my sale.

MS LAWDER: You were saying that you prepared the contracts and a lot of paperwork; is that what you—

Ms Forner: We did not prepare them for this one. I reviewed the contracts once an agreement had actually been reached, to check that they were consistent with our normal terms, in terms of the right entity, the right block and section and that kind of stuff. But with respect to the actual RFT package, which would have contained the specimen contracts and all the rest, we were not engaged for that, no.

MS LAWDER: After the RFT, did you prepare or review the \$1 lease contract?

Ms Forner: Not that I am aware of, no.

Mr Peters: No.

MS LAWDER: Or the section 72 purchase contract, which was about \$4 million?

Mr Peters: No. For the purchase contract?

MS LAWDER: Yes.

Ms Forner: I would have been on the email chain because it was normal for the GSO, when they were sending contracts back and forth in the agency, to include me on it. I was not asked for specific advice, no, because once again it was not our transaction.

MS LAWDER: You mentioned you had not specifically asked a probity officer any particular questions because you were acting under direction. Did it occur to you at any point that because it involved the Tradies it may be sensitive?

Mr Peters: Regardless of any entities that are engaged, we treat them all equally. I think the sensitivities were well known. With the luxury of hindsight, obviously, the view of the world would be slightly different. But at the time I felt there were enough qualified individuals managing the process.

Ms Forner: From my point of view, the probity adviser traditionally would be engaged by the evaluation team. Because we had no role on that and no oversight, maybe it was naive but I had assumed that would have been done as standard practice.

MS LAWDER: As Mrs Dunne started off by saying, the former director of sales and the deputy director-general were provided with advice by the ACT Government Solicitor's office that indicated:

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... 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.

Did you consider that or was it your view that you were acting under instruction?

Mr Peters: Acting under instruction.

MS LAWDER: From?

Mr Peters: The directorate.

MS LAWDER: EDD?

Mr Peters: Yes.

MS LAWDER: How did you get the post fact notification of cabinet approval of the sale? Did you? You were saying that it had not occurred in your checklist before advertising.

Mr Peters: Correct. In that process of receipting all the final and approved documents before we put them out into the marketplace, there would have been a sign-off as part of that process. You will get a whole stack of documents, and part of it is just to triage them through and make sure they have all the appropriate approvals in place before you put them into the public domain. It would have come through that process.

MS LAWDER: Later in the piece?

Mr Peters: Correct.

MS LAWDER: Do you recall when that sign-off of cabinet would have been?

Mr Peters: I do not recall. I know that it was not ready at the time of the advertisement; that is all I can say. I knew it was very close.

MS CODY: But it is not unusual to advertise without having full documentation ready.

Mr Peters: Correct. Take the cabinet process out of it, yes. The idea of having documentation that is near finalised—it is not uncommon to put it into the market with an advertisement.

MS CODY: Because you are looking to see if there is interest?

Mr Peters: Yes. In an exciting marketplace, you are trying to stimulate a bit of energy and bring people to the buying table. Part of that is saying, "In the document we have made available, they are going to look like this." That is all fairly normal, and an acceptable practice, too.

MS LAWDER: If that is the case, why is cabinet approval on the checklist?

Mr Peters: Because this was a particular site that was being managed, I think, because it was a direct sale that did not go through. That was probably part of that cabinet process: to say that it is no longer a direct sale and it can go to market. I can only assume that that would be part of that process and that is why cabinet would have been involved.

MS LAWDER: In terms of the advertising, we heard yesterday that the market was a little depressed at the time. Were you involved in the discussion of the timing of the advertising?

Mr Peters: No is the short answer.

MS CODY: I heard Ms Forner talk about the supermarket policy. I am going to call it that; there is a longer name but that will work for now.

Mr Peters: Competition.

MS CODY: Good job; thanks. Were either of you involved in the Coles sale?

Ms Forner: I, once again, would have had oversight on the actual final contract at that point, but not the preparation of the sales package and that kind of thing.

Mr Peters: Or any negotiations.

Ms Forner: Or negotiations, tender assessments or anything like that.

MS CODY: Because that sat with the directorate?

Ms Forner: Yes.

Mr Peters: Correct.

THE CHAIR: Mr Peters, why were you copied into the email that you recollect or think came from the Solicitor-General in October 2014 if you had not really had any involvement with this since—

Mr Peters: Quite possibly, as I said before, if Greg Ellis was no longer in the role and that role had not been backfilled potentially, there was a director of sales available to put correspondence to. I can only assume that that is why I was looped into it.

THE CHAIR: To clarify this again—you may have answered the question; it may have fallen out of my head—when you received that email, your recollection is that it was not directed to you, but you were in the cc?

Mr Peters: Correct.

THE CHAIR: What did you do with the email?

Mr Peters: I do not believe I did anything with it other than to say, “Have you got all

the correspondence you need to make a decision through the deputy D-G?”

THE CHAIR: But you did have conversation with the deputy D-G?

Mr Peters: There were conversations all the way through the process. The conversations were really about ensuring—“Do you know the next phase? Are you confident with the next gate? Do you know what needs to be done? Do you understand your timings?” They were not because there was distrust; they were because this was one of many sites we were selling. Everything we sell has to be programmed and delivered. I cannot just have an idea arrive and all of a sudden find you have to get it sold. It has to go through appropriate process. My conversation was about “Where are you up to?”

THE CHAIR: But this was not a sale that happened in a hurry.

Mr Peters: Not at all, but not many do. They are quite programmed, and they do take time. You could have a conversation. For three months—nothing. Then that conversation is reiterated because they have advanced. The continuity of getting a piece of land to the market is very different in application.

THE CHAIR: I am just trying to get my head around it. Between September 2012, when the ad was placed, and October 2014, when the GSO copied you into an email, how closely were you following this? How often were you having a conversation with the deputy director-general?

Mr Peters: Not very closely at all. That was not my remit. I recognise that we had a role, but there were also points in time when the conversation would have been, “Thank you, Clint, but we are okay at the moment; we have got this.” There were consultants that were engaged to do work as well. I am not privy to what that engagement was. I recognise there were consultants doing what they had been engaged to do, whatever that was. I personally felt that there were enough individuals with authority managing this process. This would have been one of probably 30 sites that we were applying attention to.

THE CHAIR: And you did not think that there was any point in having a dog and barking too.

Mr Peters: I will not say I did not think; what I will say is that I was comfortable that it was being managed by the directorate.

Ms Forner: The other important thing to note is that it was under a tender assessment process, and we were not on the panel, so it was not actually appropriate—

Mr Peters: To step in.

Ms Forner: For us to ask details about the tender. That would have been a breach of probity if we did, if we asked or if they told us. That is standard practice today. We do not discuss sites that are under active tender processes. Neither of us would have breached probity by asking those questions.

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MS CODY: Mr Peters, you mentioned you moved to the asbestos taskforce during this time. In what year was that?

Mr Peters: It was 15 November, I think.

MS CODY: I know it is really hard to remember the times.

THE CHAIR: That was after this process, I think.

Mr Peters: 2014. Sorry, age is starting to play up with dates and times.

THE CHAIR: There was the time line that you were going to take on notice and get back to us.

Ms Forner: Yes.

THE CHAIR: Thank you very much for your appearance here today. As I said before, you will receive a transcript from the secretary. If there is anything you need to clarify, take it up in the first instance with the secretary.

Mr Peters: Thank you.

Ms Forner: Thank you.

WOOD-BRADLEY, MR IAN, former member, tender evaluation panel

THE CHAIR: The committee will now hear from Mr Ian Wood-Bradley, who is designated as a former member of the tender evaluation panel. Mr Wood-Bradley, have you read the pink privilege statement?

Mr Wood-Bradley: I have read the privilege statement.

THE CHAIR: Mr Wood-Bradley, we have asked you here today through a slightly circuitous process in relation to the report on the sale of block 30, Dickson, written by the Auditor-General. People were identified by positions that they occupied. When we inquired of the agencies who occupied those positions, we were informed that you were part of the tender evaluation panel, so we have asked you here in that capacity. Could you give us an outline of your involvement in the tender evaluation panel in relation to the sale of block 30, section 34, Dickson?

Mr Wood-Bradley: That is the Tradies car park?

THE CHAIR: The car park associated with the—

Mr Wood-Bradley: I was not involved. I was not on the panel.

THE CHAIR: You were not on the panel?

Mr Wood-Bradley: I was not on the panel. I was on a panel for the Woolies car park, which is on the northern side of—

THE CHAIR: You were on the panel associated with the—

Mr Wood-Bradley: That is right. I was on that with the late Alastair Swain. He and I were on the panel for urban design advice in relation to the tenders that were submitted. They were design-based tenders; there were non-financial objectives, and I was asked to provide comment on those.

THE CHAIR: That was in relation to the Woolworths panel?

Mr Wood-Bradley: Yes.

THE CHAIR: We were given a list of people who were on the car park panel, and that included you and the late Mr Swain.

Mr Wood-Bradley: Yes.

MS CHEYNE: It is not you?

Mr Wood-Bradley: No.

THE CHAIR: It is not you; okay.

Mr Wood-Bradley: I know nothing about the Tradies at all.

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THE CHAIR: Therefore we need to thank you very much for your time today. We will have to go back to the agency, get them to refresh their records and come up with the people who were on the panel.

Mr Wood-Bradley: I have no idea who was on the panel. Alastair may have been, but I do not know—

THE CHAIR: We were told that Mr Swain was.

Mr Wood-Bradley: There were two panels at the time that I was involved with. One was a Gungahlin town centre panel, which Alastair and I advised on. The Woolies car park was the other one, and I was on that one. It is a long time ago, so I can just recall bits and pieces of it.

MS CHEYNE: But you know what you were not a part of, so—

Mr Wood-Bradley: Yes.

MS CHEYNE: we will not take up more of your time.

MS LAWDER: Were you surprised to be asked to come today?

Mr Wood-Bradley: I was. I did advise that I had nothing to do with it. I thought it would be easier just to come along and say that.

THE CHAIR: I was advised that you had said that and I actually thought it would be better and useful for you to come and say it on the record. Our records show something else, and we actually need to set the record straight.

Mr Wood-Bradley: That is fine.

MS LAWDER: I hope you had a nice bike ride in.

Mr Wood-Bradley: Thank you; it was lovely.

THE CHAIR: Thank you very much for your time.

Hearing suspended from 10.25 to 11.30 am.

MUNDY, MR GRAHAM, Project Director, Urban Projects, Urban Renewal, Environment, Planning and Sustainable Development Directorate

TERRACINI, MR STEPHEN, Manager, Valuations and Estate Management, Urban Projects, Sales and Marketing, Suburban Land Agency, Environment, Planning and Sustainable Development Directorate

THE CHAIR: Mr Mundy and Mr Terracini, have you read the privilege statement and do you understand it?

Mr Mundy: Yes, I have read and understood the privilege statement.

Mr Terracini: Yes, I have read the statement.

THE CHAIR: You have been asked to come here today because we are inquiring into the Auditor-General's report in relation to the Dickson land sale and your positions were identified in the report. Through our inquiry your names have been associated with occupying those positions at that time. Can you outline the role you played in the sale of the land in Dickson to the Tradies club and any role you had with the purchase of the Downer land that was owned by the Tradies club.

Mr Mundy: My role was similar to what it is now. On behalf of Dan Stewart at the time, as my deputy director-general, I undertook due diligence under site assessments—engineering, traffic, environmental—on block 30, section 34, Dickson. That was in 2012. Subsequently I jumped back in again in 2014 to undertake some further environmental assessments on the two sites you mentioned—the former Downer club site and the CFMEU site.

THE CHAIR: So you had two phases of involvement?

Mr Mundy: Yes.

THE CHAIR: One before the Dickson land was put out for RFT?

Mr Mundy: That is correct.

THE CHAIR: And another in 2014 over the Downer sites?

Mr Mundy: That is right. So the 2014 was after exchange and prior to settlement.

THE CHAIR: Do you have a time frame on that?

Mr Mundy: Yes. I was involved in May 2012 when I engaged Indesco engineering to undertake some assessments on the Tradies car park site. Then I was involved in March 2014 to undertake some environmental assessments on the two Dickson sites.

THE CHAIR: When you were doing this you were working for EDD or the LDA?

Mr Mundy: I was in the LDA but working for EDD.

THE CHAIR: So you were officially employed by the Land Development Agency?

Mr Mundy: That is correct.

THE CHAIR: So what was the arrangement under which you were doing work for the EDD?

Mr Mundy: I was working directly to their executive at the time, who was Dan Stewart. I was doing the role I do all the time, which is standard practice—undertaking due diligence. They engaged me to provide that service.

THE CHAIR: You say you were doing a standard job of work and due diligence. What were you looking at?

Mr Mundy: For the Dickson site, block 30, section 34, I basically engaged Indesco to do a civil engineering assessment study which looks at existing services, constraints, what needs to happen to allow the site to be serviced, that sort of information. That information normally would then be provided in the tender itself to advise purchasers. In 2014 I was involved in managing some environmental assessments on the former Downer club site and the CFMEU site.

THE CHAIR: What sorts of environmental assessments?

Mr Mundy: On the Downer club site specifically, because the building had burned down, we did some environmental land assessments to see if there was any residue contamination which might cause any issues. We engaged Robson Environmental to do a phase 1 report, which came out with four potential areas of environmental concern. That means you have to do some further digging and some further detailed investigations. The investigations basically came up with the conclusion that the areas were fine and within normal standards.

We also engaged Robson to look at the buildings on the CFMEU site. Basically they just updated the existing hazardous materials survey for the building in terms of where asbestos might be found and management practices and such. That was pretty much my role.

THE CHAIR: Your role was not to do the investigation but to initiate—

Mr Mundy: To engage consultants to do the assessments. That is correct.

THE CHAIR: The first phase of that in relation to the Dickson Tradies car park was in May 2012?

Mr Mundy: It was in May 2012.

THE CHAIR: In your position did you have any understanding of when the block was going out for sale or why you were being given that particular task?

Mr Mundy: Yes. I was given the task because they were looking at selling the site, the block.

THE CHAIR: Mr Terracini, what was your role?

Mr Terracini: I do not recall having a role.

THE CHAIR: You do not recall having a role?

Mr Terracini: Not at all, no.

THE CHAIR: What was your role at the time?

Mr Terracini: In 2011-12, when I understand this started, I was an administrative service officer at the ASO6 level assisting in sales.

THE CHAIR: Where?

Mr Terracini: The LDA.

THE CHAIR: You have been identified by EPSDD as working with the sales staff at the time. But you say you had no role in negotiations?

Mr Terracini: I do not recall that. I did work in the sales team. As I said, when this started I was more an administrative officer. Probably around 2014 I think I became a senior officer and was running auctions and tenders, but not for this.

MS CHEYNE: You were involved in other sales but not this sale?

Mr Terracini: Yes.

THE CHAIR: Not the sale of the Tradies car park block and not the purchase of the block in Downer.

Mr Terracini: None of it.

THE CHAIR: If that is the case, I apologise that you were called here today; we were advised by your management that you were involved in this process. We will excuse Mr Terracini. This is not the first time it has happened today, unfortunately. Thank you for coming.

THE CHAIR: Do you have questions for Mr Mundy?

MS CHEYNE: I am sorry that I was not taking notes about the time frame in which you were involved.

Mr Mundy: Yes, sure.

MS CHEYNE: Could you give me the years when you were involved?

Mr Mundy: Yes. The first time was May 2012 and the second time was March 2014.

MS CHEYNE: And that is it?

Mr Mundy: Yes, that was it.

MS CHEYNE: According to the Auditor-General's report—did you say March 2014 or May 2014?

Mr Mundy: March 2014.

MS CHEYNE: If you cannot answer this, that is perfectly fine. In the Auditor-General's report there are various email communications noted between April and May 2014—I appreciate that is after March—that show that LDA staff were assisting EDD with the sale of the car park and that they had queried the probity risks associated with relinquishing the key RFT requirements, such as the project delivery agreement and the \$1 million security bond. Were you part of that at all?

Mr Mundy: No, I was not part of any of those negotiations.

MS CHEYNE: It is helpful for us to piece it all together.

Mr Mundy: Sure.

MS LAWDER: In your role do you work completely under direction or would you have had visibility of a checklist of things that should have taken place before you were involved? Do you just work to direction or had a precursor—

Mr Mundy: I would have worked to direction; also, because I am very experienced, I would have suggested, "These are the sorts of site assessments you should be undertaking for the sale of any block of land." I would have made that clear at the time. But I was working under direction. My direction was actually to undertake what I undertook on the sites.

MS LAWDER: From Mr Stewart, I think you said earlier.

Mr Mundy: Yes, exactly right.

MS LAWDER: When he, or whoever, asked you to do that, would you have asked whether approval had been given or was it that, given that he was directing you, that was sufficient?

Mr Mundy: It would have been sufficient at the time, yes. I was just working under direction because I only had a very minor role, and that was my task. So I was under direction.

MS LAWDER: A moment ago, we heard that Mr Terracini perhaps is not involved, as we were told.

Mr Mundy: Yes.

MS LAWDER: We heard that from another potential witness this morning. Have you

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ever, in your time at the LDA and working with EDD, had cause to question their record keeping?

Mr Mundy: So that it is clear for the committee, I assisted the Auditor-General in finding the records and the information for the audit inquiry. When I undertook that task I questioned their record keeping big time.

MS CHEYNE: Go on.

Mr Mundy: It was very poor—the record keeping. I helped the Auditor-General, the auditor, to find the records. So at the time—

MS CHEYNE: What do you mean by “poor”? What would be a standard that you would expect?

Mr Mundy: A standard I would expect is electronic files which are ordered, and not hard-copy or on someone’s computer drive. Basically, it was hard-copy files that we kept in those days. The territory had hard-copy files on any project; they were basically a lot of loose papers in a box.

MS CHEYNE: Have you seen that box?

Mr Mundy: I have seen that box.

MS CHEYNE: Is this the box?

THE CHAIR: I think there is a missing box as well.

MS CHEYNE: Yes. How many boxes are there?

Mr Mundy: I found two boxes.

MS CHEYNE: Where were they?

Mr Mundy: They were with Richard Drummond, who was the project officer at the time, in his area, after he left. I found those two boxes. They had a whole lot of loose papers on this project and on a number of other projects he was involved in.

MS CHEYNE: Loose papers; no files or things in manila folders?

Mr Mundy: No, loose papers.

THE CHAIR: What about electronic records?

Mr Mundy: He had electronic records himself—Mr Drummond. They were on his computer itself, the hard drive of his computer.

THE CHAIR: His work computer?

Mr Mundy: His work computer, yes.

THE CHAIR: On the C drive, essentially?

Mr Mundy: Yes, exactly.

THE CHAIR: Is that standard practice?

Mr Mundy: No.

MS CHEYNE: What is standard practice?

Mr Mundy: It would be on the shared common drive—whatever the shared common drive was at the time.

MS LAWDER: Do you use TRIM or something similar in the department?

Mr Mundy: TRIM was more for ministerials and such. No, it was just more on the shared hard drive, set up under the project. LDA staff would have had access to that shared drive, or EDD.

THE CHAIR: Could you, Mr Mundy, describe, from your experience, best practice record keeping for a project that you might have undertaken?

Mr Mundy: Yes. Certainly back then, all emails and all information would have been printed off and kept, as I said, on a hard-copy project file, which is a registry file which anyone can call back from registry and have access to. The electronic files would have been on the common drive—as you said, maybe the C drive back then—and under the actual project name itself and then ordered. That is good practice.

MS LAWDER: To your knowledge, with the registry file, how comprehensive was it? Were you able to find that registry file, in your interaction with the Auditor-General?

Mr Mundy: The registry files which were set up had hardly anything on the files themselves—a few pages. I then put all the pages from the boxes and printed off from actual electronic on the files. The auditor was then given those files, so he had access to what I had access to.

THE CHAIR: Do you have any feeling for how complete that file was by the time you had reconstructed it?

Mr Mundy: From memory, it was very complete in that it tracked the history of the actual tender itself. But it is probably common knowledge that there were no minutes of any meetings at all. There were no meetings in there at all.

THE CHAIR: In your experience of working in this area for a while and being involved in projects, if you were selling a block of land and you had a preferred buyer, what sorts of minutes of meetings would you expect to see?

Mr Mundy: I expect to see minutes of all meetings, and especially of the decisions coming out of the meeting. As a matter of course there would be minutes coming out

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of the meeting which are circulated to all parties from the meeting and highlighting any directions.

THE CHAIR: Was there anything that indicated that a schedule of meetings had taken place?

Mr Mundy: Not really. It is a while ago. There might have been one or two emails which mentioned an upcoming meeting, but I never got any idea of how many meetings.

MS CHEYNE: Minutes would normally have records of decisions arising out of a meeting.

Mr Mundy: Yes.

MS CHEYNE: Were there any other records of decisions taken?

Mr Mundy: You are testing my memory.

MS CHEYNE: Yes, sure, but—

Mr Mundy: Look, I can remember some of the paperwork, which is highlighted in the Auditor-General's report, about going to the director-general and stuff—a few of those—but no separate decisions. Some of the paperwork is actually part of the Auditor-General's report, but I cannot remember any other, no.

MS CHEYNE: Whose responsibility was it to take the minutes?

Mr Mundy: It would have been the project manager at the time—whoever attended the meetings. In most cases, it would have been Mr Drummond or Mr Ellis.

MS CHEYNE: Are you the one who gave advice that there might be a missing box?

Mr Mundy: No, because my thought is there is no missing box.

MS CHEYNE: Okay, no missing box?

Mr Mundy: Like I said, I did a very thorough search for the Auditor-General, and the boxes I found—like I said, I found two boxes. So if there is another box—

MS CHEYNE: And what you were able to take out of those boxes and then upload to the registry file—

Mr Mundy: Yes.

MS CHEYNE: gives a decent picture of what happened over a period of time.

Mr Mundy: A very good picture from day one to sort of the conclusion.

MS CHEYNE: Yes, and ideally that would have all been on the registry file in the

first place.

Mr Mundy: Exactly right.

MS CHEYNE: Rather than loose-leaf papers in a box.

Mr Mundy: Yes, so it was a bit of a retrofit. So a lot of it was there, but loose papers; okay, so—

MS LAWDER: Are we talking here about an EDD file or an LDA registry file.

Mr Mundy: It would have been a territory record file, sorry, that everyone could use.

THE CHAIR: Sorry, but would it have originated in EDD or the LDA.

Mr Mundy: EDD; they were the project lead.

MS LAWDER: You were saying that you were employed by the LDA, but you were working for EDD on this project.

Mr Mundy: That is correct.

MS LAWDER: Was that quite common?

Mr Mundy: Yes, that was common. We had the skill set or the functionality to be able to do that. Yes, that was common practice.

MS LAWDER: Was there anything about this particular project that raised any flags with you? Were there any sensitivities, any concerns that the players could have more political sensitivity?

Mr Mundy: Basically, like I said, I only had a minimal role in a sense. I was not part of the negotiations on the tender or part of the—sorry, I was not—

MS LAWDER: No need to apologise.

Mr Mundy: party to any of the probity-type advice. I would have handled it differently myself, but that was only my personal view.

MS CODY: Sorry, I am not quite sure where we are up to. The two boxes of files that you found—sorry, two boxes of papers that you found—

Mr Mundy: Yes.

MS CODY: have now been turned into a file?

Mr Mundy: Yes.

MS CODY: That is filed in an easily accessible—

Mr Mundy: So the files are either with EPSDD now or they are back to registry. When files are not used they go back. They are easily traceable, can I say. But the two boxes had a lot of other papers that were not just necessarily for this project, yes.

MS CODY: I am assuming they have also been filed appropriately.

Mr Mundy: Yes. I did very good job of filing.

MS CODY: Someone has to. I must admit I am not great at files. I heard you mention a couple of times in the last line of questioning that you would have done things differently.

Mr Mundy: Yes.

MS CODY: Can you expand on what you might mean by that?

Mr Mundy: LDA was set up to handle sales, simply to run a sale, as you probably heard before. I was just a little bit surprised that EDD—the directorate—were handling something which was basically a sale when it came down to it.

MS CODY: We heard evidence this morning that some of those bespoke—mainly around the shopping centre policy—

MS LAWDER: Supermarket.

Mr Mundy: Yes, supermarket policy.

MS CODY: That is it; supermarket policy.

MS CHEYNE: Supermarket competition policy.

MS CODY: There you go. We heard that EDD did take the lead on a lot of negotiations and sales. Is that your recollection as well?

Mr Mundy: My recollection is that, yes, they took the lead on special projects, can I say?

MS CODY: Yes.

Mr Mundy: But when it turned into a sale, LDA would take the lead; simple as.

THE CHAIR: Just to clarify, even if it was a shopping centre—

Mr Mundy: Yes.

THE CHAIR: or some sort of a direct grant or something to ALDI or someone, it would have been handed over from EDD to LDA for the sales process.

Mr Mundy: Exactly right; that is correct. I mean, the LDA had the sales area set up to do the sale.

MS CODY: So with this particular process, I guess my feeling is that EDD managed a lot of the process. They managed the development of documents and contracts and those sorts of things.

Mr Mundy: Yes, EDD managed 95 per cent of the project, from my recollection—the contract, yes.

MS CODY: You said that in other sales EDD would manage parts of it but once it was ready for sale it would go to LDA.

Mr Mundy: Yes; that is correct.

MS CODY: Is there a reason that this did not necessarily—

Mr Mundy: I am sorry, I cannot comment. I do not know.

MS CODY: Could it be that it was quite a long, lengthy negotiation process and it was quite complex, I think.

Mr Mundy: Yes. I mean, it was quite complex, and it was a long—exactly right, yes. Eventually, as you know, it went to LDA. Someone made the decision to send it to LDA to do, I suppose, when they did.

THE CHAIR: Sorry, you said that it eventually went to LDA.

Mr Mundy: Well—

THE CHAIR: What is your understanding, from your perspective, of the passing over of this from EDD to LDA?

Mr Mundy: Basically, they passed it over to the sales area to do the sale, to do the contractual documentation.

THE CHAIR: To do the contractual—

Mr Mundy: Yes.

THE CHAIR: at the end of the—

Mr Mundy: Yes, at the end of the process.

THE CHAIR: At the end of the process.

Mr Mundy: Pretty much, yes.

THE CHAIR: After the negotiations and handshake.

Mr Mundy: Yes, so after the deal had been done, after the negotiations had been done, sorry.

MS CODY: Right, okay.

THE CHAIR: Okay, because—

Mr Mundy: In this case it was a done deal in a sense and then—

THE CHAIR: Yes, okay. So you were—

MS CODY: I think we heard evidence this morning that the LDA looked at the contracts to make sure that they met all the terms and conditions of a basic sale contract and—

Mr Mundy: Yes, that is my understanding of what their role is as well.

THE CHAIR: Going back to the Downer sites, you said that you contracted an organisation to do a site assessment about contamination in the soil.

Mr Mundy: Yes, that is correct.

THE CHAIR: And hazardous materials in the existing, remaining, buildings. That was when?

Mr Mundy: 2014.

THE CHAIR: March 2014?

Mr Mundy: They started in March. It took a while for them to actually complete it.

THE CHAIR: What the committee is trying to do is get a feel—because no-one can tell us exactly—for when Downer blocks became part of the deal. Your information sets a time line. It was obviously in the mix before March 2014.

Mr Mundy: I was directed in March 2014 that it was part of the deal and I needed to do some assessments on it, yes.

THE CHAIR: You were told that this was part of the deal that related to the Dickson block?

Mr Mundy: Yes.

THE CHAIR: That was quite clear at the time?

Mr Mundy: Yes.

THE CHAIR: The issue of the other block in that area that was owned by the Salvation Army was raised with us yesterday. Do you happen to know whether any assessments were done around that time in relation to any risks on that land?

Mr Mundy: No, to the best of my knowledge. I certainly did not undertake any on the

PROOF

Salvation Army site, no.

THE CHAIR: So to the best of your knowledge, there was—

Mr Mundy: To the best of my knowledge, there was no assessment undertaken.

MS CODY: Were you involved in the other Downer site?

Mr Mundy: Yes. I was involved in the former Downer club site and the former CFMEU site. I was involved in those two.

MS CODY: What about the Salvation Army one?

Mr Mundy: With the Salvation Army, I was not involved at all.

MS CODY: You said that you had to organise environmental testing through Robson.

Mr Mundy: That is correct.

MS CODY: Was that only at the Downer club site or was it at both Downer sites, the CFMEU site and the Downer club?

Mr Mundy: They did slightly different environmental assessments. One has just land, as you know; the other has buildings. With the land one, as I said previously, because it had a burnt building on it, we wanted to make sure it had all the right environmental clearances before the territory took it on, and make sure there were no outstanding environmental issues that the territory was facing. Basically, they came back and said that it was all within acceptable levels, so the territory was not taking on any added risk on that site.

The second had a building on it and it was occupied. They basically just did a walkthrough, did a visual. Most buildings which are occupied have a management plan in place already: hazmat—hazardous management—planning. They updated that, pretty much.

MS CODY: When the territory was looking to purchase blocks that may have had burnt buildings or where sheep used to run on them or whatever, was it normal process that an environmental test was done?

Mr Mundy: Yes.

MS CODY: How often would it be done on a block? Is it every sale?

Mr Mundy: Every sale. Every sale we do lots of different due diligence tests and environmental. Every time.

MS CHEYNE: Can I go back to this missing box? I want to go to the period, just before I joined the committee, when the Auditor-General appeared before the committee, when this inquiry first began. The Auditor-General's report does not say that there is a missing box, just that record keeping was not up to scratch.

Mr Mundy: Yes.

MS CHEYNE: But when appearing before this committee, before I was here, the Auditor-General said that there seemed to have been a box go missing. In your view, given that you have assisted with that, is it that there is a missing box or is it simply that minutes were not taken?

Mr Mundy: I found everything I could find, and I did a very extensive search. My view is that there is no missing box.

THE CHAIR: There is just missing documentation?

Mr Mundy: Yes; correct.

THE CHAIR: There are gaps in the documentation?

Mr Mundy: That is correct.

MS CODY: It was poor record keeping rather than malice?

Mr Mundy: Yes. That is correct.

THE CHAIR: When you say you did a thorough search, can you describe that for us?

Mr Mundy: Basically, I got our IT area to do a search on all LDA drives, which were a common drive, to see what they could find. Also, like I said, because we could not find anything, we then did a search of Mr Drummond's hard-copy drive—electronic. They found a whole lot of documents, electronic documents. I did a registry search to see if any files had gone back. A few files came back to me. Like I said, they had very few papers on them. I also did a search of Mr Drummond's workspace, because he was no longer there.

THE CHAIR: He had gone?

MS CODY: I was just about to ask that question. The reason was that he was no longer—

Mr Mundy: No; that is correct.

THE CHAIR: When did you conduct this search?

Mr Mundy: When the auditor first started, whenever that was.

THE CHAIR: How long had Mr Drummond not been with the agency?

Mr Mundy: I do not know, sorry, off the top of my head, but it was at least months.

THE CHAIR: Could you find out for us?

Mr Mundy: When Mr Drummond left?

THE CHAIR: Yes, when Mr Drummond left.

Mr Mundy: Sure.

THE CHAIR: And just clarify for us when you conducted that search.

Mr Mundy: Sure. I can take both those on notice.

MS LAWDER: Of the files that were identified on Mr Drummond's PC's hard drive, do you recall what other sales or areas the other files might relate to or was it only this topic that the files related to?

Mr Mundy: Yes. Basically the files related to a lot of projects that Mr Drummond was working on.

MS LAWDER: You do not recall any them?

THE CHAIR: So not just this?

Mr Mundy: Not just this file.

MS LAWDER: You do not recall what those sales were or—

Mr Mundy: Not really, because I was concentrating on this project.

THE CHAIR: You said that you had someone interrogate the LDA electronic files.

Mr Mundy: That is correct.

THE CHAIR: What about EDD?

Mr Mundy: And EDD as well, sorry; both. That was why we came to the conclusion they were on his hard drive, because EDD did not have anything on their common drive either.

THE CHAIR: Did Mr Drummond work for EDD?

Mr Mundy: Yes, EDD.

THE CHAIR: I recollect that, from what was said yesterday, he was employed on contract.

Mr Mundy: That is correct. That is my understanding as well.

MS LAWDER: How could it have got to the point of the sale without someone identifying that there was no sort of registry information about this sale?

Mr Mundy: I cannot comment on that, sorry.

PROOF

MS LAWDER: Is it usual or unusual, in your experience?

Mr Mundy: No, that is very unusual. If you take it to sale, you want to see all the proper files and all the proper paperwork.

MS CHEYNE: You said there were other loose-leaf papers relating to other sales?

Mr Mundy: Yes, that is correct—other projects that Mr Drummond was working on, sorry.

THE CHAIR: They were not necessarily sales?

Mr Mundy: No. That is correct.

MS CHEYNE: Do you think this was more Mr Drummond's record keeping or do you think this signals a broader problem within that agency at the time?

Mr Mundy: I cannot comment on that, sorry. Partly, it was certainly Mr Drummond's attitude to record keeping, can I say.

MS CODY: We have heard evidence that—obviously the Auditor-General made comment on this and we have been talking about it for quite some time—the Auditor-General recommended better file management, I guess, or better record keeping. I note that you are working in EPSDD now.

Mr Mundy: That is correct.

MS CODY: Do you think that the areas of the directorate that you work in have improved the record keeping?

Mr Mundy: I think the record keeping is really good now because it is all electronic. I think it has improved a thousand per cent.

THE CHAIR: Do we have any more questions for Mr Mundy? Thank you very much for your attendance here today. You will receive a transcript, as will Mr Terracini, and you will have the opportunity to provide any comment back to the committee through the committee's secretary. We will now suspend hearings and resume after lunch at 1.30 with Mr Garrison, the Solicitor-General for the ACT. Thank you very much for your attendance.

Hearing suspended from 12.03 to 1.30 pm.

GARRISSON, MR PETER, Solicitor-General for the ACT

THE CHAIR: We recommence today's hearings into Auditor-General's report No 3 of 2016 in relation to the tender for block 30, formerly block 20, section 34, Dickson. I welcome Mr Peter Garrisson, Solicitor-General for the ACT. I presume that you have read and understood the privilege statement in front of you?

Mr Garrisson: I have.

THE CHAIR: Do you have any opening comments in relation to this inquiry?

Mr Garrisson: No, I do not.

THE CHAIR: We will go straight to questions. Could I begin by getting a bit of a feel, please, about the arrangements that you had with the LDA and the EDD in relation to providing a probity officer for particular contracts and specialised legal advice to those agencies in their land dealings generally.

Mr Garrisson: Madam chair, as you will be aware, the legal services directions mandate the office of the ACT Government Solicitor as the government's legal service provider, and that is able to be departed from with my approval so that, for example, there is in place a range of outsourcing arrangements.

In relation to the LDA, for example, virtually all their residential conveyancing was outsourced to private law firms. Also, in relation to particular transactions, by reason of the size or resourcing requirements, some transactions will be outsourced to a private law firm to address. Other than that, we did provide the legal services to the LDA in relation to the majority of its land transactions and, as part of those legal services, in relation to some transactions we also provided probity advice.

There has been a lot of discussion, I must say, in relation to probity. It is a term that is thrown around quite a lot. Could I say at the outset that there are suggestions, for example, not only in relation to this particular transaction but in relation to others, that somehow a probity adviser should be present at all meetings, present at every step of the process. That is not the basis upon which we provide probity services. It is what you might call an on-demand service, but the arrangement for providing that advice is making a probity adviser available for a particular transaction to respond to questions that are raised during the process and, indeed, from time to time to give probity presentations.

Moving forward a few years, we now regularly provide probity and procurement advice to a range of agencies and, indeed, to the SLA. We have provided extensive training in relation to probity that arises in relation to its day-to-day business. What underpins that is the view—and it is a view, for example, that is accepted in New South Wales, and I think now the commonwealth as well—that a probity adviser is not there as some form of insurance policy.

The essence of appropriate probity, which is acting in good faith and complying with your legal obligations, is about the officers of the particular agency exercising their

functions as they should and the essence of a transaction will be either straightforward, complex, or large—and they do not necessarily all mean the same thing. The transaction that kicked all this off will still be the sale of a block of land, like dozens of other sales of blocks of land that occur.

THE CHAIR: In relation to that particular block of land, the block of land which is best described as the Tradies car park, what was the involvement of the Government Solicitor's office, say, in relation to probity with that?

Mr Garrisson: In relation to probity, it is a bit hard to divorce that from legal advice because probity advice is really just a variety of that, and that will often be built into a range of things that you are doing. For example, when we first got instructions in relation to the matter, which was in the middle of 2012, we took instructions, we settled the RFT and we drafted contracts and other documents for the tender process. That will have, as part of it, almost built in—particularly when you are settling the documents—benchmarks, mechanisms and processes which of themselves should support what one might term a framework of probity.

THE CHAIR: Moving on from there, you have established the documents. We have advertised it. We have had a request for tender. Do your officers have any role in the tender assessment process?

Mr Garrisson: As part of the process after the tender went out, there was probity advice, including by the probity adviser. There was an addendum, there were some questions and clarifications that had been sought and those associated issues.

THE CHAIR: That was after the advertisement but before the close of the request for tender?

Mr Garrisson: Before it closed. To the best of my knowledge, we did not give any advice during the evaluation process, and that is often the case, unless an issue arises upon which they think, "We need some advice as to what to do," because of a particular circumstance.

MS CHEYNE: Sorry, could you say that again? You did not give any advice or no advice was sought?

Mr Garrisson: No advice was sought and therefore we did not provide advice. We did not attend the evaluation meetings. We would not normally. And you need to look at that and say, "Why?" The answer is that it actually was not a particularly complex process; it was the sale of a block of land and it was being evaluated against fairly clear criteria.

If the evaluation team had a concern about process, about something that had come in—sometimes, for example, tenderers want to put additional information before the evaluation panel—we can get questions about that. Basically from that period, November, until about the middle of 2013, aside from the fact that the preferred tenderer had been announced, my office had no involvement whatsoever while the negotiations occurred. And that is actually quite normal.

The parties negotiate the commercial terms that they want to enter into, and if they do have any issues that arise then they will seek some advice. I think in May and June there were a couple of discrete issues that some advice was sought on but other than that the next engagement of our office was at the end of the year, the very end of the year, when we got instructions at the end of December and in January 2014 in relation to, “Right, we now want to proceed with the sale. We have got our terms and we need to negotiate the terms of the contract.” Then we were quite vigorously engaged with the solicitors for the successful tenderer over the course of the next 12 months in resolving those terms.

THE CHAIR: When you say, “We were quite vigorously engaged,” who was?

Mr Garrison: With my office, with the lawyers, the lawyers in my office who were dealing with the transaction.

THE CHAIR: Was there a lawyer or a group of lawyers who had this as one of their cases?

Mr Garrison: I had some changes in personnel during that period, but there would have been three or four lawyers involved at different times on cementing the documentation.

THE CHAIR: And are those people the same people who might be providing probity advice?

Mr Garrison: To start with, our lawyers are all trained to identify a call for probity issues, process issues, issues that can give rise to legal risk arising from the conduct of the parties or changes in the terms of the contract. I am aware, obviously, that a fair bit has been made of the changes that occurred during that negotiation as against the original tender. The position that, I think fairly, is identified in particularly a couple of the advices that are cited by the Auditor-General is that there is capacity within the tender processes to vary your terms.

There is a risk—and my office identified that risk as part of the negotiation process—and one has to put these things in context. The client was counselled, “You’ve got to be a bit careful about how far your changes go because you could have this consequence that you prejudice the process because you have gone too far.”

But that is quite an ordinary sort of warning to give when you have got some backwards and forwards between the clients in terms of whether they want the land, and it is important, I think, to note that, had my office formed the view that the terms that the parties had landed on did, in fact, create a legal risk for the territory, then that advice would have been given. It was not. Our advices were provided to quite senior officers within EDD and the LDA, and that advice is taken account of, and we are provided with instructions as to what changes would be effected.

By the time we got to the end of the year, and the deal was crystallised, the documents were signed and exchange occurred, we had three separate transactions. There were three different blocks of land. The territory was buying two, and the Tradies, for want of a better term, was buying the other. But there were some different parties involved,

different legal parties. I think one of the blocks that we purchased was from a different entity.

THE CHAIR: Who were the entities that you purchased them from?

Mr Garrison: The Tradies, I will call it, bought one and was the owner of another. But there was another company. I cannot remember the name of it now but it was—

THE CHAIR: Could you get back to us on notice the name of the other company?

Mr Garrison: Certainly, yes. Then, of course, there have been differences in terms of when they settled and did not settle. Block 30 has not yet settled and of course it remains an open transaction.

THE CHAIR: Just to clarify, was there a single probity officer assigned to this transaction?

Mr Garrison: There was a probity officer nominated at the beginning of the transaction. We have obviously checked our records. Issues of probity arose in the course of providing legal advice to the client, during the negotiation of the final terms of the contract. There was an internal email that is referred to in the Auditor-General's report between my senior lawyer, who was the probity adviser, and a less senior lawyer about a probity issue. Perhaps I will take a little excursion momentarily. The reason there is a lot of material from my office in relation to this report is that we were assisting the Auditor-General because she could not get material from anywhere else.

THE CHAIR: Presumably, the GSO is better at keeping records than EDD appears to have been.

Mr Garrison: One strives for perfection but rarely achieves it, but we have fairly good record keeping.

THE CHAIR: I was expecting that you would criticise me for damning you with faint praise, Mr Garrison, but you took a higher path.

Mr Garrison: I think you know me well enough, Mrs Dunne, to know that I would always try to take the higher path where possible. That email does not signify that there was in fact a probity issue that was causing a risk to the transaction. It reflected, basically, an internal discussion about, "What do you think about these circumstances?" It was really no higher than that.

MS CHEYNE: Can we be super clear that this is the October 2014 email?

Mr Garrison: No, this is the earlier one. That was in April. This is the one that is referred to—

MS CHEYNE: It helps if you can point out which emails in the report—

Mr Garrison: Yes, I know.

MS CHEYNE: Given your record keeping is—

Mr Garrison: The two emails in October were plainly emails to EDD and the LDA, giving them advice. The earlier email was in April; I know that. I am not sure why I cannot put my finger on it.

MS CHEYNE: I think it is pages 56 and 57.

Mr Garrison: Yes, there it is: 2.77. That was an internal response. As you can imagine, our lawyers consult more senior lawyers on a regular basis in relation to a range of issues that come up in the course of a matter. This is the only one that we have actually been able to find—internal communication—that was reduced to writing. But there is informal communication on a regular basis by lawyers in the office when they have the conduct of a matter. Often, advice that will go to a client will be informed by discussions that have been had internally about the matter, and that may or may not be reflected in our internal records.

THE CHAIR: Mr Garrison, can you provide for the committee the full email that is referred to in paragraph 2.77 and also the full email referred to in paragraph 2.103?

Mr Garrison: May I reflect on that, given that they are, in fact, the subject of legal professional privilege?

THE CHAIR: Yes.

Mr Garrison: I know they are in the audit report.

THE CHAIR: They are referred to in the audit report.

Mr Garrison: But the material was provided to the Auditor-General on the basis that there was no waiver of legal privilege. I am happy to consider your request.

THE CHAIR: Also remembering that the committee can call for documents.

Mr Garrison: I am certainly aware of that.

THE CHAIR: Thanks.

Mr Garrison: As a matter of formality, I will need to consult with the Attorney-General just to get his approval to provide it, because of the existence of privilege. But I am happy to—

THE CHAIR: It sort of depends on who owns the privilege.

Mr Garrison: Yes, but—

THE CHAIR: You will have to consult the owner of the privilege.

Mr Garrison: The Attorney-General determines the waiver of legal privilege under

the legal services directions. I am more than happy to make those inquiries and I will respond out of session.

THE CHAIR: Okay. Thank you.

MS CHEYNE: What did you ask for, Mrs Dunne—the emails from May and October 2014, or just October?

THE CHAIR: Both.

Mr Garrison: There are three.

THE CHAIR: Yes.

MS CHEYNE: April, May and October.

THE CHAIR: Yes.

Mr Garrison: Yes.

THE CHAIR: In paragraph 2.77 the office of the senior officer seems to be saying to the probity officer—anyway, someone has said that there is not an issue of probity because there is only one tenderer. That is not the—

Mr Garrison: Can I say two things?

THE CHAIR: Yes.

Mr Garrison: One is that that was the response from the probity officer. The other is that I do not know why it was said that there was only one tenderer.

THE CHAIR: I do not know what the issue was, and the committee does not know what the issue was.

Mr Garrison: Certainly, I understand that.

THE CHAIR: Part of what we are seeing is that there was a growing concern that the terms of the tender were changing so much that maybe we should have been asking the other tenderer whether they were still interested in those terms. That seems to be being highlighted in that paragraph indirectly. It seems that someone is labouring under a misapprehension that there was only one tenderer.

Mr Garrison: If I may—

THE CHAIR: Yes, that is what you are here for.

Mr Garrison: That was an internal inquiry that was made in April. The next point in time when the issue of variation from the terms of the RFT occurred was in October. And it occurred in October—

THE CHAIR: October—

Mr Garrison: October 2014, when the parties were already 10 months into the negotiation of the terms and conditions, and at a point in time when there were certain negotiations occurring around the terms, and we were seeking instructions about some of the changes that were being requested. As one might reasonably expect, we were saying, “Here are the changes they’re asking for, but you’ve got to be careful of this.”

The fact that commercial transactions will often undergo change and will often depart from the terms of the original proposals is not uncommon. If I may repeat, if my office had formed the view that there was such a departure from the original proposal as to create a legal risk for the territory, we would have taken steps to address that with the client. With respect, we have done that in other processes where we have said, “Really, this is a step too far; you’ve now got to go back to square one.”

THE CHAIR: I suppose the committee is trying to get its head around—and it is very hard to do without seeing documentation—exactly what it was that was being referred to in paragraph 2.103—

Mr Garrison: I appreciate that.

THE CHAIR: where it says:

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 ...

Reading that in the context of the Auditor-General’s report, that looks to the committee like a warning from someone in the Government Solicitor’s office to someone moderately senior in the transaction. If there was to be a warning that, “You are moving from RFT to direct sale,” are you saying that would have been highlighted more? Does a warning from the Solicitor-General come on specially embossed paper?

Mr Garrison: No, it does not actually. Perhaps we should adopt that. Can I say, madam chair, that in the course of the negotiation of a transaction, particularly one of this duration, the parties will often move their positions. They will put positions in relation to the matter and we will provide advice in relation to parts of those particular changes.

The position in mid-October was around a series of changes that had been put forward by the successful tenderer. The counsel that was given in the email related to saying, “Well, here’s what it’s all about. Here are the changes they want. But in considering them, you’ve got to be careful that you don’t transgress.” It was put no higher than that.

I understand you have asked me for the email chain and that is something I will address. But at the risk of repeating myself, had my office formed a view that the territory or EDD had agreed or was intending to agree to changes that in our view

jeopardised the process, that very clear advice would have been given. That advice was not given.

MS CHEYNE: If your office had formed that view, would your office have raised it even higher than the deputy director-general?

Mr Garrison: If necessary. And I understand—

MS CHEYNE: So if you thought the deputy director-general was like, “Yep, thanks,” and put it away, you would potentially raise it?

Mr Garrison: And that would be me then raising the issue.

MS LAWDER: So that I am quite clear, paragraph 2.103 says:

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 is on page 64 of the Auditor-General’s report. The words “were provided” are quite passive. Was that a proactive move from the solicitor’s office or was it in response to a specific or discrete query from EDD? You said you generally got specific requests.

Mr Garrison: But in a transactional matter there are a lot of moving parts. One of the principal moving parts for us was dealing with the lawyers who were acting for the tenderer. They had put to us those changes. We were providing—

MS LAWDER: EDD?

Mr Garrison: No, they were putting to my office some changes.

MS LAWDER: Who is the tenderer you are talking about?

Mr Garrison: That is the Tradies. Their lawyers wrote to my office to say, “We want these changes.” That is the way it works—you try and negotiate through the lawyers. We then gave advice to say, “Here is what they want.” And in saying, “Here is what they want,” we said, “But you’ve got to be careful about how far you go.” So we volunteered it. We will, in fact, always identify risks that may arise from particular courses of action and provide that advice.

MS LAWDER: So you provided that and when you passed that on you indicated that it could pose a risk as it could result in the transaction being so divergent from the RFT that it was a direct sale et cetera. Further down that paragraph, it says:

There is no documentary evidence of how the risk of non-compliance with the *Planning and Development Act 2007* was reviewed by the Director-General and mitigated ...

So you have volunteered that advice and the negotiations have continued. Nothing came back to you about that?

Mr Garrison: We got instructions about some of the particular changes that were identified.

MS LAWDER: So there were some changes identified after you made that comment?

Mr Garrison: Part of the changes they had proposed, and there continued to be changes from then up until when the matter resolved.

MS LAWDER: So is there any documentary evidence of that?

Mr Garrison: Of what?

MS LAWDER: The risk of non-compliance.

Mr Garrison: Sorry, Ms Lawder, perhaps it was infelicitously described, but it was more a caution to say, “Well, here are the changes. You need to be careful when you’re thinking about changes because they can have these consequences.” It was not an assertion that these particular changes were.

MS CHEYNE: We have really homed in on this paragraph.

Mr Garrison: Yes.

MS CHEYNE: We have mentioned it to a lot of people.

Mr Garrison: Yes.

MS CHEYNE: Without seeing that email, has, potentially, the Auditor-General’s report mischaracterised the content of that email?

Mr Garrison: I believe so.

MS CHEYNE: Okay.

Mr Garrison: And I believe—

MS CHEYNE: That is incredibly helpful.

Mr Garrison: I believe that—well, the Auditor-General and I do not necessarily see eye to eye all the time on—

MS CHEYNE: Sure.

Mr Garrison: particular matters, nor do I see eye to eye, necessarily, with the Australian Government Solicitor in relation to issues. There are some conclusions in the report that I believe there are different views on.

MS LAWDER: However, further down that page, in paragraph 2.105, in response to the Audit Office, the Australian Government Solicitor—

Mr Garrison: The Australian Government Solicitor.

MS LAWDER: did advise that they felt it could have departed enough to be a direct sale.

Mr Garrison: Yes, well, I disagree with that.

MS LAWDER: Are you saying you perhaps disagree with—

Mr Garrison: I disagree with that.

MS LAWDER: that characterisation?

Mr Garrison: I completely disagree with it.

MS CHEYNE: Why did the auditor's office go to AGS?

Mr Garrison: Because I was giving advice to government and—

THE CHAIR: It is their practice. They have to have independent legal advice.

MS CHEYNE: I am new to this.

Mr Garrison: No, Ms Cheyne, as I indicated, my office provides legal services to the whole of the territory and all of the agencies. There are instances where—for example, for some of the statutory office holders—we may be in a position of technical conflict. The Auditor-General is one. Often when there is a request for advice from the Auditor-General that involves the conduct of an ongoing audit, we will do an advice that is jointly provided to what is now his office and the agency involved, depending on the nature of the matter. We do provide quite a lot of advice to the Auditor-General.

However, in the case of this active audit, which involved transactions in which we were involved and in which we were engaged in providing advice to the client agencies, it was plainly appropriate that legal advice that the Auditor-General might require should be provided externally. The AGS has been engaged on several occasions to provide that advice to the Auditor-General on several other matters as well. As I said, we do not necessarily agree on all of those things.

MS CHEYNE: Could I clarify what you were saying before about who approaches whom when advice is required or sought? On this occasion, the Tradies wrote to you or your office advising that there were X, Y, Z changes. Then, when you received that, you thought, or your office thought, that it was at a point not to say what is characterised there but at least to alert EDD and LDA to where it was heading.

Mr Garrison: Yes. Perhaps I can explain it in the following way. When the commercial deal was crystallised at the end of December 2013 and the Tradies and EDD had decided, no, we have reached our deal, each of them then instructed their lawyers. My office was instructed by EDD, and Clayton Utz were instructed by the

Tradies. Then, generally speaking, although the clients may obviously discuss matters with themselves, dealings in relation to the finalisation of the terms of the documentation will proceed between the lawyers.

MS CHEYNE: Okay.

Mr Garrison: So we would write to Clayton Utz. Clayton Utz would then contact its client to get instructions. Then they would write back to us and then we would write to our client and it all sounds terribly—

MS CHEYNE: Right. Of course. Yes.

Mr Garrison: paper heavy, although it is mostly done electronically these days.

MS CHEYNE: Yes, and filed properly, I am sure.

Mr Garrison: Filed properly.

THE CHAIR: And yours was all filed?

Mr Garrison: I sincerely hope so. But we have got quite extensive records in relation to it, which we relevantly shared with the Auditor-General to assist because there was a—

MS CHEYNE: Is this perhaps one of the reasons why there are no minutes of the meetings, because it was all done through lawyers?

Mr Garrison: I could not possibly say what occurred at the EDD or the LDA's end.

THE CHAIR: Could I get a feel on this? You said that by December 2013 there had been a meeting of the minds between the vendor and the buyer about the terms of the sale of the Tradies car park block.

Mr Garrison: Yes.

THE CHAIR: And that you were instructed early-ish in the New Year. Then there was a series of negotiations between you and Clayton Utz on behalf of the Tradies.

Mr Garrison: Yes.

THE CHAIR: Two questions follow from that. When you were initially instructed, January-ish 2014, was the acquisition of the Downer blocks part of the deal? Were you instructed on that?

Mr Garrison: The Downer blocks?

THE CHAIR: The old Downer—the old burnt down observatory and the building occupied by the CFMEU.

Mr Garrison: Sorry, are they—which blocks were—

THE CHAIR: They are the blocks that—it is section 72. They are two blocks in section 72 in Downer which were part of the deal, for which the government paid \$3.8 million.

Mr Garrison: By that stage, yes.

THE CHAIR: By that stage, yes. When you were given instructions in January 2014, the land swap arrangement was part of the deal?

Mr Garrison: The—

THE CHAIR: The purchase of the car park and the sale of the two blocks in Downer in Rosevear Place.

Mr Garrison: Yes, my recollection is that our instructions at that point—

THE CHAIR: Could you confirm that for us?

Mr Garrison: Confirm that for you? Certainly.

THE CHAIR: That was my first question. My second question is: how much variation was there between January 2014, when you were instructed, and the end of 2014, when they eventually signed a contract?

Mr Garrison: How long is a piece of string? There were a number of changes that were made in the course of the negotiations. I would need to consult our files to be able to answer that more fulsomely.

THE CHAIR: I would really appreciate a fulsome answer on that.

Mr Garrison: If one is looking at the changes that occurred from the point in time when we received instructions to when the matter settled, as I said, I will see what I can do to identify that.

THE CHAIR: You seem to be the only people who have records, and the committee is in search of information.

Mr Garrison: I understand that.

MS LAWDER: You may know this, rather than having to look it up: who was your key contact or contacts within EDD on this sale?

Mr Garrison: It changed. There were two or three, I think. Of course, the instructions were copied to both the LDA and EDD. I know Mr Ellis was involved early in the piece, and two or three others of their staff. I cannot recall exactly who took over from him.

THE CHAIR: Could you provide that information on notice as well, please?

Mr Garrison: Certainly.

MS CHEYNE: Did you at any point have any direct contact with the director-general of EDD about this?

Mr Garrison: Not about this transaction.

MS LAWDER: About anything relating to that transaction at all?

Mr Garrison: Not that I can recall. I know there was a meeting that was held with some of my lawyers, relating to finalising some of the changes that were under discussion. As I have indicated, there was nothing. I certainly have no recollection of anything being brought to my attention that, if you will, set the alarm bells ringing.

MS CHEYNE: And if it had, you would have been—

Mr Garrison: Indeed I have on other occasions for other transactions.

MS CHEYNE: ringing Mr Dawes?

Mr Garrison: Yes.

MS LAWDER: Similarly, did you or any of your staff have any discussions on this transaction or anything around it with the Attorney-General or anyone in his office?

Mr Garrison: No. Can I say that ministerial contact is very carefully monitored in my office, and most of it is through me. There would have been no discussion that I can recall, nor is there any record of it, with any minister in relation to this transaction.

THE CHAIR: I would like to go back to a more general question. Does the ACT Government Solicitor's office have lawyers embedded—or did it have, because the agency is defunct—either in EDD or in the LDA?

Mr Garrison: At that point we had, and indeed now we have, lawyers outposted to a number of agencies to assist them in dealing with requests for advice that they have. The precise role that they perform varies according to the agency. For example, the lawyers that we have in Access Canberra and in the Revenue Office have a different focus to the lawyers that we have in other parts of government. We did have lawyers that would regularly attend at the LDA. It was part of a regular routine. There were a number of different lawyers at different times because we did not put them out there—

THE CHAIR: They were not embedded, for want of a better word? They were not always physically there?

Mr Garrison: They were lawyers who were physically there for varying periods of time. It might have been a couple of days a week. I cannot recall exactly what our arrangements were at that point in time. But they were there to deal with specific requests for legal advice, to deal with particular transactions.

If I could bell the cat, so to speak, we did not, do not and would not have a function of just generally over-viewing the business of the agency. That is the agency's business. We are there to provide legal advice. We provide legal advice based on instructions. And the lawyers who were outposted to the LDA did exactly that.

They would deal with a quick request, saying, "We've got this problem. What do we do?" They would also provide the conduit for more detailed instructions to be provided to our office in relation to a particular transaction. They keep a record of what they are asked and what they give, which is part of our record keeping. That is the way we work across the whole of government now.

THE CHAIR: Were those embedded officers the probity officers or were they—

Mr Garrison: No.

THE CHAIR: They are separate. So those people are there for everyday, run-of-the-mill—

Mr Garrison: Legal advice.

THE CHAIR: legal advice. Would they necessarily have a case load that would be generated out of that agency? Were the people who were embedded in EDD or the LDA also overseeing the contracts that would be coming through?

Mr Garrison: That is possible. Sometimes lawyers would not be outposted there full time. They would only be there for two days a week and then they would come back to the office. They still have a workload to address. They may well still be addressing some of the instructions that they got from the LDA when they were out there.

THE CHAIR: I am just trying to get a feel—

Mr Garrison: I am sorry, Mrs Dunne; they were not embedded, which takes on a connotation that they formed part of the business. They were there as my lawyers to provide legal advice on call, so to speak.

MS CHEYNE: That is common in all directorates; right?

Mr Garrison: It is quite commonplace.

THE CHAIR: I am reminded that we had a conversation in an estimates hearing or something back in about 2010—

Mr Garrison: It could be any number of them.

THE CHAIR: about this very thing, about how you were having in-house lawyers in agencies, and the idea was to ensure that they were fully engaged in the projects of that agency. I think at the time we were talking about procurement.

Mr Garrison: That could be. We in fact still have lawyers going out to procurement,

too—providing what I call some day-to-day legal advice or assisting in providing further instructions back to our office. I probably have about 10 lawyers outposted now across various agencies. It is really just about assisting the agencies with efficiencies, and, fairly selfishly, to assist my office in reducing the volume of requests for legal advice that come in that could be deal with in a summary fashion.

THE CHAIR: In a more summary fashion, yes. I want to go back to something you said at the beginning. You said that there was not very much legal advice in the early process because it was just a single project. It was a single sale of a block of land, or that is what it looked like in 2012.

Mr Garrison: Yes.

THE CHAIR: It looked like a simple sale of a block of land. Even then, back in 2012, given the location, was there anything that caused your collective antennae to be raised that there may be some sensitivities about this simple sale?

Mr Garrison: It was the sale. It was the outcome of a tender process. Every transaction you look at carefully. What I had hoped to convey was that it was a relatively straightforward transaction. As I hope I indicated, you can have a relatively straightforward transaction but it can have a range of consequences which could flow from the size, the time frame that is required, its interaction with other government projects—a whole range of things.

The engagement of my office and the level to which one has, for example, engagement of a separate probity adviser in the transaction will depend on all those factors. For example, we have had several major projects where we have considered that it is appropriate for there to be an external probity adviser engaged, which has been done in relation to projects at the moment. We have done it probably three or four times in the last couple of years, just where you think, “It has got a lot of documentation; it has got a number of moving parts,” and whilst, in essence, it might not necessarily be an inherently complex transaction, because of the number of moving parts it is best that you have someone external have a look at the way those moving parts are operating.

THE CHAIR: You said that in mid-2012, when you were looking at the documentation, it seemed like a straightforward thing. Was there any time in the process after the request for tender went out, the advertising, in September 2012 to when the whole thing was concluded in about December 2014 that you changed your mind and that you decided it was not a simple project?

Mr Garrison: I have to say that I had virtually no visibility on the day-to-day conduct of this transaction. I knew when the instructions came in, and occasionally the lawyers would say, “Oh, yes, this is proceeding and this has occurred and that has occurred.” “Oh, all right.” It was really at that low level.

THE CHAIR: When I say “you”, I mean—

Mr Garrison: The office?

THE CHAIR: I do not mean just you personally; I mean the office as well. You are here on behalf of the office.

Mr Garrison: Not that I can recall, not that I am aware of and certainly not that is disclosed in any of our files.

MS CHEYNE: What do you say was lower level officers, which are quite normal for transactions?

Mr Garrison: We are the hierarchy.

MS CHEYNE: Yes, exactly, and I am sure they come back and they check things with more senior lawyers and so on.

Mr Garrison: Correct.

MS CHEYNE: What is the level involved usually?

Mr Garrison: It depends on the transaction. I am trying to remember the level of the less senior lawyers involved, but there were principal solicitors involved who are quite senior, and solicitors and senior solicitors, at different points in time over the transaction, bearing in mind that we are looking at a two-year time frame. There were personnel changes.

MS CHEYNE: I am not asserting anything, but it is helpful to have this on the record.

Mr Garrison: Yes.

MS CHEYNE: Do you have complete confidence in your staff and the advice that would be provided?

Mr Garrison: Yes. I may not entirely agree with some aspects of advice that is provided from time to time and, indeed, that is the nature of things.

MS CHEYNE: But that is the nature of the legal profession.

Mr Garrison: To put it colloquially, if you put two lawyers in a room you will get three advices.

MS CHEYNE: But in terms of the general standard of your staff—

Mr Garrison: It is very high.

MS CHEYNE: and the competence of your staff, it is very high.

Mr Garrison: It is very high.

MS CHEYNE: That is helpful. Again, I am not asserting anything, but for the record was there any preferential treatment of this transaction because the Tradies was involved?

PROOF

Mr Garrison: Not at all.

THE CHAIR: Thank you very much for your attendance today. There was a substantial amount of homework involved in your appearance today. Some of it, I think, you will be able to provide and some we might have to argue about later and so on. But thank you very much for your attendance.

You will receive a copy of the proof *Hansard* from the secretary, Dr Lloyd. A reminder that things taken on notice should be answered to the committee within five days of receiving the proof *Hansard*. Thank you.

Mr Garrison: Thank you, chair. Thank you, members of the committee.

THE CHAIR: Thank you very much.

The committee adjourned at 2.25 pm.