



**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL
TERRITORY**

STANDING COMMITTEE ON PUBLIC ACCOUNTS

***Inquiry into Auditor-General's Report No 8 of 2018: Assembly of
rural land west of Canberra***

Members:

**MRS V DUNNE (Chair)
MS T CHEYNE (Deputy Chair)
MS B CODY
MS N LAWDER**

TRANSCRIPT OF EVIDENCE

CANBERRA

WEDNESDAY, 16 OCTOBER 2019

**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 9.44 am.

BAILEY, MR DANIEL, former Executive Director, Sales and Marketing, Land Development Agency

THE CHAIR: Good morning and welcome to the third public hearing of the inquiry of the Standing Committee on Public Accounts into Auditor-General's report No 8 of 2018 on the assembly of rural land to the west of Canberra. Today's hearings will be recorded and transcribed, and a proof transcript will be provided to each witness for comment before the transcription is published.

I welcome Mr Daniel Bailey, the former executive director of sales and marketing of the then land development agency. Mr Bailey, have you read and understood the privilege statement?

Mr Bailey: Yes, I have.

THE CHAIR: Are you still employed by the ACT government?

Mr Bailey: Yes, I am.

THE CHAIR: Where are you these days?

Mr Bailey: I am currently the executive group manager, property and venues, within the Chief Minister, Treasury and Economic Development Directorate, looking after ACT Property Group, Venues Canberra, government office projects and the National Arboretum.

THE CHAIR: I want to go to a particular event which is outlined on pages 105 and 106 of the Auditor-General's report. It speaks about the payment of invoices to Colliers for a document called the *District of Stromlo Acquisition Strategy* paper. What do you know about the genesis of that paper and the payments that were made for it?

Mr Bailey: I do not think I was involved in that payment at all.

THE CHAIR: We were told last week that you were involved in the making of that payment that was adversely commented on by the Auditor-General.

Mr Bailey: I joined the LDA in December 2015 and I left in 2017. I was not the director of sales and marketing; that was a different person. In case there is confusion there, John Mason was the director of sales and marketing in the LDA. I was the executive director.

THE CHAIR: Does that mean that the person who said that you were the person who asked for them to sign off on this has misremembered? You say you did not start until December, so you could not have been the person who signed off on this. But the invoice was presented to the LDA in December and was signed off in February.

Mr Bailey: If that is paragraph 3.22, it says:

... the former Director Sales Marketing and Land Management, authorising the receipt of the services rendered.

That was not me; that was a different position in the directorate.

MS CHEYNE: Do you know who that was?

Mr Bailey: John Mason.

THE CHAIR: I suspect we may have been misdirected.

Mr Bailey: Okay.

THE CHAIR: But while you are here, just to cover off, were you involved in any way in any of the sales referred to in the Auditor-General's report?

Mr Bailey: I was not involved in the transactions there.

MS LAWDER: That is probably why you were wondering why you are here.

Mr Bailey: Yes, but that is okay.

THE CHAIR: I apologise. We were misdirected as to who signed off on that, so we will have to go back and start again.

MS CHEYNE: Could we get who was who at the time that you were there?

Mr Bailey: I was the executive director of sales, marketing and property management. I had a dual role. I was based in the LDA and I looked after the sales and marketing team. The director of sales and marketing land management was the director, the SES band 1. That team obviously did the sales of greenfield sites and there was a land management team in there and the Mingle team.

THE CHAIR: What is the Mingle team?

Mr Bailey: It looks after communities and events for new suburbs.

MS CHEYNE: Like at Molonglo Valley, where they have get-togethers at the park to meet your neighbours.

Mr Bailey: I also had a dual role in economic development where I looked after ACT Property Group and Venues Canberra at that time. There were three different areas that I looked after. I reported directly to David Dawes, as the director-general at the time, as he was in both roles of economic development and within the LDA.

THE CHAIR: So directly, not through the—

Mr Bailey: Not through anybody, no. Not through the deputy director-general of the

LDA; I reported direct to David.

MS LAWDER: In that role you were not involved in any discussions or decision-making about what properties to purchase?

Mr Bailey: No involvement in what properties to purchase.

MS LAWDER: Once some properties were purchased did you have any involvement in what might happen in the future to those blocks?

Mr Bailey: Yes.

MS LAWDER: Can you talk about that a little?

Mr Bailey: There was involvement in the property management of those after they were purchased. ACT Property Group was involved to look after some of the tenancies and any built form on some of the properties. We were engaged to set up any agreements with those or collect rent or things like that. So there was involvement in that part of it. Yes, I was involved that.

MS LAWDER: Did you or your team determine what rent might be payable?

Mr Bailey: I would have to check that.

MS LAWDER: How might that have come about?

Mr Bailey: I would have thought that would come from some sort of valuation on the rents of what you would get for a house on a rural property, but I can find that out.

THE CHAIR: The rural properties had more than houses on them and substantial acreage was involved. Was your group responsible for establishing land management agreements over those properties?

Mr Bailey: In part, yes. It was not necessarily property group, which I was looking after then; it would have been more the land management team in the LDA that looked after those elements—bushfire operating plans and things like that.

THE CHAIR: So in addition to the property group there was a land management team?

Mr Bailey: Correct. At that time I had coverage of both. The land management team was within the sales and marketing team of the LDA. I think three guys worked in that team that reported direct to John and then to me. I was at ACT Property Group as well, so ACT Property Group were engaged at times where there were built properties. ACT Property Group manages a number of residential properties, as it is now, in rural areas. So they were brought on to do the property management side that you would engage a normal real estate agent to do. You would get someone with a lease in place, collect the rent and undertake maintenance items of the built side of it rather than the land side of it. That expertise was in the LDA regarding the weeds and the fences and the pests and things like that.

THE CHAIR: But you were dual-hatted?

Mr Bailey: Dual-hatted, correct.

THE CHAIR: So you were in the LDA and in—

Mr Bailey: And in economic development, running the other side of it. Yes, correct.

THE CHAIR: In that context, the Auditor-General is critical of the fact that for a lot of those properties it took a long time to get land management agreements in place and that substantial amounts of rent were forgone as a result. How novel was it for the LDA to be managing rural land?

Mr Bailey: I know the team I had were very comfortable with managing it. I did not think it was anything out of the ordinary. The team was capable of doing that sort of thing. With the assistance of a property group managing the built side of it that seemed to work. I would need to get more detail on the ones that we were collecting—

THE CHAIR: There was evidence last week in relation to Milapuru, where the lessee surrendered his lease but had permission to stay and wanted to negotiate a long-term permission to stay. There are other examples of that—Pine Ridge, where the original lessee continues to occupy and manage the land. It was put to us that the owner of Milapuru had made many attempts to have something put in place and that he went from pillar to post because no-one quite knew how to deal with his issues. He already had a land management agreement that could have been rolled over or adapted, but his evidence was that it was not. He eventually threw up his hands and walked off because it could not be negotiated. He was sent to the environment department and he was sent to the property group et cetera.

His evidence was that it was quite stressful and extraordinarily difficult—in fact, it turned out to be impossible. I gather that there is now agistment on that land even though there was an offer to continue to manage it and it could not be dealt with. His evidence was that no-one in LDA was experienced in dealing with rural land, but you are saying you had a team of people who had experience in rural land.

Mr Bailey: Yes, I think they had considerable experience. I know the property group had considerable experience in setting up leases for the built side of it. I would need to get a little more detail on his specific concerns. I know an occupancy agreement was put in place when he departed; I think his partner entered into an agreement and paid a bond and paid rent.

THE CHAIR: Over the house?

Mr Bailey: Yes, over the house. I am not too familiar with the land management side of what occurred. I would need to get a little bit of info on that part.

THE CHAIR: The committee secretary could point you in the direction of the evidence last week from the lessee from Milapuru and you might comment on that on

notice.

Mr Bailey: I did see some of that, but I did not think there was enough detail for me to be able to answer too much. I do not know enough about that land management side of it, but I can talk generally about the capability of the team. I know the experience they have, but I am probably not fully across the specifics of Mr Katz's situation.

MS LAWDER: You said it was you and three other people in the land management team; is that right?

Mr Bailey: Within that branch three people were specifically land management.

MS LAWDER: How many rural properties do you think they managed—five, 10, 100, 1,000?

Mr Bailey: It was not just the rural land; it might have been the greenfield sites within the ACT as well. They were across the landholdings the LDA had, so they might be dealing with dumping in the greenfield estates or security issues right out to preparing bushfire management plans for the rural properties. They had a broad range of roles.

MS LAWDER: But do you know a ballpark figure?

Mr Bailey: No, I do not think I could even guess.

MS LAWDER: Is there any way you could find out how many rural properties they were responsible for?

Mr Bailey: Yes, I could probably get that information.

THE CHAIR: How long had this team of land managers been in the LDA? You said you came in in December 2015. The LDA had been around for quite some time before that. Had there always been a land management team?

Mr Bailey: My understanding was that it was a longstanding team, but I could get confirmation and see if they were there from the beginning. They were a very experienced, capable team that had been there for a while.

THE CHAIR: But the LDA started accumulating rural land, with properties like Glenloch, in about 2013. Then there was the big buy-up that we are looking at in relation to this report. At some stage they would have had to ramp up their capacity in relation to managing rural land as rural land?

Mr Bailey: Yes, or overseeing that. In most instances you would try and get somebody on the site to manage those things for you and just be in a position where you are overseeing it. It is much better to have people living on the sites and in the houses looking after those properties for security. That is a general rule I have in terms of running the property group as well—a vacant property is one of the hardest to manage because you have security risks, vandalism and all sorts of things. Having people on site is much better.

THE CHAIR: As the manager of that group and their overall property group, was it your responsibility, and your predecessor's and presumably your successor's responsibility, to ensure that the territory was obtaining appropriate rents for land that was in the portfolio?

Mr Bailey: Yes. That is always the direction there. In this instance, with that particular Milapuru property, there were numerous attempts to get the rent. And we always work closely with the Government Solicitor's office and whatever the directorate is to seek advice and guidance on that.

THE CHAIR: Could you indicate to the committee, perhaps on notice, when you attempted to gain rent?

Mr Bailey: I can get the team to provide information on what they did in terms of that, yes.

MS CHEYNE: I think the evidence we heard was that attempts were made but nothing could be done because nothing was in place, and it is hard to attempt to do something when there is nothing in place to point to, so the government had no leg to stand on.

Mr Bailey: Yes. I can get that information from the property group and they can pull that together and show the correspondence and meetings that took place.

MS CHEYNE: I am still just trying to get my around who is who—I know this is painful—

Mr Bailey: That is okay.

MS CHEYNE: particularly because these agencies do not exist anymore and the Auditor-General's report is: "Work it out for yourselves." Last week Anita Hargreaves said that you were executive director for sales and marketing. That is correct?

Mr Bailey: Correct.

MS CHEYNE: But she said that John Latham was the director for sales and marketing.

Mr Bailey: John Mason, yes.

MS CHEYNE: Okay. Maybe Hansard has picked that up wrongly.

Mr Bailey: He was sales, marketing and land management. That branch that I had of one of the three areas—

MS CHEYNE: So you were his boss?

Mr Bailey: I was his boss.

MS CHEYNE: Around the time of that invoice and purchase order that was signed off without the appropriate numbers on it and according to the financial instructions, you were on leave?

Mr Bailey: I joined in December of 2015, so no, I was just coming in. But I was not involved in that particular invoice.

MS CHEYNE: It is useful to clarify, because last week Ms Hargreaves said, when the chair asked who the head of the sales and marketing team was, that it was the executive director of sales and marketing but he was on annual leave and that the director of sales and marketing was the one who had said that the goods had been received, all services had been provided and he was seeking her approval to pay. Then we asked for names to be put to those positions and that is when she said your name as the executive director and John Mason—we will correct that with Hansard—as director for sales and marketing.

Mr Bailey: It looks like I was away during that week. No, I was at work in December. I joined on 7 December.

THE CHAIR: The invoice was paid on 18 February 2016. She was asked to expedite it, the reason being that the authorising people in the chain, in the sales and marketing team, were not available. If you could check the—

Mr Bailey: Yes, I can check that and confirm that. I do not think I had any leave that was booked in the calendar, but I can check. I might not have been in the office still.

MS CHEYNE: I am particularly interested in it because it is weird, frankly. In Ms Hargreaves's own evidence she said she was a stickler for detail and yet on this one occasion just signed off \$300,000 that did not have a purchase order raised but had been walked over to her desk because it was overdue. There are a lot of question marks around that in terms of due process, so any light that you might be able to shed on why you were not involved—

Mr Bailey: No, I was not involved. I genuinely do not know. I am not sure.

THE CHAIR: Normally would something like a purchase order like that have gone through you before it went to Ms Hargreaves?

Mr Bailey: I was John's direct supervisor. If it was work that directly involved our team, you would expect that. But it may have been that it was work involved with a different part of the LDA and John was working for a different part or something like that. I am not sure. But, as I said, I was not involved in that particular one, so I cannot give you much—

THE CHAIR: Have there been other instances of unsolicited work provided as a gift to the agency which then the agency decided to pay for?

Mr Bailey: I am not aware of any that would—

THE CHAIR: That is reassuring.

Mr Bailey: I am a stickler for things like that as well. I would not have approved it unless it was preapproved, if you know what I mean. You cannot get someone to do the work and then just pay it, not without asking.

THE CHAIR: This all happened soon after you started, and you were there for a bit of time. I assume this came to your attention at some point.

Mr Bailey: I vaguely remember having a chat to John about it. But I do not recall being involved directly with it or giving any guidance or direction on that one.

THE CHAIR: So why would it be that your area paid this invoice? You said that your area was not involved in the acquisition of land that this report covers, so why would it be that this invoice landed in your area?

Mr Bailey: I am not sure. I do not have the detail on that one.

THE CHAIR: It is a big sum of money, nearly \$300,000. Were you regularly paying out sums like that for things that did not quite fit in your remit?

Mr Bailey: The team would have to get advice at times, or valuations and things like that. As I said, we were selling greenfield estates and getting valuations for land and for residential blocks and things like that. We would be regularly paying out for advice for that sort of thing, so that would not be uncommon. But I am just not familiar—

THE CHAIR: But you did not commission this advice?

Mr Bailey: I did not commission it.

THE CHAIR: That leaves the question open. If your area did not commission that advice, why—

Mr Bailey: As I said, I can only talk about myself. I am not sure who commissioned that advice, but I certainly did not.

MS CHEYNE: You were John Mason's boss?

Mr Bailey: Yes.

MS CHEYNE: Did he have this delegation or this freedom to just go, "Yep, no worries. Let's pay that \$300,000"?

Mr Bailey: I had delegation, absolutely. He was a band 1 executive; he would have had delegation.

MS CHEYNE: Are these delegations ever reviewed?

Mr Bailey: Yes, annually.

MS CHEYNE: When things were paid, did you not ever say, “Hey, what’s that?”

Mr Bailey: We annually reviewed delegations. As I said, I think it would be best to speak to John directly as to how he paid that one.

THE CHAIR: What would the delegations have been? To what level of payment would—

Mr Bailey: I am not sure, but I expect his level there would have meant a fairly significant amount of money that he would have had delegation to pay. But off the top of my head I am not sure.

MS CHEYNE: Like a million?

Mr Bailey: That would not be uncommon for the work that would have been done there, but I am not sure.

THE CHAIR: And that would be a single, standalone delegation that would not need to be countersigned?

Mr Bailey: There is the two-process signing there. As you are saying, in this instance here, John would have signed the goods receipted and then it has gone to another executive to sign. So, as you say, you need to sign that—

THE CHAIR: No, I mean is the delegation jointly held so that you have to have more than one signatory to approve the sale? I am just thinking about delegations that I have managed in the past. Sometimes substantial sums of money require more than one signatory.

Mr Bailey: That is right, and that is the process in this instance here: there were the two. I think it is fairly standard across the board that you have a person with goods receipts. If you are operating under a purchase order system, it is goods receipted and then there is an executive or another delegate over the top that signs that off.

MS LAWDER: I want to continue with delegations. You say they may be reviewed annually. Is that in terms of who has delegations and how much they are for or do you mean of individual transactions that have occurred during the year?

Mr Bailey: No, that is just generally of the positions. Every area that I have worked in, every year we review. You can do it more than every year—every six months.

MS LAWDER: In line with the chief executive instructions and such.

Mr Bailey: There can be churn or something like that. But also there can be decisions made to change the delegations. Operational requirements might mean that you might have to put a delegation in somewhere else.

MS LAWDER: What about this particular transaction, which we heard was done without a purchase order, for \$300,000? When and how could or should that have

been picked up? Should it have been picked up in the annual audit that this was done without a purchase order? Do you know whether it was picked up? Is there an audit committee?

Mr Bailey: No, I generally do not know enough—

MS LAWDER: You do not know?

Mr Bailey: to be able to answer that.

MS LAWDER: So without saying that this happened, there could have been 50 \$300,000 transactions without purchase orders if there is no kind of process to pick them up.

Mr Bailey: I am not sure. There is visibility of invoices paid within all systems, so I—

MS LAWDER: You are just unsure how this could have happened without someone—

Mr Bailey: Yes, I am not sure. I just do not know the detail about this one here to be able to give you any answer.

MS LAWDER: But generally, as the supervisor of this particular person, would your expectation have been that at some point—even at the end of the year—someone might have brought this to your attention in terms of review and—

Mr Bailey: Yes.

MS LAWDER: continuous improvement.

Mr Bailey: Yes, I would imagine that.

MS LAWDER: But it was not brought to your attention?

MS CHEYNE: What was John Mason's professional relationship, and working with Mr Gordon?

Mr Bailey: Understanding what that sales and marketing team was, it worked for everybody in the LDA; so it was that front of house there. He would have worked for all—for everybody. He did. He worked for everybody within the LDA.

MS CHEYNE: That is useful. It is just that there is a substantial bit in the Auditor-General's report about email exchanges between Mr Mason and Mr Gordon. It is just useful to know what that relation was, given that Mr Mason says repeatedly that he does not really know what he is doing.

Mr Bailey: Yes. I mean, it was a close organisation and there were formal reporting lines. They worked for everybody.

MS LAWDER: In terms of those processes, things occurred—for example, without purchase orders. Where you work now, do you think there are strong processes in place that would avoid or pick up these things, post fact, and address them? Has there been any change?

Mr Bailey: I have a different team. It is a different structure, a different set-up.

MS LAWDER: Does it ring alarm bells for you?

Mr Bailey: I am just not familiar enough with it to be able to say that. I do not want to sort of create alarm there.

MS CHEYNE: But, Mr Bailey, you said that you are a stickler for this sort of stuff. So, in your opinion, is this unusual? If this happened again, would you go, “That is not really how we do things”?

Mr Bailey: Yes, it is not normally how I would do things now. But, as I said, I do not know the history as to how that happened for this one here.

THE CHAIR: But you do say that you recollect vaguely—

Mr Bailey: Yes.

THE CHAIR: having a conversation with Mr Mason about—

Mr Bailey: Yes, I do remember something about it.

THE CHAIR: the invoice.

Mr Bailey: No, I remember hearing about. I know that it is a few years ago now. It could have been post that it had happened that it was raised to my attention. But I do not remember giving advice on it or being involved at the time. It could well have been after the event that that happened, in my mind.

THE CHAIR: But you do have some recollection that at some stage in the process someone raised with you concerns about a nearly \$300,000 invoice?

Mr Bailey: No, it is just being aware of it there; so not necessarily that it was a bad thing or whatever, but I was just aware that it had happened. But, again, I do not know the detail of the beginnings of it all, which I think is probably important.

THE CHAIR: No, I am actually trying to drill down into when you became aware of it. You say that you have a recollection of having a conversation with Mr Mason. What was the nature of the conversation? What was it about?

Mr Bailey: Yes, I am trying to recall. I think it was just about John and, I think, why he got the advice or something like that. That is what I think it is. But, as I said, I think it would probably be best to get John in to have a chat.

MS CHEYNE: Hopefully his memory is better.

Mr Bailey: Yes, sorry.

THE CHAIR: Anything else? Thank you very much for your attendance here today, Mr Bailey.

Mr Bailey: Thank you.

THE CHAIR: You will receive a proof transcript, which will be sent to you for comment and any clarification that is necessary. If you have issues that you need to clarify, you can raise them with the committee, firstly through the committee secretary, Dr Lloyd. There are a number of things that you said that you would take on notice.

Mr Bailey: I will get back to you on them.

THE CHAIR: Thank you. We will expect those in the near future.

Mr Bailey: Thank you.

THE CHAIR: Thank you very much for your attendance today.

Mr Bailey: Thank you.

GORDON, MR TOM, former Executive Director, Greenfields, Land Development Agency

THE CHAIR: Welcome, Mr Gordon, the former executive director of greenfields and the former director, sales, marketing and land management in the former land development agency. Have you had an opportunity to read and understand the privilege statement?

Mr Gordon: Yes.

THE CHAIR: Thank you for your attendance here today. Could you state your name for Hansard?

Mr Gordon: I am Tom Gordon, I am the executive director, development delivery, at the Suburban Land Agency.

THE CHAIR: There seemed to be a multitude of titles within the former LDA, so could you give a rundown of your role and what you did under various of those titles?

Mr Gordon: Yes. To correct the opening statement about my role with sales and marketing, that is incorrect. I was executive director of greenfields. You have just been talking to Daniel and Daniel had that executive director role with sales and marketing. I am not sure how that—

MS CHEYNE: You were definitely executive director, greenfields?

Mr Gordon: Yes.

THE CHAIR: Simpliciter.

Mr Gordon: Yes, simple as that. I am not sure how that information landed in there.

MS CHEYNE: And no other title?

MS LAWDER: Ever?

Mr Gordon: I have been with the agency for some time. But—

MS CHEYNE: Yes, but around that time.

Mr Gordon: Around that time with the land development agency, yes, it was primarily greenfields, as the executive director.

MS CHEYNE: It just is helpful for us to know if there was any other title you were known by that you are referred to in that report. This is incredibly painful for us, as you can tell.

Mr Gordon: It might help to understand that the LDA at that time was working very closely and in an integrated fashion with Economic Development. So people like

Daniel would have a dual role; they would wear two hats. The urban executive director wore two hats. The deputy director-general wore two hats. Obviously the chief executive wore two hats as well. There was a fair degree of integration in the business.

THE CHAIR: You were single-hatted?

Mr Gordon: Single in the land development agency.

THE CHAIR: And you only worked for the land development agency?

Mr Gordon: That is correct, yes.

THE CHAIR: It was put to us, when we were asking detailed questions of the former chief executive, that you were the person who had most of the corporate knowledge and that you dealt with most, if not all, of the sales covered by the Auditor-General's report. Would that be your assessment?

Mr Gordon: Yes. For all the properties mentioned in there I would have had some level of involvement. I would have been working through direction from the CEO, reporting to the CEO and to the LDA board.

THE CHAIR: Did you have any involvement in the acquisition of Glenloch station?

Mr Gordon: No, I had no involvement in it.

THE CHAIR: Was that in your time at the LDA?

Mr Gordon: It would have occurred in my time at the LDA. I have been there for over 10 years now. But I would not have had any involvement in it. To give a bit of back history, my primary involvement would have been mainly in Gungahlin. Molonglo was a different area, so at that time when it was purchased I in all likelihood had no involvement in Molonglo.

THE CHAIR: So when did you move over to Molonglo, so to speak?

Mr Gordon: The way it was structured was that within the land development area, the greenfields development area, there are two primary focuses—one being Gungahlin and one being Molonglo Valley. Around that time my focus was Gungahlin, but there was an executive director sitting above me at that time.

MS CHEYNE: Who was that?

Mr Gordon: What year was that? I do not know when Glenloch was actually purchased. I could guess—probably 2011 or something. I am not really sure. Around that time, I think the executive director for land development would have been Chris Reynolds.

THE CHAIR: So you are saying there was a change in the structure?

Mr Gordon: Not really in terms of land development. There was always an area that was focused on greenfield land delivery and there has always been an area that focused on the more urban projects, the infill projects—the likes of Kingston or Yarralumla or the Woden town centre. Those sorts of things were more controlled by another person within the agency.

THE CHAIR: Could you say that again?

Mr Gordon: There was a greenfield structure that had the two primary areas of Molonglo and Gungahlin. Then there was an urban structure that looked at the various projects that were urban infill projects.

THE CHAIR: So at some stage you were more concentrated on Gungahlin?

Mr Gordon: Gungahlin, yes.

THE CHAIR: When did your interest shift or when did you acquire responsibility for Molonglo?

Mr Gordon: When I moved into the position of executive director I took carriage of the two arms—the Gungahlin and Molonglo areas.

THE CHAIR: So you were promoted into responsibility for Molonglo?

Mr Gordon: Yes.

THE CHAIR: When was that?

Mr Gordon: I was acting, probably in 2014—maybe a little bit earlier than 2014. And then it became a substantive role in, I think, late 2015.

THE CHAIR: A number of properties were acquired. Were you involved in the acquisition of Milapuru?

Mr Gordon: Yes. As I recall I was assisting David Dawes. I was present while he was having the conversation with Simon Katz around negotiating a price.

THE CHAIR: The \$7 million price?

Mr Gordon: Yes. The exact details of it I would not be able to recollect; it was so long ago. But the essence was that there was a degree of negotiation around the price, and I think David ultimately agreed to \$7 million.

THE CHAIR: It was put to us by Mr Katz—I think Mr Dawes substantially agreed with this—that the owner of the adjacent block, the Canberra Equestrian Centre, was interested in acquiring Milapuru but went to the LDA to see whether the LDA was interested in acquiring Milapuru and the LDA said they would like first dibs on Milapuru. Were you involved in those conversations?

Mr Gordon: No. I understand the conversations took place around the adjacent owner

advising Mr Katz that he should talk to government. The discussions relating to the specifics of the adjacent owner and things like that I was aware of but was not really involved in the positioning of the decision.

MS LAWDER: I have a short supplementary question on that. Going back a few sentences, you said that you were assisting David Dawes at that time.

Mr Gordon: Well—

MS LAWDER: Was he involved in the purchasing sort of decision?

Mr Gordon: Yes, David was directly involved.

MS LAWDER: What was his role at that time?

Mr Gordon: David was the CEO.

MS LAWDER: He was the CEO?

Mr Gordon: Yes.

MS LAWDER: Was he involved in all purchase decisions?

Mr Gordon: Yes. In a broad sense, when an acquisition, a potential acquisition, was being contemplated, it would generally be the case that David would be informed almost immediately that someone had an interest in talking to us or potentially selling the parcel of land. The discussion with David would be, “Do you think this is one that we should actually explore?” There might be various discussions around why you would explore or not and then direction: “Yes, proceed. Do some background on it. Put some information together.” Then it would go to the board for a decision, typically to say: “Is it something that we should pursue?” Alternatively, the paper would say that we have reached a position on a property—you know, almost at the point where you are seeking the approval. There would be a paper that would go around stating that this is the status of it, that this is the intended value for the parcel of land and then seeking the board’s approval to actually commit to the purchase.

THE CHAIR: Did those two things always happen or was it an either/or thing?

Mr Gordon: Look, I would have to check, but it was generally the case. I think with Milapuru, in 2014—I think you probably are aware of this—there was a lot of discussion within the board on their strategy, sort of thinking about what was happening with the supply of land.

THE CHAIR: Yes.

Mr Gordon: Now, having a very experienced board with a range of capabilities, they were very attuned to what that might mean for the territory. That conversation I think then led to some papers being prepared by the deputy CEO at the time. I think that was the second half of 2014 that they were prepared. As a result of the paper in late 2014 there was a decision to look at Milapuru. As I understand, the discussion was

that it was potentially on the market. Also, there was discussion around the two properties further to the west of Milapuru, I think. One would be Fairvale. I am not sure what the one in the middle is.

THE CHAIR: The other one is the one which is between Milapuru and Fairvale, which is the National Equestrian Centre, which is still in private hands.

Mr Gordon: Yes.

THE CHAIR: I will get to the National Equestrian Centre in a minute. Milapuru was settled on 31 July 2015. When did you start conversations about the acquisition of Milapuru?

Mr Gordon: I am just trying to think. The actual decision process I was not involved in—so the December meeting where the board agreed to proceed in looking at Milapuru. I would have been involved—

THE CHAIR: So you are saying that in December 2014 the board formally agreed to consider looking at Milapuru?

Mr Gordon: As I understand, the board paper at that time spoke of the three properties. Then I think the board minutes indicate a discussion around the property being on the market and that they were to start looking at the possibility of acquiring it. I think that was around December.

THE CHAIR: You think that was around December.

Mr Gordon: Yes. Now, I would have been involved shortly after that. Yes, given it was the Christmas break, I imagine it would have been January or late February that the first discussions would have—

THE CHAIR: Could I clarify this before we go on? You were not involved in those discussions, because that was a strategic discussion and you were in the business of acquisition?

Mr Gordon: Yes, but also I think—

THE CHAIR: Sorry, is that a reasonable—

Mr Gordon: Yes, that is a reasonable assumption. But I think at the time as well the format of the board was that the board would meet with the CEO and probably the deputy CEO. Then various executives would come in and talk to specific papers, so you were not generally across all the business.

THE CHAIR: You were not there all of the time.

Mr Gordon: Yes, you were not across all the business of the board.

THE CHAIR: Sure. That is fine.

Mr Gordon: Some of these things you would not necessarily be aware of; you would not be included in the conversations.

THE CHAIR: Okay.

MS CHEYNE: But Mr Stewart said last week that he wrote the overall strategic paper that went to the board in the original stages, but that it was you who was responsible for the implementation of the paper that he put to the board.

Mr Gordon: No. I think that paper was looking at the strategic opportunities that were prevailing. That was developed by the deputy CEO.

MS CHEYNE: Yes.

Mr Gordon: The outcome of the board discussions led to the CEO then having conversations with Mr Katz in regard to a potential sale. I was present at that discussion with Mr Katz when the price was agreed.

MS CHEYNE: Right.

Mr Gordon: Then, out of that there is a process of actually engaging the Government Solicitor's office. The other side has solicitors. There is a conveyancing process that goes through about the actual acquisition. So, post the decision, I am in that process. There was a paper put, I think, to the board in regard to the outcome of it.

THE CHAIR: The board would have had to sign off because it was \$7 million.

Mr Gordon: Yes, they would have agreed to it. Let me see if I can find it. In that—

MS LAWDER: Are you saying that Mr Stewart's assertion or recollection is wrong?

Mr Gordon: Well, it may be a recollection. It was some time ago, yes. The minutes of that meeting go to the specifics of—

THE CHAIR: Which meeting?

Mr Gordon: The December meeting. The resolution was to move to acquire block 19, the price being within \$5 million to \$10 million. So there was a price range in which they were to negotiate.

THE CHAIR: The board minutes of the meeting of December 2014 specifically say that the LDA was prepared to go out and acquire—

Mr Gordon: Yes, and we can provide you with those minutes.

THE CHAIR: But that was before Mr Stewart's paper, because Mr Stewart's paper went to the board in May 2015.

Mr Gordon: No.

THE CHAIR: That is his evidence and that is what the—

Mr Gordon: No, sorry. There are several papers that talk about the strategy. There was a paper put up in December 2014 that talked to the specifics of Milapuru and the other two properties. But preceding that there would have been the strategy meetings that the board had and there would have been another paper, probably six months prior to that around that land supply issue.

MS LAWDER: Then why did we have one after this?

THE CHAIR: Sorry?

MS LAWDER: Why did we have a strategy paper afterwards if there had already been a strategy paper before?

THE CHAIR: Actually, it may be that I have got the dates and the year wrong. You are saying that there was—

Mr Gordon: Yes. So if you looked at—

THE CHAIR: There was a strategy paper in December. The board meeting agreed that Milapuru was in the frame.

Mr Gordon: Yes.

THE CHAIR: Did the board minutes record any other blocks that were in the frame?

Mr Gordon: The other two properties—there was a resolution to initiate any discussions with the adjoining owners if they had interest.

THE CHAIR: The adjoining owners?

Mr Gordon: Yes.

THE CHAIR: So the adjoining owners to Milapuru?

Mr Gordon: In here it says blocks 418 and 491, which I am not sure exactly—

THE CHAIR: I think 491 was Fairvale before it was—

Mr Gordon: Yes. As to whether those discussions happened, I could not say. I was not involved in direct discussions with individuals other than the ones like Huntly, where we were contacted directly and then we spoke to the parties that were interested.

MS CHEYNE: Just to clarify, Mr Dawes said last week that Huntly was almost entirely you in terms of the negotiation.

Mr Gordon: In terms of the face to face with Huntly, yes. There may have been an initial discussion with one of the officers within the business, but it soon came to me and I had discussions with people from Huntly.

MS CHEYNE: He said Tom Gordon was looking after that particular transaction.

Mr Gordon: Yes. In doing so, you would garner enough information that would help inform advice that would go to, firstly, David about: “Is this something we should look at?” then getting agreement that, yes, we should explore it. We would go to the board. There would probably be an advisory paper that said, “This is something that is on foot; are we interested in proceeding?” and then going into more detailed negotiations around what the price could be, whether there would be agreement and what terms might come out of that agreement.

THE CHAIR: So you are saying that you only became involved in the process after the price was settled, essentially?

Mr Gordon: Yes. I had no role in setting the price. That was a discussion with David and Simon Katz. But there is involvement—

THE CHAIR: Specifically in relation to Milapuru, you had no involvement until there was a handshake on the deal?

Mr Gordon: Other than being aware that discussions were pending and then having the discussion, my recollection is that I was present when David was having a discussion with Simon—

THE CHAIR: You were present at the discussion?

Mr Gordon: Yes. Then, following on from that, the process was: “Now you’ve agreed to sell it, how do you go about doing that?” I had underneath me a group of people that were able to then contact the GSO and put in place all the necessary things—

THE CHAIR: So you are telling the committee that your job was to put into effect an agreement that was made by somebody else?

Mr Gordon: Yes.

THE CHAIR: But you were not involved in the negotiation?

Mr Gordon: Not in the negotiations on Milapuru. But, in effect, the agreement to proceed is the LDA board’s decision. There is a negotiation process. Typically, in many instances, there is an agreed position from the board about where the price range would be. The board would indicate: “I’m happy for you to have the discussion up to this price.” If you could not negotiate then you would come back. You would come back to the board and say, “We’ve got to this position and the party agrees”—or, for whatever reason, the party may not agree. So it is the board making that call. The chief executive would have worked within that range, knowing what the board had agreed to, and had the discussion I was present at, and there would be a negotiation around the price. Then that would have informed the board for another paper, I would imagine.

THE CHAIR: And because it was more than \$5 million it went back to the board?

Mr Gordon: I think the board recognised that a likely range would be greater than \$5 million and recognised that the framework required the LDA to go to the Chief Minister and Treasurer as part of the framework. So the business case was put together and then approval sought through treasury and then the Chief Minister and Treasurer.

THE CHAIR: I now have my copy of the board minutes and agendas, which is available under freedom of information. Could you refresh my memory, Mr Gordon, as to when this paper in relation to—

Mr Gordon: How do you want it described? Is it—

THE CHAIR: The date would be handy.

Mr Gordon: I have got the minutes of December 2014. It would be 138.

THE CHAIR: I have now got it in context. What the deputy CEO, Mr Stewart, described was that there was the strategy discussion in late December 2013 and then there was a board paper, a version of which eventually went to cabinet, that went to the LDA board in May 2014. And then, you are saying, in December 2014—that was 11 December 2014?

Mr Gordon: I do not seem to have the exact day, but it was December 2014. It is described as 138.3.4.

THE CHAIR: Okay, 138.3.4. There are redacted bits. We now know what is in part of the redacted bit. At meeting 138 there were decisions made in relation to pursuing Milapuru, block 418?

Mr Gordon: To move to acquire block 19, which is Milapuru, and initiate discussions with the adjoining owners in 418 and 491.

THE CHAIR: I think that 491 is the old block number for Fairvale. We can work it out from that. Could we move on to Fairvale?

MS CHEYNE: Just, just for our clarity and when we read back on this in years time, the key sales and lease negotiations that you were involved in were Milapuru, Huntly, and Fairvale?

Mr Gordon: No. Across the breadth of the audit, all those properties I had some level of involvement in, the primary role being providing advice through to the CEO and then through to the board about whether they would agree to the acquisition of certain parcels of land. With the ones that are mentioned in that report I would have had not always the lead role in negotiations—David took on a role in that space—but in a lot of instances a role in negotiation and then my team working with the GSO to then finalise the acquisition.

THE CHAIR: But you were finalising an acquisition that had already been agreed

on?

Mr Gordon: In Milapuru's case, yes. The agreement, again, is the board's decision. The board agrees: "Yes, you can pursue it. This is the range in which you can pursue the purchase." If you landed in that range then you would execute the process of actually acquiring it.

MS CHEYNE: Was it just the different circumstances of the different properties that changed your role or the scope of your involvement?

Mr Gordon: Yes, I think so. In that area of the Cotter Road there were Milapuru and Fairvale and then Winslade. Winslade is the one just to the north of Fairvale. In that instance the owner contacted us. We had not had any contact with him. He contacted us. We had the discussion. We went out and had a look at the site. We made an assessment that we should discuss this further with the CEO and through to the board, just following the process I described before, and ultimately the land was acquired. That is someone approaching us unsolicited, ad hoc almost.

MS CHEYNE: I think we were told last week that every property owner approached the LDA rather than the other way around.

Mr Gordon: Yes. I am just talking about the ones I was involved in. My experience was that they would contact us. Just to correct that, though, at west Belconnen there was the project of the second supply of electricity that was going in. We did have to make contact with the owner of Wagtail, where that infrastructure was being implemented.

THE CHAIR: That is the TransGrid easement?

Mr Gordon: Stockdill Drive, I think, yes. Wagtail, The Vines and Pine Ridge were contacted about that power supply going through and the infrastructure that would go in in that space. That process essentially was driven through a government decision to locate the facilities. Our involvement particularly related to how it went through west Belconnen and impacted on us and the other three properties adjacent.

MS CHEYNE: Okay; that is useful.

THE CHAIR: We can put a pin in that. On Fairvale, it is our understanding that somebody approached the LDA on behalf of the owner.

Mr Gordon: Yes.

THE CHAIR: When did you become involved in the discussion about Fairvale, and specifically about the discussion on splitting the block?

Mr Gordon: It would have been on that August 15, as I understand it. I was not involved in the actual negotiations, so I was not present. As I understand it, the decision by the vendor to sell the property was solely their decision to look to retain part of the land and then the option to sell the other part to the government.

THE CHAIR: Could you just repeat that?

Mr Gordon: In regard to the sale, I understand the negotiations ended up being that the vendor, the seller of the land, made the decision to keep part of the land for the purposes to sell to someone else and then sell part of that land to the territory.

THE CHAIR: Where did you get that idea from?

Mr Gordon: That would have come through from the CEO. I was not party to the negotiations, but that discussion would have led to the block—a desire of the seller to sell it that way. The decision from the CEO was, “Okay; we are happy to proceed.” Then I was informed. Then we proceeded on that basis. “How do you actually go about subdividing it? What does that look like?” There was no real definitive line shown of what that subdivision may be, and then it was working it out as to, in terms of that agreement, where that line would be.

MS CHEYNE: Does this seem pretty weird given that Milapuru had not been—

Mr Gordon: Not necessarily.

MS CHEYNE: There had been some suggestions that Milapuru wanted to be subdivided. Mr Katz was told no. Then suddenly Fairvale was like, “Yes, no worries. We will subdivide it.”

Mr Gordon: I think in fairness that if Mr Katz had raised it at the time of negotiations and the sale it could have been contemplated. I have no recollection of Mr Katz raising that at the time of sale. Subsequently he may have considered it, but I do not have any recollection of that.

MS CHEYNE: Okay.

Mr Gordon: At Fairvale, though, the land was subdivided, and the decision of the owner to go down that path is solely their decision. The CEO—

THE CHAIR: But you cannot subdivide a rural lease; it is not permissible.

Mr Gordon: In this circumstance the land is surrendered and there is a re-grant of the lease. The portion that comes to the territory is a surrendered part.

THE CHAIR: But the original lease over the original block of land does not envisage that ever being subdivided. That is the condition for lease. It cannot be subdivided.

Mr Gordon: In respect to that, the process we went through was with the Government Solicitor’s office and their advice about how this could occur.

THE CHAIR: So this was a workaround?

Mr Gordon: I do not know if it was a workaround. It was a—

THE CHAIR: In breach of the original lease.

Mr Gordon: I do not know if it is a breach. I would be happy to review the original lease. I am not sure if it is actually a breach of the lease.

THE CHAIR: It is my understanding, and it has been said in here already, that you cannot subdivide a rural lease.

Mr Gordon: Let me see if I can find a lease and I will see if I can find what clause you might be referring to. Within the zoning allowance of subdivision, I think the clause you may be referring to is the assignment clause, which restricts the owner's opportunity to onsell the property without first getting agreement with the authority, the authority being the planning authority. That assignment clause—I think you may have discussed around that 10-year period which—

THE CHAIR: The 10-year profit-share arrangement was over.

Mr Gordon: Yes. It has other conditions in there about what you may do with the lease. You may be referring to that. Certainly the zoning allows the opportunity to subdivide. I am not across which clause you are talking about, but I am happy to look at it. Maybe I can provide advice.

THE CHAIR: What you are saying is that you were presented with a situation that said that part of Fairvale is for sale to us—

Mr Gordon: Yes.

THE CHAIR: Essentially, and you went about making that happen.

Mr Gordon: Yes.

THE CHAIR: Including the surrender and reissue of two separate leases.

Mr Gordon: Yes.

THE CHAIR: One for the bit that you were acquiring and one for the bit that the owner was onselling to somebody else.

Mr Gordon: That is correct, yes. That the process would have involved the Government Solicitor—

THE CHAIR: You keep saying “would have”. Were you there at the time?

Mr Gordon: Yes, I was there. The process included engagement with the Government Solicitor, seeking consent from the Planning Authority. All that would have occurred.

THE CHAIR: Did occur?

Mr Gordon: Yes.

THE CHAIR: When you were negotiating with the Government Solicitor about “How do we get this done?” and getting consent from the Planning Authority, did anyone ever say, “Gee, we have never done this” or “I am not sure that this can be done in this way”?

Mr Gordon: I think it happens quite often; maybe not quite often, but it happens as a result of the owners having a desire to surrender their lease but the government also having opportunity for people to surrender a lease, like at Wagtail, where we want to put infrastructure in. You have to create a separate parcel within their parcel. The process would be that their lease—

THE CHAIR: But it was for a public purpose?

Mr Gordon: In that instance, yes.

THE CHAIR: Yes.

Mr Gordon: But the process does not limit it to just public uses.

THE CHAIR: There have been surrenders of leases around the place, but that was that a property may have been a parcel of leases and some leases. Certainly the case of the history of what is now referred to as Wintergarden, which was a much larger property, was a parcel of leases. From time to time, some of those leases had been acquired or surrendered or—

Mr Gordon: Yes. As urban development touches on those rural properties that are adjacent to them, the norm was, or had been, that they were classified as a rural lease, which would have had a shorter term, like a 20-year term.

THE CHAIR: No, they—

Mr Gordon: Within that—my experience is Gungahlin—you have a rural lease, and you would give three months notice of the intention that you were going to withdraw it. In Wintergarden, I think that was the case for land that they may have had towards the river. And then the main property that they offered for sale had the 99-year lease on it.

THE CHAIR: None of the Gungahlin leases ever had 99-year leases. They were never part of the turn of the century rural policy.

Mr Gordon: I think there are some that did have—not “did”, have the 99-year lease. I think Horse Park would have had one; Elm Grove; Well Station probably had one. They would have been created as curtilage or precincts around the extent of urban development, like the one in Harrison, which is Well Station. I am aware that back in the day that was a larger property and then, as urban development came in, it got restricted to about a 40-hectare lot. On that, the homestead and the immediate values around the homestead were retained within that urban environment.

THE CHAIR: In relation to Fairvale, as far as you were concerned there was never any discussion of the LDA acquiring the whole of the property?

Mr Gordon: The paper that the deputy CEO presented in December, I think, looked at the opportunity for the whole property, but the board's response was to entertain discussions with the owners. I am not sure if that actually occurred, but I think they were probably surprised that the owner had decided to sell before anyone could actually talk to them anyway.

It is probably the circumstance of events that the owner made a decision to sell. The board would have been of a mind to acquire that property as it resulted through the discussions with the CEO and the negotiation. The owner wanted to sell the parcel in two tranches, and the board was informed of the result that the CEO had landed on, that they could purchase part of the property. They accepted that.

MS CHEYNE: In terms of the actual subdivision and where it is, just looking at that land, there is a lot of frontage on Cotter Road that was ceded or that Mr Flannery got to keep?

Mr Gordon: It was Ms Howieson's property and Ms Howieson's ultimate decision on what that property looked like.

MS CHEYNE: Yes, but you allowed for it? You could have said no, surely?

Mr Gordon: Again, I was not in that discussion and this is not—

MS CHEYNE: Who was?

Mr Gordon: The CEO managed those discussions.

THE CHAIR: Mr Dawes seems to be of the view that you were intimately involved in this purchase.

Mr Gordon: In the actual subdivision, yes. But the decision to subdivide was a negotiation that the CEO had with the owner and I was not a party to that. In the sense of influencing it after that decision, it was more about what was the level of agreement in terms of wanting to have curtilage around those existing homes, the scale of what that was, the practicalities of actually working out where that subdivision could go.

I think from memory we were looking at how the fence lines actually work in that area, because Ms Howieson was operating, I think, cattle in that area and doing a fantastic job. But that operation meant that there were all sorts of fence lines through that whole operation, which made it not an easy task to actually pick where that subdivision would go. And ultimately the buffer to the homestead area determined where the extent of that block went to the east.

THE CHAIR: And were you involved in those discussions?

Mr Gordon: Yes. And ultimately both parties agreed, "Yes, that looks like a reasonable solution."

THE CHAIR: You are saying that the LDA came to an agreement with the owner of the Fairvale lease about where the subdivision should be?

Mr Gordon: Yes.

THE CHAIR: Was anyone else involved in those discussions?

Mr Gordon: Yes. It was clear that Mr Flannery had an interest in acquiring that parcel of land but that decision and negotiation were with the owner. But we were aware that there was a portion of land—a sort of general description of how big it should be—and it was trying to work out the practicalities of putting that on the ground.

THE CHAIR: But when you were working out the practicalities, who was involved in the discussion?

Mr Gordon: I would have been in the discussion; Mr Flannery would have been in the discussion and Ms Howieson would have been informed of where those discussions had landed.

THE CHAIR: The owner was not involved in the discussions directly?

Mr Gordon: Ultimately, yes.

THE CHAIR: Directly—

Mr Gordon: Yes, at the time.

THE CHAIR: And when you were sitting down with your whiteboard or your ACTmapi and working out where the boundaries would go, the owner was not involved?

Mr Gordon: No, but—

MS CHEYNE: But you were, and Mr Flannery was?

Mr Gordon: Yes.

MS CHEYNE: He said, “Mr Dawes put his assistant”—you—“in to try to help with the finer negotiations around the boundaries and the practical solutions. The vendor and I drew up plans. Mr Gordon drew up plans. We played tic-tac from overseas on the potential boundary alignments.”

Mr Gordon: Yes, that would summarise it.

THE CHAIR: You were involved in the sale of Huntly but that was pretty much a fairly straightforward arrangement. The owners of the trust that owned Huntly came to the LDA and essentially offered it for sale. Is that your understanding?

Mr Gordon: Yes. They were exploring opportunities. They had run a commercial

business, I think, Consolo, and I think—

THE CHAIR: And this was their only rural lease?

Mr Gordon: Yes. I think part of their consideration was that a person—his name was Mr Gale—was on the property. He was an elderly person and had some obvious connection within the company. Their concern was that he was getting, I want to say, frail and at some point they were looking to get rid of the property as it really was not in their interest anymore. They contacted us and then we worked through a process with them.

THE CHAIR: You were with the LDA in 2016 when the price was agreed?

Mr Gordon: Yes.

THE CHAIR: Were there board minutes in relation to Huntly?

Mr Gordon: Yes.

THE CHAIR: When were they?

Mr Gordon: It would have been in June and then again in September 2015.

THE CHAIR: 2015?

Mr Gordon: Yes. The scale of this acquisition was such that we had to go again through the framework through to the Chief Minister and Treasurer and that did take considerable time to consider that business case. And ultimately, the acquisition, I think, occurred in April 2016.

THE CHAIR: And you were there for all that period?

Mr Gordon: Yes, I was with the LDA for that period, yes.

THE CHAIR: And you were involved in the sort of conveyancing of the property, is that right?

Mr Gordon: Not directly. Within my area there is a team that looked at development delivery. They would work with the Government Solicitor's Office and essentially the Government Solicitor's Office was acting as our conveyancing solicitors. They would deal with the other side. There would be a number of issues that would have to be resolved in, ultimately, the sale.

THE CHAIR: And was it a straightforward sale?

Mr Gordon: Yes. I do not recall any major issues with Consolo, no.

THE CHAIR: Do you know—and I think this is something the committee will have to inquire about—when the 99-year lease on Huntly was effected?

Mr Gordon: I probably would not have that record in front of me. From memory I think it was a 2001 lease.

THE CHAIR: The committee has been given a copy of a lease but it is only signed by Consolo and we have not seen a copy of the lease which was countersigned.

Mr Gordon: I think one of the things around these leases—and it was, I think on a couple of them, maybe a few of them—was that where there is an issue of the lease and then there is a second issue of the lease the commencement date is on the first issue of the lease. What happens in that assignment clause is that it refers to the commencement date. And there may be confusion about the term that is left on the lease, as opposed to when that commencement occurred.

THE CHAIR: When Consolo was here, there was uncertainty as to how long there was to run on the lease. But the lease that the committee has seen was signed by Consolo in 2001.

Mr Gordon: Do you want a copy? You have got a copy.

THE CHAIR: You are saying that that is actually the commencement of the lease?

Mr Gordon: If you like, I could find that lease. We could contact the titles office and get it and have the complete record.

THE CHAIR: I think the committee will probably have to do that. But that clarifies the position that there may be some elapsed time between when the lessee signs the lease and when it is signed off within the agency. But the first date is the commencement date?

Mr Gordon: Yes, and I think also—and it probably has not occurred on these ones—that there is opportunity for anyone that has a lease to then seek to extend it to the full term again. And you can, even in a residential sense, I think, go about doing that. It could have occurred like that.

THE CHAIR: Could I ask about block 418, which was not acquired? It is the National Equestrian Centre. However, you said that in December 2014, the LDA board minutes indicated that we should pursue block 418. Were you involved in any discussions with the lessee of block 418?

Mr Gordon: I think that there were two occasions where I may have met the owners with the CEO and more recent—that was in the LDA timeframe.

THE CHAIR: Back in the day.

Mr Gordon: In the SLA, I think there was a conversation, through a phone call, about the interest in the property. I directed him to EPSDD to have a discussion in that regard.

THE CHAIR: The lessee approached the government more recently—since the SLA has been formed?

Mr Gordon: Yes, I think it was, “Who would I talk to?” because the SLA is not necessarily functioning in that same role as the LDA was doing in terms of—

THE CHAIR: Acquisition.

Mr Gordon: Acquisition; there is a policy framework, I think, in 2017. But it requires a lot more of government to be involved in that decision-making process.

THE CHAIR: Thanks for that. I go back to the meetings that you attended with Mr Dawes to discuss possible acquisition of the National Equestrian Centre. Do you recall roughly when that was?

Mr Gordon: No, I could check back in my diary and have a look.

THE CHAIR: Thank you, that would be good.

Mr Gordon: But it would have been—I am just thinking. The LDA ended in mid-17; so it would have been roughly the end of that late 16-17 sort of period, I think.

THE CHAIR: It was put to us by Mr Dawes—you may have been at this meeting—that the owner was entertaining an offer from a third party and that Mr Dawes was shown a letter from the third party which had a figure that they were entertaining. Mr Dawes’ view was that the LDA could not afford to match that figure. Do you recall that?

Mr Gordon: Not specifically that there was an offer from a third party. I know that the owner had a view of what the property was worth. I think Mr Dawes might be talking about more recent dealings that the owner might have had. But at the time, I would not have necessarily been aware—

THE CHAIR: What was the ballpark figure that we were talking about back when you were having these discussions with Mr Dawes?

Mr Gordon: I think at the time our position would have been around that \$10 million or so for that property. It could have been a few million more, but it certainly was not, I think as Mr Dawes said the other day, in the high 20s or 30s, or whatever it was.

THE CHAIR: Mr Dawes said that he thought it was on the market at the moment. But at the time when you were discussing this with the owner of the National Equestrian Centre, what were the figures that were being discussed with him?

Mr Gordon: I would have to go back to have a look at exactly what he was seeking—

THE CHAIR: That would be handy, thank you.

Mr Gordon: Yes.

THE CHAIR: Do the board minutes reflect a range of prices for the National Equestrian Centre? Certainly, you said that the board, in relation to Milapuru block

19, said five to 10.

Mr Gordon: No, they do not mention a price. But I think there must have been an earlier paper. They just talked generally about the land values. There were some values in there but in this discussion, no there was not in regard to either of those properties.

THE CHAIR: You did say before that your recollection was that the range for Milapuru was between five and 10?

Mr Gordon: No, that is in the minutes, yes.

THE CHAIR: That is in the minutes?

Mr Gordon: That is in the minutes for Milapuru. I think with the others it is more the sense that the board is seeking, "See if you can find out if the other parties are in that area."

THE CHAIR: Okay, yes.

Mr Gordon: Then the discussions, I think, with—is it 418? I think it is 418.

THE CHAIR: It is 418, which is the National Equestrian Centre.

Mr Gordon: Yes, that is then having the discussion: is that in a feasible band in which people would think that that is value for money? The owner probably had some figure and then what we were working with was somewhat less, given what we were paying for the adjacent properties.

THE CHAIR: But it is also a much larger property than Milapuru?

Mr Gordon: Yes, but I think that probably when you equate that back to a per hectare rate it may have been considerably more.

THE CHAIR: So you were present at some discussions but discussions did not go anywhere. You do not recollect off the top of your head, but you may have access to what figures were being discussed at that time?

Mr Gordon: Yes, I will have a look.

THE CHAIR: That would be great, thank you.

MS CHEYNE: Do you recall why the agreed rent for Huntly ended up being substantially higher than the estimate?

Mr Gordon: I do not know why but it is not uncommon that when you go to the market with something you have an idea of what a price may be. Typically, if we sell a parcel of land, we will have a reserve; you go to an auction or a tender and you get significantly above. So people apply different values to what you may have determined to be the values, or the advice that you have determined to be the values.

In this instance I think they went to tender, a market tender. Obviously, someone thought there was significant value in it. That would be why it was above I would imagine.

MS LAWDER: Can you confirm whether it was usual for most of these rural land purchases to be off market?

Mr Gordon: In this instance, yes. Where people are contacting us, yes. It—

MS LAWDER: I mean more generally across all of those rural—

Mr Gordon: Look, in the broader industry, I suppose, no. Since we have acquired these, I think there were a couple down towards Tharwa that had gone on to the market. They engage an agent. They have a good idea of what they think the value is. They advertise it *Domain* and in other areas to attract interest. I presume that in most circumstances people would go through a market process.

MS LAWDER: I want to go back to Fairvale briefly, the one that was split. It does say somewhere in the Auditor-General's report that Mr Dawes had said that his first response about the proposed subdivision was no. Then he thought again about it. There are a few other points in the Auditor-General's report about the subdivision and how unusual it was, things like, "Can you check the proposed subdivision?" There are all sorts of things in the Auditor-General's report—

Mr Gordon: Yes.

MS LAWDER: that I am sure you have read at some point. Can you, from your experience, give us examples of other subdivisions of rural properties that have occurred as part of a sale to the LDA?

Mr Gordon: No, not specifically that there would be one like that. But again, I think that the auditor is focusing on something. But David was in those discussions and, as he said, he probably clearly had a view that he would like to acquire the property. But it is the owner who is making that decision about how they would like to proceed. Look, this was not pushing people into a position to sell—

MS LAWDER: No, I understand that. I guess my point was more about Mrs Dunne's previous point about whether or not subdivision was allowable under the lease—

Mr Gordon: Yes.

MS LAWDER: and how common it may be.

Mr Gordon: Yes. The subdivision of leases and things I think is probably a question for the planning authority because they would be across all of that wealth of information. In our circumstances, I think that Fairvale was unique, but not unique in the sense that people would surrender land and seek compensation through a sale.

MS LAWDER: Yes, because the auditor's report also says at paragraph 3.135:

No other information or documentation was evidenced for ... the circumstances in which officers of the former Land Development Agency agreed to the subdivision of the property during negotiations for its purchase.

Mr Gordon: Yes, so they are talking about the specific negotiations with the individual, which the CEO attended and negotiated that position of: yes, you can subdivide.

THE CHAIR: Could I also touch on—and I am conscious of the time—the sale of Wintergarden. Did you have any involvement in the sale of Wintergarden?

Mr Gordon: Yes.

THE CHAIR: Did you attend the auction?

Mr Gordon: Yes. I am glad you raised that because I was a bit concerned about the comments made by the two individuals.

MS CHEYNE: Yes, this is your chance.

Mr Gordon: They were extraordinary comments, but I can understand that they are emotionally taxed, regarding what has happened within the family. The son had been appointed to look after the property and had gone down that path of the sale. But the assertions that there were some discussions by me or the other officer from the LDA with people bidding at the auction are absolutely false.

THE CHAIR: You are saying—

Mr Gordon: Absolutely false.

THE CHAIR: The witnesses the other day essentially said that the LDA poisoned the waterhole.

Mr Gordon: Yes, which is extraordinary.

THE CHAIR: You can categorically say that there were no discussions with potential bidders—

Mr Gordon: No discussions at all.

THE CHAIR: that you would acquire the land—

Mr Gordon: No, not at all.

THE CHAIR: at some stage in the future, if you wanted it.

Mr Gordon: Not at all. We attended that auction; there was a small crowd there. The only conversations we would have had would have been with agents that we knew that were in the real estate industry. A number of people go along to these auctions. There are greetings like “hello”, and that is about it. But no intent—

THE CHAIR: Why did the LDA attend the auction? You were not a bidder.

Mr Gordon: We were a bidder.

MS LAWDER: You were a registered bidder?

THE CHAIR: You were a registered bidder?

Mr Gordon: Yes, and we bid.

THE CHAIR: You did bid?

Mr Gordon: Yes.

THE CHAIR: Who did the actual bidding?

Mr Gordon: The officer that attended with me.

MS CHEYNE: Who was that?

Mr Gordon: That was Stephan Docherty.

MS LAWDER: Did it go past your cap; is that what happened?

Mr Gordon: Yes. We had previously discussed this acquisition with the board. The board agreed to an absolute limit that we would bid at the auction.

THE CHAIR: Which was?

Mr Gordon: I would have to check the exact number. I think it was around \$3.5 million for the property. I think the last bid they got was at \$3.6 million. I do not think we actually got to our cap. Someone bid above us, anyway, so we did not proceed.

THE CHAIR: You did not bid to your cap but you were still the underbidder?

Mr Gordon: No, the other party were the underbidder because they did not get to the reserve.

THE CHAIR: So there was a reserve. Did you know there was a reserve?

Mr Gordon: At most auctions there is a reserve, yes.

MS LAWDER: Why didn't you bid again?

Mr Gordon: Did I know the reserve? No.

MS LAWDER: Why didn't you bid again, if you still had money within your cap?

Mr Gordon: Because the other bidder had bid above our cap in their bid.

MS LAWDER: So you bid \$3.6 million, then they bid—

Mr Gordon: No, we did not bid \$3.6 million. I think—

THE CHAIR: You bid something less than the cap and then—

Mr Gordon: Yes, something less than \$3½ million.

THE CHAIR: the next bid was higher than your cap, but that still did not reach the reserve?

Mr Gordon: No, it did not reach the reserve.

THE CHAIR: You are saying that you categorically deny the accusations made—

Mr Gordon: Absolutely. They are extraordinary comments, but I can understand that they are in the position they are in. They did not attend the auction, so I do not know where they got that information from. It might be of interest to ask who provided them with that information. Categorically, in no sense did we discuss with other bidders the intentions of government.

THE CHAIR: Thank you very much for your attendance here today, Mr Gordon. There are quite a few things that you said you would look into and see if you could refresh your memory. When you get the transcript, that will all be laid out for you. There will be a transcript, and if there are things that need clarification with the committee, you can take those up with Dr Lloyd. Thank you very much for your attendance here today.

DIETZ, MR JOHN, Chief Executive Officer, Suburban Land Agency

THE CHAIR: We welcome Mr John Dietz, the Chief Executive Officer of the Suburban Land Agency. Mr Dietz, have you had an opportunity to read and understand the privilege statement?

Mr Dietz: Yes, I have.

THE CHAIR: Mr Dietz, when did you start in the Suburban Land Agency?

Mr Dietz: In November 2017.

THE CHAIR: The blocks of land that are the subject of this Auditor-General's report are now the management responsibility of the Suburban Land Agency; is that correct?

Mr Dietz: That is correct.

THE CHAIR: Is there any thinking in the Suburban Land Agency about the long-term future of those blocks of land?

Mr Dietz: There is, but I will reiterate the remit of the Suburban Land Agency. Essentially, in its creation, it is the government's delivery organisation, and we are to deliver on the government's needs for land. We are not so much responsible for the future planning or strategic direction of where that land may come from. Currently, that is occurring within EPSDD.

THE CHAIR: Your remit is quite different from the LDA's, in that it is—

Mr Dietz: The creation of the SLA had very specific wants out of that creation. Part of it was to define its remit as the government land delivery organisation.

THE CHAIR: But not the government land acquisition or strategic thinking organisation?

Mr Dietz: All of the strategic planning comes from within EPSDD. We may implement land acquisitions. However, the land acquisitions and the process required for a land acquisition are as per the direction from the minister in 2017 about how that would occur. The SLA can still acquire land. If we do acquire land, it goes through a very significant business case. There is consultation between the directors-general of TCCS and EPSDD, as well as the Under Treasurer, before that would go to the minister for a recommendation.

MS LAWDER: Have you acquired land through that process since you have been there?

Mr Dietz: No. I will be quite specific. The SLA has not approved the purchase of any land. There has been some land which has completed the process while the SLA was in the process. The settlement of land has occurred under the SLA.

MS LAWDER: If the SLA does not purchase that land, is there another entity that can or does purchase land?

Mr Dietz: I am probably not the expert to know that. There are probably other parts of government that could participate. I would be surprised if any future major rural land acquisition did occur by any department other than the SLA, though. I think the direction that we have would allow us to do it.

THE CHAIR: When you say that you finalised transactions which were in train, were they rural lands?

Mr Dietz: Yes.

THE CHAIR: What were they?

Mr Dietz: They were the Vines and Wagtail. Both of those had been approved by the LDA board. Essentially, the contract of exchange had occurred. The settlement of those did not occur until later, when the SLA was in existence.

THE CHAIR: This is extraordinarily hypothetical. You say that the SLA has the capacity and the powers to acquire rural land and you would be the agency most likely to do so.

Mr Dietz: In my opinion, yes.

THE CHAIR: Are there any on the horizon?

Mr Dietz: None that are going through the formal process that is required under an acquisition direction.

THE CHAIR: But there is the contemplation of some acquisition?

Mr Dietz: Yes. I think that, in the day-to-day business, certain contemplations do occur. To be quite open, with the previous one you talked about, the National Equestrian Centre land, since I have been the CEO of the SLA, I have been approached by the owner of that land, to see if government wished to acquire.

MS LAWDER: Theoretically, if that were to happen, do you then pass that back to EPSDD in terms of a strategic approach or would you be able to manage that within your remit?

Mr Dietz: Probably beyond; theoretically, we would be working hand in hand with EPSDD. Under the acquisition direction, we would probably take control of the process that is required. However—

THE CHAIR: So you would be the lead agency?

Mr Dietz: In that particular case, yes, we would be the lead agency, to ensure that the processes were required. However, much of the business case that is required does require strategic planning direction. A lot of input would have to come from

EPSDD in that particular area.

MS LAWDER: Theoretically, if it was somewhere else other than that rural land west of the Molonglo and Cotter Road area, if it was in a completely different area, say, down in Tuggeranong, where it would be a strategic decision, if someone there approached you, again, would you be able to follow that through or does it go to EPSDD? I am talking about a new area.

Mr Dietz: Even in a new area, the land acquisition direction is an SLA land acquisition direction, so we would be taking control of that. With the processes that are required, we would be managing each step. The very first step in one of those would be a discussion between me and probably the Director-General of EPSDD to understand whether that particular land is even in an area that government may wish to consider.

MS LAWDER: Yes, that is what I am getting at, that strategic approach.

Mr Dietz: Yes. Although we may be the lead agency for the process that is required, the direction does ensure that there is significant collaboration between agencies.

MS CHEYNE: It seems from the evidence that we have heard that what happened historically was a bit haphazard or inconsistent in terms of the different approaches and how things all came about. In the circumstances, it appears from the evidence that we heard last week that officers, despite wanting the land, were not exactly expecting that that land was going to become available, or that the owners were as interested in selling it as quickly as they were. I refer also to the design of how some things in the LDA were operating. Has the SLA adopted a new process or guidelines, a step-by-step guide in terms of saying, "If we are looking to acquire a substantial piece of land, these are all the things that need to happen and things that need to be ticked off to do that"?

Mr Dietz: I probably do not have an opinion on what happened before the SLA.

MS CHEYNE: Yes, that is fine.

Mr Dietz: But from the time that SLA was created, it did have the luxury of knowing its remit and of knowing the required outcomes of what it was doing. We were able to go through a significant analysis: did we have the skill set? Do we have the policy? Do we have the processes required to do so?

A number of initiatives have been put in place to ensure that, as you say, a step-by-step process is known and understood, even down to the way we have structured our organisation now. We have ensured that there is a rural lease management team. I am not sure that that was in place previously. There was an estate presentation team and a rural management team. To ensure that there is absolutely clear accountability and responsibility from those who are managing our subleases, through an executive director through to me, it is fully known, understood and appropriately resourced.

Yes, I am happy that they are in place. There is a step-by-step process as to how to

achieve evaluation instruction. We now have policies in place, and standard operating procedures that sit underneath that policy. The whole-of-government valuation scheme is essentially the panel that we would go through. We go through a whole-of-government portal to ensure that the instructions are appropriate and that there is clear and transparent knowledge of that tender and the work order that goes out. I am confident that we now have things in place to ensure that things happen appropriately.

THE CHAIR: Let us go to the issues of land management. Last week we heard evidence that one of the lessees who surrendered his lease went through a tortuous and ultimately unsuccessful process of trying to acquire a sublease on the land that he had previously farmed. There is considerable discussion in the Auditor-General's report about failure to put in place land management agreements, failure to put in place sublease agreements and failure to collect rents. You are now responsible for all of these tranches of land. Is there a land management agreement in place for every one of the properties listed in the Auditor-General's report?

Mr Dietz: Yes, there are land management agreements in place. I note that we are looking to update the land management agreement for Huntly and we have had negotiations with the sublessee there but have not yet agreed on the final wording of that land management agreement. So there is an updated land management agreement for Huntly that is not yet in place. While that is not in place, it is my understanding that the original land management agreement at the time of tendering exists.

THE CHAIR: Huntly went out to tender. Did the SLA do that, or was that done by the LDA?

Mr Dietz: No, that happened under LDA.

THE CHAIR: Of course. So you acquired that land management agreement and you are in the process of renegotiating it?

Mr Dietz: Yes.

THE CHAIR: Milapuru, block 19: is there a land management agreement in place over that?

Mr Dietz: Yes, there is a current land management agreement.

THE CHAIR: And is rent being received?

Mr Dietz: I might just make a distinction about a sublessee arrangement and a land management agreement. A land management agreement may be in place but there may not be a sublessee in place. For Milapuru at the moment we have an agreement which is a short-term agreement with someone who is to manage the land. We are also going through a process to obtain the appropriate agronomist information to ensure that we fully understand the paddocks, to ensure ABCD so that we can go out to tender with all of the appropriate information to get a longer term sublessee. For Milapuru we do not have a sublessee. We do have a short-term agreement in place, and that short-term agreement ensures that the land management agreement is being

enacted.

THE CHAIR: So somebody is essentially agisting the property, or what?

Mr Dietz: Yes.

THE CHAIR: There is cattle on it and they have responsibilities for maintaining the paddocks and stuff like that?

Mr Dietz: That is correct.

THE CHAIR: And that is a short-term lease?

Mr Dietz: Yes.

THE CHAIR: And you are looking to put it out for tender for a longer period?

Mr Dietz: You are right. We would look at more like a 10-year type period.

THE CHAIR: I think it is block 418 which is the remaining residual part of Fairvale. I am going clockwise.

Mr Dietz: That one is where we have a licence agreement for grazing on that particular land. It is not the same as a straight sublease type agreement, the licensing agreement. That licensing agreement does also ensure that the land management agreement is being enacted appropriately.

THE CHAIR: Is the lessee of 517 licensed to graze on 518?

Mr Dietz: That is my understanding.

THE CHAIR: Winslade?

Mr Dietz: Winslade has a current land management agreement and a current subleasing agreement.

THE CHAIR: So there is a sublease in place?

Mr Dietz: Yes.

THE CHAIR: There is someone resident on the property?

Mr Dietz: I believe so. I can check that for you.

THE CHAIR: Is rent being gathered in, or is it a peppercorn rent?

Mr Dietz: I would have to check that detail as well.

THE CHAIR: Great, thank you. Huntly we have touched on. There was a tender arrangement and someone is managing, subject to review of the land management

agreement, all of the property that was known as Huntly?

Mr Dietz: Yes.

THE CHAIR: All of the individual leases?

Mr Dietz: Yes, that is right. There is a sublessee in place there.

THE CHAIR: There is a sublessee in place over the whole however many hectares?

Mr Dietz: That is correct.

THE CHAIR: Wagtail Park?

Mr Dietz: Wagtail, which is—

THE CHAIR: Stockdill Drive.

Mr Dietz: I think it is named something a bit different here. Wagtail is actually one that we have bought as an easement.

THE CHAIR: But it is a big block. It is not all subject to the TransGrid easement, is it?

Mr Dietz: I think that in that particular case, where the land management agreement is required we are managing that ourselves as SLA, our rural management team. That is something I would like to take on notice, just to confirm the detail.

THE CHAIR: Yes, sure. But if you are managing it yourself—it is not your core business. Is there cattle on it, or are you just—

Mr Dietz: No, it is for short-terms periods; bushfire is another example, where the land management agreement ensures that the bushfire operations plan is in place. In certain circumstances it is up to us to ensure that the bushfire maintenance is happening.

THE CHAIR: With Wagtail Park, perhaps when you come back on notice, there is the bit that will be part of the electricity easement—will be or is. I have lost track of where the electricity easement is. Is it complete, or is it still in the—

Mr Dietz: I know they are putting in some of the infrastructure further north. I do not think they have gone through the process to fully put the substation in yet.

THE CHAIR: Is the electricity easement going to be hived off from the rest of the lease and have a separate lease over it?

Mr Dietz: Yes, absolutely. That land is provided to the utility. It would no longer be—

THE CHAIR: So it then becomes a lease that the utility manages?

Mr Dietz: Correct, so we are no longer custodian of that.

THE CHAIR: And that is the same with part, or all, of The Vines?

Mr Dietz: I understand that it is most of The Vines, but I would like to take that on notice as well.

THE CHAIR: And presumably the top part of Pine Ridge as well?

Mr Dietz: Correct.

THE CHAIR: And at Pine Ridge the previous lessee is now the sublessee on a peppercorn rent?

Mr Dietz: That is correct.

THE CHAIR: And Wintergarden is the same: the previous lessees are now the sublessees on a 10-year peppercorn rent arrangement?

Mr Dietz: Yes, you are right. The Wintergarden one has four sublessees involved. There are three that are across the main assets within the property and then one for the main property.

THE CHAIR: The main property is the residential part?

Mr Dietz: No, the main land area of Wintergarden.

THE CHAIR: That is right: there are a number of leases over Wintergarden. Could you, perhaps on notice—I thought there were three leases on Wintergarden—

Mr Dietz: I understand that there are actually four. But I will take it on notice to detail those.

THE CHAIR: That would be great, thanks.

MS CHEYNE: I want to ask about what has become a bugbear, I guess, which is this \$300,000 unsolicited advice that was paid for. I know you have nothing to do with it but I want to ask how SLA conducts business now in terms of unsolicited advice and how things are paid for and who signs off on things. I think that that sticks out to us as a bit of an anomaly. Does the SLA have a policy of receiving unsolicited advice?

Mr Dietz: We do not have a policy of receiving unsolicited advice. We definitely have procurement policies which can ensure that we go out appropriately to market for what is required. Those policies are definitely in line with the Procurement Act to ensure that, under those regulations, if it is under \$25,000 we are getting at least one quote and if it is between \$25,000 and \$200,000 we are going out for three quotes et cetera. That is also reflected in our delegations matrix, which also then ensures that, if you have produced a procurement or if you have completed a procurement, then under the delegations matrix these particular people have the authority to sign off on a

procurement.

Payment against the procurement is also governed by certain policies in the SLA, most notably, the chief executive financial instructions, CHEFIs. CHEFI No 2 deals with the payment against particular procurements. In those cases the CHEFI is to ensure that a purchase order is in place, that you would not be paying against something without a purchase order if it is of the appropriate magnitude and that the appropriate people are signing off, based on the delegation for those transactions.

MS CHEYNE: And if unsolicited advice comes the SLA's way, what is the process for dealing with that?

Mr Dietz: We have had some good discussion in the SLA and with our board.

THE CHAIR: And paying for it, more specifically.

MS CHEYNE: Yes. They might not accept it.

Mr Dietz: I am quite open in understanding when it should be deemed unsolicited advice and understanding when it is industry information. That is also something which almost then gets into our gifts and benefits-type register. There are often people who get invited to an industry lunch and at that industry lunch there might be sandwiches. We would see that as not being unsolicited advice but we see that as part of probity in ensuring that we have attended something; we have eaten the sandwich; we catch that in our gifts and benefits process, and that is where the greyness could come in. Is it unsolicited advice, is it a gift, is it a benefit?

Anything above \$50 is actually then required to be approved within gifts and benefits, even outside of SLA, going to a HR area within EPSDD. They keep a register, those sorts of open discussions of whether it is a gift or benefit and if it is beyond \$50 it will be definitely adhered to.

THE CHAIR: That means that if you as the chief executive are invited to a boardroom lunch, chewing the fat, that goes on the register?

Mr Dietz: Yes.

THE CHAIR: Even if it is a working, sandwich lunch?

Mr Dietz: Yes. We talked about the gifts and benefits register. If I went to something that was nothing but just discussion, no, that would probably just be deemed a meeting. If I went to something where there were sandwiches or something, then yes, I register that. It gets approved. The CFO actually approves it within the SLA to note that there is a—

THE CHAIR: When you say “approves it”, before you go or afterwards?

Mr Dietz: Before I go.

THE CHAIR: Before you go?

Mr Dietz: Actually I have got a great example. In another couple of weeks I have been invited to a breakfast meeting to discuss change, organisational change, and the challenges in today's society when there is repeated change through organisations. That goes for about two hours, from 7 till 9 o'clock, and there will be breakfast at it. Before I accepted that I had approval from my CFO that that was appropriate business to attend because the breakfast probably adds up to, I do not know, \$50 or so.

THE CHAIR: That is part of your deciding to put something in the diary. That process happens before you would actually make a decision about whether or not—

Mr Dietz: Yes. And that example is in train. I sent an email to my CFO with what the event was. The CFO said yes, that is an appropriate thing for me to attend. That then initiates a process of the gifts and benefits register, which has a form which ends up going through what it is, roughly how much it might be. I am required to sign that form and it is kept within a register under the HR area of EPSDD.

In relation to your example of other steps and things in place, these are the steps and things which are really around changing culture and ensuring that we have got the right culture in the organisation to—

MS CHEYNE: Probity and transparency?

Mr Dietz: Correct. Yes.

MS CHEYNE: If someone walked over to a CFO with an invoice and said, "This is overdue. Can you pay it right now", what would now happen in the SLA if that were to occur?

Mr Dietz: Firstly, if the CFO was to pay in those circumstances they would essentially be going outside of policy because that would have had a purchase order at that particular amount. If that were to occur, to go outside of policy, it would have to be something that would come to me. I would think it is the chief executive financial instruction. The CFO would come to me. We would discuss the particular situation. It is getting very theoretical as to what might happen in that particular case.

MS CHEYNE: But in terms of assuring us—

Mr Dietz: It would not happen in the normal events process and if it did happen then there would be an investigation by me as to how we got to that point. Yes.

MS LAWDER: On that—I am sure it was presumed it could not happen in the LDA as well; there are processes in place in most organisations—in the very unlikely event that it did happen, how would it be picked up and at what point? A week later? A month later? A year later? What is the audit and review process?

Mr Dietz: We have what are deemed as essentially a second and third line of defence. We look at things like fraud and regarding probity there. In restructuring the organisation, we have an operations area. That operations area essentially has our solutions, which are run by the deputy CEO, and we have project directors, who are

essentially delivering. They use the assets from the solutions area.

Separate from that operations area, we have an agency governance and process area, which reports directly to me. We have an agency secretary. Her responsibilities are both to ensure that the board has the appropriate information and to ensure that the business processes are appropriate. Therefore, the policies and the procedures are being governed by someone outside the actual operations area.

Thirdly, we have our chief financial officer, who runs the finance team, who are looking at all the transactions. They are the third line of defence to ensure that if they observe something that does not look right, again it is picked up at that particular point in time. That happens on the financial transaction processes on a monthly basis as they go through.

MS LAWDER: When does that take place? Is it a daily thing?

Mr Dietz: Yes. They are instigated by the transaction itself. As to when that process occurs, I think it is essentially on a monthly basis that they are ensuring that all the accounts are reconciled. I can take that on notice.

MS LAWDER: Do they look at every single transaction and ensure that there is a purchase order, it has been signed, the people signing it have the appropriate delegations, and all those things.

Mr Dietz: I am happy to take on notice the actual process that they would go through, whether it is looking at every single individual, and to what extent they look at every single individual. Another area that we would see is, the risk area for fraud is on the variations to contracts. That is something where we have had, again, good discussions with the executive, good discussion with the board, to ensure that we have appropriate processes in place.

Firstly, the delegations ensure that the approval of variations to contract occur at different levels of seniority. But, secondly, there is a periodic report of all variations within the company that goes to the executive team on a periodic basis so that we can see any trends or things that might be occurring inappropriately.

MS LAWDER: If there was one event or a series of events where, for example, transactions were approved without purchase orders, without appropriately signed purchase orders, who would be told about that? Is there a level, a threshold?

Mr Dietz: There is a level. If I remember rightly, under \$10,000, a purchase order is not required. It does depend on the size of the transaction. If an issue was found, there would first be a discussion between me and the area that found it. It would probably either be the CFO or the agency secretary. That discussion would probably occur with us as a triad, between myself, the agency secretary and the chief financial officer. If we felt that we had found something, it would then be for us to understand the players involved to see if there were an issue. At that point, we would probably bring in the manager of the person to let them know: "Hey, we found this particular issue." Then, depending on the severity of it, we would be talking with the person to understand what the issue was.

MS LAWDER: Say you had a delegation up to a million dollars. Does that include, say, 10 payments of \$90,000 to the same person or entity? Does that raise a flag anywhere?

Mr Dietz: Yes.

MS LAWDER: So even though it is within the delegation, each individual transaction—

Mr Dietz: I think the point you are getting to is the disaggregation of contracts to get under delegations. That is a known possibility. Our chief executive financial instructions specifically say that you are not to disaggregate contracts for that purpose. It would be through the delegations of someone going up to their manager to have it approved, and through the second and third lines of defence, that we would look to be picking up those sorts of things. But it is very known that it is inappropriate to disaggregate contracts just for the purpose of getting under delegations.

MS LAWDER: And that would also apply to there being no need for a purchase order under \$10,000 if it was disaggregated?

Mr Dietz: Yes.

THE CHAIR: I am not sure whether this is in your remit, Mr Dietz. Currently you have this fairly large portfolio of land to the west of Weston Creek and northern Tuggeranong into Belconnen. Are there plans to do anything with it apart from just manage the land?

Mr Dietz: Our immediate plan is to manage the land appropriately as custodian. You are right that the actual strategic planning that is required for the further mid and long-term intentions for that land is outside our remit.

THE CHAIR: Who does that?

Mr Dietz: It happens within EPSDD.

THE CHAIR: It is a large parcel of land. Some of it is residential capable and some of it not so much.

Mr Dietz: Yes.

THE CHAIR: It is presumably not as continuous as the original, especially the Stromlo strategy, had in mind. Is it, in your view, a valuable asset for the territory?

Mr Dietz: Absolutely, yes. I do believe it is.

THE CHAIR: A valuable long-term asset?

Mr Dietz: A valuable long-term asset. Land in the territory, just based on its physicality, is restricted over time. I think that over time, to provide the community

with the diversity of choice that is required, the ability for government to own assets like that is a big benefit.

THE CHAIR: Is it necessary that the government own it? Given that in a sense, to some extent, rural leases were looked at as a land bank for the future, is it necessary that the government should own it? Is it only necessary that the government have appropriate land acquisition policies?

Mr Dietz: And perhaps talking a bit more opinion here—

THE CHAIR: Yes.

Mr Dietz: I think the lease agreements were generally 99 years. It was not as if they were about to age out quite within the time frame that we are looking at. If the acquisitions were to occur under the Land Acquisition Act, then my knowledge of the act is that you essentially need to ensure that you have attempted all commercial negotiations that you can to acquire the land prior to using the acquisition act. Either resumption or compulsory acquisition under the act has to be for a public purpose. Currently I would not be convinced that just land development would come in under that criterion of a public purpose.

THE CHAIR: Would constitute a public purpose? Thank you.

Thank you very much for your attendance here today. You will receive a proof transcript. There are a number of things that you said you will take on notice, which will all come up through that. If there is anything that you need to clarify with the committee, you can do that in the first instance through Dr Lloyd, the committee secretary.

Hearing suspended from 11.59 am to 3.30 pm.

BARR, MR ANDREW, Chief Minister, Treasurer, Minister for Social Inclusion and Equality, Minister for Tertiary Education, Minister for Tourism and Special Events and Minister for Trade, Industry and Investment

MINERS, MR STEPHEN, Deputy Under Treasurer, Chief Minister, Treasury and Economic Development Directorate

PONTON, MR BEN, Director-General, Environment, Planning and Sustainable Development Directorate and Chief Planning Executive

THE CHAIR: I now resume the hearings and welcome the Chief Minister, Mr Barr, and his officers to the table. Mr Barr, you have read and understood the privilege statement?

Mr Barr: Indeed, yes.

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

Mr Barr: No.

THE CHAIR: This report that the committee is inquiring into relates to the assembly of rural land to the west of Canberra. It was put to the committee by a number of former officials that the genesis of this project, or process, came from a strategy meeting of the LDA board, or a regimen.

MS CHEYNE: A planning day.

THE CHAIR: A planning day, yes, sorry. I did not think that was quite the right term. Various officials were charged with looking at the land supply pipeline and how long it would last. As a result, there were papers presented to the LDA board. Our understanding is that it was in May 2014 and soon after that it was referred to the strategic board—the heads of agencies—and then after that a similar paper was referred to cabinet. My understanding is that at the meeting of the LDA board on 1 May there was a paper called “Future greenfield land supplies, a series of scenarios and options”.

Given the importance of this issue, the board requested a quarterly update on activity supporting the development of a sustainable long-term planning pipeline. The board also noted the analysis of greenfield land supply in the territory and the intention that the information be provided to the strategic board and the urban development subcommittee of cabinet. Our understanding is that soon after this meeting in May this went to the strategic board and after that there was a cabinet submission drawn up and the issues went to cabinet.

Chief Minister, for your information, the LDA board minutes from 2013 to 2017 which are on the public register, the FOR register, are not complete. Can you talk us through the cabinet proposal and, within the constraints of cabinet confidentiality, what happened with that submission?

Mr Barr: I can take that on notice, I am not in a position to talk you through the cabinet discussion. That is not appropriate. I can ask Mr Ponton to give some background in relation to the planning work that preceded those dates, that go back to

2012, in relation to the planning and construction work there. If there are specific questions in relation to cabinet, I can seek some advice on what is releasable or not. But I do not keep a verbatim record—

THE CHAIR: I understand that.

MS CHEYNE: We could probably give some context about what we have been told by Mr Stewart and Mr Dawes, which was that this paper got topped and tailed and eventually went to cabinet.

Mr Barr: Possibly a cabinet subcommittee, by what—

THE CHAIR: The minutes seem to indicate a cabinet subcommittee but the evidence from Mr Dawes and Mr Stewart indicated it went to cabinet.

Mr Barr: They may not be distinguishing between a subcommittee and a—

THE CHAIR: And that may be a thing that does need to be distinguished.

Mr Barr: I will check the record in relation to whether it was a subcommittee or a full cabinet, or possibly both, in terms of that particular paper. Just to confirm, this is the paper that went to strategic board?

THE CHAIR: Yes.

Mr Barr: When from?

THE CHAIR: Sometime after 1 May.

Mr Barr: LDA planning day, to strategic board into a cabinet process, sure.

THE CHAIR: Soon after 1 May 2014.

Mr Barr: Okay.

THE CHAIR: And if it did go to a cabinet subcommittee, who were the members of the cabinet subcommittee?

Mr Barr: Sure.

MS CHEYNE: Mr Stuart said last week there was a cabinet decision that was drafted and finalised in response to the submission that was put forward, and my recollection is that cabinet did not share the concerns of the board at the time in terms of the greenfield pipeline—just for context. I do not need you to respond until you see that.

Mr Barr: Yes. But in terms of the origins prior to an LDA planning day, planning work was done some time in the years in advance of that. Mr Ponton can perhaps help and put some information on the public record about that.

THE CHAIR: Mr Ponton, could you indicate that you understand the privilege

statement?

Mr Ponton: Certainly. I do. In terms of when the land on the western edge first appeared in the planning strategy, that was in 2012. The planning strategy work was undertaken for several years prior to that in terms of a range of pieces of analyses and background studies that were undertaken. And it was building on the earlier spatial plan which was in the early 2000s.

THE CHAIR: 2002-ish?

Mr Ponton: About then, yes.

THE CHAIR: That large oval dotted line west of Canberra basically comes from that strategy?

Mr Ponton: Correct, yes. The 2002-3 spatial plan was looking at the city settlement in terms of distance from the city centre. As we shifted into 2012 there was a shift to looking, instead of these concentric rings, more at development being contained within the urban footprints, and that was when we first started talking about 50 per cent within the urban footprint and 50 per cent greenfield development.

In terms of the development within the existing urban footprint, you will see that in 2012 we started to also talk about the high densities along transport corridors. Even though there was a shift at that point to increase densities within the existing urban footprint, there was still a need recognised for greenfield development.

The planning strategy is a 20, 30-year document even though it is reviewed every five years. We need to do the thinking in terms of what might be 20, 30, even 40 years hence, which was why we had identified the western edge at that time as needing further investigation. We knew that in general terms it was likely to be urban capable. That was just from a desktop analysis. The next step ordinarily would be to undertake a series of detailed studies, and that was flagged initially in the 2012 strategy and has been identified also in the 2018 strategy.

You might ask why the work has not been done yet, and that is simply around priorities. Since about 2013-14, work was being done in relation to the minister's statement of planning intent in 2015. And we were starting to hear from the community that there was a strong desire for the government to focus on urban renewal activities. People were saying to us that they were quite keen to see increased densities provided, if it was done well. Our focus at that time was really looking at the work in the planning strategy that needed to be done to deliver on those particular aspects in terms of the increased densities, which meant that we did not do as much work in relation to the greenfield development.

Having said that, we have done quite a lot of work now in terms of increasing densities within the city, looking at tools available to us to improve development outcomes such as the capital city designer review panel and we are now moving to undertake the work for the western edge study.

It was also around timing. At that point there were still development fronts. In terms

of what is happening in Gungahlin, that is starting to ease. We have got Ginninderry. It is now timely that we start doing the work in relation to the western edge.

THE CHAIR: Chief Minister, with the Stromlo strategy of acquiring land along, essentially, the borders of the Cotter Road, if you look at the map of Canberra, it seems to make sense. Was there, at a ministerial level, sign-off that this was something that the LDA should be pursuing?

Mr Barr: Obviously, in the context of the process around land acquisition, and following that process, yes. In the context of the broader discussion around strategic planning for the territory, without identifying specific individual blocks and sections, the broader discussion that Mr Ponton has outlined does indeed reflect a pretty consistent approach to greenfield development locations that have been identified, through most of this century, actually. There is nothing new in the context that, ultimately, once particular development fronts have been fully developed, if there is to be any further greenfield development in the ACT inside the borders—

THE CHAIR: As I said it certainly makes sense, that area—

Mr Barr: That is correct.

THE CHAIR: to the west of Weston Creek and to the west of Uriarra but east of the Murrumbidgee; it does make sense. I do not think anyone says that the acquisitions do not make sense in a long-term strategic sense. What I am trying to get a feel for is the extent to which you, as the responsible minister, were in control of the arrangement. I am not saying you were saying, “Buy, buy, buy; sell, sell, sell.” Were you being kept informed that this was a strategy that the LDA was embarking upon?

It seems that the LDA minutes in December 2014, that were read out to us today, but not in the set of minutes that are on the FOI web page, actually indicated that there were particular blocks that the LDA should pursue, one where there was apparently a willing seller at the time; also that they should pursue other blocks in that area so that you would have connected, sequential acquisitions. To what extent were you, as the responsible minister, aware of that? To what extent was that discussed with you?

Mr Barr: The cabinet, the government, the whole operation—every department, the strategic board, every element of government—would have been aware of the long-term planning policies, stemming back to the mid part of the first decade of this century. From the point of view of the 2004 spatial planning exercise, these broader issues of future land supply have been canvassed. I would have had a much greater level of visibility on the strategic planning front for the period 2007 to 2011, when I was the planning minister.

Those concepts of where future urban growth would occur were the subject of both follow-on work from the 2004 spatial planning exercise, or the work that led up to the release of the spatial planning in 2004, and subsequent pieces of work. Obviously, the 2012 review that Mr Ponton talked about occurred after my time as planning minister. But the work started on that towards the end of a four-year tour of duty in that portfolio.

In terms of the LDA's activities, obviously, they reported their activities to me, to the cabinet and indeed to the strategic board, as it relates to specific land acquisitions that have been the subject of the Auditor-General's work. There was a process in place. According to delegations and authorities in relation to that, those were followed.

THE CHAIR: I am not disputing the policy thrust, and the policy thrust was longstanding. With this map, with that arch, that area there, as Mr Ponton said, that was in planning documents way back in 2002-03, so it was an established principle.

I think the committee has had mixed advice. What we were told last week by former officials was that when the issue of strategic acquisition on a greenfields front was raised with cabinet, the message that we got was that it was not a cabinet priority. Cabinet was not much interested in it. At the same time the LDA was out in the market acquiring land which certainly complies with the overarching planning policy, at a time when they are saying to us that the government was not much interested in that space. There is perhaps a bit of a disconnect there, and I am trying to understand.

Mr Barr: I am not certain exactly how that was characterised in the context. Cabinet is a collective body. If I have learnt anything over the past 15 years, it is that one person's recollection of a cabinet discussion can be very different from another's. That is why there is an official record. I will consult that in relation to specific decisions or otherwise.

Cabinet subcommittees, for example, are not decision-making bodies but they are opportunities for issues to be aired. It may well be that an official's recollection of a cabinet subcommittee discussion—not only ministers sit there; so do officials—is that there may well have been a variety of views expressed about the level of available land for future release.

MS CHEYNE: And the urgency.

Mr Barr: Some people may have been more relaxed or not. I can make the observation that most of the work and predictions that were undertaken in the first part of this century were predicated on much slower rates of population growth than have actually occurred. That extends to almost every official ACT government document. A lot of the time, though, in defence of those who prepare those documents, they were relying on data from the Australian Bureau of Statistics that, when a subsequent census occurred, our population was revised up, often by amounts that would equate to the equivalent of three or four years worth of population growth.

We have reached 425,000 people possibly 10 years ahead if not 15 years ahead of when some earlier demographic models predicted that we would. With that rate of compound population growth, if you factor in, for example, going back to 1995, growing at one per cent a year, it would give you a very different answer in 2020 than growing at two per cent a year. I think that is part of the discussion.

THE CHAIR: We are relying on the evidence of people who gave evidence last week who were relying on their memories, not on written records et cetera.

Mr Barr: Let me check the official record. That will probably help.

THE CHAIR: The advice was that there was not much of an appetite to pursue this, but at the same time that there seemed not to be an appetite to pursue this, the LDA was embarking on what has been characterised as strategic acquisition in this space. There is a bit of a disconnect.

MS CHEYNE: LDA had identified this parcel area of land that was on its target list. We are not quite clear about whether there was a “go ahead” or whether there was a “wait your time and let’s see what happens”. Mr Dawes said last week that there was a sense that they were going to bide their time but suddenly everything seemed to change when the Canberra Equestrian Centre was purchased. The LDA was thinking, “We’d better go and get Milapuru.” I am particularly interested in whether that is the correct characterisation in terms of what happened at those levels.

Mr Barr: I do not recall there being any red light to say, “No, do not acquire anything.” I do not believe there would be any official decision to that effect. But I will check the record. It may well be that there would have been a variety of views put about both the future prospects for population growth and land release activity at levels we were seeing in the first part of this decade; and, if that were to continue, what would be the available land supply?

One of the elements within the then LDA’s statement of intent, and indeed its operations, was to act commercially. Clearly, market opportunities could arise that were consistent with a broader, long-term planning strategy and provided future governments and the territory in the long term with options in an area that clearly had been identified, and options across a variety of fields. I note that the result of particular EPBC assessments certainly curtailed the quantum of land that was available for development in other locations, the need for offsets and all of those questions. People within government would legitimately have a variety of different views as to whether that trend would continue; how much land would be required, for example, for offsets as opposed to new greenfield development.

Perhaps the most useful thing I can do for the committee is to check the official records in relation to the issues. I will confirm, firstly, whether the matter went to a cabinet subcommittee, cabinet or both. It is regular practice for items to go to a subcommittee before coming to a formal cabinet meeting, or to go to a subcommittee and proceed no further.

MS CHEYNE: Mr Dawes and Mr Stewart had different recollections about the outcome of that. Getting that clarified would be helpful.

Mr Barr: That may reflect that they both attended one meeting and one or the other attended another. It is obviously many years on. Not everyone’s memory is absolutely perfect about who said what and when. From my perspective any of the actual land acquisitions went through a process according to the requirements. The LDA and its board had to act at that time under that legal structure with the Planning and Development Act and the relevant sections there. When the treasury was required to provide an assessment of any acquisition above the threshold amount, it did so and made a recommendation to either me or to cabinet in relation to those matters.

Treasury would also provide coordinating comments on cabinet submissions and sometimes even on presentations that would come to a cabinet subcommittee. Some presentations to cabinet subcommittees are done verbally; at other times they are done with a PowerPoint presentation or with a brief paper that might summarise issues but not seek an official decision of cabinet. One distinction I would draw to the committee's attention is that cabinet subcommittees do not make decisions. They can note presentations, but any actual decision must go to a full cabinet meeting.

MS CHEYNE: This might point to some of that evidence last week, particularly from Mr Dawes, who said he was not sure about a "don't do anything"; he thinks it was noted. We are just surmising here, but the LDA was kind of saying, "We think we're getting to a point where this acquisition of land is urgent," and almost seeking permission to go out and just do it. It seems to be characterised—

Mr Barr: Which, obviously, they did in relation to individual—

MS CHEYNE: Yes, but I think this precedes that. It was like, "We want to go and do it now," and everyone was thinking, "It's probably not top priority." But then the Canberra Equestrian Centre was sold and suddenly we went, "Okay, if land is going to start being on the market, please go."

Mr Barr: It was there, and I do recall a discussion with both the chair and the CEO of the LDA around the private sector acquiring land. That then became part of a broader process that included the LDA board, the strategic board, which comprises the directors-general of each ACT government directorate, and cabinet processes, be it a subcommittee or the full cabinet.

THE CHAIR: So moving on from those early decisions, to what extent were you briefed about LDA acquisitions generally and LDA acquisitions in this western corridor?

Mr Barr: I guess there would be briefings in relation to either seeking authority to undertake an acquisition if it was within the thresholds that were required under the instrument. In that instance I would generally receive a briefing from the LDA. Often that would contain the information or at least a cover letter that they had written to the Under Treasurer seeking treasury's assessment. After that assessment process, which would take weeks, they would then come back with a recommendation from treasury for those that were within the range of—

THE CHAIR: Apart from those one-off briefs in relation to a particular purchase, would those one-off briefs be set in a context that this is part of a strategy to acquire land west of—

Mr Barr: Yes, in the context of the previous discussions at a cabinet level, the strategic board discussions, the LDA board discussions—just to step back through that process. But none of it would be a surprise to me, because of my previous involvement as planning minister. Caroline Le Couteur may have labelled me, or I have labelled her, as a planning nerd. I know a few people who take a deeper interest in these things and would have gone back and had a look at the strategic context.

THE CHAIR: I have broken myself of that habit.

Mr Barr: You may well be in that category.

THE CHAIR: I think I am a recovering nerd.

MS CHEYNE: I do not know.

THE CHAIR: A recovering planning nerd.

Mr Barr: Mrs Dunne, you and I have been in this place now the longest of any of our colleagues. We have a history and a corporate memory going back nearly to the beginning of this century in my case and to the last century in your own

THE CHAIR: Yes, because I have a few years on you, Chief Minister.

Mr Barr: Only a few, Mrs Dunne.

THE CHAIR: What you are saying is that when these briefs came to you they were not a surprise and a one-off that would cause you to scratch your head and say, “What’s the context for this?” because there was enough context?

Mr Barr: Because there had been a series of discussions, that is correct.

THE CHAIR: But when you would have been asked to sign off on, say, Milapuru, because that was \$10 million, and cabinet would have been asked to sign off on Huntley, because that was \$10 million, they—

MS CHEYNE: I thought Milapuru was \$7 million.

THE CHAIR: Yes, sorry. When those came up, they would have been contextualised but also you had enough context to be going on with anyhow. So none of it was a surprise to you?

Mr Barr: No, not in terms the broader planning strategy, the discussions around land supply, the context of more rapid population growth and then, obviously, on the individual properties, the advice of the treasury.

THE CHAIR: In these purchases, how often was treasury involved? What was the threshold that got treasury involved and what was the threshold that got cabinet involved?

Mr Miners: I have read the pink sheet and understand the privileges.

Treasury was involved where the valuations were over \$5 million. There were three particular ones we were involved in: Milapuru, Huntly and Winslade.

THE CHAIR: That was the only time treasury became involved, except of course if there was more than \$20 million in a year?

Mr Miners: In aggregate, yes. treasury's involvement, in those ones, that was when we would provide a formal briefing. There were various other conversations we would have over time with LDA or with the minister about land and land release and how it fits in, but they were not in the same formal sense as briefing on these ones.

THE CHAIR: So the other properties in this list—Fairvale, Pine Ridge et cetera—did not come across your radar specifically, because they did not meet the money threshold?

Mr Miners: We certainly did not provide specific briefing on them. I cannot recall whether there were informal discussions at any point about directions in relation to those specific properties.

MS CHEYNE: Did you provide any specific briefing about value for money for Milapuru?

Mr Miners: When we see the business case, that has costs and potential revenues on it. That includes a value for money assessment, and we will provide advice on that as well.

MS CHEYNE: Are you able to give us any context about what you thought at the time, particularly because it was substantially higher than the valuation for the property? I think we appreciate that there is broader context here, but it would be useful to know what treasury was thinking.

Mr Miners: Certainly at a high level they all represented very good value for money.

THE CHAIR: Except that Milapuru was subsequently revalued in the asset revaluation process at \$4 million dollars.

Mr Miners: Yes. When we look at those business cases, they are not about maintaining that land as rural land; they are about converting that land into residential land, and in doing so they all represented excellent value for money.

THE CHAIR: But they are currently valued for their present use?

Mr Miners: That is correct.

MS CHEYNE: So the business case is what it could be used for, but what is actually on the books is what its current value is in what it is presently used for?

Mr Miners: That is correct.

THE CHAIR: You saw the business case for Milapuru, which meant that there was an extrapolation that this translated into X housing blocks, which translated into however many gazillion dollars.

Mr Miners: That is correct.

MS CHEYNE: Did these business cases assume that the National Equestrian Centre

would be acquired? I am asking this because with that band we have Milapuru and then the National Equestrian Centre—on Mrs Dunne’s excellent map—and then Fairvale next to it. Without the National Equestrian Centre it is land, blank, land, land, land.

Mr Miners: Each of the business cases looks at the blocks in isolation, because that is what they are coming up for specific decisions on. But they were all set in a broader context. I cannot remember specifically which blocks of land were mentioned, whether they specifically mentioned the Equestrian Centre. But they were certainly set in a broader context.

THE CHAIR: Is it possible to acquire copies of the business cases that you saw?

Mr Miners: I am presuming the Auditor-General has already seen those, so I have no problem with that.

THE CHAIR: Thanks.

MS CHEYNE: I want to ask about the unsolicited advice that Colliers provided. You may not have anything to tell us about this but—

THE CHAIR: But we have to ask.

MS CHEYNE: we have to ask, because we have asked everybody. You might be aware from the Auditor-General’s report that around the time of all of this Colliers came out with some strategic advice about the acquisition of land and seemingly gifted it to the LDA. Subsequently, the LDA decided to pay a substantial amount of money for it. The invoice was not raised properly. We believe it was walked over to the CFO’s desk who was then told, “This is overdue. Please pay it ASAP.” Was this ever brought to your attention?

Mr Barr: No, that is, I think, a level of operational activity that would sit well below anything coming into a minister’s office.

MS CHEYNE: Was it ever brought to the attention of any of you?

Mr Barr: I would presume that it would not be something that would be brought to treasury’s attention, either, but I will ask Mr Miners.

Mr Miners: I cannot recall seeing it.

Mr Ponton: And I read about it in the audit report, of course.

THE CHAIR: Sorry, I missed that.

Mr Ponton: I read about that in the audit report; so it is not a matter that I am familiar with, no.

THE CHAIR: Yes, so the first time that you became aware of it—that there was unsolicited advice—was when you read about it in the audit report?

Mr Ponton: Yes, I mean, I was certainly aware of the Colliers' work. I had a short stint at the land development agency but I was on the periphery of this. I was not involved in the land acquisitions of—

MS CHEYNE: You were aware that the work existed but you were not aware of how it had come to exist?

Mr Ponton: No.

THE CHAIR: Sorry, just to refresh our memory, when were you at the LDA, Mr Ponton?

Mr Ponton: I was at the LDA at the very end of August 2016. Then I had a month off in December. Then I was there from January through until early April; sorry, 2015 and then the early part of 2016. So August, September, October, November and then January, February, March.

THE CHAIR: 2016?

Mr Ponton: 2015-16.

THE CHAIR: And then the LDA was wound up in 2017?

Mr Ponton: 2017, correct, yes.

MS CHEYNE: When you were at the LDA, were you aware of any other practices of receiving unsolicited advice—

Mr Ponton: No.

MS CHEYNE: and then paying substantial sums for it?

Mr Ponton: No.

THE CHAIR: Thank you. A quick hearing is good hearing, but there is a substantial amount of material from the front end that you have taken on notice.

Mr Barr: Yes, I will take it on notice.

THE CHAIR: Thank you very much for your attendance today, Mr Barr, Mr Ponton and Mr Miners. You know the usual blurb about the draft transcript et cetera and responses to questions taken on notice.

Mr Barr: Yes, thank you.

THE CHAIR: This is not your first rodeo.

MS CHEYNE: Will Hansard pre-populate that? Do you have that arrangement?

GARRISSON, MR PETER, Solicitor-General for the ACT

THE CHAIR: I welcome the Solicitor-General, Mr Peter Garrisson SC. Have you read and understood the privilege statement?

Mr Garrisson: I have, thank you.

THE CHAIR: Can you identify yourself for the purposes of Hansard?

Mr Garrisson: Peter Garrisson, Solicitor-General for the ACT.

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

Mr Garrisson: No, I do not.

THE CHAIR: We will go to questions. Looking at the involvement of the Government Solicitor's office in these purchases, were there involvements beyond those relating to conveyancing or leasing issues?

Mr Garrisson: No, our involvement began when we were instructed that a decision had been made to purchase a particular property. Sometimes those instructions came a little before as they wanted to get draft contracts or documents of that nature. Generally speaking our principal involvement was really only a matter of weeks between the instructions and the transaction concluding because obviously the negotiations were concluded.

Each of the vendors was legally represented and so we dealt with their lawyers in relation to finalising the terms of contracts, dealing with issues around subleases and then after the matter had settled dealing with issues in terms of registration and those associated matters. We are talking about nine properties so obviously it varied between each of them in terms of the time frame; some took a lot longer, some were more complex for a range of reasons.

THE CHAIR: Which were the more complex ones from your office's point of view?

Mr Garrisson: There was one in particular where there were a range of issues around easements and subleases, all of which were part of the negotiations with the other parties.

THE CHAIR: Nothing that stood out as being unusual or difficult or problematic.

Mr Garrisson: No. Obviously I had no personal involvement in the transactions. But, as I said, some of them were more complex simply because of some of the issues that had to be addressed by each party. But other than that they were relatively straightforward transactions.

THE CHAIR: Generally speaking the Government Solicitor's office was acting as the conveyancing agent on behalf of the territory?

Mr Garrison: Pretty much.

MS CHEYNE: The Fairvale subdivision, we have had quite a journey of learning about this.

Mr Garrison: It was not actually a subdivision; it was a surrender and re-grant. It is quite a different process.

THE CHAIR: The overall outcome is the same.

Mr Garrison: It can be. Particularly when you are dealing with rural leases there is a greater focus by the planning authority in relation to whether it will agree to a subdivision. A surrender and re-grant process is more facilitative. Of course, that has occurred in a couple of these transactions.

THE CHAIR: Going to your point that the planning authority—I cannot remember your words—would not be in favour of subdividing a lease—

Mr Garrison: No, the issue is that when one makes a decision about the process by which you are going to achieve your outcome. the decisions are made by the purchaser and vendor as to how it is to occur. The other issue with a subdivision is that it requires a development approval whereas a surrender does not.

I do not know enough about the great detail of each transaction, but the agreement reached between the parties was that it would proceed by way of a partial surrender of one of the blocks and then a re-grant and that was the most efficacious way of achieving the outcome that the parties wanted.

THE CHAIR: I take your point that it was a way of achieving the outcome. But Fairvale was a large rural holding. If this is not your area of expertise I am happy for you to say so, but my understanding of rural leases is that they cannot be divided. So it could be the case that this issue of a surrender and re-grant of two leases over what was previously one lease is a bit of a fig leaf of respectability over something that normally speaking would not be legally possible.

Mr Garrison: Sorry, Mrs Dunne, but it is actually possible.

THE CHAIR: How is it possible?

Mr Garrison: A subdivision is possible. It is not prohibited by law. It is not prohibited by the terms of the standard lease.

THE CHAIR: For rural leases?

Mr Garrison: There are issues in relation to particular types of transactions that the lessee can undertake, but subdivision is not prohibited. As I said, it is not my principal area of practice, but the requirements in relation to a subdivision set up a series of hurdles for the parties to overcome, and there is also an issue in relation to the timing. A DA can take some time to put in place. It can be requisitioned. As I have said, there are particular issues around rural leases that I understand the planning authority is

sensitive to.

THE CHAIR: Could you elaborate on those?

Mr Garrison: They are the things about the size of the block, can it still be used as a rural lease and all of those sorts of issues. As I said, I am not across those matters in any detail.

THE CHAIR: There has been a longstanding policy in the ACT that is predicated on not subdividing rural leases. Attempts have been made in the past for rural leaseholders to attempt to sell off small parcels of their property and that has never been allowed in the ACT; there has been a policy predisposition towards keeping these large leases intact. With that context in mind I am trying to get how this quite unusually resulted in a large lease being subdivided.

Mr Garrison: It was not.

MS CHEYNE: In effect, subdivided.

THE CHAIR: It was divided and sold in two lots.

MS CHEYNE: That is term we have been using the whole way.

THE CHAIR: It was one lot and then it was sold as two lots. Technically speaking it was not subdivided but it was effectively subdivided. The two components were sold to two different people in what appears to be contravention of longstanding rural policy.

Mr Garrison: I have to say I am not aware of that longstanding rural policy. It is a matter that perhaps would have to be addressed to the planning authority.

MS CHEYNE: Was the matter of Fairvale the first time that you had been approached by anyone in the LDA about splitting the land, subdividing the land, in this way? We have heard some conflicting evidence that the owner of Milapuru wanted to have a portion of that land as well—

THE CHAIR: Subdivided off?

MS CHEYNE: Subdivided off, and had been told in no uncertain terms, “No, we don’t do that.” And then a short time later, to an everyday person it appears that this was allowed to happen for Fairvale when the right questions were asked.

Mr Garrison: I cannot respond to what someone was told or not told.

MS CHEYNE: But you were never approached about doing anything similar with Milapuru?

Mr Garrison: Not that I am aware of.

THE CHAIR: Could you take that on notice?

Mr Garrison: I can say that—

THE CHAIR: You are saying that you did not personally do this. People in your office may have had some contact. Could you take that on notice?

Mr Garrison: I could actually answer the question. We received instructions in June 2015 to prepare sales contracts and the associated licensing, which we did. We dealt with the vendor's solicitors and the matter settled in a matter of about a month later.

THE CHAIR: It was settled on 31 July. You said that you are not aware, and you have also said that you were not directly involved in any of these. You are here on behalf of your office. Could you, on notice, check with the people who were whether this issue arose about subdivision, however characterised, of Milapuru?

Mr Garrison: Yes, I will confirm the position but my belief is that we were never asked for advice in relation to that. The issue did not arise, and we were instructed to simply prepare sales contracts and matters that went with it.

THE CHAIR: But if you can confirm that, that is great.

Mr Garrison: I will confirm that.

MS CHEYNE: The forgone rent for a range of properties—

THE CHAIR: The rent forgone?

MS CHEYNE: Yes. We understand that there have been even some recent attempts to recover some rent from Milapuru.

THE CHAIR: Milapuru, in the first instance.

Mr Garrison: I do not know about Milapuru. There have, from time to time, been some issues with arrears, as we understand it. We have not had formal instructions in relation to them, except, I think, in relation to one matter where there was a letter of demand sent. There was a range of exchanges with the party involved and then we got further instructions not to pursue it.

THE CHAIR: And what property was that?

Mr Garrison: Can I get back to you in relation to that?

THE CHAIR: Yes.

MS CHEYNE: For context for you, last week Mr Katz said—

Mr Garrison: Sorry, it was Mr Katz.

MS CHEYNE: He said that he had received an email from the ACT Government Solicitor, a letter of demand.

Mr Garrison: My office, yes.

MS CHEYNE: His response was that there was never any agreement signed; they never had a lease; they never had a rental agreement; they never had a grazing licence. “I responded to that letter in writing and only about three months ago I got a response from the ACT Government Solicitor that it has been withdrawn,” and they were happy with what he had provided.

Mr Garrison: That is the matter that I had in mind.

THE CHAIR: That is the only matter where the ACT Government Solicitor’s Office has pursued rents in relation to these properties?

Mr Garrison: Pursued them in a sense, yes. Generally speaking, the post-acquisition management of properties and the issues that arose have been left to the right agencies to deal with and they are not often involved in any of those issues.

MS CHEYNE: Are you able to talk us through, to the extent that you can recall, what happened in this case, particularly who instructed you to send the letter of demand? Mr Katz responded—it seems that that letter of demand was some years ago—reasonably quickly, but then only just recently has it been withdrawn. What is going on?

Mr Garrison: Our original instructions came from the SLA that there was an arrears of rent. My understanding is that the residential agreements and licences had, in fact, been executed back in 2016. But after the forwarding of that letter, I understand, there was further engagement with Mr Katz and a couple of the ACT government agencies—not just the SLA but Property Group and a range of others—and we were instructed not to pursue it any further.

THE CHAIR: Your understanding was that there were licences and subleases in place?

Mr Garrison: I believe there were.

THE CHAIR: We might have to pursue that. There are a couple of things that you took on notice and, as you know, you will receive a proof transcript in the next few days and if there is any matter of clarification you can take that up with the committee secretary in the first instance. Thank you for your appearance here today. I now close today’s hearings.

The committee adjourned at 4.24 pm.