LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON PUBLIC ACCOUNTS

(Reference: Review of Auditor-General's Report No 7 of 2016: *Certain Land Development Agency Acquisitions*

Members:

MRS V DUNNE (Chair)
MR M PETTERSSON (Deputy Chair)
MS B CODY
MR A COE

TRANSCRIPT OF EVIDENCE

CANBERRA

WEDNESDAY, 22 NOVEMBER 2017

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

By authority of the Legislative Assembly for the Australian Capital Territory

WITNESSES

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Amended 20 May 2013

The committee met at 9.03 am.

GARRISSON, MR PETER SC, Solicitor-General for the ACT

THE CHAIR: Good morning, and welcome to the fifth public hearing of the Standing Committee on Public Accounts inquiry into the Auditor-General's report on certain land acquisitions. Welcome, Solicitor-General. I draw your attention to the pink privilege card, which I am sure you have read before and understand.

Mr Garrisson: Thank you, Madam Chair; I do.

THE CHAIR: I will begin with some general questions, to give the committee some background on the role of your office in supporting the government in land acquisition. Could you walk us through what role you have in that space?

Mr Garrisson: The office of the Government Solicitor supports the government and its agencies in relation to, in essence, almost all of its legal services. Amongst those is land acquisition. Land acquisition takes a variety of forms. Our involvement can range from simply providing advice to the drafting and settling of the relevant transactional documents once it is done. I would say that with the overwhelming majority of our work in the field there is already, in effect, a deal done and then they come to us. If it is not already documented—

THE CHAIR: So you are doing the conveyancing, essentially?

Mr Garrisson: Most of the territory's conveyancing which is domestic conveyancing is undertaken by private law firms. I made the decision that that should be outsourced. There are a handful of major development transactions that are done by some private firms. It is a question of particular expertise and capacity. Our office deals with a range of large developments for government. The type of transaction can be simply an acquisition, which could be as a result of purchasing at an auction or a negotiated deal with a party; or one of the options is acquisition under the Lands Acquisition Act, which can be either by agreement or by compulsion. They are all tools that are available, depending on the particular circumstances.

Compulsory acquisition is used infrequently, mostly associated with public utilities, roads and the like, if you cannot negotiate an appropriate deal. The complexity with compulsory acquisition is that if you get to that point you sometimes have some difficulty negotiating a mutual arrangement, and you then invariably will have a fight over what the compensation is, which can take some considerable period of time. The general approach is that if you can reach an agreement in relation to an acquisition then that is a far better course than proceeding by way of compulsory acquisition, which has a number of formal steps associated with it and can take some time, particularly if the party from whom the land is being acquired disagrees.

THE CHAIR: Is there a capacity to use the Lands Acquisition Act as a sort of template for acquisition, even though you are not going through a compulsory acquisition?

Mr Garrisson: That would be difficult. It is a particular formal process. It requires

first the giving of a notice of acquisition, then a response by the parties.

THE CHAIR: So if there were agreement there would be too many steps?

Mr Garrisson: If you reach agreement, which happens, there can be some good reasons for using the Lands Acquisition Act rather than a negotiated arrangement. But if you do negotiate, you give the notice and then the party says, "All right, let us agree a price," and everyone is happy, and it is acquired by agreement. Generally speaking, the steps that the parties are required to take are: let them know that you want it, agree on the terms of it and then document the terms of it. The Lands Acquisition Act does not give the party from whom the land is being acquired the option to have terms and conditions, because if it is compulsory, once the acquisition notice is given the land is gone, on the terms of that notice. Then it is simply an argument over the money that is involved, which can be and indeed has been litigated and can take some considerable time.

THE CHAIR: I asked the question because, in relation to this inquiry and the acquisition of these three particular blocks, at least one, possibly two, of the parties involved said that if we had had some structure, perhaps like the Lands Acquisitions Act, or we had used the same principles, it would have been easier. I wanted to see whether you thought it was possible to use the structure without using the formality of the—

Mr Garrisson: A structure is always good. Perhaps I could leave it at that.

THE CHAIR: Was your relationship with the LDA in terms of land acquisition different from other agencies? Did you have more involvement with LDA land acquisition?

Mr Garrisson: Only because the LDA was doing most of the land acquisitions. That is its business.

THE CHAIR: What advice and other services did the Government Solicitor provide to the LDA and the government more generally about these three acquisitions, the one in Glebe Park and the two at Acton?

Mr Garrisson: Obviously I will not give the detail of our advices. With Glebe Park we provided an initial advice about acquisition options. At that point I think it was very early days. It was sometime in the middle of 2014 or thereabouts.

THE CHAIR: On notice could you provide us with the dates of that?

Mr Garrisson: I think they are actually referred to in the audit report. I think the advice we provided was on 9 May 2014. I think there were some further desultory communications, but basically our office had no involvement at all until June the next year, when we received a contract.

THE CHAIR: So there was radio silence between your first advice and receiving the contract at the end of June?

Mr Garrisson: Very much so. As I said, there were some minor communications for a couple of months after May but nothing of great moment. Our next substantive involvement was when we received the contract. Clearly a deal of some description had been done and we were then instructed to finalise the document.

THE CHAIR: Regarding Mr Spokes and Dobel Boat Hire, from the Auditor-General's report there was, at least in relation to Mr Spokes, more involvement from the Solicitor-General's office?

Mr Garrisson: Yes, there was more involvement from my office in both of those transactions. The involvement was, I would almost say, intermittent. It was every few weeks. Sometimes there would be a fairly intense period, and that would involve, again, initial advice about possible ways forward. But then it was really about the negotiations. In respect of one of them, our role commenced when the LDA received a solicitor's letter from one of the parties, saying, "Here is a letter with a proposal." We got drawn in at that point. I think it would be fair to say—

THE CHAIR: That was Mr Spokes?

Mr Garrisson: It was Mr Spokes. It was a letter from Meyer Vandenberg. In respect of both matters I think it would be fair to say that the negotiations were difficult. That is reflected in the Auditor-General's report. It was also, I can probably fairly observe, a little on the untidy side. From my observations, at different points we were dealing with lawyers, then we were dealing with the parties directly, and the parties were dealing directly with the lawyers involved. Communication was perhaps not optimal. Ultimately we received instructions as to what the transaction was going to look like, and that was documented and finalised.

THE CHAIR: In which case was it documented? Because it seems that you—

Mr Garrisson: When I say it was documented, I mean the agreement for the surrender, the agreement for sale and that material.

THE CHAIR: It seems from the Auditor-General's report that, at least in relation to the Dobel Boat Hire business, you were acting without written instructions from the LDA.

Mr Garrisson: I could perhaps describe it as not an optimal way for the transaction to proceed.

THE CHAIR: Would you consider it usual or unusual to be asked to settle in this way without written instructions?

Mr Garrisson: There are sometimes issues of urgency in which we take oral instructions and the documents are settled with the client's instructions, often with the client. We have transactions of some urgency where that occurs. Most instructions that come into our office are written instructions. They come with a request for legal advice with the salient documents.

Both Spokes and Dobel were iterative processes by which different persons were

engaged in providing advice to the Dobels and Spokes. All I can say is that, as a result of those discussions and negotiations—and there was some correspondence—the deal that was finally struck upon and the price that was finally struck upon we were instructed to document, and we did so.

THE CHAIR: But the original instructions coming from the LDA were not written, so you were creating the documents afterwards to make the file, essentially?

Mr Garrisson: No, the file was made of our notes, emails, notes of meetings and the like. But the final form of the transaction, which was reflected by a surrender document and a purchase of business document and the like, was drafted on instructions that were provided and by agreement with the representatives of the other parties.

MS CODY: It is quite common to have file notes made of verbal correspondence.

Mr Garrisson: Of course. One of the elements of a commercial legal practice—and a large part of our property and commercial practice is exactly that; it is a commercial legal practice—is responsiveness to the needs of the client and a flexibility about the way one both accepts instructions and responds to them. From my own background in private legal practice, the excessive bureaucratisation of one's work is not often met with enthusiasm by clients. And a number of the transactions that we undertake are undertaken with some level of priority. It is a fact of life that sometimes we do not get instructions until a matter is perhaps closer to the finishing line than we would prefer, in which case one has to move with alacrity to both clarify the instructions and draft the relevant documents.

THE CHAIR: In relation to the Mr Spokes matter in particular, there seem to have been a lot of meetings.

Mr Garrisson: Yes.

THE CHAIR: It was reported to us by one of the principals of Mr Spokes that there were meetings and phone calls a lot of the time. How many meetings were you or your office involved in in relation to Mr Spokes?

Mr Garrisson: A solicitor from my office attended several meetings. The relationship between Mr Spokes and the LDA was complex. Of course, our role as legal advisers is to attempt to facilitate the deal, but we cannot make the deal; we cannot decide what the terms of the deal are going to be. All we can do is give advice, and then the clients reach agreement as to what the deal is going to look like. Sometimes it is not necessarily with our advice.

THE CHAIR: The Auditor-General's report refers to a meeting on 19 November 2014 on the city to the lake project, with a representative of the Government Solicitor's office, the owners of Mr Spokes and their legal representatives, and a ministerial adviser to the Minister for Economic Development. Can you tell the committee who that ministerial adviser was and whether it was usual practice to have ministerial involvement in negotiations for land acquisition?

Mr Garrisson: I am aware of that observation in the report. I am not certain who the ministerial adviser was. There were—

THE CHAIR: Can you take that on notice?

Mr Garrisson: I can certainly take that on notice.

THE CHAIR: Thank you. The second part of my question is: is that a usual thing, for there to be ministerial involvement, interest, at that level of detail in land acquisition?

Mr Garrisson: Not ordinarily. The minister's office or ministerial advisers, of course, can become involved because a party will make a representation to the minister's office. Accordingly, in terms of a constituent raising an issue with a minister, the minister generally will feel some obligation to ensure that that constituent's concerns are being addressed. I cannot speak in relation to this matter. It is not a usual circumstance, but there can be circumstances where it may happen.

THE CHAIR: Also in relation to the Mr Spokes acquisition, the principal of Mr Spokes, when she was here, said that they eventually had to give up their lawyer because it was too expensive and that later in the day they were approached by a good Samaritan, essentially, Mr Parsons, who helped them deal with the process. Mr Parsons negotiated a fee for professional services with the LDA, which was settled at the time. Are you aware of that? And are you aware of whether that was a usual or unusual process? He was acting for the seller but negotiated his fee with the purchaser.

Mr Garrisson: That is a commercial matter. There are a number of deals that are done in a commercial sense where one party or the other has as part of its deal the fact that its costs will be borne by the other party. Ordinarily the parties have equal bargaining power; generally each will bear their own transactional costs. Sometimes those transactional costs will get built into the price as a figure. Without being able to make any observation about the quantum of the figure at all, it is not unusual and certainly is not something where, from our perspective of providing legal advice, we would say, "Oh, this is a terrible thing. You shouldn't do it." It is simply a commercial term.

THE CHAIR: So it is not unusual for the Government Solicitor to come across occasions where there are brokers or third parties involved in a negotiation?

Mr Garrisson: This was an unusual transaction with an unusual genesis. Ordinarily we are dealing with solicitors. Business brokers, consultants or advisers are often engaged and involved in matters. There are a number of people. Ultimately they may well have recourse to legal advisers in due course. But it is not uncommon for parties to have business advisers, for want of a better term.

THE CHAIR: Could I go back to the general issue of land acquisition and the principles for land acquisition. In relation to the Glebe Park block that was ostensibly for the relocation of a stormwater pond, previously you said that land acquisition could often be done for a road reserve or something like that. Wouldn't public infrastructure such as a stormwater pond be exactly the sort of acquisition that you would use the Lands Acquisition Act for?

Mr Garrisson: First of all, the Lands Acquisition Act can only be used for a public purpose, and that is prescribed under the act.

THE CHAIR: Could you give us a brief, layperson's summary of what a public purpose is?

Mr Garrisson: It is not particularly easy. There are some obvious examples: a road is an obvious example. A less obvious example, although it may sound obvious, is acquiring land to release it for public sale in order to meet housing demand. There is an active debate among those who are interested in such things about whether that in fact amounts to a public purpose or not. There is a school of thought that says that acquiring land to resell it to a third party is not a public purpose, because there is ultimately a private interest involved. There are some who take a different view.

Of course, ultimately, if a party from whom land is being acquired is agreeable to it being acquired then in the end it does not matter whether you use the Lands Acquisition Act or you simply do it by private treaty. Private treaty is preferable. The terms are identified; they are known. In fact, it can occur reasonably promptly once the parties have agreed on price. We have advised from time to time on some acquisitions that have been undertaken under the Lands Acquisition Act. I would not describe them as commonplace at all, because it is a process that has a level of formality around it that is not necessarily helpful to a speedy outcome.

THE CHAIR: In relation to the final acquisition of the Glebe Park block, you said that you gave advice in April 2014 and then there was not very much communication until you received a contract and were asked for it to be finalised and executed.

Mr Garrisson: That is right.

THE CHAIR: Who drew up that contract?

Mr Garrisson: It was Clayton Utz, I believe.

THE CHAIR: And who were the final signatories to the purchase of the land?

Mr Garrisson: I could not possibly tell you. I would need to check the document.

THE CHAIR: Could you check? Can you get back to us on notice as to who the final signatories are?

Mr Garrisson: Yes, certainly. In terms of who the parties to the transaction were?

THE CHAIR: The parties to the transaction, yes. Presumably somebody in the LDA signed it on behalf of the government and somebody sold it on behalf of the sellers.

Mr Garrisson: Just to clarify, the acquiring party presumably would be the Australian Capital Territory.

THE CHAIR: Rather than the LDA?

Mr Garrisson: I believe so, but I am happy to take that on notice and provide you with a response.

THE CHAIR: Thank you. In relation to all three purchases, could you come back to us with that information—who were the parties on both sides?

Mr Garrisson: Who were the contracting parties? Certainly.

THE CHAIR: Who were the contracting parties. In relation to the other purchases, did you draw up the contracts or were you presented with contracts, as in the case with the Clayton Utz one?

Mr Garrisson: From recollection, I think one was a surrender of lease; another one had a purchase of business agreement and a surrender document of some description. We would have drafted those documents on instructions.

THE CHAIR: In relation to the purchase of businesses, are there other circumstances in which the territory has acquired a business? If so, under what legislation do they acquire it?

Mr Garrisson: If you step back and look at what was being acquired, it was the land; the land was a business. If you look at the principles of compensation, you are not simply buying the land, because there is a value to the business. In a consensual transaction, if you want a party to agree to sell it, they are going to attribute a value to the business.

More particularly, if you were acquiring it under the Lands Acquisition Act, the compensation obligation under that legislation would take into account a range of matters that are well beyond the simple property value of the land. It can include—it does include—legal costs, transactional costs, costs of perhaps moving your business or your house and a whole range of things.

So whatever the particular structure of the transaction is, the end result is compensation for the land and what is on it. If the party is attributing a value to its business—for example, fixtures and fittings, the building and so forth, which are ordinary incidents of such a transaction—they are also matters that are properly the subject of compensation under the Lands Acquisition Act. There is a list set out in the act of half a dozen or more things that are amongst those that can be included.

MS CODY: And that would be a general thing? No matter who was purchasing land, if the owner of the land was having to give up, they are going to make it worth their while to do so.

Mr Garrisson: Absolutely, Ms Cody; that is quite correct. My understanding is that that was very much the situation here. I think it is common knowledge, arising from the Auditor-General's report, that both in relation to Mr Spokes and in relation to Dobel, they had placed, shall we say, reasonably ambitious prices on the purchase of their land and undertaking.

MS CODY: As a former business owner, I would probably do the same thing with anyone looking to purchase a business from me.

THE CHAIR: In relation to the Mr Spokes bike hire, for which the value of the business was set at $1, and the territory acquired the business, and in relation to the boat hire business, where there was a substantial value put on the business, this was, from your point of view, just a transactional arrangement? There was no head of power or no particular legislation that the territory was using to acquire those businesses? It was just part of the transaction of acquiring the land?

Mr Garrisson: Yes, indeed, in the exercise of the territory's ordinary power to enter into contracts.

THE CHAIR: Are you aware of other circumstances in which the territory has acquired a business while in the process of acquiring land?

Mr Garrisson: I would say that over the course of the last 18 years that I have been here I am sure it has occurred. I cannot recall a specific instance. We certainly have entered into purchase of business agreements at different points, but I have no particular recollection of an example. It is not commonplace, but certainly the value of the business would form part of the consideration for buying a block of land.

I am assuming that the owners of these businesses had a particular reason why they wanted a sale of business transaction; it may have been their own tax affairs or a whole range of reasons why that was a favourable treatment of the matter. But that is something of which we have no knowledge.

THE CHAIR: You said earlier that there was a mixture of approaches to legal work in relation to land and you said that, generally speaking, if it was residential, it was sent out to private conveyancers to do the work. Do you have a set of guidelines for where work is done by private companies and where it is returned for the Government Solicitor to be involved in?

Mr Garrisson: We have established a series of panels for the provision of different types of legal work for the territory. Amongst them is a conveyancing panel. That is work that is what I would call your ordinary domestic conveyancing; for example, the sale of residential blocks as part of a greenfield development and a number of land releases that are undertaken. We used that panel to establish the law firms that are doing the transactional work for the asbestos task force.

The decision as to whether or not a particular piece of work is to be outsourced is mine. Agencies can request it and provide a justification as to why they think it should go to the private law firm. Alternatively, I make a decision, as indeed I did with conveyancing work quite some time ago, that on a value for money and risk basis it is better done by the private sector—they could do it efficiently and cheaply; they have all the systems set up because they do a whole lot of other conveyancing work for other people; and it is low risk in the sense that it is routine transactional work—and the resources of my office are far better allocated to dealing with the more significant and high-risk transactions which the territory enters into.

THE CHAIR: But, finally, the decision as to whether something is contracted out or done in house is your decision?

Mr Garrisson: Correct.

MS CODY: I am assuming that the panels you use are set up under the procurement guidelines.

Mr Garrisson: Yes. There are two or three panels. We are looking at refreshing them next year.

THE CHAIR: In relation to the Land Development Agency more generally, did the Government Solicitor provide advice to the LDA board? Specifically, did you provide advice on the land acquisition framework, either to the minister when it was being devised or to the board after it was made and they were making decisions that were supposed to adhere to that framework?

Mr Garrisson: No.

THE CHAIR: Not at all?

Mr Garrisson: No.

THE CHAIR: Did you advise the government on the land acquisition policy framework?

Mr Garrisson: I have no recollection of having done so.

THE CHAIR: You said that you did not, at any time, advise the LDA board on the land acquisition policy framework?

Mr Garrisson: At the time at which we were engaged, no, I did not. After a range of issues arose, I provided informal advice in relation to it. And obviously the Australian Government Solicitor, on behalf of the Auditor-General, looked at the policy as well. It is my understanding that, before the audit report, the LDA board implemented a range of changes to its systems and processes to reflect the way the ministerial direction read.

THE CHAIR: Going back to the business, you said it was a transactional thing. I am still a little uncertain about the acquisition of businesses. If we are acquiring a business, we do not actually—

MS CODY: You personally or we the government?

THE CHAIR: No, we the territory. The territory is acquiring a business. Normally when the territory acquires things it has a reason for doing it. It acquires land because it needs it for some reason. It acquires goods and services because it needs them for some reason. In this case, it was acquiring a business that it did not want and did not ever operate. One, in particular, did not operate from the moment of acquisition. Is there anything in relation to procurement that the government would have had to do to

ensure that this was an appropriate procurement, or are you saying, Mr Garrisson, that this was simply a part of the business deal to acquire the land?

Mr Garrisson: That is the way the matter was viewed. Those were our instructions.

THE CHAIR: Your instructions were what?

Mr Garrisson: That this was how the deal was going to be broken up.

THE CHAIR: In relation to Dobel Boat Hire, that was a verbal instruction in the first instance? Was that break-up of land value and business value conveyed to you in writing at any stage?

Mr Garrisson: There were ongoing negotiations between the parties. There was correspondence with the solicitors who then were acting for Dobel. The instructions, so to speak, were iterative, through email and letters from the other side and the negotiations that occurred.

THE CHAIR: And this is what you call a less than optimal management of the transaction?

Mr Garrisson: If one looks at it in totality, it was untidy. From a process perspective, certainly my preference would have been for it to have proceeded in a different way. But it was an iterative transaction and one gets to an endpoint where the acquisition of the land, on our instructions, formed a critical part of a much larger project, and it was viewed in that context.

THE CHAIR: In relation to the land acquisition policy, when I asked you questions about whether you had advised the LDA board, you said that after some developments you had given informal advice. What were the developments and what was the nature of—

Mr Garrisson: When it all became public, when there was the assertion that the board had not in fact complied with the terms of the policy, I expressed a view, which is basically aligned with that which the Australian Government Solicitor formed, that the direction meant what the direction said.

THE CHAIR: Was that an unsolicited opinion from you or did the LDA board come to you? You said it was informal advice.

Mr Garrisson: I met with the board and they discussed a range of different matters from time to time. I do recall expressing, after the issue in relation to the policy arose, a very short view about its terms. To be perfectly frank, I cannot recall when it was. It was a very short email. It may well have been not so much to the board as to an officer. I would need to find out who it was. It was quite some time ago.

THE CHAIR: Could you get back to the committee on that?

Mr Garrisson: I will endeavour to locate that.

THE CHAIR: Thanks.

Mr Garrisson: By that stage it was pretty much water under the bridge, because everyone had agreed that—

THE CHAIR: You said that from time to time you met with the board. That was at their board meeting?

Mr Garrisson: Occasionally. That was more as a client engagement exercise in terms of discussing a range of matters with them, the provision of legal services, how that was progressing and any particular issues that they had.

THE CHAIR: Did they ask you? Were the times when you met with the board initiated by you or the board?

Mr Garrisson: It could be either. Sometimes I like to catch up with clients and see how they are going. It is a normal practice.

THE CHAIR: Could you tell us, on notice, when over the period 2014, 2015 and 2016 you met with the board and, within the bounds of client confidentiality, what issues were discussed?

Mr Garrisson: I will see what I can do.

THE CHAIR: Mr Garrisson, that probably concludes what the committee needs to know at this stage. There are a number of things that you have taken on notice. There will of course be a transcript that will come out in the next couple of days. That gives you an opportunity to review the evidence, and if there is something you think needs to be clarified we can take it from there. When the transcript comes out, there may be some questions that arise, and we might put those in writing to you as well.

POWDERLY, MR PAUL, State Chief Executive, Colliers International and Colliers ACT Pty Ltd

THE CHAIR: Welcome, Mr Powderly. We are on the fifth day of hearings into the Standing Committee on Public Accounts inquiry into the Auditor-General's report on certain land acquisitions. Thank you for your attendance today. The purpose of today's hearing is to look at the valuations in relation to the land at Acton, but there are a couple of issues that I might raise that come out of your evidence from your earlier appearance; I might take the opportunity to clarify a couple of issues there.

Mr Powderly: Sure.

THE CHAIR: You are familiar with the pink privilege statement?

Mr Powderly: Yes.

THE CHAIR: The Auditor-General's report states that the Colliers International valuation advice in relation to Dobel Boat Hire was emailed direct from the principal of Colliers to the chief executive officer of the Land Development Agency. That would be you. Was the boat hire valuation emailed directly from you? Is that correct?

Mr Powderly: No.

THE CHAIR: This is what the Auditor-General's report says. Are you the principal of Colliers International?

Mr Powderly: Yes, I am, but I am not sure that the valuation was sent from me. I think it was sent from Rob Rixon.

THE CHAIR: Who is Rob Rixon?

Mr Powderly: He is the valuer that did the valuation. For clarity, as I wrote back to Brian when he wrote to us to ask us to appear at today's session, selecting today's date and today's time meant that Rob Rixon and our government people would be overseas in New Zealand, unfortunately, this week, not returning until tonight. I have offered to come and answer what questions I can on behalf of the valuation business.

THE CHAIR: Okay.

Mr Powderly: I did also ask if there were any technical valuation questions to provide to them. Obviously, not having done the valuation myself, I am only going to be able to answer what I can answer. I did not receive any technical questions. I am going to try to answer everything as best I can.

THE CHAIR: If there are technical questions that you cannot answer, of course—

Mr Powderly: We will take them on notice.

THE CHAIR: There is the option to take it on notice. The Auditor-General's report states at paragraph 3.9:

> The Colliers International valuation advice was emailed direct from the principal of Colliers International to the Chief Executive Officer of the Land Development Agency on … Monday, 30 November 2015. Oral instructions appear to have been given by the Chief Executive Officer of the Land Development Agency to the ACT Government Solicitor for the acquisition some time after this time but no written instructions could be found.

Could you clarify for the committee what the transmission process was for the Colliers valuation on Dobel Boat Hire on about 30 November 2015?

Mr Powderly: Yes. I am going to refer to it as block 16, section 33, because I do not know the difference between Spokes and Dobel.

THE CHAIR: Okay; block 16. I am happy with block 16, section 33.

Mr Powderly: We received written instructions from the LDA, from Richard Hutch, on 23 November 2015. That was following a week of dialogue that Rob Rixon and Richard Hutch had had about what the valuation was for and what the instructions would be. Obviously, it being quite a complicated property with a myriad of interests, they wanted to make sure they got the instructions right so that they got the correct advice. Draft advice was emailed to the director-general and to Mr Hutch on 30 November—not the final valuation report but draft advice which provided for a valuation of $426,000, less the concessional lease payout of $130,000. That was provided with a "draft" print across it for them to have a look at the advice that we provided.

THE CHAIR: So $426,000 for—

Mr Powderly: That was the market value, less the concessional lease payout of $130,000, with the market value being deemed about $296,000. That was provided in draft on 30 November.

THE CHAIR: When was the valuation finalised, and what was the process after 30 November to the finalisation?

Mr Powderly: We have no record of emailing the final draft to the government. It was mailed to them in about February with our invoice.

THE CHAIR: About February, with your invoice?

Mr Powderly: Yes.

THE CHAIR: When was the settlement?

Mr Powderly: I am not sure.

THE CHAIR: It was mailed in about February?

Mr Powderly: Yes. We do not have a record of emailing the final document. As I said, you can ask the government if they have a copy. We do not have a copy that we

have actually emailed. We mailed it with our invoice.

THE CHAIR: In relation to Dobel Boat Hire, block 16, section 33, there were two initial valuations, which were not done by you. The third was sought in November from Colliers, which we have discussed. Can you talk me through how we got from $426,000 in the draft to somewhere between $900,000 and $1 million, which was the final advice?

Mr Powderly: The final valuation of the property, the market value, was $438,000. That was the market value of the property assessed by Colliers International in the final advice. In the intervening period between our draft and our final advice, the LDA had contacted us and said that they were dealing with one of the other transactions and they were looking at just compensation under the Lands Acquisition Act and what premiums would be paid to avoid going down a compulsory acquisition process.

I think we were asked to look at other jurisdictions, at New South Wales, to see what was occurring and whether there were premiums paid in excess of just the market value of the property, which we did. We spoke to a number of our valuers in the team working on the New South Wales infrastructure projects. You will know all of their names: WestConnex, NorthConnex and other bits and pieces. We were told that, in excess of the market value, there were premiums being paid for disturbance, solatium in the case of residential properties, all heads of compensation, and that those premiums range from anywhere between $50,000 and up to half a million dollars depending on the circumstances of the property.

We provided that advice to the LDA. In that final advice, it said, "Market value of the property is $438,000, but if you want to go down this track of not going through a drawn-out litigation process you can pay up to $500,000, which is what we have sourced from other jurisdictions as a payment to avoid going down that process." We provided then that the maximum range you could pay would be the addition of the two.

THE CHAIR: Okay.

Mr Powderly: We did not say the market value was 950; we said that would be the maximum which you could pay if you wanted to avoid going down that process.

THE CHAIR: Because also, in that, you have a range. I recall from your evidence when you last appeared here that you said a real valuation would not have a range; it would have a point.

Mr Powderly: Yes. The advice clearly states the market value of the property as being $438,000.

THE CHAIR: Yes.

Mr Powderly: Then it goes on for a couple of paragraphs to talk about this issue of compensating people for going down this process, and that some governments choose to do that and some governments do not. What we did was do the research we were

asked to do, and we came back with the maximum, really, that people are paying for this sort of—

THE CHAIR: Okay.

MS CODY: A long, drawn-out court process could easily cost at least those sorts of sums.

Mr Powderly: It could do. That would be excessive. I think it is more about—in the case of New South Wales—imagine holding up the public infrastructure for four years, what that cost would be.

MS CODY: That is right.

Mr Powderly: In the case of the ACT, our brief and our instructions clearly were that this was a city to the lake project that they wanted to proceed with. Obviously, nothing has happened so urgently since, but the point was that if you were going to try to go forward with a project that had economic benefits you would not want to be sitting there for four years wondering whether you were actually going to go ahead with the project. Governments really need to put a quantifiable price on that. I guess that has been the whole argument about this. You put a business case together to make decisions about whether you do or do not pay somebody more than the market value.

THE CHAIR: In relation to market value, the previous valuations were one of $50,000 and one of $100,000, but Colliers came in at $438,000. Can you talk us through the thinking that Colliers did that got you to $438,000?

Mr Powderly: I cannot talk for Mr Rixon. He obviously did the valuation. I am reading from the file. Basically there is limited evidence of two boat storage type properties that had sold on the foreshore, both being in Yarralumla. His analysis, which I read, was that he looked at those and said they showed a certain rate per square metre.

This property was substantially smaller. He applied a higher rate per square metre. His initial assessment was $296,000 and he increased that to $438,000 during the process between draft and final. As I said, it is not the sort of property for which there are 50 comparable properties. He provided the sales, he provided his interpretation of the sales and it was not my job necessarily to query his justification. He came up with his assessment and it was issued.

THE CHAIR: My understanding from reading the Auditor-General's report is that the site rate eventually lit upon was $4,000 per square metre.

Mr Powderly: It was originally $3,000 and it got lifted to $4,000, yes.

THE CHAIR: How did we move from $3,000 to $4,000?

Mr Powderly: Between draft and final there was a conversation with the LDA about what they were doing with the other property. That must have influenced the view to change it by $1,000 a square metre, which added a hundred and something thousand

to the property. As I said, in many instances we issue draft reports, because there is always an area for people's interpretation of evidence and their opinion. Sometimes we are convinced that it is slightly higher value; sometimes it is lower value. It is just part of the process of doing a valuation.

THE CHAIR: The difference between $3,000 per square metre for the site rate and $4,000 was a negotiation between Colliers and the LDA?

Mr Powderly: No, I would not say a negotiation. They basically provided us more information on other things that were occurring, another property about to sell that we were not aware of. I understand they were negotiating on the other boat frontage property.

THE CHAIR: The bike hire business?

Mr Powderly: Yes.

THE CHAIR: Which you also provided—

Mr Powderly: No. We provided no advice on that.

THE CHAIR: In relation to Mr Rixon's valuation, I recollect from your evidence that you signed off on it as well.

Mr Powderly: Yes. We have a one-up policy in Colliers. Someone checks it and countersigns it.

THE CHAIR: So you would have had some knowledge of it at the time?

Mr Powderly: I discussed it with him, yes.

MS CODY: Mr Rixon obviously does a lot of valuations for Colliers.

Mr Powderly: Yes, he is very experienced. He is an associate director. He has been with Colliers for probably 15 years now. Formerly he was the head of the Australian Valuation Office, and he does a lot of our government valuation work.

MS CODY: You obviously trust his work. You have kept him on.

Mr Powderly: Absolutely.

MS CODY: He knows what he is doing. He comes up with valuations that work for the client and for you?

Mr Powderly: Yes—not for me personally but for Colliers.

MS CODY: For Colliers International.

Mr Powderly: Yes. As I said, in hindsight about the amount of compensation, if we could have got a lot more evidence and a bit more time we might have been able to

close that gap a little bit, but we were pretty much given seven to 10 days to do that quick bit of work and come back to the government. Everything is great in hindsight. But I have no issue to question his ability and technical grasp of things. He has probably a better understanding of concessional leases and lease payouts than most.

THE CHAIR: In relation to the report, Capital Valuers, who were engaged by the Audit Office to provide independent valuation advice in relation to this inquiry, said:

> The Colliers report does not stand on its own and cannot be relied upon without further review of a number of anomalies in the report. The final ascribed value lacks evidence and methodology and has not been justified.

How do you, as a representative of Colliers, respond to that critique?

Mr Powderly: Capital Valuers are fully entitled to provide their opinion. Obviously they are talking about the difference between the $496,000 and the recommended range. As I said before, getting governments to release information about confidential, compulsory acquisition things is nigh on impossible. If I could have had that information and inserted it in the report then maybe those comments would not have been provided. But it is what it is and we have to live with those comments provided by the Auditor-General.

THE CHAIR: In the report, in relation to Dobel Boat Hire the Auditor-General says:

> The Colliers International advice places significant reliance on the purported payment of $230,000 in 1997. In advice to the Audit Office Capital Valuers noted that 'Colliers have assumed in favour of the Crown lessee that the payment was a payment for the lease'. However, the Crown lessee, Dobel Boat Hire Pty Ltd, did not produce documentation in relation to the payment, as requested by the Land Development Agency.

Correct me if my understanding of valuation is flawed, not being professionally trained as one. My understanding is that part of the baseline for the valuation was an exchange of moneys in 1997 of $230,000, which the Dobel Boat Hire owners said was a payment for converting it to a crown lease. But there is no evidence that the lease was converted to a crown lease and there was certainly no evidence provided by the Land Development Agency here, or from any of the valuers, that this was a crown lease; it was in fact a concessional lease. Can you talk the committee through what the significance of the 1997 payment of $230,000 was and how that might have affected the valuation?

Mr Powderly: The information and the instruction provided by the LDA, and the report that was provided to them, was on the basis that that was paid and that was dealt with. If it was not, they should have come back to us and said, "What would your value be if that had not been," and we would have given them a different value.

THE CHAIR: So you were specifically instructed by the Land Development Agency—

Mr Powderly: Yes, and it is in our instructions. It is what we assumed and we were told to assume.

THE CHAIR: You were told to assume that there had been an acquisition of the crown lease?

Mr Powderly: Yes; we were advised that that had occurred. It would not be the first time that the government had not processed something that had been paid, but the valuation was on that basis. If it was not the case then it would have a different value, quite simply.

THE CHAIR: Were you aware of the relatively short lease that was remaining on the—

Mr Powderly: Yes, 2022, or whatever the date was. I read the report.

THE CHAIR: Would the length of time remaining on the lease have coloured the valuation of the lease?

Mr Powderly: If your instructions were in isolation. But our instructions and the basis on which the valuation was done, which I have had occasion to read in the last 24 hours, were: "We have been engaged by the ACT government Economic Development Directorate portfolio to provide valuation services in regard to the proposed acquisition of the crown lease block 16. The land is required as part of the city to the lake project and we have examined the value of the crown lease from the viewpoint of the crown lessee and EDD as the acquiring authority."

The relevance of that is that, as an acquiring authority, once you own the property you do not have a five-year lease. Obviously when we came up with a value we took into account the current lease term, but our instructions did not say, "Value this clinically as if these guys' lease was going to expire, because we want to be reasonable and fair to purchase the property." The background to our instructions was reasonably clear: to be reasonable and fair. But it was on the basis that the LDA was going to be the purchasing and the acquiring authority.

THE CHAIR: So you took the LDA's word for it that this was a crown lease. Did you check whether the title was registered in the titles office?

Mr Powderly: We did a title search. We provided a precis in the valuation report of the crown lease and the information given to us. I did not check, because I did not do the valuation, but—

THE CHAIR: When I say "you", I mean Colliers.

Mr Powderly: whenever you provide a valuation and there is unclear information, you basically condition the report to those things so that the person relying on it then has to go and satisfy themselves. At the end of the day, the client was the ACT government, which has the titles office, the Solicitor-General's, the LDA. It is not my job to do that if we are asked to do something quickly and they are to look at those assumptions.

THE CHAIR: So you did not do a title search?

Mr Powderly: No. We were given documents—the crown lease and the background information—by the LDA.

THE CHAIR: So your valuation was predicated on the view that the information you were given was correct?

Mr Powderly: It was predicated on the fact that the valuation was to be done on the information provided to us. Our valuation division conditioned the report to that extent.

THE CHAIR: In relation to the valuation for the business component, if you purchase a business that has a short term to run, does that impact the value of the business?

Mr Powderly: It certainly would—not that we valued the business; we valued the real estate. In general principle, if you are valuing a business, you can only capitalise the income over the remaining term of the lease. That is pretty standard practice. But we did not do any valuation on this business; we valued the real estate, because we were understanding that the business had been purchased by the LDA and that that was no longer part of what we were valuing.

THE CHAIR: Thank you. You have corrected the chronology that is a bit faulty in my head. There are a couple of issues I would like to go back to in relation to block 24, section 65. Ms Cody, have you got any further questions in relation to Dobel Boat Hire?

MS CODY: No, that is fine.

THE CHAIR: This arises from a reflection on the Auditor-General's report and the evidence that you gave previously on 27 September. This is in relation to the changing of the document that was subject to the FOI request and the Auditor-General's comments on that. The Auditor-General comments that there was an exchange of emails in relation to the document from the former deputy chief executive of the Land Development Agency and that you sent via email at 9.57 on 12 November a copy of the discussion paper because, as we have discovered before, there was poor record keeping in the LDA, so you provided them with a copy of that.

In your evidence to us you said that there was a period of time that went by, perhaps 30 or 40 minutes; that you received a call after the first email; and that then a second email was sent with the words "discussion papers" changed to "valuation". However, the Auditor-General says that the first email was at 9.57 and the second email was at five minutes past 10. That is only eight minutes. Can you explain the discrepancy between what you told us on 27 September and what is reported in the Auditor-General's report?

Mr Powderly: I am not sure which timing is correct. Just to go back one step, the primary document provided to the LDA was the valuation considerations document, which we provided one week earlier. As I said in my evidence, we were contacted many months later by a former employee of the LDA who said that they were looking

for documents; they could not find their file.

As I said to you, I was out of the office. I rang my EA and said could she look at the last email that was sent to Dan Stewart and to send a copy of that to John, which we did. I had an intervening conversation of a few moments. When I spoke to the Auditor-General originally, I did not have the emails with me; I thought I said to her that it could have been 30 to 40 minutes between them. I am not sure I said it here; I thought I said here, "Here are the emails."

THE CHAIR: No, you actually said:

> I got a phone call about half an hour later, 40 minutes later, saying, "We should have got valuation advice."

Mr Powderly: The emails are the correct time frame. I have your transcript, which is marked up—it will go back to you—that Brian has sent to me, but the emails are the correct time frame, whatever it was, five or six minutes.

THE CHAIR: Okay.

Mr Powderly: We sent the email through and offered if they wanted to change the heading of the document. I got a phone call back saying, "Yes, please do that." Again, my EA, because I was out of the office, made the changes and sent it on my behalf.

THE CHAIR: So the timing of the emails is the timing—

Mr Powderly: Is the correct timing.

THE CHAIR: Thank you for clarifying that. In relation to the unpaid informal valuation for block 24, section 65 that you provided to the former deputy chief executive, which was originally called "valuation considerations", how common is it for Colliers to make unpaid informal valuations for clients?

Mr Powderly: Let us go back to my testimony. We did not provide valuation advice to the LDA. Let us get that clear.

THE CHAIR: Valuation consideration?

Mr Powderly: The valuation considerations document was considering the valuation done by another firm, which was the firm that had the valuation for a million dollars. That is why it was headed that: it was considering a valuation that had been dropped off to my office by another firm as to why it did not represent market value. Let us be clear. We did not do any valuation advice to the LDA. If we do, we receive written instructions, we provide a quotation, we provide terms and conditions, and we issue a report that is signed by a valuer with a valuation in it. I want it to be crystal clear.

THE CHAIR: Okay.

Mr Powderly: We do provide the LDA with multiple pieces of advice for government during the course of the year under our other contract, which is our

commercial agency contract. We are asked on multiple occasions to provide informal advice as to the marketability, the value, of something we are looking to buy. We do that as an agent under the panel arrangement, and we do not necessarily charge for that. I could probably cite 30 or 40 instances where I and other agents have been asked to provide that advice to the LDA as part of a proprietary process to pitch for business. It is not uncommon.

As I said in my advice, I did advise the former deputy director-general, if they were going to proceed beyond the preliminary advice to acquire a property, that they should get formal valuation advice. At that point in time they could have used Colliers or they could have used someone else. We would have charged them handsomely for that advice. But they chose not to, because, as I said before, somebody left the LDA and the process ran awry.

The answer to your question is: yes, we do a lot of work on the commercial advisory panel where we are asked by the LDA to give advice on Molonglo, Gungahlin or other bits and pieces. We do that as part of our panel arrangement. If we were asked to charge them, we would, but in most instances it is informal market advice, which is what we thought we were providing in respect of this property. They had a valuation; they could not understand why they should be paying more than a million dollars. We gave them this advice as to what its market value would be.

Referring to the Auditor-General's report, which you have, Capital Valuers have said that, had Colliers been asked to do valuation advice or had he been asked to do valuation advice, the advice that we gave the LDA would have represented the value. I can direct you to the page in her report.

THE CHAIR: Okay. What you are saying there, Mr Powderly, is that it is not uncommon for Colliers and other valuers to provide this kind of informal valuation?

Mr Powderly: No. Remove the word "valuers". For Colliers, as a commercial real estate business, it is not uncommon for them to give advice to government about the marketability of property.

THE CHAIR: Okay; I stand corrected. It is Colliers as a property venture rather than Colliers the valuers.

Mr Powderly: Colliers ACT Pty Ltd is the real estate business, as opposed to the national valuation business, which operates under strict valuation guidelines.

THE CHAIR: But what you are saying is that it is not unusual for Colliers to provide this sort of informal advice free of charge to the Land Development Agency and other government agencies in relation—

Mr Powderly: Yes.

THE CHAIR: And this would continue through into the new agencies that replace the Land Development Agency, like the Suburban Land Agency?

Mr Powderly: It would be up to them if they sought advice. I have provided similar

advice to politicians on certain bits of taxation policy. We are happy to provide advice where we can.

THE CHAIR: Okay.

MS CODY: Mr Powderly, did you say you have a commercial contract as part of that—

Mr Powderly: Yes. There is a panel arrangement in place with the LDA. There are provisions in that document that if we do certain work we charge an hourly rate and other work we provide free of charge if it is just general or market advice.

MS CODY: And I would imagine that, if that business was set up in other jurisdictions, you could quite possibly have the same contracts in place?

Mr Powderly: We do have contracts with the New South Wales government on the provision of certain services, but in the ACT only just recently have those contracts been updated. Under the new Suburban Land Agency there are now new contracts in place for their panel real estate firms, and there is also a panel arrangement in place for valuation firms.

MS CODY: Thank you.

THE CHAIR: In the Auditor-General's report, referring to block 24, section 65, and the discussion paper provided in May, it says that you came up with a range of current values to settle the matter, of between $2.8 million and $4.6 million, with a recommendation of between 3.6 and 3.8, and with block 24, section 65, city, the Glebe Park land, in your May discussion paper you did not consider alternative uses previously identified; that is, hotels or serviced apartments. It says that, importantly, in contrast to the valuation considerations documents of May 2015, only provided a week earlier, it stated that the site was permitted for residential use.

There seems to have been a variation in your considerations over a period of time about what the appropriate uses were for that land. In one instance you said that residential use was not allowed, and in a later document you said it was allowed. What was the reason for the variation between the valuation consideration paper which looked at hotels and serviced apartments and the discussion paper a week later that looked at residential land use?

Mr Powderly: Thank you for the question. I am glad people do not read what I have already provided, but we went to some great lengths to produce this information for you. The valuation considerations document was done for the LDA to look at the comparison to the current valuation of a million dollars and what were the options.

The discussion paper was produced specifically for the former deputy director-general to have a meeting with the proponents, who were only thinking about the site in a residential capacity, and he was to go to that meeting armed with what their thinking would be as to what it would be as a residential property and he had those ranges. The former document was the one that the LDA relied upon and used in all of the different options for the site. There was no point sending him along to a meeting where they

want to talk about residential.

That was the reason why we produced that discussion paper for him. Its relevance for the LDA's decision-making process, as I said, and the whole idea about it having its title changed, was irrelevant, because the primary document was the valuation considerations document. He only took that discussion paper in case they wanted to know: "What advice do you have on its residential value?" That was the only reason for that document existing. It had no other relevance.

For the LDA's file to go missing and them not having all their documents there—it ended up being the document they only had after it was emailed to them. I put that, quite detailed, in writing to you when I appeared last time, because the Auditor-General felt that she had not produced that document to you and asked me to do so. That is why I have been frustrated with the whole misreporting about this issue about which documents were provided to the LDA and what their purposes were.

THE CHAIR: There are a number of documents, in fairness, Mr Powderly.

Mr Powderly: Yes, I know.

THE CHAIR: There are a number of documents which are close together that cover similar areas and have similar names, some of which were changed.

Mr Powderly: Yes.

THE CHAIR: So it is somewhat confusing for all people concerned, obviously members of the Land Development Agency and also members of the Auditor-General's office.

Mr Powderly: Which is why I hoped, when I wrote to you, that it was to clarify that for you.

THE CHAIR: Yes; okay. That will conclude our evidence today. There were a couple of issues that you said you would take on notice, and you will receive a transcript. I understand from what you said—

Mr Powderly: Sorry, what issues were we taking on notice?

THE CHAIR: I think there was something that you said you would take on notice, but I am open to correction.

Mr Powderly: I said if you had anything, I would take it on notice, but you have not asked me any technical questions I do not have the answer to.

THE CHAIR: Sorry; yes. There will be a transcript, as before. I understand from what you said that you are in the process of writing back to Dr Lloyd?

Mr Powderly: Yes: just a couple of corrections. We have been going through all the documents for you.

THE CHAIR: Thank you. We will have the same process again.

Mr Powderly: Thank you.

THE CHAIR: Thank you very much for your evidence.

The committee adjourned at 10.27 am.