



**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL  
TERRITORY**

**STANDING COMMITTEE ON PUBLIC ACCOUNTS**

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

**Members:**

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

**TRANSCRIPT OF EVIDENCE**

**CANBERRA**

**WEDNESDAY, 20 NOVEMBER 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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## **Privilege statement**

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*Amended 20 May 2013*

**The committee met at 9.33 am.**

**POWDERLY, MR PAUL**, ACT State Chief Executive, Colliers International

**THE CHAIR:** Welcome to the fifth day of hearings 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 west of Canberra. Mr Powderly, have you read and understood the privilege statement?

**Mr Powderly:** I have, thank you.

**THE CHAIR:** Thank you for coming here today. Do you have an opening statement to make?

**Mr Powderly:** No, not at all. Colliers International is fairly well known to the ACT government. We have provided our research for the former LDA, the planning authority and the Suburban Land Agency for the past 25 years into the residential market in Canberra. So we have certainly got a good handle on and great knowledge of that sector of the marketplace, which is why we have been involved in some of the conversations with this acquisition strategy.

**THE CHAIR:** I will begin with the acquisition strategy. According to the Auditor-General's report, Colliers provided to the LDA a paper on the strategic acquisition of land in Stromlo.

**Mr Powderly:** That is correct.

**THE CHAIR:** Who was the author of that paper?

**Mr Powderly:** Effectively me and one of my colleagues in the office, who did a lot of the research. I am not sure if you are interested in how it came about but I am happy to provide you the details.

**THE CHAIR:** We are indeed, yes.

**Mr Powderly:** Because of our involvement with providing the ACT government with a fair bit of the research into the markets which has formulated land release for many years, we were invited to a planning session that was put on by the then ACTPLA and the then LDA to talk about Molonglo and the future densities and how Molonglo would be developed. I attended that with one of my colleagues. Effectively, the conversation went around the fact that we were running out of land and that by about 2030 we would be pretty much short of broadacre land to develop. There was a conversation about how we increase the densities in Molonglo, add more medium density in there and so on.

We left that meeting with the pretty clear view that the amount of suburban residential land had a finite supply and that, as a result of a lot of the environmental impacts there, we were going to run out of land at some point in the future. From my perspective and from my colleague's perspective, we thought that that would be a bit of a shame. So

we did a bit of a snapshot of what land was available within the ACT and across the border that could be future development land. We looked as far as Jerrabomberra north, just outside of Canberra, to where the current development is happening out near Holt, and looked at all the land down south, because a lot of that land had been cleared of vegetation through the bushfires, which is why Molonglo was being developed.

We came up with a parcel of land which was the land through Stromlo as probably one of the better areas to focus on. We set out in our strategy report a whole lot of reasons why. One was obviously that we were developing Molonglo. We had infrastructure to the front door of that land with Hindmarsh Drive pretty much terminating the front of it. The land had been reasonably cleared from the bushfires: a lot of the native vegetation, grasslands and so on. And obviously it was more to the south of Canberra, which enabled south Canberrans to have a choice of land, which they currently do not, with Gungahlin in the north. So we saw it as a good parcel of land. We wrote up a strategy report. If you have not read it—it is quite comprehensive; there are a whole lot of attachments—

**THE CHAIR:** That is the thing, actually: we have not read it and we have not seen it. Would it be possible for you to provide the committee with a copy of the report?

**Mr Powderly:** I will scan one and send it to you.

**THE CHAIR:** That would be great.

**Mr Powderly:** Effectively, the paper sets out an acquisition strategy for the Land Development Agency. It goes through the parcels that have been identified. It includes copies of the crown leases. It tells us who owns them, how long they have owned them for and what the potential may be on that land for the government in terms of future opportunity, knowing, of course, that—

**THE CHAIR:** The proportion of developable land?

**Mr Powderly:** Yes. Not all the land is developable; you have to lose some land for river corridors and so on. I went through and did a bit of a hypothetical analysis of what that revenue might look like for the territory if they owned the land as opposed to a private developer. Then it made some recommendations around the sorts of values that these parcels might be worth if you wanted to buy them in a marketplace. It talked about the strategy, how it would be done. Then we left it in the capable hands of government to think about it.

**THE CHAIR:** When did you present that to government? You presented it to the LDA, to ACTPLA, or both?

**Mr Powderly:** We first sent it to the LDA through Dan Stewart, who was then the person in charge of that part of the business. We then had further conversations with stakeholders, who were obviously people in the planning authority and people in the LDA who had seen the report and were making their own analysis and making their own representations to the LDA board as to whether this was something they should contemplate.

It is not the first time we have done this. We have actually made recommendations to the ACT government in previous years to acquire parcels of land that have been strategic to the territory. We acted for the territory to buy Crace. We bought that for \$30-odd million from the commonwealth, did the zoning, did a bit of work and sold it for \$90-odd million to a joint venture, and the territory did extremely well over that. We acquired part of section 63 from the commonwealth, acted for the ACT government in that process and then sold it for \$90-odd million dollars at an auction in 2017. Glenloch: we have purchased a lot of properties. All I am saying is that it was not a unique thing. It seems to be that everybody thinks this is a unique thing for the territory to be looking at strategically acquiring land, but it has been going on for—through former parts of government.

We presented it, as I said, and then there were conversations that happened after that as people got their heads around what that meant and how the government would go through that process.

**THE CHAIR:** When did that paper go to the LDA?

**Mr Powderly:** Sometime around 7 or 11 November. I do not have the exact date but I know it was in the first two weeks of November 2014.

**MS LAWDER:** A *Canberra Times* article from 22 September 2018 entitled “Key issues in rural land audit already met, ACT government says” says:

Key questions surrounding the planning directorate’s decision to subdivide the Fairvale property ...

Despite the audit office finding it represented a potential conflict of interest that was not disclosed to the former agency’s board, Colliers ACT chief Paul Powderly has previously rejected the claim out of hand.

The claim was that Colliers recommended the purchase and then had the benefit of almost \$300,000 worth of work acting as an agent. Obviously it was not up to you to inform the board, but was this disclosure of a potential conflict of interest ever discussed with you? Did you have any knowledge of—

**Mr Powderly:** I think there are two issues there. One is that with Fairvale the conflict of interest has nothing to do with Colliers; it is to do with a party who purchased part of the land. From my perspective, Colliers International found out that the owners of Fairvale were wanting to sell the property. I approached the agent who was going to be representing them, and with the authority of—

**MS LAWDER:** Sorry—I think I read the wrong paragraph. It is:

... the series of rural land purchases was originally proposed by LDA contractor Colliers International ACT, with the firm ultimately reaping almost \$300,000 worth of work acting as agent on the subsequent purchases.

As I said: recommended the purchase and then reaped the benefits. Fairvale, sorry, was a different issue further up in the article.

**Mr Powderly:** Under our Colliers contract with the LDA, for which I can give you the contract number and the reference number, which started in 2013, we respond to the LDA's request every three years to submit our fee proposals and our services that we can provide to the LDA. They range from doing evaluation services to selling properties, acting for them in acquiring properties, marketing services; it is a full schedule of fees. Those are submitted through the probity part of government. We are written to and told that we are appointed to provide those services as and when we are asked to.

There cannot be a conflict when I am acting for the LDA in accordance with my own contract and get paid in accordance with my set of standard fees that have been agreed through the procurement part of government, I do not understand how there is a conflict. I am acting in the interest of government to acquire land as per a strategy.

**THE CHAIR:** But it has been put to the committee that the paper that you presented to the LDA was unsolicited.

**Mr Powderly:** Correct.

**THE CHAIR:** Would it be within the suite of the terms and the suite of payments that you would be paid for unsolicited work?

**Mr Powderly:** There are two steps there. Firstly we provided the strategy report for the government to consider whether they would adopt it. When the government decided, or when the LDA decided, to proceed with it, we provided them the same strategy report with the fact that we were then going to act for them and included in it how we would be remunerated. That was provided as a hard copy to the LDA. It clearly stipulated, "In accordance with our current contract with you, we'll help you in these negotiations and we'll be paid in accordance with the standard fees." So when they decided to proceed, that would be submitted to them. That is how we were remunerated.

Colliers, like all real estate companies, have to comply with SOX, which is Sarbanes-Oxley compliance. We cannot generate an invoice for a fee unless we have a contract. We produced all that information and we then provided an invoice on 15 December for the work that we had done on a number of those acquisitions. We very clearly met our audit requirements and obviously the LDA's requirements, because they had all the documentation and they paid the invoice.

**THE CHAIR:** There is an issue that, internally, there was not a purchase order, but that is not a matter for Colliers; it is for the LDA.

**Mr Powderly:** Yes. But, as I have said in the past, the purchase orders became a more relevant thing later. The reason that we had these contracts with the LDA is that we were doing so much work. There was so much happening with the LDA and every single time you had to go and quote for a job; it became just a nightmare. So they set these contracts up for three-year periods. You provided your fee proposals and you just did the work. Sometimes you lost money on them and sometimes you did well, but that was with the standard fees that we agreed to at the time. So from my

perspective I do not know what internally existed within government. It was clearly articulated that we were to go out and deal and acquire some of these properties, and we did.

**MS LAWDER:** Did you provide an invoice for that work?

**Mr Powderly:** Correct. The Auditor-General has the invoice, the break-up of fees as per—

**MS LAWDER:** So there is an invoice but no purchase order.

**THE CHAIR:** In relation to these properties, you have mentioned one which is not really a subject of this inquiry. You mentioned Glenloch, which is outside the scope of this inquiry but is connected to the land around this. What was the nature of your dealings over the acquisition of Glenloch?

**Mr Powderly:** The owner of the property at the time, Mr Neville Stuart, was wanting to sell the property. He had come to Colliers as a commercial agent to see whether we would be interested in selling it. We identified very clearly at the time that the best buyer for the land was going to be the ACT government. Another party had jumped in and secured the property for a period of a 12-month option and did not proceed. Mr Stewart was quite an elderly gentleman and did not have much family, so I put him in touch with the ACT government because I thought they were the best parties to buy, given what they were doing with Molonglo. They negotiated an outcome. There were valuers involved. They ended up paying a price for the property which I am sure will be seen in the next year or two as extremely cheap for the government. We did not charge a fee for that but we certainly made the introduction to the—

**THE CHAIR:** So you were approached by Mr Stewart and then you introduced him to the LDA?

**Mr Powderly:** Yes. Another party had purchased it but did not perform. So I thought the government should be aware of that and have a chat with him, and they secured the property.

**THE CHAIR:** The original purchase arrangement fell over?

**Mr Powderly:** Correct. It was from an out-of-town group.

**MS LAWDER:** We have talked about the fact that that was an unsolicited proposal to the LDA. So there was no written instruction for you, or request?

**Mr Powderly:** Do you mean for Stromlo?

**MS LAWDER:** For the strategy that you prepared.

**Mr Powderly:** No. My strategy report became a reverse brief. When we were retained we included the provisions in that strategy paper on how they would secure our services.

**MS LAWDER:** What were the provisions in the final agreement about what services Colliers would provide on behalf of the LDA?

**Mr Powderly:** We would identify those properties, meet with those parties that may have had an interest in selling, have a conversation and talk to the LDA. They would get independent valuation advice, not from us, to make sure that they were comfortable and that it was within the parameters of what their approved strategy might have been. We would negotiate an outcome, instruct lawyers, attend meetings and all the things that we do as an experienced agent. I did that on a number of occasions: meeting with government solicitors, dealing with instructions and sending off the offers. Those offers were sent to the LDA for approval before they were sent to buyers. And we secured the acquisition of a number of those properties.

**THE CHAIR:** Did Colliers have anything to do with the acquisition of the lands to the north: Wagtail Park, Pine Ridge, The Vines, Lands End or Wintergarden?

**Mr Powderly:** No.

**THE CHAIR:** So it was only the areas around the Cotter Road?

**Mr Powderly:** It was only the properties we identified in our strategy report, which you will get a copy of when I email it to you today. They are the ones that we really focused on, because we had put a paper to government to assist. The fact that the government took that strategy and thought they could have a wider approach to it was probably a great thing.

**THE CHAIR:** So your strategy covered the land south of the Cotter Road, essentially?

**Mr Powderly:** It was called the district of Stromlo and we identified those properties in that strategy paper.

**THE CHAIR:** Did it identify Winslade or Huntly?

**Mr Powderly:** No. They were on the other side of—

**THE CHAIR:** So it is basically the ones south of the Cotter Road?

**Mr Powderly:** Correct.

**MS LAWDER:** Did you refer at all to the ACT planning strategy 2012 in the preparation of your strategy?

**Mr Powderly:** As part of it we looked at what land had been identified as future urban; not zoned, but what land was future urban. It very much was similar to the way Molonglo started out before the bushfires. So we thought that this was a natural progression for this land. The government could have taken the strategy paper and said, “Thanks very much. We’re going to focus on going to the north”—or the east or whatever. But at the end of the day I think it was a good strategy, because they were in Molonglo and they have acquired some of the properties. I would have liked to

finish the job, but the inquiry and the Auditor-General's report came up, so everybody became a bit concerned to proceed with the rest of the strategy. Anyway, that is the way it goes.

**THE CHAIR:** So in relation to those blocks of land, block 433, which was known as the Canberra Equestrian Centre—I think it still is known as the Canberra Equestrian Centre—was not acquired by the government. Did you have any dealings in relation to the acquisition of the Canberra Equestrian Centre?

**Mr Powderly:** Yes.

**THE CHAIR:** As an agent for the government, or as an agent for the person who acquired it?

**Mr Powderly:** No-one has acquired it yet.

**THE CHAIR:** No, there are two equestrian blocks. There is the one at the very top of Hindmarsh Drive, which was acquired by a private owner, and then there is the National Equestrian Centre, which runs off the Cotter Road.

**Mr Powderly:** The first property, yes: Colliers residential land group put that to a market process and sold it. The LDA was not in a position at that stage to get their strategy sorted out and acquire it, and it was sold to a private party.

**THE CHAIR:** So it was privately owned—

**Mr Powderly:** And it was sold before the strategy paper was drawn up.

**THE CHAIR:** Was that—

**Mr Powderly:** It was 2012, 2013.

**THE CHAIR:** Of course. Was that in some way an impetus for the strategy paper, or was that just a known known when you developed the strategy?

**Mr Powderly:** No, it was not so much an impetus. Obviously there was the fact that one party had sold and we had seen what the market appetite was and that there was more land there. That was one of the reasons why we looked at that area in the strategy paper. But really it was that planning meeting where the government said they were running out of land. If I had not been thinking about the government's interests, I would have got to all those owners and sold them all to other people, but my idea was that the ACT government needs to secure land supply for this territory, as any government should, for the future.

**THE CHAIR:** I want to go back a step and up a level. The rural lands policy that came in at about the turn of the century converted most of the leases in the ACT to 99 years, with a few exceptions. Had that created a situation, because of the profit-share arrangements in those leases, where essentially there were no sales of rural land for 10 or 12 years in the first period after the policy was introduced? It really only occurred to me when we started to do this that that was possibly an

unintended consequence of that policy.

**Mr Powderly:** I think two things happened. One is that we did not know at the time that we were going to lose 40 per cent of the territory's land to environmental requirements, so at the time of issuing the ability for people to take up those 99-year leases there was not seen to be a shortage of land. We probably had 80 years worth of land supply. At that point in time you would not have said that any government did it knowing that they were going to have a shortage. It has turned out to be the fact that it was not a very good strategic outcome, because we would not have had to go and buy all these sites at higher numbers; you could have just basically, under the rural lease policy, compensated people and taken them back. But no-one was to foresee all the loss of land to the north and some parts of the south of land to environmental—which probably took 30,000 dwellings out of our future supply.

**THE CHAIR:** As an experienced property organisation, have you seen other pockets of rural property coming up for sale at the end of that profit-share period? Have there been sales of rural land in other parts of Canberra—

**Mr Powderly:** Yes.

**THE CHAIR:** Further to the south and—

**Mr Powderly:** The majority of people who come to us and want to sell it—if they have one or two years to go on that period in which they have a profit-share arrangement, we say to them, “You're better off waiting, because the difference in value is substantial.” It is no accident that most of the land at Stromlo came out of that period of a year or two, more as a coincidence—the bushfires. Then you end up with land that is actually at value. People have taken the opportunity to sell it, and good on them, to get fair value for their properties.

**THE CHAIR:** So there has been a reasonable trade in rural land across the territory in the past five or so years?

**Mr Powderly:** The territory and surrounding territory. It has been very busy between Yass, Goulburn, Bungendore and Canberra; there has been a lot of activity with rural land. That is primarily because the value of land in the territory has gone up so much that a lot of this land has value for either grazing purposes, because we are forcing people out of existing properties, or for rural residential subdivision, which is an extremely popular type of land supply to people in this region.

**THE CHAIR:** Which is hardly available at all in the ACT.

**Mr Powderly:** And Canberra is so central to all of those areas. It is very popular. You have seen the Royallas. You have seen the stuff at Bungendore. You have seen things in Yass and Murrumbateman. It is very popular.

**THE CHAIR:** Off the top of your head, apart from these blocks that are subject to the inquiry, have there been other rural blocks that have changed hands that you are aware of in the territory?

**Mr Powderly:** Yes. There are properties—

**THE CHAIR:** Whereabouts?

**Mr Powderly:** Down near the Mugga Lane tip there have been a few properties change hands. There have been some properties at Pialligo, heading out from Majura Parkway. Heading up Majura Parkway there have been some land sales transpire there. There have been some further land sales, as you saw, with what happened with the developments out at Holt; there have been a couple of those parcels sold. And there have been a lot around the Jerrabomberra, Googong, Tralee areas.

**THE CHAIR:** But none west of the Murrumbidgee or south of Tuggeranong? They are less—

**Mr Powderly:** There is one west of the Murrumbidgee that we put on the market. We failed to get a buyer for that property. That is just on the other side of the Murrumbidgee near the town centre. That was on for about \$5 million. That has not sold at this point in time. And there are a couple further south of the town centre that do not have the future urban value. What the vendor wants and what the purchasers want to pay are a bit apart, so they have not quite transacted. But there are certainly properties for sale there.

**THE CHAIR:** Yes but they are not as highly sought after because they are not future urban potential.

**MS LAWDER:** The ACT government have the planning and development land acquisition policy framework direction 2014, which has a number of principles and tests to be applied. Were you involved in the application of any of those principles and tests, or is that simply an internal decision-making process within the LDA?

**Mr Powderly:** I have not seen the document you talk about and certainly no one consulted with us, but I would not say that I am backwards in giving my thoughts and views to government and to employees of government. I have never been one to shirk from giving advice that I think is in the best interests of the territory. So no, I have not seen the document and we have not been involved in it, but we certainly provided regular advice to government over those years when the Suburban Land Agency and the LDA were formed, because our experience in other jurisdictions with Landcom and others meant that we came with some experience on how government and development bodies should act.

**THE CHAIR:** Milapuru is south of the still privately owned Canberra Equestrian Centre. Did you have any involvement in the purchase of Milapuru?

**Mr Powderly:** Is Milapuru the property that sold for about \$7 million?

**THE CHAIR:** Yes.

**Mr Powderly:** Yes, I did. The owner of that property made contact with the purchaser of a property that we had sold some years earlier and reached out to us because he was contemplating a sale. That particular private person did not want to buy any more land

there. They made contact, then we made an introduction to the ACT government about the acquisition. They moved forward and acquired the property.

**THE CHAIR:** Were you remunerated for that, or were you just an introductory agency?

**Mr Powderly:** We identified it. The government purchased it. We were paid for it. That is the way it works in agency.

**THE CHAIR:** But you said that in the case of Glenloch you did not receive any payment; you were just a—

**Mr Powderly:** Correct. At that stage it was well before there was any policy, before there was a panel in place; it was before the—

**THE CHAIR:** Okay, it was the panel arrangement. One of the blocks that has not been acquired is the block called Riverview, which is perhaps the furthest west of those properties.

**Mr Powderly:** The most west of the properties, yes.

**THE CHAIR:** I gather it is the most constrained by river corridors et cetera and—

**Mr Powderly:** Yes and also bushfire abatement and so on. We met with the owners and put it to the Suburban Land Agency. They got their own independent advice from the planning authority and from—

**THE CHAIR:** Suburban Land Agency, or LDA?

**Mr Powderly:** Sorry, I mean the LDA. The LDA got their own advice and came back to me and said, “We’re not interested in proceeding with that property. It has no value for us. It’ll be part of the fire abatement zone.”

**THE CHAIR:** Do you know whether that block ever changed hands?

**Mr Powderly:** I do not know.

**THE CHAIR:** In relation to Fairvale, did you make approaches to the owner or did the owner make approaches to Colliers?

**Mr Powderly:** No. Through my network of people in the industry, I was told that that property was coming up for sale. They were thinking about getting it ready for a spring sale. I found out who the agent was, Mr Medway. I made an approach to him and told him that I was acting on behalf of the ACT government and would be interested in talking to his client. We proceeded to negotiate. I wrote to him with an offer, which was approved by the ACT government. They came back and accepted the offer subject to some minor changes around structure, because they had some tax benefits, being rural owners, but the package number did not change. Then we went to contract. But somewhere in the middle of the process, whoever was advising the owners of Fairvale decided they wanted to buy part of the land, and it ended up being

split.

**THE CHAIR:** What was the offer in relation to Fairvale that was made through you and accepted?

**Mr Powderly:** I can refer to my letter of offer. Just give me 25 seconds.

**THE CHAIR:** That is fine. I am glad that some people have papers. That is good.

**Mr Powderly:** My offer, which was made to Suzanne Howieson through her agent, Colin Medway, provided the real estate purchased at \$4.95 million and \$500,000 for the enterprise, the going concern business, so it was a total price of \$5,450,000. We asked them to get accounting advice to make sure that they were dealing with the sale in the best interests for them, because obviously from the LDA's perspective and the government's perspective it did not matter much; we were acquiring it for future development at some stage.

**THE CHAIR:** So that so long as the envelope was—

**Mr Powderly:** So long as the package price was the package price, we were reasonably flexible. We ended up negotiating a sale and then, as the Auditor-General's report identifies, somewhere between when I negotiated the purchase and what actually happened is that there was a change where they were wanting to split the property up and sell part of it to their advisor.

**THE CHAIR:** Were you in any way privy to that negotiation?

**Mr Powderly:** No. My job was to—

**THE CHAIR:** When did your job finish?

**Mr Powderly:** My job then was to apportion the value of the two properties once the LDA had made the decision they were going down that path. So we provided some advice as to how that should be apportioned in terms of what the value of the western block was with the residence on it and what the balance was for the land that the LDA was buying, noting that part of it was useless; it was river corridor. We provided that advice and the purchasers agreed on an outcome.

**THE CHAIR:** So you were not involved in the dividing up of that block?

**Mr Powderly:** No. I got to do the advice after it was subdivided.

**THE CHAIR:** You got to do the advice after it was agreed and—

**Mr Powderly:** Yes. I provided the LDA with my view on the apportionment of the values based on what they had provided to me as the proposed split of the site.

**THE CHAIR:** Did you form a view about whether it was a good move strategically to split the block?

**Mr Powderly:** I do not think anybody asked me my view. I—

**THE CHAIR:** No, I am not looking—

**Mr Powderly:** would certainly have preferred to acquire it all, but that was not the deal that was being put on the table. The deal had been changed by the vendor. Part of the property would have joined with the other property, Riverview, and formed part of the bushfire abatement zone, because it needed to be a certain distance. At that stage, very preliminary planning, no-one would have known how much of the property would have been lost. But we were pretty comfortable with the purchase price for the size of the property.

**THE CHAIR:** The thing that strikes me about it is that in that split, the government lost a lot of road frontage, which I would have thought would be valuable.

**MS LAWDER:** Or preferable.

**Mr Powderly:** If the strategy had been enacted, the road frontage would have been irrelevant, because the property directly to the east of it was 620 hectares and had 500 metres of lineal, and then it just would not have mattered what road frontage you had. But failing finishing the strategy and buying that property, then yes, the piece of land that is left has got a small frontage.

**THE CHAIR:** So it now looks like a panhandle—

**Mr Powderly:** Yes.

**THE CHAIR:** and may be problematic. Moving on to the National Equestrian Centre, which is the large block to the east of Fairvale, did you have any discussions with the owner of the National Equestrian Centre in relation to—

**Mr Powderly:** Multiple conversations, yes. I met with them many times.

**THE CHAIR:** Was he an interested seller?

**Mr Powderly:** Correct. I had got to a position of negotiating a sale.

**THE CHAIR:** When was that?

**Mr Powderly:** It would have been 2016, 2015, after all the other properties had been acquired.

**THE CHAIR:** But it has not changed hands.

**Mr Powderly:** No, because the territory was not able to proceed with an acquisition, because once the Auditor-General's report came out everybody got paralysis.

**THE CHAIR:** You got to a point of an agreement of sale in—

**Mr Powderly:** I would have said 2015. It was multiple—probably 2016.

**THE CHAIR:** How constrained is that block: how much of that block is able to be developed?

**Mr Powderly:** Out of the 600 hectares, probably about 350,000 or 400,000. It has a large tranche of yellow box, which is actually quite a nice feature if you are going to do a nice subdivision in the entire area. You have to remember that we are not looking at these properties in isolation. We are looking at it as one 1,200 hectare development parcel which could generate 10,000 to 12,000 dwellings. There would be one integrated approach; you would not look at them in isolation.

**THE CHAIR:** I understand that. I am just trying to get a feel. That block of land is key to the success of that whole strategy in a way, is it?

**Mr Powderly:** If you are going to develop all the properties, it is certainly instrumental in developing the, as you called it, panhandle. But the other properties to the north, the Katz property and the Domazet property, could quite easily be independent developments. Because they come off Hindmarsh Drive, they will be the first to be developed. But certainly having control of that parcel would have meant that the whole plan was complete.

**THE CHAIR:** When you come to an agreement with the owner of the National Equestrian Centre, what sort of figure will we be talking about?

**Mr Powderly:** I did not bring it with me, but I think in the very early days we were talking about \$16 million or \$17 million. Then the price expectations went up to closer to \$20 million as it dragged on and a lot of other people started showing interest because the territory was not participating. They were the sorts of numbers at the time, about three years ago.

**THE CHAIR:** And other people would become interested because they would recognise that it has residential potential?

**Mr Powderly:** Yes, at some time in the future.

**THE CHAIR:** So essentially they could look at it as land banking in the meantime.

**Mr Powderly:** Yes. The business there is an ongoing business. It is quite popular. There are a lot of people that agist horses there. It generates revenue. It is not like it is just a land bank; it obviously does generate revenue at the moment and an income source for someone that owns it.

**THE CHAIR:** In relation to the blocks north of the Cotter Road, Winslade and the Huntly Estate, did Colliers have any involvement in their acquisition?

**Mr Powderly:** No.

**THE CHAIR:** In 2014 when you wrote the strategy, what did you think the future residential value of those tracts of land would be?

**Mr Powderly:** You are asking for a free valuation, but the—

**THE CHAIR:** It would not be a valuation, because I have not given you written instructions.

**Mr Powderly:** I am joking. If you had near on 1,000 hectares of land there which was zoned residential, the best example I can give you is that I sold the land for the LDA in Molonglo to the airport group for over \$200 million for a certain parcel. I would say that that land would be worth somewhere between \$800 million and \$1 billion zoned to the territory, with no lease variation charge to be paid, because the territory does not charge itself lease variation charges.

**THE CHAIR:** To expand the context, you said that you were involved in the acquisition of Crace?

**Mr Powderly:** Correct.

**THE CHAIR:** That was commonwealth land?

**Mr Powderly:** Correct.

**THE CHAIR:** What was that purchase for and what was it worth by the time it was subdivided?

**Mr Powderly:** At the time, it was zoned future urban; it was not zoned as residential at the time. We paid about \$32 million dollars to acquire that from the commonwealth.

**THE CHAIR:** How big a block of land was that?

**Mr Powderly:** It fitted the suburb of Crace, so let us say it was probably 130 to 150 hectares. I can get the exact area if you need it. But we had some complications there. We had to build that large roundabout as part of acquiring the site. You will see on the corner of Barton Highway that large roundabout.

**THE CHAIR:** The one with the lights on it.

**Mr Powderly:** Yes. It was a requirement to build that if you were going to develop that land. Then we put it into a joint venture, got the Territory Plan zoning sorted out and sold it for \$90-odd million dollars into a joint venture. The territory picked up the uplift in the land value, plus a share of the profits because they had sold that piece of land. It was very typical of where the values move. But that land was much closer to a zoning than the land we are talking about, which is—

**THE CHAIR:** Because it was identified as future urban development.

**Mr Powderly:** Yes and we were developing Palmerston; we were developing all the suburbs adjacent to it. It was just a matter of fixing up some infrastructure so that that could happen. There are a number of examples like that.

**MS LAWDER:** Sorry to backtrack but I am interested in the payment that was made

to Colliers, the one—it is not your concern—without a purchase order being raised. As part of that there was an amount included for the development of that unsolicited strategy and also a fee for a block which did not get purchased in the end. Would that be the usual approach: that the government would pay for something that they did not end up purchasing?

**Mr Powderly:** As the Auditor-General received advice, that actually was not for that block; it was for the government's share of the planning work. We did a \$150,000 planning study to justify why the land could be developed. The territory had to pay for its share of that report. That was provided to the Auditor-General in notes under an issues paper to them before they issued the report. The fact that they failed to make the amendment in their report—they have been suitably counselled on that incorrect assertion in the report. We provided them with the notes on the context of the invoice, how the invoice was formed. Someone had just typed in the wrong block. All it should have said is their share of the planning report.

**THE CHAIR:** So could you elaborate on that? So which block was there a planning report on that you provided input to?

**Mr Powderly:** We did it on all the land.

**THE CHAIR:** All of the land that is the subject of the inquiry?

**Mr Powderly:** In the strategy report which you will get to read when you get a copy of it. The territory paid a commission on the ones that they had acquired and they also had to pay their share of the planning report on the ones that were acquired. We had put on there the other block. We have sent that person subsequently an invoice for their share of the planning report. But it accidentally got put on that invoice. It was supposed to say their share of the planning report.

**MS LAWDER:** So it was an error on Colliers' part?

**Mr Powderly:** Yes. We provided the Auditor-General with the file notes; how the fee in the invoice was calculated. We went back and forth. They could not figure out how the sliding scale worked in the LDA's fee structure, so we pointed that out and clarified that.

**THE CHAIR:** For which block was the planning report paid for by an entity other than the LDA?

**Mr Powderly:** The private purchase two years earlier.

**THE CHAIR:** That is block 433: the Canberra Equestrian Centre, the one at the back of Chapman?

**Mr Powderly:** Correct.

**THE CHAIR:** So, essentially, what you did with that planning report was to say to all the people who were landowners or had an interest, "Here's the planning report," and you apportioned a value of that planning report?

**Mr Powderly:** Correct.

**THE CHAIR:** What was the total value to Colliers of that planning report?

**Mr Powderly:** I think I paid \$175,000.

**THE CHAIR:** You paid it?

**Mr Powderly:** Colliers paid \$175,000. I am still at this stage owed money because one piece of land has not been acquired.

**THE CHAIR:** I see. As you acquire the land, then you get a—

**MS LAWDER:** Paid based on the land they purchased—

**Mr Powderly:** I paid for the whole planning report. I then decided to apportion the cost to each of the owners. So if the LDA had bought all the land, they would have paid all of it, but they did not. A private person bought one parcel and then the other three blocks were, hopefully, going to be purchased by the LDA. They did not; I am still holding a chunk of that cost on my books.

**THE CHAIR:** How much has the LDA paid Colliers?

**Mr Powderly:** Whatever was on the invoice: \$50,000 or whatever the number was against that block number. I can point it out for you. I will open the invoice. Do you have a copy of the invoice?

**THE CHAIR:** No.

**Mr Powderly:** It had the amount of money for block 19, which was \$7 million; it had the money for the \$5.5 million acquisition; and then it had—

**THE CHAIR:** That is Milapuru and Fairvale, yes.

**Mr Powderly:** the \$50,000 which is related to the other blocks, which was the bit that the LDA paid its share of the planning report for. It was \$50,000 of the \$150,000.

**MS LAWDER:** With the \$50,000 that you apportioned to the LDA, based on the bit that they did purchase, was there some written proposal and agreement that the government would pay for that?

**Mr Powderly:** No, other than what was provided in the strategic planning report. If you want a copy of that, it is—

**THE CHAIR:** Yes, that will be fantastic, thank you.

**Mr Powderly:** It is thick and it is about A3; it is quite a comprehensive report.

**THE CHAIR:** That would be great. If it is easier to provide on a flash drive or

something like that—

**Mr Powderly:** If you can ask Brian to write to me after this, I will have received your instructions and then I will send a copy over to you.

**THE CHAIR:** I think that is all. Is there anything that you feel needs to be added?

**Mr Powderly:** From my perspective, hopefully it will turn out that in a few years everyone will say what a great acquisition it was and we have got heaps more land for Canberra and housing choice.

**THE CHAIR:** Thank you for your appearance here today. You will receive a draft transcript. There are things that we will follow up that you will provide for us that will help the inquiry.

**BARRETT, MR ROSS**, former Chair, Land Development Agency Board

**THE CHAIR:** Welcome. Mr Barrett, have you had an opportunity to read the privilege statement? Could you indicate that you have read it and you understand the privilege implications?

**Mr Barrett:** I have read it.

**THE CHAIR:** Do you have an opening statement to make?

**Mr Barrett:** No. You will not believe it, but I have been in Canberra 50 years and on a lot of committees and a lot of authorities but this is the first time I have been into a hearing. I have been on holidays. I come to you very relaxed but I have not looked at previous evidence and I was not advised by your staff that I had that opportunity. But I was just watching Mr Powderly and I am sure I will get a chance to say something if I want to later on. I am here to answer your questions if I can.

**THE CHAIR:** Thank you very much. You were the chair of the Land Development Agency at the time of the acquisitions that are covered by the Auditor-General's report. It has been put to the committee that there were concerns raised with the board, and the board agreed with the concerns, that the territory was running out of residential land: that there was at the time probably 15 years worth of residential land in the pipeline and that the board thought that this was a problem. Could you comment on that?

**Mr Barrett:** I think the issue was raised by the board in the first place. We, as you know, operate under a four-year program under the statement of intent. That is very clear, very obvious and very effective for its purpose. It is fine-tune stuff: how many blocks you will develop and how much you will return to government. But being a typical board of extremely experienced people they said, "What happens in the fifth year?" and we thought we should be giving a bit of time to think about that: the fifth year, the 10th year and maybe the twentieth year.

On reflection, over a number of meetings and a number of discussions, we thought that a good starting point would be to ask somebody how much land is currently in the agreed development area. A report was done for the board that showed, as you said, quite a limited supply. Equally, as I am sure you are aware, to go from a rural land lease to a shovel-ready subdivision is not an easy task. It will take about 10 to 15 years to achieve that, particularly with 99-year leases attached to those. So the board thought strategically they should give some thought to what they should do. They came up with the idea to involve the government, if they could, in that process. There were already rumours that private land developers were out there starting to buy land.

As we are all aware, land development has been the province of the ACT government and, quite frankly, they are going to lose it over the next few years and it is going to cause enormous problems for our economy. This rural land lease situation is going to become a pain in the neck for whatever government happens to be in place.

We had a look. The western edge was the obvious place. We were not looking to buy all the land. We were looking to have strategic pieces of land so that no matter what private enterprise did we would be involved in the process. We got government approval to do that.

**THE CHAIR:** You got government approval to do that?

**Mr Barrett:** To go out and buy land through a—

**THE CHAIR:** You explicitly acquired government approval?

**Mr Barrett:** The process that was set up by government was a directive from the minister that set out a framework for how we would go about acquiring land.

**THE CHAIR:** So you were relying on the strategic land acquisitions framework to acquire land?

**Mr Barrett:** Is that what it is called? It was the directive of June 2014.

**THE CHAIR:** I do not entirely know what it is called.

**Mr Barrett:** We were given a direction in 2014 as to how to go about it.

**THE CHAIR:** How to acquire land?

**Mr Barrett:** Yes, processes for acquiring—

**THE CHAIR:** That was the disallowable instrument from government?

**Mr Barrett:** I am not a public servant. If that is the appropriate term, Vicki, that is the appropriate term.

**MS LAWDER:** Earlier on you referred to the fact that you asked for a report on the amount of land. Who did that report for the LDA?

**Mr Barrett:** Dan Stewart did it. I initially, just as a throwaway comment, said, “Do something on the back of an envelope for me so I’ve got a rough idea what we’re talking about.” But Dan Stewart, being Dan Stewart, did a very detailed report with a whole range of options and alternatives, and the answer was 20 years, plus or minus about three years—

**MS LAWDER:** He worked for the LDA at that time?

**Mr Barrett:** Yes. He was deputy director.

**THE CHAIR:** Mr Stewart provided the board with that advice, 20 years plus or minus. What is your recollection of what the board did after that?

**Mr Barrett:** We then approached the government to give us an authority to go out and do something that would be in the long-term interest of the territory.

**THE CHAIR:** And in response to that you obtained—

**Mr Barrett:** A directive.

**THE CHAIR:** So in June 2014 there was the disallowable instrument which is called the strategic land acquisition framework. Is it your understanding that that was a direct response to a request in relation to acquisition of residential or potential residential land that the territory did not currently own?

**Mr Barrett:** Yes.

**THE CHAIR:** Before I go to specific blocks of land in that acquisition—and this may be testing your memory—did the board have discussions about the acquisition of those blocks of land? You have talked about one that had already been acquired, which is the one directly to the west of Rivett and Chapman at the top of Hindmarsh Drive, which is the Canberra Equestrian Centre, which is privately owned. Then there was a cascade of others: Milapuru, which is directly to the south of that block—

**Mr Barrett:** Yes. I have a map in front of me.

**THE CHAIR:** the National Equestrian Centre, which is still in private hands, immediately to the west of that; Fairvale, which was divvied up, and we will come back to that; and then Winslade and Huntly. Then there are the areas which abut Belconnen. Was the board aware of the strategic paper written by Colliers International about the strategic acquisition of land in the Stromlo area?

**Mr Barrett:** At some stage, yes.

**THE CHAIR:** Can you put a time on what “at some stage” means?

**Mr Barrett:** No. My recollection is not that good, sorry. Certainly the report that came to the board had been prepared by Dan Stewart.

**MS LAWDER:** The Auditor-General’s report says:

*The District of Stromlo Acquisitions strategy paper that was presented to the former Land Development Agency Board at its meeting on 11 December 2014 ... closely resembled unsolicited written advice ... provided by ... Colliers International ... in September 2014.*

Were you aware that it was based on Colliers’ unsolicited advice?

**Mr Barrett:** At some stage I personally was certainly aware that Dan got external advice. Whether we were aware on that particular day, I do not remember.

**MS LAWDER:** Is that external advice quite different to the unsolicited advice? Unsolicited would imply to me that no-one asked for it.

**Mr Barrett:** It is sort of interesting. We live in a very small town in terms of

government and industry, and many of us use each other as sounding boards on many things. Dan approached me on a number of occasions to ask my advice on things, not necessarily connected with this, and I was only too happy to talk to him. Everybody knows Mr Powderly. Whether he got advice from him or not—I would imagine that at stages he talked to him. He talked to everybody. That is our industry. You try to learn what you can that will benefit you in the future.

**MS LAWDER:** If you can try to cast your mind back—it is a while ago—the Auditor-General’s report says:

Minutes of the Board meeting on 11 December 2014 do not identify whether the former Land Development Agency Board approved the Strategy, its scope or rationale.

However, the LDA did go on to purchase some of the properties. What is your recollection of what the board decided about that strategy at the 11 December 2014 board meeting?

**Mr Barrett:** Obviously I cannot distinguish that board meeting from any other board meeting. Are you asking me whether the board accepted Dan’s strategy paper?

**MS LAWDER:** Yes; was it approved? They might have accepted it but did they approve it to go ahead?

**Mr Barrett:** That would be a matter of record, I am sure. The report that Dan presented was a bit of a shock to me and, I am sure, all the rest of the board. We had not been thinking further ahead than 20 years. I just cannot recall. I am not sure what difference it would have made to my thinking, if any. This was a particularly good board, I have to tell you. I have been on a lot of boards for government and everybody. We had a valuer, we had a planner, we had the two most experienced public servants Canberra has seen, we had a lawyer; we had everything. A board’s role, in my opinion, is to get advice from the chief executive, to get advice from management, to get advice from a Colliers-type person, and then to use their own experiences and wisdom to come up with answers. It seems to me that an Auditor-General’s job—and I am not critical of it—is to look at the written word and make judgments on that.

**MS LAWDER:** Who took the minutes of the LDA board meetings?

**Mr Barrett:** Whoever was assigned to do it. There were various people over a period of time.

**MS LAWDER:** There was not an assigned minutes secretary or a public servant or someone who took the minutes each meeting?

**Mr Barrett:** Yes, of course there were. There were people to take the minutes and they were quite capable people. Mostly, I can remember, I think, at the end it may have been Chris Wilson, who had a very senior position. I used to wonder why we were using somebody that senior to take minutes, to be honest. But I do not think the board ever had concerns about the minutes. The question you are asking me—I am not quite sure what the implication behind it is, but I just do not remember.

**THE CHAIR:** The Auditor-General says that the minutes were unclear as to whether there was further work commissioned or whether the board just accepted the strategy and that was it. Did you just accept the strategy, or did you say, “Thank you for the strategy and, to follow up, can you do a range of things?” Was there further work commissioned or initiated as a result of that?

**Mr Barrett:** Again, I am a little confused, sorry. The strategy, as you are calling it, was a paper prepared by Dan for the board that set out the future land boundaries. Is that what you are talking about?

**THE CHAIR:** Yes.

**Mr Barrett:** We certainly accepted his word that there was in the order of 20 years and we should therefore have a board decision to do something about it.

**THE CHAIR:** Did the board formally make a decision to do something about it?

**Mr Barrett:** This issue drifted around for a while, around strategy: where we should be thinking and where we should not be thinking. I just do not recall. But clearly we were in agreement to approach the government to do it. I would assume that it was a decision at that meeting. But clearly it was not a clear-cut resolution, and that may be the problem of the chairman at the time, which was me. I know I do not need to, but I am failing to understand what we are trying to work out here.

**THE CHAIR:** I think what the committee is trying to get to is whether there was a specific task given to the LDA in response to Mr Stewart’s strategy paper.

**Mr Barrett:** Absolutely.

**THE CHAIR:** And what was that?

**Mr Barrett:** The government issued a directive to proceed with the opportunity to go out there and, if somebody wanted to sell a block of land, have a look to see if that would be of future benefit for Canberra and, if it would, to see if it was worthwhile investing in it.

**THE CHAIR:** Was the LDA given a specific directive to acquire land west of Molonglo?

**Mr Barrett:** It was given a specific directive at its request. It was not a government initiative; it came from the board. We thought that it was important and then they gave us a directive. In fact the directive was prepared by one of David Dawes’s staff.

The difference between us and the Auditor-General is that she interprets that directive and that instruction in a purely legalistic sense after it is prepared. The difficulty that I have, and I am quite uncomfortable with it, is that the Auditor-General has expressed some criticism about the board’s activity, and that criticism from her perspective is correct. It is based on the written word. Have a look at her report. They argue what the word “follow” means. Somebody put “all” in the second-last sentence, which

apparently contradicts its stated purpose.

The purpose of that directive and the intent of that directive was clearly understood by the LDA board, the LDA staff, Treasury, I assume our minister, and even planning. But where we have got into trouble since then is that the Auditor-General has taken a legalistic view. It is not that the board was wrong; it is bad drafting of the directive. We cannot blame anybody else, because Mr Dawes's staff prepared it.

**THE CHAIR:** You are saying that the draft of the directive was compiled in the LDA?

**Mr Barrett:** No. Do not confuse the LDA—the newspaper keeps doing that—with EDD. It was one of David's EDD staff.

**THE CHAIR:** It does need to be clarified, because Mr Dawes was double hatted at the time and—

**Mr Barrett:** No, he was quadruple hatted. It is not an excuse but there is enormous pressure on the senior executive in the LDA. All senior people wear two hats. Mr Dawes was responding to—I do not know about at that time but at various times—five ministers. That is no excuse to get things wrong. It is not an excuse at all, but it might be part of the reason why some of the documentation was never quite kept up. I have never discussed it with him; that is just my view. The LDA is different to any other directorate: it has to produce money for government. There is enormous pressure on those senior people.

**MS LAWDER:** Going back to the report about land that Dan Stewart provided, the board said, “Can you do a one pager,” or—

**Mr Barrett:** No, I said that, and he went and did it very detailed, and I appreciate that.

**MS LAWDER:** As it turns out, with hindsight, that was largely based on advice from Colliers International. It was very similar to the unsolicited written advice they provided. And of course later they invoiced the LDA for around \$300,000 for the purchase of some of the properties and also an amount for the provision of that advice. Were you aware at any time that you would have to pay for that advice? Was that approved?

**Mr Barrett:** No. You are into management issues now. I am not aware of the other things that are in the Auditor-General's report about invoicing. It is just not a board issue.

**THE CHAIR:** Going back to the planning and land acquisition policy framework, direction No 1, 2014; it has so many parentheses and bits in it, I am just trying to drill down. Was that a general directive, or was it a directive that arose out of the discussion of the long-term shortage of residential land?

**Mr Barrett:** It arose because the LDA was concerned about the long term. The intent of that directive, the purpose of that directive, was fully understood by everybody. But apparently the word “follow” means something and the inclusion of “all” at the end

changes its purpose. I am advised by Mr Tonkin, who was on our board, that if it was a commonwealth issue, the commonwealth have some coverage that purpose is more important than the written word. But apparently we do not have it in the ACT. So the Auditor-General has made her comments based on the written word, which is her role.

**THE CHAIR:** I am not actually interested in the argument about the meaning. I am actually asking about what the impetus for this directive was. Was this directive a general set of guidelines about how the LDA should acquire land, or did it spring from the need to acquire more residential land to the west of Canberra?

**Mr Barrett:** It sprang from a concern of the LDA board that the government need to look a little further ahead. Do not forget that they have got other directorates that are doing things as well. But as far as the LDA was concerned, the LDA should be looking further ahead. They have a requirement to ensure adequate land supply going ahead. The concern undoubtedly arose; probably in my head but in the board's head. We went to government and asked, "Can we do that? That directive does not instruct us to go and buy land; it gives us the authority to be able to do it under the conditions that are set out in it."

**THE CHAIR:** So what you are saying is that that is the general overarching authority for the acquisition of land? What I am trying to get to is, in relation to the land that is the subject of the Auditor-General's report, whether the LDA had specific permission to go out and acquire land for that purpose.

**Mr Barrett:** It was given the authority under that directive to look at purchasing land. It then made a decision internally, within the board, on what it would like to buy. Under certain circumstances, I think under \$5 million, it had the authority to do that. After that it had to go and get various other approvals, which it did.

**THE CHAIR:** I do not want to seem to be putting words in your mouth. You are actually saying that the land acquisition policy framework direction was an overarching authority which gave the LDA the strategic—

**Mr Barrett:** Ability would be the word.

**THE CHAIR:** ability to go out and acquire land where you saw fit?

**Mr Barrett:** Under certain conditions, some of those being approval from others at various levels.

**THE CHAIR:** When it came to seeking approval for acquisitions above \$5 million, was the board involved in seeking that approval, or was that done at a management level?

**Mr Barrett:** The board made the decision that it would like to buy that. At that stage it would have had agreement with the seller, subject to formal approvals, that they were willing to proceed. And management carried out that task.

**THE CHAIR:** So for instance with the purchase of Milapuru, which went for \$7 million, the board would have said, "Yes, that's a fair price. We're happy with

that,” and then it would have sent the LDA management off to the government?

**Mr Barrett:** Correct.

**THE CHAIR:** And would it have come back to you to say whether the government said yea or nay?

**Mr Barrett:** Of course.

**THE CHAIR:** But when you were then informed, say in the case of Milapuru, that the government had agreed to that acquisition, then the board signed off on it? Or was it—

**Mr Barrett:** It was already done.

**THE CHAIR:** It was already done, so you were only informed?

**Mr Barrett:** We were not the approving authority. In that case we were the recommending authority.

**THE CHAIR:** If you were only recommending, who was responsible for actually sealing the deal?

**Mr Barrett:** According to the directive, over \$5 million to \$20 million, I think, it went to Treasury and our minister. You would like to think that they would take our advice. Over \$20 million I think it went to full cabinet.

**THE CHAIR:** And if you exceeded—

**Mr Barrett:** \$20 million in a year.

**THE CHAIR:** That had to go to cabinet as well.

**Mr Barrett:** Yes. Well, we did not set out to do that. There are some minor differences around whether you acquire it the day you decide to buy it and sign a contract or whether you buy it when you have paid the money—

**THE CHAIR:** When you settle it, yes.

**Mr Barrett:** That is a bit of an issue in that paper, but I do not see that as a big deal.

**THE CHAIR:** In relation to some of these blocks, the unsolicited strategy from Colliers, which was essentially adopted by the LDA, included the acquisition of the National Equestrian Centre, which is, I think, block 418. It is the large block that—

**Mr Barrett:** That is Milapuru, is it?

**THE CHAIR:** No, it is to the west of Milapuru.

**Mr Barrett:** I am sorry. It is Kerrabee, correct.

**THE CHAIR:** Kerrabee, yes; that is what it is sometimes known as. That has never been acquired by the government. Do you have a recollection of having any discussions about the acquisition of the National Equestrian Centre?

**Mr Barrett:** Yes.

**THE CHAIR:** What are those recollections?

**Mr Barrett:** You keep talking about Colliers' paper. That was just one of the pieces of input we had. There were other blocks that people approached us about or we learned were for sale and we went to purchase.

With Kerrabee, you are saying that it was one of the recommended ones. I can see why. You have only got to look at the map to see why for the government would be good to acquire that. I have a reasonable recollection of that one because it went on for so long. We had a valuation done based on its worth as a business, and that came back at—let us call it X. We then looked much more closely at it in terms of its future use to us. That would have increased its price to maybe two X. The scuttlebutt around town at the moment is that a major developer is looking at that block for considerably more than that. That is scuttlebutt.

**THE CHAIR:** When you say two X, you were prepared to essentially double your offer. But that does not relate to its future value as a tract of residential land?

**Mr Barrett:** No. Do not forget, we did not buy this land purely for residential. Residential was the main purpose but land can have lots of—there is a risk strategy. To do nothing and have private enterprise own all that: where does the government go, as an economy, in the future? People talk about risk. The biggest risk with this was not doing anything. We just could not come to terms. Do not forget, the board does not deal with these people. Management deals with them; we get reports. The report is, "We couldn't do a deal with this gentleman." It is his block of land. He sets the conditions. In fact for all of the blocks of land we did not set the price; the sellers set the price. We might argue with them and try to get the price down, but a seller sets the price and the conditions under which they will sell. And we could not come to terms with him.

**THE CHAIR:** You are saying that the LDA is a price taker, not a price setter?

**Mr Barrett:** No. In any situation, the seller of land determines the conditions. If they are not happy with them, they do not sell. The buyer either accepts them or rejects them. There were a number of blocks; this is one block that we did not proceed with because we could not come to terms with the seller. It is his block. He has every right to ask whatever he jolly well likes. I would be surprised if we were not out there arguing with him that our offer was a fair offer. But he has chosen not to take it. There are other blocks that we looked at that we did not proceed with for different reasons. They might be too steep; they might be too something. But price is not a bad one to get knocked back on.

**THE CHAIR:** You did not proceed with the Riverview block, which is the furthest

west of those blocks, presumably because, as has been put to us, there is too much river corridor, too much fire abatement zone; the topography was not great.

**Mr Barrett:** That is true. The LDA board was not out to buy every block of land in Canberra; it was trying to buy strategic land, enough of it to be involved in the game going ahead. The LDA has a requirement to return the government \$400 million. It has an enormous turnover. That is surplus. It is a drop in the bucket.

People talk about risk. There is no risk in buying this. The risks are in not buying it. In terms of buying it, they were all bought at roughly rural land value. If the government decides not to proceed into that area for whatever reason, we can just resell them or re-lease them. But I will tell you what we will do: I am quite sure the government will put lease conditions on there that allow them to get it back under some reasonable set of circumstances and price. They may put a withdrawal clause in there. They may even put a requirement there that “We’ll sell it to you, but if we ever want it we’ll only ever give you its current rural value.”

What is going to happen is that this land will inevitably, in my opinion, get rezoned for development. It is almost unarguable. When it does, the price of that land will increase potentially up to 10 times; not 10 per cent, ten times. The government is going to have to face that issue. People say, “Well, we’ll go out and compulsorily acquire it.” That is the biggest lose-lose situation for everybody. What government wants to go out there and acquire land compulsorily when people do not want to sell it? The LDA only answered people who had made a decision to sell. We put ourselves in the marketplace to buy. Sometimes we were successful; sometimes we were not. I have no doubt, Mrs Dunne, that history will show that we did not do enough of it.

**THE CHAIR:** You are essentially saying that not doing anything would create a pain in the neck for any government in the future.

**Mr Barrett:** This is going to haunt governments in the future. The land where we expect to have to develop next is all—basically we are talking about 99-year leases. The reason that these people are selling, in my humble opinion, is that they got their gift back 10 years ago, they had the moratorium period, they can make good money now and they are taking the money and running. They are fully entitled to do that.

I noticed the *Canberra Times* had an article the other day in its editorial that said people selling land may be looking like a bit of a mug’s game. “Hang on to it because you’ll make more when it rezoned”—that type of implication. That is true. This report, now it is out there; there were enough private developers starting to look to pick off land in Canberra and around Canberra. This has just brought it to the front page of the paper. There is not a developer within 100,000 miles of here who does not know that Canberra is a good touch: go and see what you can do.

**THE CHAIR:** Would it therefore have been more strategic for the LDA to have individually approached these landowners to say essentially, as has happened elsewhere, “The government is interested in purchasing this land. When you’re interested in selling, come to us first”?

**Mr Barrett:** Yes, that would have been good. Maybe we would have reached that

situation, I suspect. I am no longer there. I am a great believer in small steps. I thought we did well getting the government to recognise that it was an issue. It is a massive issue. I just cannot stress how big an issue this is going to be for the ACT. They, to their credit in my opinion, gave us approval to go ahead on a limited basis, and we are in trouble for what we did. With the exception of blocks that required infrastructure on them, because we had to approach those people, none of these blocks that are contentious did we approach. They were willing sellers. They set the conditions of the sale. Clearly as a buyer you argue to get the best deal you can, but they set them. If they set a set of conditions that we as a board thought was appropriate in the long-term interest of the territory, we either bought it ourselves or recommended to government that they approve it. That has happened on all those blocks there.

**THE CHAIR:** In relation to the block that was subdivided, the Fairvale block where the LDA did not acquire all of it, was the board involved in the discussion about dividing the block?

**Mr Barrett:** No.

**THE CHAIR:** If it had sold for \$5 million—it was valued at just north of \$5 million—and it had been sold as an entity, that would have gone to the board. Was the board aware of the acquisition of Fairvale and the circumstances under which it was subdivided?

**Mr Barrett:** Fairvale came to the board as a total. I do not think we agreed to buy it; we agreed to investigate it, I believe. That would be a matter of record. I am just a bit rusty. In the end the board was advised that another purchaser was buying part of it and asked if we wanted the balance. That is up to the seller. The seller determines the conditions. The seller has made a decision to sell to somebody else. I do not lie awake worrying about that anymore. All we had the opportunity to buy was the residue. We had a close look at that and we decided it would be good to buy the residue. But we would have bought the lot if we could have got it for the appropriate price. That was not what we were offered.

**THE CHAIR:** Mr Powderly says that there had been an agreement for the LDA to acquire the whole lot and then the circumstances changed.

**Mr Barrett:** I cannot argue that. I said to you it would be a matter of record. I just do not recall. We were certainly happy enough to investigate buying it all. We may well have made a decision to buy it all. I do not recall, but it would be a matter of record.

**MS LAWDER:** We had the land acquisition policy framework interpretation paper, which was prepared in August 2015. The Auditor-General's report said:

... various Board reports and business cases assert that the purchases were in accordance with Framework, but there was no contemporaneous record of [that].

Do you recall any of the discussions about whether the reports and business cases were in accordance with the framework, and on what basis would the board records state that?

**Mr Barrett:** The area where I think the Auditor-General is correct, because that is her role, is in the clarity behind these things. I think I accept that as a fair criticism because that is her role. But all these things were discussed, all the framework. Everything was discussed at every meeting. We even had meetings outside board meetings with staff. David made staff available to senior people. If Jim Shonk as a valuer had an issue, he would go to see the staff and talk to them about it, get more information.

I am not quite sure what you are talking about now, back in 2015, the directive. We were given authority to investigate purchasing land in, I thought, June 2014. Is that not the date on that? Now you are talking about a year later.

**THE CHAIR:** There was an interpretation paper that was—

**MS LAWDER:** What purchases it applied to and how to apply the \$20 million accumulation limit: that is the document I am referring to. Then according to this, on an ongoing basis the board reports reflected that it had been discussed and agreed that it was in accordance with the framework, but there are no records of what information the board had to decide it was in accordance.

**Mr Barrett:** I understand. I can recall the paper. I think the board asked to make sure that we were doing the right thing and the paper came back and said that we were. Has the Auditor-General not said, “You haven’t documented that or clarified that”?

**MS LAWDER:** Yes. There are a number of principles and tests in that framework, and the Auditor-General has said in that some cases—

**Mr Barrett:** They were not followed.

**MS LAWDER:** Were, were not, partially et cetera. I am wondering on what basis the board records say that it was in accordance with the framework.

**Mr Barrett:** Forgetting about that paper, in general the board was fully aware of the framework because it was involved in asking for it to be prepared. The Auditor-General’s interpretation of that framework is different to the intent of that framework; it is contrary to the purpose of it. She has a reason to come to a conclusion based on the written word. She is clearly right, it would appear, because she got the Government Solicitor to back her up. But that view is not supported by any of the other stakeholders. That is the point I am trying to make to you. I think that it is simple. The directive was not prepared exactly in accordance with its intent and its purpose. So when that paper was presented, we thought we were following it. The Auditor-General says that in a legal sense we were not.

**MS LAWDER:** For example, the framework’s value for money principle, according to the Auditor-General, was considered to be followed for four of the eight properties. So that is only 50 per cent, in theory, that have met the value for money test, which is a concern in terms of expenditure of public dollars. That is why I am asking what documentation the board relied on to make the assessment that the purchases met the framework when, according to this—

**Mr Barrett:** The critical thing to government of course is that you follow policy, you get value for money and you understand the risks. There are a number of other things in that framework; there is another handful of things. Each block that was purchased was purchased with the board understanding those requirements and believing that they had met them. In terms of the purpose of that document, I guarantee you that we met them. In terms of a legal interpretation, looking back, we did not. I accept that. I cannot do anything but.

**THE CHAIR:** We do not have any other questions. Mr Barrett, thank you very much for your attendance here today.

**Mr Barrett:** Could I ask you a question? I am not joking.

**THE CHAIR:** It is unusual but yes, you may.

**Mr Barrett:** I am not quite sure where you are heading with this. I would just like to repeat that in terms of the staff there they are in trouble for not following procedures—enough clarity, enough documentation. I am happy to accept that. But the LDA is different. Those people were under a lot of pressure. It is no excuse—not an excuse at all—but it is part of the reason.

In terms of the board, that board is skilful; they are all local people who live here. They are all people who want Canberra to thrive. There was not a single one of them who was there to get paid. They were all there to do the best for Canberra, not only for Canberra but also for themselves and their families.

I do not know whether you are looking at that side of things or you are looking at other things. But if you are, when you do your report, I would just like you to give a bit of thought to the staff and the board who have been criticised here. I understand why they have been criticised in a legal sense, but I think that it is a pity this is not still continuing. I think government should be much more proactive.

**THE CHAIR:** Thank you for your comments.

**Mr Barrett:** Now that I have been to a hearing, I do not want to come to another one. I have moved on; I do not want to come back.

**THE CHAIR:** You can tick it off your bucket list.

**MS LAWDER:** Yes, you never have to do it again.

**Mr Barrett:** Thank you.

**THE CHAIR:** You will receive a draft proof transcript. If there are any issues that you wish to raise, you can raise them in the first instance through the secretary, Dr Lloyd. Thank you very much for your attendance here today.

**The committee adjourned at 11.03 am.**