



**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**

**WEDNESDAY, 12 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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## **Privilege statement**

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*Amended 20 May 2013*

**The committee met at 9.30 am.**

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

**THE CHAIR:** Welcome to the public hearing of the inquiry of the Standing Committee on Public Accounts into Auditor-General's report No 3 of 2018 *Tender for block 30 (formerly block 20) section 34 Dickson*. Today we will continue to hear from Mr Greg Ellis and also from Mr Ben Ponton.

Mr Ellis, you have already been here. You have already identified that you recognise the privilege statement. I think that we will begin by going back to questions pretty much where we left off this time last week. Could I ask you to clarify for the record: in the time that you worked in EDD, how long had you been working there before you got this project in relation to the Dickson Tradies? You were there with that project for about the best part of the year or a bit over a year and then you were no longer in EDD. Is that correct?

**Mr Ellis:** That is right. I struggle to remember exactly when EDD was established. I believe it would have been sometime in late 2011 when LAPS and the LDA were combined. So it was from about then. I really racked my brain to try to remember whether it was late 2011 when I first got this project or early 2012. It was the subject of a particular meeting, though, when I got the project. I just do not recall whether it was, as I say, late 2011 or early 2012.

That meeting, just to establish when I first got it, took place in Dan Stewart's office. It was a meeting between the LDA sales team and me and it was at that meeting that it was decided I would have this project because the LDA sales team said, essentially, it fell outside what they said was their skill set and they had enough on their plate with the land release program. So I offered to take it over.

Cabinet had made an initial decision that the land would be brought to market in October 2011. It was some time after that decision and, say, January 2012 when that meeting took place.

**THE CHAIR:** Sorry, just to clarify, they made a decision in October 2011 to bring the land to sale?

**Mr Ellis:** That is right, yes.

**THE CHAIR:** If they had made that decision in October 2011 to bring that land to sale why did it need to go back to cabinet in the death throes of 2012 just before the caretaker period?

**Mr Ellis:** I do not know the answer to that question. What they wanted to know has been outlined by the Auditor-General in her report. At different points they wanted to know the terms and conditions of the leasing. They wanted to see the final RFT documentation, as I recall. That was why it had to come back. From my perspective, we were just told that it had to come back and we had to come back with

that information.

A decision was made in October 2011, as the Auditor-General outlines. Sometime after that Dan Stewart held a meeting with LDA sales. He had actually asked me to check with LDA sales to find out where they were up to in getting it going because he was concerned. I understood he was under some pressure as to why nothing had been happening on it.

I undertook to talk to him about it. I got back to him and said, “They’ve told me they’re snowed under with the land release program.” That was when he held the meeting and it was decided that I would take it over from that point.

As a part of the decision in October 2011 cabinet had said—and this is in the Auditor-General’s report—it wanted to see the leasing development conditions and it would tick off on the final RFT prior to it going to market. And that is what happened in September.

**THE CHAIR:** Up to a point.

**Mr Ellis:** Yes.

**THE CHAIR:** It actually went to market before the government ticked off.

**Mr Ellis:** Yes. I beg your pardon. There is a clarification about that which I would like to get to but, just sticking to your question, to finish it, that is how I got the project. It was late 2011, early 2012; a deliberate decision that LDA sales would not handle it. So I had it from that time on. I had to get it ready to be advertised, and that happened. I did not have a direct role in the evaluation process. I was just there to tick it off, make sure it was managed properly. Then I conducted the negotiation. That went to December 2013 when we had an agreement.

In January 2014—and just for the record I think it is worth while my making this point clear—I was notified that I would not have a position in the new structure that had been brought down. It just so happened that I broke my foot around that time and I went on extended leave. I came back very briefly in April and said my goodbyes, and that was it.

My involvement was finished in that sort of staggered way. December 2013 was really it. In January I was notified I did not have a job, went on sick leave, came back briefly and was gone. Really from late January 2014 I was no longer involved.

**THE CHAIR:** There was a restructure in EDD?

**Mr Ellis:** A major restructure; and something which I was at pains to point out to the Auditor-General that was very significant, perhaps, in my view was understanding a lot of why the things that did happen did happen. Clearly I had had main carriage of this whole thing, almost, since day one, day one being October 2011. Then suddenly in December 2013, January 2014, I played no role and people who had played only minimal roles, or lesser roles, had to take over.

**THE CHAIR:** Who else was on your team?

**Mr Ellis:** Involved in this project?

**THE CHAIR:** Yes.

**Mr Ellis:** Just Richard Drummond.

**THE CHAIR:** So it was you and Mr Drummond?

**Mr Ellis:** Yes. I should add I had a junior staff member who assisted Mr Drummond on some things like record keeping, filing, but fundamentally it was Mr Drummond.

**THE CHAIR:** Was there a delineation of duties between you and Mr Drummond or were you just all in it together sort of thing?

**Mr Ellis:** It was my job to make the decisions, his job to attend to the details. I had many projects on, literally dozens of projects at any one time, and also at this time there was the very significant block 21 project happening.

**THE CHAIR:** Sorry, block 21?

**Mr Ellis:** Block 21 is the Doma site, the Woolworths car park, the related site, the one that was so pivotal, which meant that—

**THE CHAIR:** It continues to be pivotal.

**Mr Ellis:** That is right; the one that had to be developed before the development on block 30 could take place. I was conducting all that. Richard worked for me and basically did the running around, the detail. He did a lot of the work with the LDA engineers and a lot of work with the LDA sales team directly, and I only intervened when it became necessary to do so or I was made aware of strategic issues. But certainly as far as the negotiation was concerned, I was the leader of the negotiations.

**THE CHAIR:** Coming to December 2013—and it seems to be generally agreed that that was when there was a sort of an agreement that that this sale would go ahead—could you summarise for the committee the terms of the sale that were agreed?

**Mr Ellis:** Basically we had a situation where the Tradies had agreed to pay the \$3.18 million. They had agreed to increase their cash bid by \$980,000 to meet the MMJ headline figure. They had agreed to replace all 154 car spaces, which was 70 car spaces more than their winning bid and they were in payment of this. We had agreed that we would purchase two of their blocks in the Rosevear precinct. They are the basic outlines of what was agreed.

As I mentioned the other day, the stumbling block for most of the last several months before December 2013 was the question of car spaces. The solution that was arrived at on this was that they would not be building all new car spaces but that 55 of them, 55 of the 154, would be car spaces which they would convert in their existing facility

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from private spaces that only members could use to public spaces. It was only when the planning authority agreed to this that we could move forward. The cash was less of an issue. I am not saying it was not an issue but it was less of an issue. But once we got the agreement on the car substitution spaces then they were fine.

Just to mention one more thing, there was the issue about their right to review the pedestrian easement question. Sometime in the middle of the year I had said that we would agree to that. That was not much of an issue. We had already agreed that along the way at some point. Then they were willing to accept the cash. Then we were left with the issue of the parking. Is that clear?

**THE CHAIR:** Yes. Could you just repeat the bit about private parking as opposed to public parking?

**Mr Ellis:** They have got existing underground car basement parking in the club. And what they offered instead of building all new 154 or 139—we can talk about those numbers, if you like—spaces, they said, “In order to meet the number of public spaces we must replace, instead of building all new ones, how about we build a certain number, 99, and we convert 55 of our existing basement car spaces, which are for our members, to public spaces, ones that can be used by the public. That will give you all 154 spaces.”

When we put this to the planning authority—we had quite a discussion about this—they eventually came back to us and said that, for reasons which related to what they were trying to do in terms of a modal shift in transport usage, they were happy to agree to that plan.

**MS CHEYNE:** I want to ask about record keeping between you and Mr Drummond. From what the chair was saying, Mr Drummond worked directly to you; is that right?

**Mr Ellis:** That is right.

**MS CHEYNE:** What was the normal standard of record keeping while you were there?

**Mr Ellis:** We followed normal public service protocols. As I say, at different times I had 10 or 11 staff, all public servants, with the exception of Mr Drummond. We put things on files. We were diligent in sending email reports on different things.

**MS CHEYNE:** What do you mean by putting things on files? What sort of files were they? Were they registry files or online?

**Mr Ellis:** Registry files, public service files. If I might comment on what we know from Mr Mundy’s discussion of this issue, the first thing I would say is that, clearly, Mr Drummond did keep the records. The infamous box did exist. It was not missing. Mr Mundy did not seem to have too much trouble finding it.

**MS CHEYNE:** He found two boxes.

**THE CHAIR:** Apparently, he found two boxes.

**Mr Ellis:** There you go.

**MS CHEYNE:** In Mr Drummond's work area.

**Mr Ellis:** I would have to ask why it was so difficult for these to be found in the first place.

**MS CHEYNE:** Who found it difficult to find? I was not part of this inquiry at the beginning, so I missed some of this.

**Mr Ellis:** The other members of the committee will, I am sure, verify that the fact that these records being missing was a big part of the first public airing of these issues.

**MS CHEYNE:** Who revealed that they were missing?

**Mr Ellis:** The Auditor-General said that there were a lot of records missing. During my testimony I said that, as far as I was aware, there was a box of records which I understood had been transferred to the LDA after I had gone. I knew that because Mr Drummond had told me that. From what we have subsequently learned, it did not seem to take Mr Mundy too much time to locate these records. Yet, unfortunately, this became a really large public issue. The inference from it was that somehow these records were not there and that they had not been created, when it seems that they were there, they were created, and they were not that difficult to find when people went looking for them.

**MS CHEYNE:** Perhaps there were always records in boxes but the Auditor-General was simply saying that records that she would have thought would have been part of what was in the box, like minutes, were missing.

**Mr Ellis:** That may be what she said. Mr Mundy also said that he regarded the fact that there were minutes missing—there was a lot of talk about the lack of minutes. Can we address this question of minutes after we address the question of how these records were actually—

**MS CHEYNE:** Of course.

**Mr Ellis:** The thing I would say is that, as I just said, the records were there. I was always aware that Mr Drummond was going around with records; at meetings with me he was always carrying files around. I cannot verify what happened, obviously, after I left. As I say, he was meant to have the assistance of a junior staff member of mine, to assist him with public service procedures about things like filing and the like. Mr Drummond was not hired for his filing expertise; he was hired for his long expertise in the commercial world and his ability to deal with those issues. It sounds to me like he kept the records; maybe they were not filed according to how they should be filed, but that may well be because I had already gone. I could not instruct my junior staff member to get him to put the documents on the files as they should be—

**MS CHEYNE:** But the standard procedure would be to put the files on the registry as you go, not—

**Mr Ellis:** I suppose. Criticism could be made of that. I am trying to explain how it would have happened—

**MS CHEYNE:** Yes, that is fine.

**Mr Ellis:** which was simply that I was no longer there. An issue like filing of the documents in an orderly fashion might have been something I would have got the junior staff member to do on a regular basis, but it sounds like once I was gone that connection broke down. It was not ideal from a public service point of view, but the bottom line is that the records were there. It is just unfortunate that so much was made of the fact that the records supposedly were not there when they were there all the time, as Mr Mundy was able to demonstrate.

The other question, though, is about what records were and were not there, and particularly this question about minutes. This goes to the question of the Auditor-General's understanding, and I think Mr Mundy's understanding, which was influenced by the Auditor-General's understanding, of what was supposed to be there. In paragraph 2.87 of the Auditor-General's report Mr Steve Brennan refers to the fact that he had essentially 40 meetings and/or phone calls with EDD officials. He does not say when those happened, but he does make the point that there were 40 meetings and/or phone calls.

In her testimony, the Auditor-General asserted that 40 face-to-face meetings took place, and it was even reported in the newspaper at one point, although it was retracted, that this all took place in 2013. This would have meant there would have been a face-to-face meeting every nine days. In those circumstances I think anyone would expect lots of minutes of meetings, but that is simply not what happened. If we go back to Mr Brennan's testimony, there were 40 meetings and/or phone calls. Of course, there were lots of phone calls, and there were lots of phone calls which were not necessarily of any major consequence, particularly in the period leading up to the close of the tender, when the Tradies, through Mr Brennan, had a great number of questions, at least 40 questions; perhaps as many as 50 or more. There were lots of phone calls between him and Mr Drummond in particular on these questions of detail. So I do not dispute for a moment Mr Brennan's testimony that there were 40 meetings and/or phone calls between—

**MR COE:** On those 40 questions, they were responded to a week later, weren't they?

**Mr Ellis:** A week or two, yes.

**MR COE:** They were responded to on 6 November. The request went in on 30 October.

**Mr Ellis:** Yes.

**MR COE:** It could not have concerned too many of the meetings, though, could it?

**Mr Ellis:** The bottom line, Mr Coe, is that, from my recollection—and nothing Mr Brennan said in his testimony contradicted this—there would have been no more

than three meetings between the Tradies that I attended. When Mr Brennan talks about 40 meetings and/or phone calls, he is either talking about events which happened after I was gone—2014—or he is talking about a lot of phone calls and no more than three meetings that we had. That is simply because there was not a lot for us to discuss.

My recollection would be that we met once. I alluded to this meeting at the last hearing. We held one meeting before the close of the tenders to outline the parameters of the RFT. Another meeting would have been held some time before April 2013, and there was probably another meeting later in the year, in 2013, as we were working through the final issues. There were phone calls in between. They were mainly to Mr Drummond on questions of detail. There were a couple of phone calls to me.

The Auditor-General's report suggests that there were discussions between the director-general and the deputy director-general on one side and the Tradies on the other in 2014. I do not know how many there were; she does not tell us. I can categorically say that there were no more than three meetings, from my recollection. If someone told me there were four, I would be surprised, but that is possible. Certainly, there were nothing like the number of meetings that were supposed to have taken place or that the Auditor-General seems to think took place.

**THE CHAIR:** Just to cut to the chase—and we can only ask you to give your recollection about the time that you were there—you said that cabinet had agreed in about September 2011 that this land would go out for sale, and asked for this to come back—

**Mr Ellis:** Sorry, Madam Chair. October 2011 was when—

**THE CHAIR:** October 2011, and asked for the final documentation, the RFT, to come back to them before it went to the market. That took another year. There was another year until you left, and about the time that you left there was an agreement. If it was so straightforward, why did it take so long?

**Mr Ellis:** It was not straightforward. I am sorry if I—

**THE CHAIR:** You are giving the impression that we lazed along until April, then we had a meeting; we might have had another couple of meetings, or maybe three. If it was simple, why did it take so long? And if it was complex, why was there not more contact?

**Mr Ellis:** I hope I can make this clear. It was simple in the sense that the position that I could adopt was pretty inflexible. As a public servant, I could not vary: we could not have an agreement unless the Tradies met the requirement to pay \$3.18 million and replace all of the car spaces. That meant that almost from day one, for most of the year, there was no movement; there was no point. I think I mentioned that in January, after they had won, I contacted the Tradies and said, "When will we get together to discuss this?" and the comment I got back was something like, "We're just getting our figures together," but literally several weeks passed before they got those figures together.

We met; we were a million miles apart. I think it comes as a bit of a shock to a lot of people in private enterprise how inflexible public servants are in these positions. You say to them, “We can’t lower the price, sorry. You have to accept the price, you have to accept the terms, or we have to go back,” because that is not how commercial negotiations are normally, as you would appreciate, conducted. There is usually far more give and take. Nothing happened, and the only way there was going to be any kind of movement was for a review of the valuation. David Dawes instructed Colliers to conduct an independent review in about April, with a view to seeing if there was some way that we could make a recommendation to the government that there should be more flexibility.

**THE CHAIR:** Mr Brennan told us in evidence the other day that there were a number of meetings which were inconclusive, where officials that he was dealing with said, “Okay, we’ll take that on notice and we’ll go back and talk to—

**Mr Ellis:** That was me.

**THE CHAIR:** Maybe you, maybe Mr Dawes et cetera. So it seems that there was some backwards and forwards between the Tradies and EDD.

**Mr Ellis:** He would have been referring to meetings where I said that—the few meetings that I am talking about where I said—because I never agreed to anything definitively without going back to David Dawes and Dan Stewart.

**THE CHAIR:** Did you keep a record of those meetings at the time?

**Mr Ellis:** Yes, I would have, and I would have written—

**THE CHAIR:** You think you did or you know you did?

**Mr Ellis:** I know I did. I think I have shown through this process that I am somebody who is very extensive in written words. I was known for my very comprehensive email reports.

I might also say that these were never meetings in the sense that you would have a public service meeting, where there were people contributing in such a way that there was a record. What happened was that we would have the meeting, I would go back and write up the agreement as to what was decided or where we were standing on particular issues. I would send that to David Dawes, copied to Dan Stewart, and if there was anything that had to be agreed at that point by David Dawes, I would then email the Tradies and say, “Mr Dawes has agreed to the terms that we discussed in the meeting.”

That would be the extent of it. It was not like a public service meeting where there would be lots of to and fro, and issues would be discussed. There would be a very simple outline of the points that were agreed, which I would summarise, send to Mr Dawes, and then email back to the Tradies to say yea or nay. As I say, there are very few of these. The bottom line of what I am saying in terms of record keeping was that these meetings were few and far between, because of the stilted and fitful nature of the negotiation. They would have all been recorded in email traffic, and if they

cannot be found, I am very surprised.

**THE CHAIR:** You said it was going backwards and forwards between you and Mr Dawes. Did Mr Dawes, to your knowledge, ever take that up the line beyond him as the director-general to the government in that period? To your knowledge?

**Mr Ellis:** To my knowledge? I cannot remember specific evidence where I could say, “Yes he definitely did that.” If I can bend the question slightly and say that I cannot imagine that he did not. It would have been normal procedure. When I think back on these events, I think, “Of course he took certain things.” But can I say to myself, “Which one? When did that happen?” I do not recall that detail.

**MR COE:** You, I gather, signed a brief to the Minister for Economic Development on 19 December 2012, and its purpose was “to advise you of the preferred tenderer for block 20 section 34”. That was in writing to the minister. Andrew Barr has signed that as being noted, with the action officer being Mr Pierre Huetter. This makes mention of the car parks, that the Tradies’ offer included only 84 car parks, the value of the offer should be discounted by 55 spaces, et cetera. How much interaction was there between the agency and the minister’s office?

**Mr Ellis:** Thank you for reminding me of that. Of course we wrote briefs all the time. I was in regular contact by phone with the minister’s office prior to the advertising.

**MR COE:** Whom were you dealing with there?

**Mr Ellis:** My recollection is I was dealing with the late Kurt Steel mainly.

**MR COE:** Anybody else?

**Mr Ellis:** I seem to recall the chief of staff at the time—who was that?

**MR COE:** Was it Ms Fitzharris?

**Mr Ellis:** No. My memory is a bit faulty on that. I spoke to Mr Steel a lot because we had a lot of projects going.

**THE CHAIR:** Mr Philbrick?

**Mr Ellis:** Beg your pardon?

**THE CHAIR:** Mr Philbrick after Mr Steel?

**Mr Ellis:** No, that is later. Was Mr Freeborn still around? No. There was a new fellow.

**THE CHAIR:** If it comes to you.

**Mr Ellis:** Yes. Sorry.

**MS CHEYNE:** When minutes were taken—and you said you had many projects on the go at once, and I appreciate that—whose responsibility generally was it to take the

minutes? Was it a more junior officer? Did you have to sign off on them?

**Mr Ellis:** We always followed a protocol that whoever was the junior officer in the room was the one who took the minutes. If I attended a meeting where David Dawes and Dan Stewart were in the room with me I would take the minutes, and that applied all the way down. If I had a junior officer with me it would be up to them to take the minutes. Yes, that would be the protocol normally taken.

**MS CHEYNE:** And would someone then clear the minutes?

**Mr Ellis:** I would get them in most of these circumstances and there would be a few notes to make. As I say, we always put everything in emails. That was already standard practice. That is how we got things up the line, that is how we kept people informed. When people go looking for records of minutes, I am surprised if they cannot find my record of a meeting in an email to my superiors. That is how I operated all the time.

**MS CHEYNE:** While I think we have determined that there is no box missing, there are still minutes that you think exist but have not yet been found?

**Mr Ellis:** Can I emphasise again, they would be of a very small number of meetings.

**THE CHAIR:** During your time?

**Mr Ellis:** During my time, yes.

**MR COE:** With regard to the sensitivity of this whole arrangement, and noting, of course, that the Tradies are linked to the government and the Labor Party, obviously, you had some people in the agency who were either well known to be members of the Labor Party or had worked in the minister's office before, liaising with staff members who are involved in the Labor Party as well. Doesn't that lend more weight to the notion that a lot of this wheeling and dealing was done on the phone, and was done with a very specific purpose in mind, that is, to support the Tradies?

**Mr Ellis:** I do not quite know how to answer that question, Mr Coe. The fact is that a great deal of work was discussed on the phone with ministers' offices. I would not possibly want to deny that. We were under a lot of pressure and that was simply the way that a lot of communications took place.

As for calling it wheeling and dealing, no. I made the point in public that I was under no illusion that we were under a great deal of pressure to get the block to market. I have made it plain that I considered that to be a question of, largely, political interest, but I have also been at pains to point out that, other than that, no matter how many times I spoke to Mr Steel or anyone else, I was never pressured into producing a particular result, other than making sure that it was brought to market before the election in 2012.

**MR COE:** On that, there was a brief to the deputy director-general of land strategy and finance in December 2013. It states that you are the author of this, and it states that one of the recommendations is for the purchase of territory block 6 section 72 for

\$3.5 million, and the waiver of 40 months rental payments on the premises of block 6 section 72. In previous records it was very clear that the government's preferred position was either vacant possession at \$3.5 million or \$3.2 million and 18 months. How is it that you came to recommend the waiver of 40 months and paying for vacant possession?

**Mr Ellis:** Essentially, the reason for that is that the Tradies' position had hardened. Once they realised that they had to meet our conditions for the extra million dollars in cash and all 154 spaces, they felt they wanted more. That was their offer, in other words. That was their offer just prior to me writing that minute. I said, "If you want it to go ahead, I think it can be justified given the advantages that there are in the deal for the government."

In other words, my brief was saying that, notwithstanding that this position is harder than the one that they have had, given that they are willing to pay what we want, and we get block 6 and block 25—block 25 in particular—it was a deal that could be justified. And that was my recommendation.

**MR COE:** As the Auditor-General said, this risked being so distant from the original tender that potentially it was a new arrangement. In light of that, did you feel particular pressure to get this deal done? If so, where was that pressure coming from?

**Mr Ellis:** I will just clarify one thing, Mr Coe: the Government Solicitor's advice makes it clear that the departure from the RFT such that it became a direct sale was only something threatened by changes made in 2014, not by the parameters of the deal in 2013. Just because—

**MR COE:** 2013 was when the deal was done, though. That was when the recommendation—

**Mr Ellis:** Yes, Mr Coe. It is a point that I made in the first session. The ACT Government Solicitor's advice, which was in the Auditor-General's report, makes it clear that it is not anything prior to April-May 2014, but subsequently, later in that year; it was the agreements made then which had the potential to "contaminate", which was the word used, the RFT. It would contaminate the RFT because it was seen, in the words of the Auditor-General, as departing from the terms outlined in the minister's brief.

My understanding is that that minister's brief was probably one that I wrote, and it may well be the one you are referring to. In other words, there were no departures being made. All we were doing in the December 2013 agreement was coming to a way that the Tradies would pay for the block, and Mr Dawes was happy for that payment to be in kind, in the form of land-swap blocks.

That is not the main point of your question; it is a question on the matter of detail. The December 2013 agreement did not, on the basis of the advice of the ACT Government Solicitor, have those departures that you are talking about that threatened it being a direct sale.

As to the question of pressure, I did not feel political pressure. I felt the pressure that I

think comes at the end of any long process where you want the deal to be finalised, you want it to be done and dusted and put away. I can say, with my hand on my heart, that I was telling the director-general that I thought that it looked like this was not going to work quite late in the piece, before we got the approval from the planning authority. I was not under so much pressure that I thought I could not say, "This is going to fail. It has to go back to market or be put back on the shelf."

**MR COE:** Do you understand that, with the whole thing, you have something that is rushed in literally two or three days before caretaker kicks in? The deal is given to the Tradies. You have a lot of conversations happening on the phone between members of the Labor Party. You then have a recommendation that vacant possession be accepted. Top dollar is given. It was not 18 months of rental payments; 40 months of rental payments were gifted to the CFMEU. There are now missing documents, or documents that certainly have not come up in FOI requests, and we have had other people say that they are not available. The whole thing just looks so suspicious. I cannot help but think there must have been some political pressure involved in this.

**Mr Ellis:** I have tried to be as transparent as I can about the question of political pressure. It seems to me that I have got myself in hot water by being as transparent as I possibly can about this issue. What I am trying to say is that I certainly believe that there was a political desire to have the matter advertised prior to the 2012 election.

**MR COE:** What was the political desire?

**Mr Ellis:** The political desire was that the government wanted to give the opportunity to its political ally to bid in a competitive auction. It was never to—

**MR COE:** Given that there was a draft variation that was out at the same time, and given that there were all of these other vagaries, why was there this desperation before an election to get this deal through?

**Mr Ellis:** I can only give you my opinion, and my opinion was and remains that the Tradies were concerned that if the government lost the election the opportunity to even have a chance of getting the block in a competitive auction would be lost to them.

**MS CHEYNE:** So this is your opinion.

**Mr Ellis:** Yes.

**MS CHEYNE:** Are you hypothesising?

**Mr Ellis:** I am just saying—

**MS CHEYNE:** Did anyone actually say this to you?

**Mr Ellis:** No.

**MS CHEYNE:** Okay. We just need to be very clear here because you are making—

**Mr Ellis:** I think I have been clear.

**MS CHEYNE:** I know, but there is a difference between being transparent and hypothesising.

**Mr Ellis:** I have been at pains to point out that no-one in the government ever applied any pressure on me to produce a particular result. But there was no doubt in my mind, and I think it was a pretty common understanding at the time, that the government wanted the thing done in the time frame that it was done in because of the election.

**MS CHEYNE:** Why was that your understanding, apart from the election? You are just putting two and two together, without any other evidence.

**Mr Ellis:** I am not going to make statements which at this remove I cannot prove. But I was in regular contact with the minister's office. I was being asked regularly how it was going and whether it was going to be done. I was not asked this about other projects. Naturally, if one gets that kind of pressure, you put two and two together and say, "What's the particular reason why this is to be done? Well, they want it done before the election."

**MS CHEYNE:** Mr Ellis, you just said there was no pressure. Was there pressure or not?

**Mr Ellis:** No, that is not what I said. What I said was that I was never under pressure; please, I have been saying this now for a long time.

**MS CHEYNE:** Okay; fine.

**Mr Ellis:** I was never under pressure to produce a particular result. I was under pressure to get the thing advertised prior to the 2012 election. Part of the—

**MS CHEYNE:** And the pressure was people asking you, "How's it going"?

**Mr Ellis:** Yes, "How's it going?"

**MS CODY:** And the process started in 2011, is that correct?

**Mr Ellis:** That is right.

**MS CODY:** It started in 2011 and took about a year, so it was hardly rushed in two days before the election?

**Mr Ellis:** No, it was not, and, as I explained—

**MS CODY:** Caretaker, sorry.

**MS CHEYNE:** Couldn't it be people asking, "How's it going," because it was so protracted in getting it advertised?

**Mr Ellis:** No, I do not think so. It was not particularly protracted.

**MS CHEYNE:** About a year—

**Mr Ellis:** If you do not want my opinion, do not ask for it; excuse me. The fact is, as I was explaining to Madam Chair at the beginning of this hearing, I was asked by the deputy director-general sometime in late 2011, I believe—it could have been in January 2012—whether I could find out what was going on with this sale because at that stage it was in the hands of the LDA sales team. He told me that because he was getting political pressure, wanting to know how it was going, even at that stage. The government’s decision in October 2011 was that they wanted it done by the end of the 2011-12 financial year, so at the end of June 2012.

I had had no part in it, but I undertook to Mr Stewart to go and find out where it was up to with the LDA sales team. They told me that it was not high in their priorities. It was outside their skill set. They had too much work to do in terms of the land release program. I went back and told Mr Stewart that. Obviously, he needed to get it done more quickly than that to meet the government’s agenda; so we held a meeting. As I explained to Mrs Dunne, I cannot remember precisely when that meeting was, but it was at that meeting that I volunteered to take over the project. So I had much less time available to me than from October 2011.

To get it done, we bent all our efforts towards trying to get it done by modifying different processes and the like, because that pressure was on. We failed; we did not get it done by 30 June. But that did not seem to be the major issue. The major issue was that we had to get it done by the caretaker period. I am just putting two and two together. No-one ever said to us, “You failed to get it done by 30 June; therefore that’s that.”

I cannot remember the exact words that I was told by the ministerial staff, and I do not want to say things that they cannot challenge themselves, particularly when they are no longer with us. But I have no doubt in my mind, recollecting events now, that all that mattered was that it was done by the election. The fact that the cabinet decision originally said 30 June was neither here nor there.

**THE CHAIR:** Can I just pick you up there because I was going to go back and ask you: what was your understanding of the cabinet decision of October 2011?

**Mr Ellis:** My understanding was that it had to be advertised by 30 June but prior to that we had to come back to cabinet with details about the parameters of the lease, development conditions and the like. That is quite explicit in the Auditor-General’s report, that cabinet would—

**THE CHAIR:** That you had to come back. Following on from that, it eventually went out for tender. There was a successful tenderer. In the time between the announcement of the successful tenderer—and I will come back to that—and your leaving, did you have conversations with ministerial staff about how the project was going? You said that you did in the process of putting it out for sale. Did you have conversations during the negotiation period?

**Mr Ellis:** I do not specifically remember them. I would not say we did not but I think they would have been very few and far between and of a very generalised nature, as I

say, because they never put any pressure on me to arrive at a particular outcome. I think they also understood that it would have been inappropriate to do so.

**MR COE:** If I can chime in here, on 25 July, an email from Mr Huetter was sent to Mr Clint Peters and cc-ed to you.

**THE CHAIR:** 25 July when?

**MR COE:** 2012 at 10.43 am. It says, “G’day Clint. It is still on but the urgency has gone out of it. The minister wanted some of the uncertainty resolved before proceeding. New time lines dictate it will go out very late in the year, so I have booked a meeting with Graham to discuss normalising the site preparation process.”

Mr Peters then responded, “As we discussed, Kylie, run the Woolies ad for one more week, this Saturday, then hold all press on the two Dickson sites until there is an outcome from the meeting with Graham.” Then Kylie Forrest says, “Thanks for chasing this up. It would be appreciated if I could be kept in the loop about the progress of these sites, given that I am the marketing project manager.” And so on. At 5.25 on the same day from Mr Peters, “Please keep the marketing team in the loop as you progress this. Additionally, can you please respond to Kylie’s comments below.”

Then Mr Drummond the next morning says, “Re block 21, section 30 Dickson, we have had 14 responses to date. Among these, we have had responses from all the parties we would expect to hear from, including institutional property fund managers, developers, and supermarket operators.

Re block 20, section 34, the minister has called a halt to this process until further site investigations have been completed. It is unlikely this site will come to market any time calendar 2012. Please cancel any ads booked for this site. Can you please provide a summary of advertising costs for this site? Thank you for all your assistance to date. Regards, Richard Drummond.” 26 July, 9:35 am.

Regarding block 20, section 34, what happened between 26 July and the next couple of months that suddenly flipped this over and made the government want to get this through three days before caretaker? There seems to be an acute shortage of documents from that period through to the tender kicking off.

**Mr Ellis:** It is difficult to remember precisely but I believe this—

**MR COE:** And the minister is involved here. The minister said pull the plug on this, according to Mr Drummond’s email.

**Mr Ellis:** Yes.

**MR COE:** Mr Huetter also made mention that the minister wanted some of the uncertainty resolved. The minister is obviously in amongst all of this at this time.

**Mr Ellis:** Because of the shortness of the time frame that certainly Mr Drummond and I had to work with, it was virtually impossible, we soon realised, to do everything that needed to be done to get the block to market in the way that was normal procedure.

As I recall, we had a great number of discussions with the position known as the deed manager in the planning authority, who is critical to all these sorts of expression of interest processes, all these sales. They really govern the way that these things operate to make sure that they are in accordance with the Planning and Development Act.

**MR COE:** You said you have been a public servant carrying out requests, and that seems quite straightforward to me. What I am curious about is: where or what is the genesis of the changes in direction that happened in that time?

**Mr Ellis:** That was what I was trying to explain. I am sorry if I was going about it circuitously. I believe the only thing that can explain that particular change of direction—and the likely explanation—is that the deed manager came up with a way that it could be achieved, whereas, when that was written, I believe we were probably really throwing our hands up in the air and saying, “We simply cannot achieve it.”

Then in the discussions with the deed manager—though this is something that Mr Drummond might have a better recollection of than I do—the deed manager would have come back and said, “No, we can do it by a different mechanism, by loading up all the risks onto the purchaser”, in other words, selling it through a private sector mechanism rather than the normal government way where we do all these different studies that we normally do and de-risk a site entirely. I do remember distinctly that that was a key change in the attitude of the planning authority, or certainly the deed manager who was in control of these things.

I can only explain that change in those terms. I hope that it is clear what I am trying to explain there. We understood the process had to be one thing. We could never have achieved it in a certain time. Discussions with the deed manager subsequently would have shown that it was achievable. Then we said to the minister’s office, “We can actually get it done if we do it this way.” And that would have been the reason why we proceeded. But that would have been explained to the minister’s office.

**THE CHAIR:** Could I go back, just being mindful of the time, to the thorny process of car parks? In the recommendations from the tender evaluation panel, the tender evaluation panel recommended that the Tradies be the selected tenderer, and that ‘MMJ Valuers be requested to provide an updated valuation on the basis that settlement occurs 30 days after exchange and only 84 car spaces are replaced’. It then went on to state other things.

Mr Brennan, in evidence last week, said clearly that they were working on the basis of 84 car parks and that that had been transmitted to them during the tender process, before the tender closed, so I presume it was also transmitted to Woolworths at the same time. So right back then, the tender evaluation process recognised that there were 84 car parks. Wasn’t it really a process of providing some of the underground car parks that currently exist under the Tradies? Is that really just a sleight of hand in terms of the number of car parks?

**Mr Ellis:** No, it is not, Madam Chair. Mr Brennan, I suggest, is referring to the same email which the Auditor-General uses to rely on this. That was the email that—

**THE CHAIR:** He said that he was told in that process and that they always worked

on the basis that they were to provide 84 car parks.

**Mr Ellis:** Yes.

**THE CHAIR:** From the outset.

**Mr Ellis:** Mr Coe has just made mention of the fact, which is relevant in this context, that the draft variation 311—the Dickson precinct code, the Dickson master plan variation—had yet to be approved. The existing policy was not confirmed. The policy regarding replacement car parks is quite explicit. It says that all of the car spaces have to be replaced. However, because the planning authority's Dickson master plan had removed 54 per cent of the available developable space for the block, the question of how that policy would be applied was unclear. There was an assumption within the development community, within the EDD and the LDA, that, of course, as the planning authority was getting rid of 54 per cent of the site, and the pocket park and the road easement, naturally, what it meant by replacing all the parking was to replace that parking which was still extant, which was 84 car spaces. That was a position that we put, as EDD, to the planning authority in their deliberations on this question, through their parking expert.

When we put the tender out, the question we got from all of the interested parties, without fail, was, "How many car spaces do you have to replace?" Essentially, our answer was, "We don't know for sure. We think it's 84, but you need to talk to the planning authority and you will have to conform to the Territory Plan." That was put in an email on 6 November to all interested parties because that is what we did when we were asked questions by particular people. We then put them in emails so that everyone who had registered an interest had the same information as everyone else. That is the email, I believe, that—certainly, Mr Brennan was operating on the basis, no doubt, of a discussion that we had separately. Certainly, the formalisation of that position was in that 6 November 2012 email.

**THE CHAIR:** Wouldn't that indicate that the request for tender was rushed out, because the important issue of car parking was not finalised before the RFT?

**Mr Ellis:** Yes.

**THE CHAIR:** Thank you. I am mindful of the time. We have gone over. Are there any final questions?

**MR COE:** Yes. With regard to the 47 questions submitted by the Tradies to which answers were provided, was that information passed on to the other 20 or so—

**Mr Ellis:** Yes, absolutely.

**MR COE:** people who had expressed an interest?

**Mr Ellis:** Yes.

**MR COE:** At what point in the process was it passed on? If that was passed on, for instance, a day before the tender closed, people would not have had enough time to

actually submit it.

**Mr Ellis:** We certainly would have tried to pass it on as expeditiously as possible, Mr Coe. I cannot confirm the date. I do not recall it being a problem in terms of not giving other parties enough time. We did extend, as I recall, the closing date by, I think, 10 days or two weeks from what it originally was. That may well have been part of the reason, so that people did have enough time to look at—

**MR COE:** On 19 December 2012, when you wrote this brief for the minister for economic development, you made mention of the fact that the Tradies scored the highest against the assessment criteria, noting that neither tender reached the reserve price. The Dickson Tradies was therefore the preferred tenderer. The brief goes on to say:

Consistent with market practice, EDD will now negotiate with the preferred tenderer. If the reserve cannot be reached, the second tenderer, Woolworths, will be offered the opportunity to meet the reserve. If the second tenderer does not reach the reserve price, the block will be made available as an over-the-counter sale. That is standard market practice.

If that was front of mind as to the evaluation of the tenders, which happened just before Christmas and, given that the Tradies never met the RFT requirements, why didn't you then go to Woolworths and say, "Hey, can you do this?" or put it on the table for sale as an over-the-counter?

**Mr Ellis:** My view, and I am sorry to repeat myself, is that I think the evidence by way of the ACT Government Solicitor's opinion is that we did not go outside the RFT—what were said to be the understandings in the ministerial brief, to use the Government Solicitor's expression, so we did not.

To try to be more helpful with your question, it certainly was the case that prior to the planning authority agreement on the parking spaces, I thought that the negotiation was going to fail. I thought that we would be going to speak to Woolworths, as it had got that close. However, when that approval came through, I thought that we had the basis for an agreement which was still significantly in the territory's favour. That is why it went forward in the way it did.

**MR COE:** Who first mentioned the idea of bringing block 6 section 72 into the mix?

**Mr Ellis:** Mr Dawes. I believe, as I mentioned at the last hearing, it was probably just prior to the Colliers review in April 2013.

**MR COE:** Who first mentioned the idea of bringing into play, as part of a broad deal, the Woden Tradies club site?

**Mr Ellis:** That would have been the Tradies themselves, I believe. As to why that was entertained, it was not so much the Woden site itself; it was the deconcessionalisation of the Woden block, I believe.

**MR COE:** That is right.

**Mr Ellis:** The reason for that was that we were trying to stack up as much by way of cash as we could get for the LDA. One might regard that as a bit—

**THE CHAIR:** Mercenary?

**Mr Ellis:** mercenary and crude. If they paid it through the normal mechanism, it means it would go into consolidated revenue. We saw an opportunity to do this and it was really floated as an idea. When I pointed out to Mr Dawes the risk of this, he knocked it on the head and said, “No, we’re not going to make enemies of treasury and the planning authority,” so that was killed as an idea.

**MR COE:** But block 6 section 72 was not—

**Mr Ellis:** No; you said the Woden site.

**MR COE:** Yes, that is right. Now I am saying: but with block 6 section 72 it was entertained, and obviously so?

**Mr Ellis:** Yes. We regarded the Rosevear blocks as a group lot, as it were. The Woden deconcessionalisation was pretty unrelated. It was going to be difficult to organise; it was going to be done over the objections of treasury, if not the planning authority. We did not face the same objections in the case of the block. We were not paying the—

**MR COE:** Has anybody ever done this before? Has anybody ever said, “We’re the preferred tenderer for a block of land. By the way, we’ve got a block of land that we no longer want; how about we do a quid pro quo? And, what’s more, you give us the cash now and we’ll give you your cash in nine years time”?

**Mr Ellis:** The short answer to your question is not that I am aware of. I do not know of any other case. I will say that, as far as the December 2013 agreement goes, we had no inkling that the time frame for the resolution of these issues was going to be this long. We assumed that the Tradies would be paying a million-dollar deposit in December 2013. I understand that was subsequently waived. That has nothing to do with me or the agreement in 2011.

At that stage the RFT still had a caveat which said that if the agreement had not been resolved within four years, either party could terminate the agreement. From my perspective, negotiating the December 2013 agreement, we were getting the million-dollar deposit, and if the government wanted out within four years, it could take that option. Those things were changed after I left.

**MR COE:** From a position point of view, why were you even involved in the purchase of block 6? Surely, if you were just concentrating on a price and a single transaction, and that is your scope of work and you are looking in isolation at the value of that particular block, how is it that somehow you get involved in block 6 section 72 as well?

**Mr Ellis:** When you say “you”, it was not me personally. As far as my role was concerned, it made no difference to me whether or not they paid cash or in kind. As

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long as the land was valued, and it had a value that we could justify in cash terms, it made no difference to me. I was told by Mr Dawes that this was going to be the way, the payment. I knew why he wanted it, because he had other objectives in mind in terms of development of that area for social housing and the like. He has mentioned that in his testimony before this committee.

**MR COE:** Had any work whatsoever been done about section 72, other than somebody saying, “It might be good for social housing, especially for women”?

**Mr Ellis:** When it was entered into—no, not to my recollection.

**MR COE:** It does not seem that Mr Dawes had much of a business case, then, for section 72—not that you saw?

**Mr Ellis:** Not that I saw.

**MS CODY:** Were you involved in every conversation that Mr Dawes ever had?

**Mr Ellis:** No.

**THE CHAIR:** I am mindful of the time. Ms Lawder, do you have any questions?

**MS LAWDER:** No, at risk of asking something that may have already been canvassed.

**Mr Ellis:** Madam Chair, there was just one point of clarification I wanted to make about something I said in my testimony in response to the advertising question—the timing. I was asked, regarding the timing of the advertisement, on which weekend do you think it happened. I struggled to remember. I think I was struggling because it was not actually a weekend, although I think I nominated the first one. In my testimony I would state this with a bit more precision; that is, my understanding was that the LDA sent out and posted the ad on their networks once cabinet had made the decision on 11 September or on the day after. That was my recollection.

**THE CHAIR:** But it had gone into the *Canberra Times* the previous Saturday.

**Mr Ellis:** On the Saturday. I was asked, and I think I said that probably the LDA acted on that Saturday. But this statement, which I think is right, is that they would have sent it out on the 11th and the 12th.

I also mention something Mr Peters said regarding me being told about the fact that the ad went in on the Saturday and my recollection being that I did not find out until the following Monday. We have different recollections. My belief is that he is thinking about what happened in the subsequent week, in terms of what he then informed me about—ads going into the papers. I remain firm in my view that I was never told that the ad had actually gone in, and I had assumed that it had been pulled in time.

**THE CHAIR:** Thank you very much for your attendance here today, Mr Ellis. There was one issue: I asked if you could come back to the committee with the name of the

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minister's chief of staff that you were dealing with at the time, when it comes back to you. You will receive a copy of the transcript from the committee secretary when it becomes available. Thank you for your participation.

**Mr Ellis:** Thank you.

**PONTON, MR BEN**, Chief Planner, ACT Planning and Land Authority; and Director-General, Environment, Planning and Sustainable Development Directorate

**THE CHAIR:** Thank you for your attendance here today for the public accounts committee inquiry into the Auditor-General's report No 3 of 2018. Can we just go to questions?

**Mr Ponton:** Sure.

**THE CHAIR:** I just want to set some context, if I can. You have been before the committee on a number of occasions wearing a number of different hats. At various stages, but I think not during this stage, you worked for EDD and the LDA. I think you followed Mr Stewart, which was after this period. Is that correct?

**Mr Ponton:** Correct.

**THE CHAIR:** Could you set some context about what you were doing in this period and what was your direct involvement in or oversight or observance of this process?

**Mr Ponton:** Certainly. In response to the specific question: what was my involvement in this matter? Absolutely none. My understanding of my appearance here today was to talk to you about what has happened since I took on the role of director-general, which was in April 2017. Importantly, responsibility for this particular unit within economic development that was preceded within the EDD, through admin changes, came within my portfolio responsibilities on 1 July 2017.

**THE CHAIR:** I just wanted to make absolutely sure that you did not have any other involvement.

**Mr Ponton:** Absolutely.

**THE CHAIR:** For this committee, it is actually quite a murky area, communication on this subject.

**MS CHEYNE:** As you are aware.

**Mr Ponton:** Sure.

**MR COE:** What roles were you in from mid-2011 through to 2017?

**Mr Ponton:** In 2011 I was working for the then environment and planning directorate, I think it was. It has had a few name changes over time. Around 2011 my role was deputy director-general of planning, and the other deputy director-general looked after the environment and sustainability space. But having said that, I did not have any involvement in the matter in that role.

My involvement with the LDA and economic development was for about six months. I was actually employed for a longer period but I had some acting opportunities in

Transport Canberra and City Services and, before that, territory and municipal services, which meant that the time that I was actually with the LDA economic development was from around—it was a period—I think it was the end of August 2015 through to 2016.

**THE CHAIR:** In relation to this project, this committee has had some correspondence with you and you have been furnishing us with the names of people who may have been involved in this. And we are in communication about that at the moment. What do the records look like? It has actually been a quite cumbersome process; and this is not a reflection on you, it is actually the process which the committee has problems with.

**Mr Ponton:** Sure. As I understand it, the question relates to identifying people who were involved in this process. The greatest challenge for me has been that I did not necessarily know what evidence the Auditor-General had relied upon in making certain statements. Where it was quite clear that the committee was asking me who occupied a position at this point in time, that was easy enough for me to identify.

But where the question was, for example, a reference to a planning officer, I needed to understand what the evidence was that had been relied upon. And that was why I had to go back to the Auditor-General to seek that advice. And they were largely able to assist me but there was some where the reference had been made by others in giving evidence. Therefore they were not able to assist in that regard. For example, Mr Ellis was providing evidence just a short time ago referring to a planning expert. It is not clear to us who that person is. But if I had a name, then I could certainly check our records to provide further information.

**MS CHEYNE:** My questions are heading into what the practices are now, but as someone who was involved in and out and has an understanding of record-keeping practices that were going on then versus what should have been occurring, what would have been the normal record-keeping practice in the period that we are looking at, between 2011 and 2014? You heard Mr Ellis's evidence; we have also heard other evidence from people last week who said that there was a certain standard that was expected but it might not necessarily have been met. From your recollection, what was required versus what was actually done?

**Mr Ponton:** I might start with my experience in the environment and planning directorate and, before that, the planning and land authority. I have been very fortunate in that I have been operating with an electronic document management system since I started with the ACT public service in 2003.

**MS CHEYNE:** Is that TRIM?

**Mr Ponton:** No, it is Objective. From my perspective, record keeping is easy. If you send an email, it is easy to drop it into the file. It is a very comprehensive system. It makes it easy then to identify records. You can undertake a search either on date or other metadata, whether it is the author or whether the subject contains certain information. We also have naming conventions so that we name our files and our records in a particular way, so that it is really clear to people what they need to search for. That was my experience working for the planning authority and then the

directorate from around 2011.

Keeping in mind that I had no involvement in this particular project—it was in my very short period with the economic development directorate and land development agency—it is on record, in a subsequent audit in relation to rural land acquisitions, that my observation going into the land development agency, from my personal perspective, was that I felt as though record keeping could be improved. Certainly, I have made that observation.

**MS CHEYNE:** In what manner could it have been improved?

**Mr Ponton:** From my perspective, trying to get an understanding of the history of projects. Coming into the organisation, wanting to understand what I was responsible for, I would have expected more information to be contained on files in relation to history; to tell the story, if you will.

**MS CHEYNE:** Did EDD and LDA have access to an electronic document management system?

**Mr Ponton:** They used TRIM but they also used paper files. TRIM, as I recall, was used primarily for tracking ministerial correspondence and the like. They relied heavily on paper files.

**MS CHEYNE:** Generally, paper files should not be kept in a box, in loose leaf?

**Mr Ponton:** No, they should not be kept in a box. From my perspective, if you are working on a project, you might keep the file on your desk, but when it is not needed, it goes back to central registry.

**MS CHEYNE:** Is that like a manila folder that has—

**Mr Ponton:** Correct.

**MS CHEYNE:** hole punches, you put it in the file, and—

**Mr Ponton:** I am very electronic, so—

**MS CHEYNE:** Yes. As someone who has not worked there, I am struggling to get a picture of what it looks like.

**Mr Ponton:** Yes, that is right: a cardboard file, various colours, depending on the particular project. It was colour coded. My first recollection of raising a concern about the quality of record keeping was in relation to another matter that this committee, I understand, has inquired on, and is currently inquiring into, in relation to the acquisition around Glebe Park. That was primarily because I was wanting to understand the broader project. I was wanting to review the history to understand what had happened.

**MS CHEYNE:** It does seem to me that there is a broader ACT government standard or expectation of record keeping versus a culture that perhaps was around at the time

in EDD in particular. Is that an accurate observation?

**Mr Ponton:** It is safe to say that every organisation has its own culture. From what I was used to, and because I come from a regulatory background—development assessment is where I started in the ACT government—accurate record keeping and justification for decisions are incredibly important. I come from that culture and, moving into a different organisational culture, as I said, I raised some of those concerns early on and the D-G at the time, Mr Dawes, certainly listened to what I was saying. He has made reference to Ian McPhee coming in to assist us in that respect. At the same time we also had somebody join the team. In fact, it was a very small team. Mr McPhee looked at governance and record keeping from the top down and we had another group looking from the bottom up. That has formed the basis for the Suburban Land Agency, in terms of its governance program.

**MS CHEYNE:** On the basis of Mr Ellis’s evidence before, in terms of who should be responsible for minute-taking and the filing of the records, he intimated that it was due to him leaving that files were not put on a registry or kept where they should have been. Would it have been more standard or acceptable practice for records to have been put onto the registry as people go? As an email is sent or a decision is made, you print it out—

**Mr Ponton:** Absolutely.

**MS CHEYNE:** and you put it on your split pin and file it away, rather than say, “The project’s ending now; we put it all into a file”?

**Mr Ponton:** That is correct, yes. My expectation would be that the project officer ultimately is responsible for the file. Having said that, if the project officer for whatever reason was not included in an email, my first point is that they ought to be, so if there is communication between others in the organisation, the project officer would be cc-ed in. The expectation from my perspective is that that is a flag to the project officer to ensure that the material is filed.

**MS CHEYNE:** Finally, Mr Ellis made some comments about minute-taking, that generally it was the most junior person involved in a meeting that would take minutes. Is that observation correct, from your recollection as to how things operated?

**Mr Ponton:** From my perspective I would expect the project officer, the person responsible for the project, to be keeping the minutes, or have somebody there to assist that person to keep the minutes. I would not leave it to the most junior person in the room. Again, this is just my perspective. If it was a more junior person, I would expect the project officer to review those minutes, settle the minutes and circulate the minutes to all who attended the meeting and then file those.

**MS CHEYNE:** Is there a process now in EPSDD for minute-taking and the clearance and filing of minutes?

**Mr Ponton:** Yes, there is.

**MS CHEYNE:** What is it?

**Mr Ponton:** Again I will speak from my perspective, but it is slightly different depending on the particular area; we have both regulatory and policy areas. From my perspective, if I am holding a meeting, I will usually have my executive officer attend. My executive officer will take minutes, then pass those through to me to review, to allow them then to be circulated and appropriately filed. If it is a policy area, again you would ordinarily expect that somebody working on the project would take the minutes. I think that is important because they will understand the content. Ordinarily, that would be cleared by a senior person working on the project, and the process would be one of circulation and recording.

**MS CODY:** I have a couple of brief questions. I just want to clarify, you were not involved in even the Auditor-General's review of this sale?

**Mr Ponton:** Because I took responsibility from 1 July 2017—that was about the time that the Auditor-General started scoping the audit—my involvement at that point was to make my people available to the Auditor-General, people like Mr Mundy who was able to identify relevant records. I should make the point: I have heard about the two boxes that Mr Mundy found. There was some commentary in the media around it. It was unclear when those boxes were identified. I thought Mr Mundy's evidence was clear that it was early in the scoping phase. That material was provided to the Auditor-General early.

**MS CODY:** I note that the Auditor-General mentioned in evidence given at the start of this inquiry that they did not seem to take paper notes. They only mentioned TRIM and email evidence. That could be why some of those were left out, but that is a question for the Auditor-General's team, I think. To your knowledge, just quickly, while you mentioned Mr Mundy's notes, you were of the understanding that they did go to the Auditor-General?

**Mr Ponton:** Yes. All information that we held, all the records, were transferred to EPSDD and all those records were made available to the Auditor-General. From my perspective, I think it is clear that it is not a case of missing records, it is a case of non-existent records that the Auditor-General was concerned about. I believe that the Auditor-General made that clear in her report. In fact, I note that the Auditor-General does not make any finding that the territory records related to the matters under audit existed. It could not be provided to the audit office and that was never raised with me, that we had material that we were not providing.

**MS LAWDER:** Have you, at any time until now in this role or previous roles, had any discussions with a minister, any minister, or their staff about this case and/or the Auditor-General's report on this case?

**Mr Ponton:** Only to the extent of the recommendations flowing from the Auditor-General's report, and I have provided advice to the minister. You might recall that the government's response to the audit report had indicated that a detailed implementation plan or update would be provided to the Assembly at the end of October. We, as the directorate, provided advice to the minister that, because of the complexity around recommendation No 1 in particular, we believed that that ought to be delayed until early 2019. The minister subsequently, in response to that briefing,

has written to the Speaker and I understand that that correspondence has been tabled in the Assembly.

**MS LAWDER:** Were all those discussions about the recommendations of the government response verbal or written?

**Mr Ponton:** There was a conversation immediately—let me go back a step. As the Auditor-General was developing the audit I was under a section 35 direction which meant that I could not speak to the minister or any staff. The only people that I could speak to were people who held a section 35 direction and that was essentially the people who were assisting the Auditor-General in my directorate.

The first briefing that we provided to the minister was very soon after the report was tabled. Of course we provided him with a quick caveat brief, a summary of the key issues and their recommendations. As I recall, we provided him with some, as is standard practice, draft media release and also some talking points.

**THE CHAIR:** This is Minister Gentleman?

**Mr Ponton:** Minister Gentleman, yes. There was that written material. All I can recall after that is a conversation advising the minister that we were seeking the legal advice that had been referred to and then, of course, there was the written brief providing the draft letter to the Speaker.

**MS LAWDER:** In this instance and in other instances in the directorate would it be normal to keep a file note about verbal conversations and add that to the electronic record keeping or is it up to the judgement of the officer involved?

**Mr Ponton:** I am pleased to say that we keep very comprehensive records—all the minutes from our ministers' meetings, their agendas—and if matters are raised that are not on the agenda, on other business, we will identify what that matter was.

**MS LAWDER:** Do you think that that has changed since you have become director-general; that it is more comprehensive record keeping?

**Mr Ponton:** I would have to say, noting my earlier comments about the electronic document management system that the planning authority has had in place since 2003 and the nature of much of the work that we do, the directorate has always had very good record keeping. We are now working with those parts of the bureaucracy that have moved into our directorate to make sure that we have consistency of approach. For example, all those areas now operate under the Objective system. So we do not have paper files. When I say that, we are transitioning away from paper files. The Suburban Land Agency, City Renewal Authority, due diligence team in the urban renewal area, all have access to Objective, which makes it very easy then to search records, as I said, because we have naming conventions. It is very comprehensive.

**MS LAWDER:** You mentioned earlier in response to another question that it is relatively simply to add emails to Objective, the electronic record. But is it still a conscious decision? There is not a prompt to officers to save it?

**Mr Ponton:** It is a conscious decision. There is a very visible button at the top of your email that you click on and it takes you straight to Objective. But they are linked. You do not have to physically move it. It is quite easy to do. I have a very dedicated legal and governance team who work with all parts of the organisation to remind people what their obligations are.

**MS LAWDER:** How do you get a feel for what percentage of emails are added to electronic records? Is there some record keeping that says, “There have been a million emails sent and 4,000 of them have been added to a file”?

**Mr Ponton:** I do not have that information. I could certainly give you information as to how many records are saved in Objective.

**MS LAWDER:** But in terms of your governance, you are saying that you are encouraging people. Do they have any data to go on?

**Mr Ponton:** I am sure that we could provide you with the number of records in a particular period that have been saved into Objective but it would be many hundreds of thousands.

**MR COE:** Mr Ponton, from 2011 through to 2015 or thereabouts, you said that you were the deputy director-general at, probably, ESDD or something like that?

**Mr Ponton:** EPDD, I think it was; yes.

**MR COE:** Did you have carriage of territory planning variations and/or lease deconcessionalisation?

**Mr Ponton:** That was within my portfolio, yes.

**MR COE:** At the time that this section of block 20 was put up for tender, there was a live draft variation into Dickson?

**Mr Ponton:** Yes, 311.

**MR COE:** Yes. Were you consulted about the sale of this block, as part of that process?

**Mr Ponton:** Not that I recall, and the record certainly does not show that—unless you have material to suggest otherwise, no. That level of day-to-day transaction and advice would ordinarily be dealt with under delegation. I would have an executive director, director or senior manager providing the advice through to the entity, that is, the land development agency or economic development.

**MR COE:** Can you think of any other times when there has been a draft variation in train and the government is seeking to sell a block that is affected by that variation?

**Mr Ponton:** It can happen from time to time. A current example would be the Macarthur House site. You would be aware that there is work being done around the

city and gateway framework that foreshadows changes to that particular site. That site is on the land release program. The challenge—

**THE CHAIR:** It is on the land release program but it is not actively up for sale.

**Mr Ponton:** My understanding is that it is programmed for sale shortly, and part of the challenge—

**THE CHAIR:** But it is currently not actively up for sale.

**Mr Ponton:** Not at this point in time. My understanding is that it is imminent. Of course, part of the challenge in terms of going to market has been being able to finalise and release the city and gateway work, to give prospective purchasers a clear indication of what both the ACT government and the National Capital Authority's intentions are for the site. That is the only example I can think of, Mr Coe.

**THE CHAIR:** Is the city and gateway work a draft variation?

**Mr Ponton:** It will result in a draft variation, so it is the policy framework. It foreshadows changes.

**THE CHAIR:** Presumably then it will have interim effect?

**Mr Ponton:** That decision has yet to be made. Having said that, the Macarthur House site would be affected by the National Capital Plan amendment, therefore the territory variation would deal with the land that sits outside the control of the NCA.

**MR COE:** With regard to the Tradies' direct sale application, can you recall the planning directorate providing any advice for that process?

**Mr Ponton:** I do not have the name of the committee but it is mentioned in the audit report. There is an advisory group at officer level that provides advice on all direct sale applications. That consists of a range of directorates. I would have had a representative on that group.

**MR COE:** The Tradies put in a development application on 15 November 2012—this was during the tender assessment period—to deconcessionalise block 28 section 34, which I believe is the Tradies' main building or adjacent to it.

**THE CHAIR:** In Dickson.

**MR COE:** In Dickson—block 28 section 34. Do you have any recollection of this?

**Mr Ponton:** No, Mr Coe. Again, in terms of those matters, I am sure you will understand that, given my portfolio responsibilities, I do not get involved in day-to-day development applications unless I need to, if there is a point of escalation.

**MR COE:** I understand that, but this is a live draft variation. There is also a live tender assessment. There is a lot happening, and it is a controversial site. Given that you were a deputy director-general, it did not—

**Mr Ponton:** It was not raised with me, Mr Coe.

**MR COE:** A document has been released to me under FOI that is in response to a question by the Tradies during the tender process. This is what the ACT government has written; it is a draft response, I believe:

ESDD has advised that it proposes to amend the precinct code to clarify that basement parking will be permissible under the proposed park.

So ESDD was engaged in this process. In actual fact the Tradies sent through 47 questions and five of them were sent on to ESDD for their responses, five were sent to the Government Solicitor, and the economic development directorate said that they could deal with 37 of the questions immediately. Those five questions never came across your desk?

**Mr Ponton:** They would not ordinarily do so, Mr Coe. That would be dealt with by senior people in the organisation.

**THE CHAIR:** But not as senior as you?

**Mr Ponton:** No. It could have been, I suspect, the executive director, it could have been one of the directors or it could even have been the deed manager, depending on the nature of the questions. But it is not something that would ordinarily—in relation to questions coming from the Suburban Land Agency or its predecessor, they are not matters that would be dealt with by a deputy director-general or the director general, given the extent of the portfolio responsibilities. If there were something particularly challenging and they were finding it difficult to provide the answer then I am sure that it would have been elevated to me through a brief. But in this case, no.

**THE CHAIR:** But your agency would have records of that correspondence somewhere?

**Mr Ponton:** Absolutely.

**THE CHAIR:** You could, for instance, provide the committee with that correspondence and/or indicate to the committee who handled that correspondence?

**Mr Ponton:** Yes.

**THE CHAIR:** Great.

**MR COE:** Thank you. With regard to block—

**Mr Ponton:** If you could remind me again of the date, that would certainly assist.

**MR COE:** This, unfortunately, is an undated document. It just says “response to Tradies’ letter”. I might have the date on the FOI schedule. I can look it up and refer it to—

PROOF

**Mr Ponton:** The only thing that would worry me, hearing some of the other evidence, is that I am presuming that the request was made to us in writing; therefore our response would have been in writing.

**THE CHAIR:** We will assemble as much information as we can and pass it on to you so that you can get back to us.

**Mr Ponton:** Certainly.

**MR COE:** Has a representative of the Tradies ever contacted you directly?

**Mr Ponton:** No.

**MR COE:** Has a request from the minister's office ever come to you about any issue or associated issue with the Dickson land swap?

**Mr Ponton:** No.

**MR COE:** Were you consulted about block 6 section 72?

**Mr Ponton:** In relation to what aspect of block 6 section 72, Mr Coe?

**MR COE:** The acquisition of block 6 section 72?

**Mr Ponton:** No.

**MR COE:** Was the planning directorate consulted about the purchase of block 6 section 72?

**Mr Ponton:** I would need to check the record. Again I know that there have been references in earlier evidence to a "planning officer" and "planning". I do not know who that is. With more information, we can certainly assist you with that inquiry. I have had no involvement in relation to block 6 section 72, other than that, of course, in recent times, my directorate has been undertaking engagement with the community on section 72 more broadly.

**THE CHAIR:** On section 72, who owns the old Salvation Army site? Did the territory ever acquire the—

**Mr Ponton:** It is currently owned by the Salvation Army.

**THE CHAIR:** It is still owned by the Salvation Army?

**Mr Ponton:** Yes.

**THE CHAIR:** It was unclear. I realised after the evidence the other day that it was unclear. Mr Dawes, I think, said that they were interested in acquiring it. Then I realised that we did not actually get to the question of whether or not we had acquired it. It is still owned by the Salvos?

**Mr Ponton:** It certainly is.

**MS LAWDER:** Are there any ongoing discussions about purchasing it?

**Mr Ponton:** Indeed, yes. The Salvation Army, as I understand, had expressed an interest in relocating south side. My directorate and economic development prior to that have been assisting in trying to identify a site. If they are able to move then that would allow the opportunity for acquisition of that site. Also we knew of that site—

**MS LAWDER:** If that site is not acquired, what does that mean for the government's current plans for that area for social housing?

**Mr Ponton:** The only clearly stated intention for section 72 is Common Ground on block 25, and that is not affected by the Salvation Army site. Like all master planning work, it is not just all about government owned land, it is about providing opportunities for others.

**MR COE:** When did the planning directorate first start work on plans for section 72?

**Mr Ponton:** From my perspective, it would have been in 2017 and—

**MR COE:** Years after the acquisition?

**Mr Ponton:** In terms of my involvement and planning, yes. Having said that, I know that economic development were doing some work and had undertaken their own engagement. I think it was around 2014, going into 2015.

**MR COE:** That is right. They put out a two-page flier about it.

**Mr Ponton:** Yes. But that certainly was not planning work. We kicked that work off in 2017. I cannot tell you the exact month but it has been ongoing for some time.

**MR COE:** Would it be usual for economic development to put out a discussion paper or consultation piece that involved rezoning that had not first gone by the planning directorate?

**Mr Ponton:** I would suggest a better practice would be to have a conversation with the planning directorate prior to expressing views in relation to what a site might be able to be used for. But having said that, I have not seen the flier. I certainly do not recall seeing the flier that you refer to. It may have been a proposal. And that is not uncommon for proponents to have an idea and seek to engage with their local community, seek those views, then come back to the planning authority.

**THE CHAIR:** In this case, because the government is the land owner, they would the proponent?

**Mr Ponton:** Correct.

**THE CHAIR:** Would economic development be the logical place for the government to take on its mantel of proponent?

**Mr Ponton:** Thinking back to the arrangements at that time, I think so. But it is unclear whether it would have also been the land development agency. Certainly I think the arrangements are much clearer now with the new administrative arrangements in terms of roles and responsibilities.

The directorate that undertakes due diligence would undertake the necessary planning work and would also look to rezone land and run that process prior to handing over to the Suburban Land Agency, whose role would be to deliver. But I do not know that I could safely say that that clarity was available in 2014-15.

**THE CHAIR:** In your experience—and you are in a slightly different position—is it routine for someone to have regular contact with staff in the minister’s office about particular projects where someone is saying, “How is the project going,” or the like?

**Mr Ponton:** It depends on the project. Certainly from my perspective—and keeping in mind that I have both policy and a more regulatory perspective—rarely, unless there is a matter that we think we would need to brief the minister on, keeping in mind that from a regulatory perspective I have an independent statutory role. Therefore we do need to be incredibly mindful about what conversations or briefs are provided. If we do provide a brief to the minister on a regulatory matter it would be for information only, to make sure that the minister is abreast of current issues. In relation to policy, that is reasonably more common to brief the minister, have discussions during regular meetings, all of which, of course, are minuted.

**THE CHAIR:** That describes your communication with the minister’s office, from you being the originator. How common would it be for someone from the minister’s office to pick up the phone and say, or send an email and say, “Where are we with project XYZ?”

**Mr Ponton:** Ordinarily, in my experience, that would occur if there were a reason to prompt that. If we had provided a brief that had earlier identified a program and the program were not being achieved, there might be an inquiry, although ordinarily it is done by email. There might be a telephone call that will then prompt a caveat brief of some kind but our communications back to ministers’ officers are ordinarily either via a short email, a caveat brief, which is, I am sure you understand, a shorter brief that is not necessarily cleared by the director-general or—

**THE CHAIR:** Sorry, you said “caveat”, not “cabinet”?

**Mr Ponton:** Caveat brief; or a more comprehensive brief. But from time to time, yes, of course I get phone calls. But it may be because there has been something in the newspaper. We might get a phone call. One of my deputies might get a phone call, “Just read this article. What is the background behind that?”

**THE CHAIR:** In your experience, you would have a regular, probably weekly, sit down the minister on issues?

**Mr Ponton:** Ordinarily, yes.

**THE CHAIR:** Does that have an agenda?

**Mr Ponton:** Yes it does.

**THE CHAIR:** And does it have other meeting notes?

**Mr Ponton:** Yes.

**THE CHAIR:** And that has always been your practice?

**Mr Ponton:** Yes.

**THE CHAIR:** And that has always been the practice in the areas that you have worked in?

**Mr Ponton:** Yes.

**THE CHAIR:** Are there any other questions for Mr Ponton? Thank you very much for your attendance today. You will receive a copy of the proof *Hansard* in the coming days. There are a couple of things that we would collect some information on and pass on to you but there are some things that you said you would take on notice as well, which will come up in *Hansard*.

**Mr Ponton:** Certainly. And can I just note I had sent Dr Lloyd a note in relation to some evidence that was provided last week.

**THE CHAIR:** Yes, which the committee is about to discuss.

**Mr Ponton:** Fantastic.

**MS CHEYNE:** And we are very grateful to receive.

**Mr Ponton:** Not at all.

**THE CHAIR:** And we were very grateful to receive that.

**Mr Ponton:** Thank you.

**THE CHAIR:** Thank you.

**MS CHEYNE:** Watch this space.

**THE CHAIR:** Yes. Thank you very much.

**The committee adjourned at 11.28 am.**