



**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL
TERRITORY**

STANDING COMMITTEE ON PUBLIC ACCOUNTS

(Reference: [Inquiry into Auditor-General's Report No 3 of 2018: Tender for the sale of block 30 \(formerly block 20\) section 34 Dickson](#))

Members:

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

TRANSCRIPT OF EVIDENCE

CANBERRA

FRIDAY, 22 MARCH 2019

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

By authority of the Legislative Assembly for the Australian Capital Territory

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

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Amended 20 May 2013

The committee met at 9.32 am.

DRUMMOND, MR RICHARD

THE CHAIR: Good morning and welcome to the sixth public hearing of the committee's inquiry into Auditor-General's report No 3 of 2018, *Tender for block 30 (formerly block 20) section 34 Dickson*. Today the committee will hear from Mr Richard Drummond, Mr Dan Stewart, Mr Andrew Loveday of Fabcot Pty Ltd, the Chief Minister and Treasurer, and Mr Ben Ponton from the Environment, Planning and Sustainable Development Directorate. Today's hearings will be broadcast, recorded and transcribed. Mr Drummond, welcome this morning.

Mr Drummond: Thank you.

THE CHAIR: I presume that you have had an opportunity to read and understand the pink privilege statement.

Mr Drummond: Yes.

THE CHAIR: Thank you. Do you have any opening comments to make or can we go straight to questions?

Mr Drummond: No.

THE CHAIR: Thank you. Mr Drummond, your name comes up frequently in the evidence that the committee has heard so far about your involvement in the negotiations for this land deal. I do not mean that in any pejorative sense; it is just a convenient way of describing it. But it is also clear from the evidence that you, at the time, were not a public servant.

Mr Drummond: Correct.

THE CHAIR: I think that at one stage Mr Ellis says that he had many public servants working to him, and you—not a public servant. Could you give us some information about what your background is and how you came to be in that position?

Mr Drummond: I have worked in the property industry for more than 40 years. I worked as a consultant to the New South Wales government, the federal government and the ACT government, as well as working for and to high net worth individuals and in investment banks.

THE CHAIR: So how did you come to be in this position?

Mr Drummond: I was approached by EDD, the Economic Development Directorate, to respond to a tender. They were looking for a consultant to run or to manage an expression of interest process that had gone a bit awry, a process looking to find somebody to develop and manage the school children's accommodation for visitors to Canberra that was being considered at EPIC. So I came in; I reviewed the process. We believed we had fixed it up. We re-tendered as an expression of interest, and that

came to a successful conclusion. In the short term, I got it back on track. They went through a process and found a successful tenderer.

After that was completed, or about the same time that that was coming to a conclusion, I was approached by EDD as to whether or not I would be prepared to assist them in running an expression of interest process for a number of properties that had been identified for sale by the government, mainly associated with sites that would be available to supermarkets. At that time there was a policy that came out that wanted to try to balance competition, or to improve competition, in the supermarket space. EDD, I believe, was charged with developing and creating a process that would see those go to market. Because of the work I had done with the EPIC student accommodation, I was asked if I could assist.

THE CHAIR: You said that on two occasions EDD approached you. Who in EDD?

Mr Drummond: It was in the first instance a person who I reported to. He was the head of capital works and infrastructure. He subsequently left and went to work for one of the councils in Sydney. Part of the discussion was also with Greg Ellis, who was the officer in charge of that process.

THE CHAIR: Sorry, which process? This is the—

Mr Drummond: This is the sale of the supermarket sites.

THE CHAIR: So the supermarket sites.

Mr Drummond: Yes.

THE CHAIR: Not the EPIC student accommodation?

Mr Drummond: No, the EPIC thing was run within EDD. I am sorry, I cannot recall his name. But he was the executive in charge of capital works within EDD.

THE CHAIR: So it came from an executive level approach to you?

Mr Drummond: Yes.

THE CHAIR: Someone who ended up being directly your line manager.

Mr Drummond: No—well, I reported to him for the EPIC expression of interest process. As I say, that went from having an unsuccessful beginning to a successful outcome. Through that, there was a discussion with him and a discussion with Greg Ellis about whether or not I would be prepared to assist them, or could assist them, with this other task process.

THE CHAIR: What in your background led to that? Do you know why this official from EDD, whose name you cannot remember, and that is fair enough—

Mr Drummond: I could try—

THE CHAIR: No, that is fair enough. You might come back to the committee later with the name if you can recall it, but I would not worry about it now. What is your understanding as to why you were approached to put in an expression interest for this tender?

Mr Drummond: This is a supposition. I was told, and I cannot recall who told me, that the matter had been discussed with LDA and that—again, these are my words—

THE CHAIR: Yes.

Mr Drummond: the interpretation was that they did not feel as though they had the capability of running an expression of interest process, that they were comfortable with running auction processes for the sale of land, but where there were other circumstances that needed to be respected they did not feel they had the capability to do that. Therefore, they—“they” being EDD and LDA—were looking for somebody who had had previous experience.

THE CHAIR: Seeing that their management was double-hatted.

Mr Drummond: I am sorry?

THE CHAIR: Seeing that their management was double-hatted—that the management of both organisations was the same.

Mr Drummond: Sure, but within the overall organisation the view was that this was government policy that needed to be delivered. Selling a block of land for a supermarket is not necessarily something that you just put straight to auction. The expression of interest process actually can help you because it is typically a two-stage process. It helps you to identify what and where the demand is coming from. You may in the second round have an opportunity to modify your offer so that the government can be in it with a better outcome.

THE CHAIR: That answers why there was an expression of interest process to find someone to run this expression of interest, but why do you think that you were approached? What particular skills did you bring?

Mr Drummond: I think I had the immediate runs on the board in terms of running an expression of interest process.

THE CHAIR: No, I am actually asking about the first time you were asked.

Mr Drummond: Why?

THE CHAIR: Yes, why do you think you were approached?

Mr Drummond: Why was I approached? I had had experience in the hotel and property industry.

THE CHAIR: Where was that?

Mr Drummond: In New South Wales and Queensland, and also in the ACT.

THE CHAIR: With whom?

Mr Drummond: Working with private individuals who were looking to do developments: Quest serviced apartments was an organisation I gave consultancy services to; Radisson Hotel Group; and, again, on behalf of private sector individuals who were involved in developing hotels and short-stay accommodation.

MS CHEYNE: Thank you for appearing today. Following on from Mrs Dunne's questioning, as the panel's chair you have mentioned some names that you were working with, but who was your key contact within the ACT government?

Mr Drummond: For the first expression of interest for EPIC it was—and his name will come to me—that senior executive in EDD.

MS CHEYNE: The one who went to Sydney?

Mr Drummond: Yes. It will come back to me. For the second round, in the first instance, for the sale of what we can call the supermarket lands—there was more than one expression of interest—it was Greg Ellis. After Greg Ellis left, it was a mixture of people within LDA. Ultimately, it was Dan Stewart.

MS CHEYNE: He was your key contact?

Mr Drummond: He was the person I reported to at the end of this.

MS CHEYNE: The Auditor-General's report identified a number of issues with the tender evaluation plan, including a lack of guidance about how to interpret the criteria and apply a numerical rating, and inadequate documentation about how the tenders were assessed against the criteria. Do you believe the panel's report could have benefited from some clearer guidelines? Did you find that to be deficient?

Mr Drummond: No. I reject what the Auditor-General says. With the evaluation panel, whilst I did not pick it, I made suggestions that there should be people from within EDD and that there should also be people from outside the immediate department—that there should be someone from treasury and someone from another source within government so that there was in fact impartiality.

I made sure that there was a probity officer and that, prior to the consideration of any tenders, they were addressed and fully briefed by the probity officer. That was the deputy ACT solicitor, with an Italian name. I believed that all of the material was put before them and that they were properly briefed in terms of their roles, duties and responsibilities, and all of the probity issues, prior to convening and making a decision.

THE CHAIR: On the question of a probity officer, you said you had a probity officer in place.

Mr Drummond: Yes.

THE CHAIR: Was the probity officer at every meeting?

Mr Drummond: For the selection process, absolutely. She addressed the evaluation committee prior to it, and my recollection, because there were a number of these expressions of interest, is that she stayed for the whole duration of the meeting.

THE CHAIR: This is the tender evaluation meeting?

Mr Drummond: Correct.

THE CHAIR: Who was on the tender evaluation committee?

Mr Drummond: I cannot—

THE CHAIR: Actually, we know that. We have been told that. Was there anything about the tender evaluation that you thought, in hindsight, was unusual, out of the ordinary or gave you cause for pause?

Mr Drummond: No. The process that was applied to this property was exactly the same as was applied to the other car park in Dickson and to the land in the Belconnen area. An expression of interest was prepared, appropriate due diligence was done in terms of looking at the land et cetera—whether it was fit for sale—and a number of valuations were provided before it went to the market.

There was the preparation of an expression of interest document which went to the ACT Government Solicitor for review and sign-off, as well as internal sign-offs. The process was out, and it was advertised. Material came in, was put together and presented to the evaluation committees. They were different for each of the different tenders so that you did not have the same people looking at all of them. Again, things were addressed appropriately, in terms of duties, roles and responsibilities, by an evaluation officer, and that was delivered by the deputy ACT solicitor. As I say, it was consistent between each of them.

MS CHEYNE: Do you think there was a deficiency in how things were documented, particularly deliberations?

Mr Drummond: No. After each of these was completed, all of the material to do with it—emails et cetera, plus all of the submissions—was put together and given to an EDD officer for them to file, including all of the minutes of meetings et cetera. What the LDA or the EDD did with those, I do not know. I do not know what happened, but it appears that initially they could not find them. Then, miraculously, these things turned up. At the end of each one of these expressions of interest, all of the material was put together and given to them for filing.

THE CHAIR: Given to whom for filing?

Mr Drummond: Initially, one of the officers that worked for and reported to Greg Ellis.

THE CHAIR: Mr Ellis said somewhere that you were not hired for your file-keeping skills. It was probably a throwaway line. Who do you recollect was responsible for filing?

Mr Drummond: I worked in an area where Mr Ellis had an office. There were about four public servants who reported to Mr Ellis. There was Mr Pierre Huetter. It was not Pierre that got the files. There were two women and one other individual who was, I think, relatively junior. He was given the material in a box: “There it is. This one’s finished.”

THE CHAIR: That was the request for tender process.

Mr Drummond: Yes.

THE CHAIR: But after we had a preferred tenderer, is that when that material was filed or was that later in the piece?

Mr Drummond: No. When the expression of interest was completed and a decision had been made, all of that material, including all submissions and the report that was written, was put in one place. My understanding is that that was the end of the process.

MS CHEYNE: What I am trying to get to is: in the actual deliberations and the bits that you were part of, before things were piled up and boxed away or filed away—however that process was working—were you satisfied with how things were documented, throughout what you were seeing?

Mr Drummond: Yes. I believe it was done properly, to the point of making a decision, absolutely.

THE CHAIR: After the decision was made, the government, the territory, entered into extensive consultation and negotiation with the preferred tenderer.

Mr Drummond: Yes.

THE CHAIR: Mr Brennan from the Tradies club told the committee that he dealt mostly with you. Is that your recollection of the case?

Mr Drummond: I spoke to Mr Brennan on a couple of occasions. To my best recollection, there were two meetings with the Tradies club after the tender.

THE CHAIR: Two meetings?

Mr Drummond: Yes. It may have been three—two or three. There were certainly never multiple meetings. There were two or three meetings. They surfaced because the club put forward a suggestion that, rather than pay in cash, the government could in fact look at a land swap. They had land in an area that EDD were looking at consolidating ownership of for future development. I was certainly aware that that was a request raised by the trade union and there was the question of how the relevant pieces of land were valued.

THE CHAIR: When did you first meet after the Tradies became the tenderer?

Mr Drummond: It would probably have been within a month of the tender.

THE CHAIR: At the first meeting, what sorts of things were discussed? What were the matters arising?

Mr Drummond: There was always an issue about car parking. I think that was always a contentious issue in terms of the valuations. There were two valuations prior to the tender going out—one valued at less than a million dollars and the other valued at over \$3 million. I do not know who made the decision, but a decision was made to take the highest valuation and set that as the bar that any successful tenderer had to achieve.

Subsequently, my recollection is that there was discussion, and this question was raised: “As part of the tender, you’re asking us to build you a park and you are also counting the car parks on which that park is to be developed. Why should we pay twice? Why should we acquire a block of land that we have to build a park on and also replace those car parks?” Similarly, there were issues to do with the roads within it. So there was argument about what the fair number was. I do not know what the ultimate outcome of that was, but that was an issue that was raised. If you look at the two valuations, they took a different approach as to the value of those car parks.

THE CHAIR: Going back to my initial question, what were the issues that were raised at that first meeting? There was car parking. Anything else?

Mr Drummond: Car parking, yes. The other one was—if not at that meeting, a subsequent meeting—the idea of being able to do a land swap.

THE CHAIR: Was it raised initially in that meeting or was it raised before a meeting?

Mr Drummond: My recollection is that it would be raised at either the first or the second meeting.

THE CHAIR: Roughly when was the second meeting?

Mr Drummond: Within a couple of months of the first meeting.

THE CHAIR: The request for tender was finalised in December-ish 2012, so we are talking about the first quarter of 2013.

Mr Drummond: Yes, that is my recollection.

THE CHAIR: So as early as April, May or June of 2013 we were talking about a land swap?

Mr Drummond: It was raised.

MS CHEYNE: By whom? Who raised it?

Mr Drummond: It was raised by the Tradies club, because they had other land.

MS CHEYNE: So they were the first ones who floated it?

Mr Drummond: Yes.

THE CHAIR: You said it was raised at the meeting. When it was raised, what happened?

Mr Drummond: Mr Ellis was at the meeting, and my recollection is that it was: “We will take this on board and we will come back to you.”

THE CHAIR: What happened after the meeting?

Mr Drummond: I believe he spoke to—it would have ultimately been David Dawes. There was some work done about: did this make sense or did it not make sense? At that time EDD or, as I understand it, the LDA were looking at consolidating land from the Dickson pool all the way back down to—I cannot remember the street—where there was a stargazing thing.

THE CHAIR: Rosevear Place.

Mr Drummond: Yes, that could be it. The government owned a lot of land in there and there were disparate uses. The idea of maybe consolidating land close to a group centre seemed to be an exercise being looked at, I believe, within the LDA and the EDD.

THE CHAIR: But as far as you know the suggestion for the land swap came from the Tradies in the first or second meeting in the first half of 2013?

Mr Drummond: That is my recollection, yes.

THE CHAIR: To set the time frame, were you involved in the process all the way through until its conclusion?

Mr Drummond: No. Soon after Mr Ellis left, it was taken over under Dan Stewart’s management and I had little or nothing to do with it from that time.

THE CHAIR: So Mr Ellis had the lead on this negotiation until he left in December-ish 2013?

Mr Drummond: Yes.

THE CHAIR: The role was then taken over by Mr Stewart?

Mr Drummond: That is as I understand it.

THE CHAIR: That is as you understand it.

Mr Drummond: Because at that point I did not have anything more to do with it.

THE CHAIR: Were you still working for the LDA?

Mr Drummond: I was doing some other tasks for the LDA, yes.

THE CHAIR: Were you moved off this project?

Mr Drummond: I do not believe I was moved off. I believe it was at a point where a decision had been made about who the successful tenderer was and there was work being done within EDD/LDA about trying to finalise or otherwise this particular transaction.

THE CHAIR: In the prolonged period between the end of 2013, when Mr Ellis left, and the final handshake and signing of the deal, how much involvement did you have?

Mr Drummond: After Mr Ellis? Little or nothing.

THE CHAIR: So you departed this project roughly at the same time Mr Ellis did?

Mr Drummond: Yes. I may have been asked questions from time to time, but in terms of having any sort of active role in it, I completed it when Mr Ellis left.

MS CHEYNE: But you were not moved off?

Mr Drummond: Off? There were still other projects.

MS CHEYNE: Why do those time frames line up? What did you have to do with Mr Ellis leaving? Why are those time frames the same?

Mr Drummond: Whereas previously I was within EDD, after Mr Ellis left, I was asked to reposition myself within the LDA, and I reported to another person within the LDA who did not have carriage of the trade union type negotiations.

THE CHAIR: When did you move off to that other project?

Mr Drummond: After Mr Ellis left.

THE CHAIR: Could you put a date on it?

Mr Drummond: You would know when Mr Ellis left.

THE CHAIR: He left at the end of 2013.

Mr Drummond: Then that was the time. When he left I basically moved upstairs into the LDA.

THE CHAIR: What were you doing after that?

Mr Drummond: I was running models for the LDA—they were looking at doing

urban renewal projects—looking at what the likely residual value of that land would be and also assessing and running a couple of processes, again for the release of land. There was some land up near Canberra Hospital that was used for a hospice-style facility. It sold to the John James Hospital, for them to build a facility there. I went through and assisted them through the due diligence required to make sure that the land was suitable for sale, helped them engage consultants to review that, read the reports and made sure that there were no problems. There were a couple of other tasks like that that I was asked to do. I had a good background in maths and land economics, so I was assisting them to get a sense of the value of these particular sites.

THE CHAIR: Still as a consultant, not as a public servant?

Mr Drummond: As a consultant.

MS CHEYNE: Who did you work for?

Mr Drummond: Graham Mundy was one of the people I worked to, but it was his boss who—sorry.

MS CHEYNE: It was a long time ago. It is all right.

Mr Drummond: I am happy to ring you and let you know. They had an urban renewal group and they had a couple of consultants. One was a consultant out of Sydney who would look at the potential built form.

Then I would do an evaluation of what the residual site value of that sort of built form could look like, based on market information et cetera, to give them a sense, when they went out to market, that they had at least done all of the appropriate due diligence: if geotech needed to be done, if there were any contamination issues, if there were any biodiversity issues et cetera, what the car parking requirements were. I was making sure all of those issues were lined up so that when they put this thing to market there were no hairs on it, so to speak, there was no prospect that someone could come back and say, “Look, you did not properly disclose.”

THE CHAIR: How long did you continue in that role?

Mr Drummond: Maybe 12 months or so.

THE CHAIR: And then what?

Mr Drummond: Then they decided that they were not going to do that anymore, so it came to an end.

THE CHAIR: And, being a consultant, when the work comes to an end, the work comes to an end.

Mr Drummond: That happens. Yes.

THE CHAIR: Have you since been employed by EDD or the LDA?

Mr Drummond: No.

THE CHAIR: Going back to the period between December 2012 and December 2013, when the negotiations were going on with the preferred tenderer, according to the Auditor-General's report, the director-general of economic development endorsed the financial terms of the negotiated land swap on 17 December 2013. That was the end of the first phase. In that first phase, in that 12-month period, you said you thought there were probably two, or maybe three, face-to-face meetings with the Tradies club?

Mr Drummond: Yes.

THE CHAIR: Was there any other sort of communication—emails back and forth, phone calls, letters, communications with the Tradies' lawyers?

Mr Drummond: I am sure there was. There would have been email communication. There would have been phone calls to Mr Ellis. In fact, I am aware that he received phone calls. But this was not about the tender process. This was about a commercial negotiation at the end.

THE CHAIR: But you were his wingman for this commercial negotiation?

Mr Drummond: "Wingman"—that is a bit of a stretch. When it came to evaluating, putting a number on things, for instance, they spoke about the facility that had burnt down. So I said, "If you are going to consider that, you need to get a valuation of it. If you are going to buy it, because there has been a fire there you should probably also do a contamination report because you do not want to be taking over a block of land that may have asbestos on it."

There was a commercial negotiation in terms of making sure that the territory was buying something that was fit and proper for use. I was involved in it, through LDA, instructing on the valuation of that land. Similarly, for the premises that were occupied by, I think, the trade union itself, there was an evaluation done on that property. Then there were negotiations about whether there should be a short-term lease or a long-term lease, what was the capital value of that, the net present value of that. Yes, I did some net present valuation, which was supported by external valuers.

THE CHAIR: So who did the external valuations?

Mr Drummond: Colliers, I believe, but there may have been one other party.

THE CHAIR: Who was the actual person who did the valuation?

Mr Drummond: The individual?

THE CHAIR: Yes.

Mr Drummond: If it was Colliers, it was more than likely that Mr Powderly would have been involved in that. But it could have been—it was Colliers.

THE CHAIR: As the actual valuer or the as the signer-off of the valuation?

Mr Drummond: Probably more the signer-off. They had a couple of other valuers as well.

THE CHAIR: Was there anything unusual, from your perspective, about asking Colliers to do the valuation?

Mr Drummond: Nothing unusual, but Colliers stopped doing formal valuations around that time. So these were not formal valuations; they were market appraisals; I think that is what they termed them.

THE CHAIR: They stopped doing them for the ACT government?

Mr Drummond: No, I think they stopped doing commercial valuations in Canberra; yes, in Canberra.

THE CHAIR: We can follow up.

Mr Drummond: Yes.

THE CHAIR: Who commissioned the valuation, from your recollection?

Mr Drummond: While Mr Ellis was there, it would have been Mr Ellis. After that, it was commissioned within the LDA. The person who would have commissioned it but was not the person driving it would have been—I do recall his name—Graham Mundy. But Graham Mundy would have taken his instructions from up the line.

THE CHAIR: Who was up the line from Mr Mundy, from your recollection?

Mr Drummond: There was someone who ran the urban renewal part. Whether or not they took instructions further up the tree to Dan Stewart, I do not know.

THE CHAIR: You said that when Mr Ellis left, Dan Stewart took over—

Mr Drummond: He became the individual ultimately responsible, but what happened between him and—

THE CHAIR: But there may have been other people in the chain.

Mr Drummond: I do not know. Yes, you would have to ask Mr Stewart.

THE CHAIR: Yes, we will. There may be other people in the chain of communication directly between him and the Tradies.

Mr Drummond: Yes, and I will find that name for you. Give me a second. Sorry.

THE CHAIR: That is all right.

Mr Drummond: Keep going. He was a director of the Canberra Irish Club, but I do

not know—

THE CHAIR: He did not have a conflict of interest?

Mr Drummond: No; I am sure he could separate them.

THE CHAIR: Yes. It is a long way from the Irish Club to the Tradies.

Mr Drummond: Yes, I am sure he could separate it.

THE CHAIR: In relation to the discussions that you had and the exchanges that you were aware of between the Tradies and EDD in the period December 2012 to December 2013, who was the principal point of contact in the Tradies club?

Mr Drummond: The secretary; you mentioned his name earlier.

THE CHAIR: Mr Brennan?

Mr Drummond: Yes.

THE CHAIR: Right. He was the go-to person, rather than Mr Docker?

Mr Drummond: Yes, but Mr Brennan was—

THE CHAIR: When you had meetings with Mr Brennan, were there other people? Was he represented? Did he have lawyers?

Mr Drummond: No. There were some other people in the meetings. I recall that at one he had their planner, who had a planning consultancy.

THE CHAIR: Who would be there on the government's behalf, on the territory's behalf?

Mr Drummond: Greg Ellis. It was Greg Ellis, and I was in attendance, and I am not sure if he had somebody else with him.

THE CHAIR: Who took the notes at these?

Mr Drummond: Well, I did not.

THE CHAIR: You did not?

Mr Drummond: No.

THE CHAIR: Okay, because I think Mr Ellis thought that you did.

Mr Drummond: Okay.

THE CHAIR: So was there somebody else on behalf of the territory who was more junior to you that might have been taking notes?

Mr Drummond: Yes. I cannot recall, but I certainly did not take notes. I did not take any formal notes of those meetings. I may have taken notes on a pad but that was not the official—

THE CHAIR: You were not the official note-taker?

Mr Drummond: No.

MS CHEYNE: In your view, did the outcome that was achieved represent value for money for government?

Mr Drummond: Yes. Well, sorry, I do not know what the ultimate transaction was, but the idea of doing a land swap where the government got land that it in turn could rezone, redevelop and sell, be it as affordable housing or other sorts of medium density housing close to a group centre, was an eminently smart transaction to do.

In terms of the value out of the car parking lost, I would have to look at what the final thing was, but certainly the trade union club had surplus car parking capacity in their building, and they could use that to trade off not having to build as much car parking under the footprint of the car park that they acquired. The community would have still had access to as many car parks as was anticipated. The government got a number close to the highest valuation. That valuation did not necessarily closely analyse the cost of the replacement car parking because there was quite a wide disparity between the two valuations. The decision to choose the highest was more about making sure that whoever bought this paid the best price.

MS CHEYNE: Reflecting on the process as a whole and the scrutiny that is now being applied to it, do you think anything should have been done differently? Would you have done anything differently?

Mr Drummond: The question has been asked: why did they have to sell the car park in the first instance? I cannot address that question. It was not going to have a supermarket on it. The sale of the other car park and the other lots of land that they sold for supermarket use makes real sense in terms of delivering on the supermarket policy that the government had: bringing in people like ALDI and bringing in more Coles to give competition to Woolworths. That made sense.

I do not know who made the decision to sell that car park, or why, but having made the decision, I believe the process was robust, and I believe appropriate due diligence was done. Knowing that it was going to be probably picked over, I made sure that proper scrutiny and proper process were followed and that that process was consistent with the others. There was nothing extra special, but, yes, we made sure that we had the ACT government involved both in the preparation of documents and also through the evaluation process to make sure that people were properly briefed.

MS CHEYNE: Why did you think it was going to be scrutinised?

Mr Drummond: Because the likely tenderer was going—

MS CHEYNE: Because of who was involved?

Mr Drummond: The likely winner of the tender was going to be a licensed club that was associated with the Labor Party.

MS CHEYNE: Do you think, as a result, you applied extra probity measures?

Mr Drummond: I made sure at all times that it was a very robust and thorough process, that valuations were done, the investigation of the property was done, the expression of interest process was handled properly, and the people who were on the panel were properly briefed ahead of making a decision. But that applied to the others. Was it extra special? No, but all of them were rigorous because, again, there is a view in Canberra that the only way you can sell land is by way of an auction, and I do not think that always gives you a good result, especially if you are looking to deliver on social or other policies.

THE CHAIR: You said you had a lot of experience in property, hotels, accommodation and the like. Did you have particular expertise in probity issues?

Mr Drummond: In working for investment banks and other people, I have run processes where, yes, it was. That is always an important thing, especially where there are funds involved that have ASIC as the party looking over people's shoulders. I am aware that in any of these processes you have proper probity.

THE CHAIR: I would like to go back to some of the issues that, as a former public servant myself, I would have expected would have happened in that period after you created a preferred tenderer and there were requests for variations to the tender. There were requests about car parking. There was a request for land swaps. What briefings were prepared for the management in EDD and what briefings were prepared for the government along these lines?

Mr Drummond: Through the expression of interest process, there were—

THE CHAIR: No; I mean after the expression of interest period, in that 12-month period after the expressions of interest period where you were involved in meetings et cetera.

Mr Drummond: My understanding is that there were minutes, memos, prepared that went between senior officers of the EDD and the LDA in relation to this, and that there was back-up material, valuation material et cetera provided.

THE CHAIR: Are you aware of whether there was briefing up the line to the minister?

Mr Drummond: No.

THE CHAIR: You are not aware of it or it did not happen?

Mr Drummond: I am not aware of it. It may have happened; I do not know.

THE CHAIR: It is a bit hard, because you are not a public servant, but given that you have been involved in other expressions of interest processes, requests for tenders et cetera which were designed to bring about a particular policy outcome—for instance, the Coles one in Dickson—were there briefings up the line to ministers that you were aware of?

Mr Drummond: Yes.

THE CHAIR: There were?

Mr Drummond: My understanding is that the head of EDD and LDA, David Dawes, regularly met with the government, treasury and the Head of Service to discuss it. Exactly what they spoke about I do not know.

THE CHAIR: I am just wondering whether you are aware of there being formal written briefs up the line to the government, to the minister responsible, in relation to the tenders that you were dealing with generally and this one in particular.

Mr Drummond: I recall that there was a briefing that was prepared and sent up the line in relation to the Tradies one at the time that the expression of interest was ready to go, had been completed, had been signed off by the Government Solicitor and was ready to go. There was a briefing note that went up in relation to that. Yes, I am aware that that occurred. Subsequent briefing notes? They had a thing called TRIM, I think, but I believe there would have been other notes at the conclusion of the thing, that this was the outcome. I would not be surprised if there was a note, but I cannot recall seeing it.

THE CHAIR: You cannot recall seeing it.

Mr Drummond: No.

THE CHAIR: You did not draft briefings?

Mr Drummond: No, I did not write—no.

MS CHEYNE: I noted before that you disagreed with or at least questioned some of the way that the Auditor-General characterised things in the report. Do you have any other comments about some of the issues raised within that report or anything you wish to refute?

Mr Drummond: No, no. My recollection of my first meeting with the Auditor-General was that she did not appear to have a lot of material. She was not aware that there were two valuations; she had gone off on the presumption that there was only one. At the interview, they acknowledged that they did not have the material. How they could conduct what they did without having access to all the material in the first instance I find a bit surprising. It is interesting that that material came to light some time later on and it did not appear to be in its full, original form.

MS CHEYNE: It does not seem to have followed the usual process in terms of filing.

Mr Drummond: I think Mr Ellis is right; I would not be a very good file clerk.

THE CHAIR: I will go back to where I started, on a bit of background. This has come before us and we are investigating. In an inquiry like this, I still keep on the internet, because that is what it is for.

Mr Drummond: You stalk us on the internet.

THE CHAIR: I stalk people on the internet. Your LinkedIn profile goes back to about 2010. What were you doing before that?

Mr Drummond: I am a recent convert. I worked as a consultant to a Melbourne-based developer called Becton corporation. With them, we developed a number of properties in the ACT. Prior to that, I worked for some high net worth individuals such as Lewis Lambert and various people, doing consulting work in property.

THE CHAIR: And you have always been a property consultant?

Mr Drummond: Yes. Well, not always. I worked for a merchant bank in New Zealand when I originally graduated from university and worked for them in Australia and New Zealand for about 10 years.

THE CHAIR: Who was that?

Mr Drummond: It was called Broadbank. It was owned by Fletcher Challenge.

THE CHAIR: Is there anything else in your career that you think we need to know?

Mr Drummond: No, I do not think so.

THE CHAIR: That might be everything we need to cover today. Thank you, Mr Drummond.

Mr Drummond: Thank you.

THE CHAIR: If you remember those names—it may or may not be relevant to the committee's inquiry, but it may be helpful as well if those names come to you—could you perhaps contact the committee secretary, Dr Lloyd, and fill in the blanks.

Mr Drummond: Sure. I am more than happy to do that.

THE CHAIR: That would be great.

Mr Drummond: I will remember it and I will send Dr Lloyd an email.

THE CHAIR: Thank you very much for your appearance here today. You will receive a copy of the proof *Hansard* probably midway through next week. If there are any issues that come up in that that you need to clarify, correct or whatever, you can begin that process via Dr Lloyd. It may be that, reflecting on the evidence and noting

that some of the members of the committee are unable to be here today, there are some supplementary questions, which we will give on notice.

Mr Drummond: Fine.

Short suspension.

STEWART, MR DAN

THE CHAIR: Welcome back to the sixth public hearing in relation to Auditor-General's report No 3 of 2018. We welcome Mr Dan Stewart to the hearings. Good morning, Mr Stewart. Thank you for your attendance.

Mr Stewart: Good morning, Mrs Dunne.

THE CHAIR: Before we go to questions, do you have an opening statement?

Mr Stewart: Yes.

THE CHAIR: Have you had a chance to read and understand the pink privilege statement?

Mr Stewart: I have. I am appearing before the committee as a private citizen. I appreciate the opportunity to make an opening statement this morning, as there are several matters that I would like to highlight in order to make this session as productive as possible for all of us. First, as I have mentioned on a number of occasions to the committee secretary prior to today's hearings, I had very little involvement in the processes that led to the sale of the site in question. This was recognised by the former Auditor-General and her team, who chose not to interview me for the report that is the subject of this inquiry.

My former position was referenced on a handful of occasions in the report and in the testimony of certain witnesses at your various hearings over the last 10 months or so. As best I can tell, the matters in question took place from 2012 to 2014. During this period I spent five months back at ACT treasury, as Acting Under Treasurer, from November 2012 to April 2013, and I left the public service in August 2015. I have obviously had no access to any records relating to this matter, emails or similar, since that time. I have made two requests to the committee secretary and have received no access to documentation, and no clarification as to the purpose of my testimony today.

To the best of my recollection, the sum total of my involvement in this matter is as follows: I attended a meeting with Mr Ellis and Mr Peters, where it was agreed that Mr Ellis and members of his direct sales team would handle the RFT process, due to resource constraints in the LDA sales team. This seemed reasonable at the time as it built on the work of the same team in the release of the supermarket car park site on Antill Street. I attended a meeting with Mr Brennan from the Tradies club, Mr Ellis and a representative of the Government Solicitor's Office who was also present at this meeting. The only matter I recall discussing at this meeting was the desire of the Tradies to acquire by direct sale the subterranean development rights under the proposed pocket park for additional parking. I do not recall the outcome of the meeting, and I am not aware of whether this matter was resolved.

Finally, in the interests of due diligence and due process, I organised and attended a meeting between the Government Solicitor, Mr Garrisson, and my director-general, Mr Dawes, following email advice from the GSO. Mr Garrisson has already canvassed the matters discussed at this meeting in his testimony, and rightfully noted

that his records on this matter are quite detailed.

I do not recall experiencing any greater than normal pressure, political or otherwise, to deliver this site to market, beyond that which I experienced for any other site in the land release program; nor do I recall ever being advised of excessive interest by staff or colleagues. I recall two conversations with Mr Ellis regarding the advertising of the tender: first, that it had been inadvertently advertised ahead of the government's formal sign-off, a matter already covered by Mr Ellis in his testimony; and, second, the fact that the tender was not advertised in the *Financial Review*.

In relation to the former, my understanding is that this was reflective of a moving cabinet agenda at the time. I do not recall why the tender was not advertised in the *Financial Review*. However, I do note the discussion of this matter on pages 37 to 40 of the Auditor-General's report, and the various views expressed, suggesting that advertising in the *Financial Review* would not have generated any greater interest in the tender. For the record, I share this view.

I do not recall attending any meetings with Mr Mundy on this matter, notwithstanding his suggestion that I did. Ms Forner may have been present at the meeting that I held with Mr Peters and Mr Ellis. I cannot say with any certainty, and I do not recall any other conversations with her on this matter.

If acceptable to the committee, I wish to table this statement for the public record, and I am happy to answer any further questions you might have.

THE CHAIR: It is essentially tabled. It has just been read into *Hansard*. Can I go to the background, and a bit of context setting? You were the deputy director-general of the LDA and EDD?

Mr Stewart: I was the deputy director-general of EDD and the deputy chief executive officer of LDA.

THE CHAIR: From what period?

Mr Stewart: I first moved to economic development in August 2011 as an acting executive director. I cannot remember the confirmation of my appointment as deputy chief executive and deputy director-general. I believe that occurred in late 2012, around the time that I was seconded back to treasury and was Acting Under Treasurer.

THE CHAIR: Then you went back to treasury.

Mr Stewart: For five months, yes.

THE CHAIR: Then you were back in LDA and EDD from April—

Mr Stewart: From April 2013 to August 2015.

THE CHAIR: You then left the public service?

Mr Stewart: Left the public service.

THE CHAIR: What did you do after that?

Mr Stewart: I joined Elton Consulting as their Canberra director.

THE CHAIR: And since then?

Mr Stewart: I worked for Elton Consulting for three years; I joined Geocon last August, as director of planning and development.

THE CHAIR: So the mentoring worked?

Mr Stewart: You would say so, wouldn't you? Yes.

THE CHAIR: We need to be perfectly plain: you were not keen to come and give evidence to the committee. There was correspondence between you and the committee secretary. We are not in the business of telling people what the line of questioning is before people come to a committee hearing, but it is clear—

Mr Stewart: The standing orders are clear on what the expectations of witnesses should be.

THE CHAIR: Yes, that you will get a fair hearing and—

Mr Stewart: That we will be advised of the matters that are going to be discussed.

THE CHAIR: The matters that are going to be discussed are quite clear.

MS CHEYNE: It is this report.

THE CHAIR: We are inquiring into this report.

Mr Stewart: Okay.

THE CHAIR: This committee has already been assured that people have very little to tell us—in fact, that they have had no involvement in this, and that has turned out not to be the case.

Mr Stewart: But I would also note that you seconded three witnesses who you excused immediately after they arrived at the table.

MS CHEYNE: One we are bringing back—

THE CHAIR: One we are bringing back.

MS CHEYNE: because they told us they were not involved and they are. You can understand our scepticism with some of the things that people have told us.

Mr Stewart: Agreed, but, as I pointed out to the secretary, and in my opening statement, the fact that the Auditor-General did not interview me for the report, the

fact that I have been mentioned scant times—

MS CHEYNE: That might be because she did not have all of the information.

Mr Stewart: Okay.

THE CHAIR: Also, we are inquiring into the matters canvassed by the Auditor-General's report, but we are not entirely limited by what is in the Auditor-General's report, and there is nothing that prevents us from going further than that. It was put to us, and it is clear in the evidence, that there were discussions between you and the RFT team about the advertising of the request for tender—

Mr Stewart: Yes.

THE CHAIR: and you were involved in setting up the RFT team.

Mr Stewart: I was involved in nominating Mr Ellis to lead that process. That was the extent of my involvement.

THE CHAIR: You made a management decision.

Mr Stewart: Correct: delegated responsibility to Mr Ellis.

THE CHAIR: Did you do that as the deputy director-general of EDD or as the deputy chief executive of LDA?

Mr Stewart: That is a good question. I do not know.

THE CHAIR: Okay; thank you. It was put to the committee—you may or may not have been here when it was put to the committee—that the reason Mr Ellis's team was tasked with this was that they had in EDD more experience in expressions of interest requests for tender than did the LDA. The LDA was sort of geared up for auction-type sales and the LDA did not have the expertise necessarily to do that. Would you agree with that characterisation?

Mr Stewart: My recollection of the decision was that it was taken, as I mention in my opening statement, in relation to resource constraints within the LDA team and was not a question of relative experience at that time. There were two sales areas within government, the direct sales team within EDD and the sales team within the LDA. The sales team within the LDA claimed that they did not have the capacity to release that parcel of land at that time. The direct sales team within EDD had just undertaken a tender process for the supermarket site on Antill Street. They had recent and relevant experience and it seemed like a good decision at the time, and a justifiable decision to us, then to proceed with the process for the Dickson Tradies site.

THE CHAIR: Going back a step further, when did you, wearing whichever hat, become aware of the timetable for the sale of land, of block 20 section 34?

Mr Stewart: Is that the Dickson Tradies club?

THE CHAIR: The Dickson Tradies site, the car park next to the Dickson Tradies.

Mr Stewart: I believe it was in the land release program.

THE CHAIR: It was in the land release program?

Mr Stewart: I believe so. If it was not, it was through the cabinet process that made the decision to release the site by tender.

THE CHAIR: When did you become aware of it?

Mr Stewart: I cannot tell you. I have not had access to any records and we are talking about dates in 2011-12.

THE CHAIR: You did mention a cabinet process to send it out for a request for tender. That happened in August 2012; is that right?

Mr Stewart: I will need to take your word for it.

THE CHAIR: Okay. No. Sorry, it was September. Were you involved in the cabinet submission?

Mr Stewart: I would have reviewed the submission before it was cleared by the director-general to go through to the minister's office, yes.

THE CHAIR: Would the cabinet submission have come from EDD or LDA?

Mr Stewart: If it was a direct sale, it would have come from EDD. In fact, LDA did not write cabinet submissions; so it would have been from EDD.

THE CHAIR: LDA did not write cabinet submissions; okay. Do you recollect how many times a proposal for dispensing with or selling—however characterised—the car park next to the Tradies club had been to cabinet?

Mr Stewart: No.

THE CHAIR: Had it been more than once?

Mr Stewart: I do not recall.

THE CHAIR: You do not recall; okay. Actually, no, I think at first it went to cabinet in 2010, which would have been before your time in the EDD.

Mr Stewart: Correct.

THE CHAIR: So where were you before?

Mr Stewart: Chief Minister's department.

THE CHAIR: In where?

Mr Stewart: I was heading up their policy division for four years. Prior to that I was in treasury from 2001 to 2007.

THE CHAIR: So you were a long-term public servant?

Mr Stewart: Correct.

THE CHAIR: You knew how to write briefings?

Mr Stewart: Absolutely.

THE CHAIR: You knew how to file things?

Mr Stewart: Yes, I did.

MS CHEYNE: Just on filing—

THE CHAIR: I thought I would give you a segue.

MS CHEYNE: Thank you, Mrs Dunne. Filing has come up a lot—

Mr Stewart: Indeed.

MS CHEYNE: not least because I think what has been revealed is not necessarily, from the evidence at least, anything untoward but more just perhaps a culture that was not being stringent in its record keeping systems, which I think maybe has led to our having an incomplete Auditor-General's report. Can you reflect on what the record keeping culture was at the time? Was it a bit more cavalier in terms of: "We do not want to deal too much in bureaucracy and just kind of get things done"? Or was it actually like: "We really need to be objective and be uploading files and not just shoving them into a box"?

Mr Stewart: I do not recall ever putting a single document into a box, for the record.

MS CHEYNE: Good; that is a good start.

Mr Stewart: But you would not naturally expect somebody at a deputy director-general position to be filing briefs after reviewing them each and every time. I think it is fair to say that through your various investigations in recent years the filing practices of the previous organisation have drawn justifiable criticism. But I would argue that in terms of the electronic records, the management of documentation through TRIM, the movement of board papers through the LDA board, all of that material would absolutely be sitting on the electronic archive, as would all of my emails in all of the files and folders that I created as a basis for my own record keeping.

As for master documents and briefs that were moving back and forth, we were dealing only in electronic documentation at that point in time, as far as ministerial briefings go. As far as cabinet submissions go, and as far as documentation for the LDA board goes,

they were receiving all of their papers on iPads. I think cabinet had switched to that process around that time also. So it is clear that there were some lax practices in note taking and filing of notes from meetings and so forth. But as far as briefings go, they were only transmitted, to the best of my memory, electronically. So they should all be there. If a minister was briefed on this matter, there would be an electronic record.

MS CHEYNE: Okay.

Mr Stewart: That is my reflection.

MS CHEYNE: It is not too long a bow to draw to say that in searching for records sometimes file names are just not what people expect them to be. Is that right? Naming conventions can be a bit of a dark art.

Mr Stewart: There would not have been a universal naming convention, no. Within different branches, different practices were being applied. But from a TRIM perspective, unique identifiers, key word searches, dates, respective ministers, all of those facilities are open to the people who are trying to research the past. And, of course, the cabinet records are excellent.

MS CHEYNE: You touched on the advertising in your opening statement. You acknowledged that Mr Ellis had canvassed it quite extensively. His evidence was that there was a bit of a sense of embarrassment in the directorate about the fact that the advertisement had gone in the *Canberra Times* before the formal cabinet sign-off. Again, it does not sound like there was anything untoward; it just seemed to be through a moving cabinet agenda that that happened. But his evidence is that, due to the ensuing embarrassment, it was your decision not to advertise in the *AFR* because there was no need. I think you said in your opening statement that you cannot recall—

Mr Stewart: No, I do not recall the reason why it was not advertised in the *AFR*.

THE CHAIR: It has been put the committee, and reinforced again today, that there were a number of meetings between the territory and the preferred tenderer in the period after the Tradies became the preferred tenderer. In December 2013 the Auditor-General says that the then director-general of economic development endorsed the financial terms of the negotiated land swap. That is David Dawes; he agreed to that in December 2013.

It has been put the committee that at the first or second meeting—so in the first half of 2013—the Tradies club raised the issue of a land swap as part of the negotiation. Mr Ellis has said in his evidence that matters that were raised in the few number of meetings he always took back to you and Mr Dawes. From your recollection, when did you become aware—I am cognisant of the fact that you do not have access to paper records or electronic records—of the proposal for a land swap as part of the negotiation on the Dickson Tradies car park site?

Mr Stewart: It could only be after April 2015.

THE CHAIR: 2015?

Mr Stewart: Sorry, April 2013, when I returned from ACT treasury to EDD. I think that is part of the confusion for some of my former colleagues. It may be that there is an expectation in their mind that, because there was a structure in place that had directors, executive directors, deputy directors-general and directors-general, those people were there at all times and all material flowed through to those people. In the period that you are talking about where these early conversations were being had and decisions were being taken, I was Acting Under Treasurer. I was not privy to any of these discussions.

THE CHAIR: Yes, but you were back by April 2013?

Mr Stewart: Correct, 2013. So my awareness of the transaction—I not believe it is a land swap—would have been after April 2013.

THE CHAIR: It has been called a land swap because it is a convenient catch-all. If you want to call it a transaction, that is fine. But the discussion about the transactions in relation to the Tradies car park did come to involve the surrender of land in Downer. When did you become aware of that as part of the transaction?

Mr Stewart: I do not recall and I was not part of the conversations with regard to the financial arrangements and the transaction. I can only assume, on reflection, that, having set the process in motion in my absence, the reporting lines had been established between the negotiating team, for want of a better term, and the director-general, and that those lines were retained throughout the process, which is why, as I rack my brain for the recollections of the various issues and processes, I have only limited recollection of certain events.

THE CHAIR: It has been put to the committee that, after December 2013, after the director-general of economic development endorsed the financial terms of the negotiated land swap—they are the Auditor-General's words—and Mr Ellis departed the public service, having been the principal negotiator until then, you took over responsibility for the finalisation of the negotiations.

Mr Stewart: That is incorrect. I only had one meeting with the Tradies, as I mentioned in my opening statement, and that was in relation to the car park—potential subterranean development rights.

THE CHAIR: When, in relation to your recollection, did that happen?

Mr Stewart: I do not know.

THE CHAIR: Was it before you went to act as the Under Treasurer, or after?

Mr Stewart: I do not recall. It would be in my calendar. Mr Brennan referenced one meeting with me in his testimony. He may be able to tell you when it was.

THE CHAIR: The only thing discussed at that meeting was the subterranean rights to the pocket park?

Mr Stewart: The Tradies were keen to acquire by direct sale the land under the

pocket park. Let us assume they would have developed the entire site; they would have excavated a basement for their own building, and they would have ideally continued that excavation through to the edge of the park, built basement car parking, created a park back on the top and handed it back to the territory. Some of those strata issues were considered to be particularly complex in those days, and probably still are, and they were keen to try to progress those discussions. I do not know where they ended up. That was the only meeting I had with the Tradies in relation to this issue.

THE CHAIR: Mr Brennan does reference one meeting. Mr Ellis says on a number of occasions that he would have taken things back to you and/or Mr Dawes. But you say that you have no recollection. Do you have any recollection of discussions about the blocks in Downer?

Mr Stewart: No. I was not party to any of those discussions.

THE CHAIR: You were not party to any of those discussions at all?

Mr Stewart: No.

THE CHAIR: Did you ever have conversations, discussions or exchanges with Colliers, or Mr Powderly in particular at Colliers, about—

Mr Stewart: No, I did not.

THE CHAIR: Let me finish—about the valuations, however described, for the Downer sites?

Mr Stewart: No.

THE CHAIR: None at all?

Mr Stewart: No. Not that I recall.

THE CHAIR: Not that you recall?

Mr Stewart: No.

THE CHAIR: Do you think that you generally have a particularly bad memory and forget things?

Mr Stewart: No, I think I have a particularly good memory, but I am careful, because I cannot claim to remember every single thing that happened eight years ago. I am saying this is to the best of my memory, and I believe I have a good memory.

THE CHAIR: I want to clarify what you think your memory is like.

MS CHEYNE: Yes. We are not being facetious.

Mr Stewart: No. In fact, the things that I clearly remember, I remember in some detail, which is why I am saying I do not recall any discussions with Mr Powderly,

and I would be surprised if they took place, because I would expect to remember them. No, they did not take place, according to my memory. If people are suggesting that they did then I am saying those people—

THE CHAIR: No, I am just trying to get a feel for this. Witnesses have told the committee that their understanding was that you took over the running of the negotiations with the Tradies club post Mr Ellis's departure.

Mr Stewart: That is incorrect.

THE CHAIR: Do you know who took over negotiations in relation to the Tradies club post Mr Ellis's departure?

Mr Stewart: My recollection is that Mr Drummond and Mr Ellis had been leading the negotiations. Mr Ellis departed. Mr Drummond completed them. Whether he was reporting through his director—I do not even recall what the branch name was; urban renewal, perhaps, at that time—or whether he was reporting directly to Mr Dawes, I do not know.

MS CHEYNE: We heard from him just before, and he said—

Mr Stewart: I know.

MS CHEYNE: Yes, I suspect so. I do not think you were here, but he said categorically that it was you, and that he had left to go and work on other projects at almost exactly the same time as Mr Ellis had left. With respect to the people who were heavily involved in the project, I appreciate that it is a long time ago, but—

Mr Stewart: No, I can understand.

MS CHEYNE: no-one can tell us who was actually responsible. Is it nobody? Is that the issue?

THE CHAIR: Did it fall in a hole?

MS CHEYNE: Yes, did people just muddle through and get it done because no-one was actually taking responsibility for it?

Mr Stewart: I do not have an answer to that question.

THE CHAIR: Can I summarise, Mr Stewart? You are saying that you had a meeting early in the piece to charge Mr Ellis's area with handling the request for tender, because EDD had more staffing resources at the time than LDA's sales area?

Mr Stewart: The LDA sales area had—

THE CHAIR: Sorry, was less pressed?

Mr Stewart: Correct.

THE CHAIR: You had a conversation after this process was advertised about the fact that the ad appeared ahead of the cabinet approval for the process?

Mr Stewart: Correct.

THE CHAIR: On that, as a senior manager, were you concerned, annoyed—

Mr Stewart: Embarrassed.

THE CHAIR: Embarrassed about that?

Mr Stewart: Embarrassed was exactly how I felt.

MS CHEYNE: About what?

THE CHAIR: About the ad appearing ahead of the cabinet approval.

Mr Stewart: The challenge with getting the timing of the ads right was that you had to give the *Canberra Times* 48 or 72 hours notice. The ad would have been notified to the paper, say, midweek. I cannot recall the cabinet timetable. I do not know when the meeting would have been, but the ad would have been put to the *Canberra Times* based on an assumption about the cabinet agenda. That cabinet agenda changed. The ad was not pulled. And I was embarrassed that it—

MS CHEYNE: Were you chastised by anyone?

Mr Stewart: No, not that I recall.

THE CHAIR: The ad was going to be placed in the *Financial Review*, but a decision was made, and you believe that you did not make that decision?

Mr Stewart: No, I am saying I do not recall the basis for that decision.

THE CHAIR: You do not recall the basis?

Mr Stewart: It is clear that the decision was taken, but I do not recall why.

MS CHEYNE: Do you think a lack of advertisement in a national publication affected the tender process?

Mr Stewart: No, I do not. Mr Dawes pointed out, either in his testimony or in his report on this issue, that the same number of inquiries were received for that site as for the supermarket site, where the national ad had been placed. Whether or not the *Financial Review*, on reflection, is the appropriate place to put a for sale sign for a block of land in the territory is questionable today. But the fact remains that the intention at the time was to place that ad. The ad was not placed. I cannot recall why, but I personally do not believe it had an impact on the final outcome.

THE CHAIR: After the discussion about the *AFR*, about which you cannot recall the reasons for the outcome, did you have any involvement in the request for tender?

Mr Stewart: No.

THE CHAIR: Any oversight of the report when it was finalised?

Mr Stewart: No, not that I recall.

THE CHAIR: After the request for tender was finalised, at about the same time, you went to treasury for four or five months.

Mr Stewart: Five months; correct.

THE CHAIR: And you came back in April? Presumably after that time you had a meeting with Mr Brennan?

Mr Stewart: I would say so. It seems more likely that it would have been after than before.

THE CHAIR: And the only thing that you recollect discussing with Mr Brennan in that meeting was the issue of the subterranean rights to the car park?

Mr Stewart: That is correct, and GSO should be able to validate that.

THE CHAIR: That anticipates my question. Who took the notes?

Mr Stewart: GSO were present, and I think we have clarified that the note taking on the LDA side or the EDD side is unlikely to—

THE CHAIR: Was pretty ordinary?

Mr Stewart: I think you and Mr Garrison both acknowledge that his records are generally very good on such matters. The GSO would have taken notes as a matter of course, as our probity adviser on the matter.

THE CHAIR: Is it your understanding generally—and then I will ask you to contemplate this specific case—that meetings between preferred tenderers would involve a probity adviser?

Mr Stewart: They would involve—I would expect them to involve—the Government Solicitor, as the legal representative for the territory, on most matters in relation to land, generally playing a twin role: the GSO as legal counsel but also as probity adviser. Yes, I would expect them to be present.

THE CHAIR: And your expectation is that—again using the expression “double-hatted”—there may be one person there acting as legal adviser to the territory and as the probity officer at the same time.

Mr Stewart: Indeed.

THE CHAIR: And that is your general experience having dealt with land sales?

Mr Stewart: My general experience is that the GSO were always involved in land transactions, sometimes heavily, sometimes less so. With two of the three meetings that I have canvassed in my opening statement the GSO was present. That was the meeting with Mr Brennan; one of the solicitors was there. And Mr Garrison's meeting with Mr Dawes.

THE CHAIR: I will just put a pin in Mr Garrison's meeting with Mr Dawes for the time being. In the period between when you returned from being the Under Treasurer and December, when Mr Dawes signed off on the terms of the land swap, your contention is that you have no recollection of any other meetings or any other involvement on your part?

Mr Stewart: That is correct.

THE CHAIR: Is that unusual?

Mr Stewart: There may have been briefing notes that crossed my desk; I cannot recall. But it is equally plausible that there were conversations. As I said, if I was away for the first five months of the process and a line of communication had been established directly between the negotiating team and the director-general, it would make sense for that to continue through to December. I do not know why they would need to loop me into a process that was already 50 per cent complete on a time basis. If you are saying that it was the end of 2012 to the end of 2013, I was absent for half of that period, so why would they then start looping me back in the conversation?

THE CHAIR: You came back in April?

Mr Stewart: Yes.

THE CHAIR: It was signed off in December, but it was not actually finalised for another year after that. What happened in that other year after that?

Mr Stewart: I do not know.

THE CHAIR: You were the deputy director-general of the organisation that was making this significant arrangement which morphed from a request for tender into a land swap deal.

Mr Stewart: Transaction.

THE CHAIR: And you have no recollection of any discussion about that in an 18-month period?

Mr Stewart: What I am saying, Mrs Dunne, is that if a senior executive was reporting directly to the director-general on a matter, there would be no reason for me to be aware, because the director-general was my superior. If my director-general was fully across the issues in question, he was dealing with the Government Solicitor and seeking advice or meeting with the Government Solicitor. If there were concerns about whether the transaction was stepping outside the boundaries of the original

tender, again there would be no reason for me to necessarily be involved, given that this is one small part of a much, much larger land release program that the LDA were responsible for delivering and all of the other work that was going on on the EDD side of the organisation.

Was I fully across every single transaction that was taking place in the organisation at any one time? No. How could I be? There were certain transactions and certain processes that I was heavily involved in; there were others where I was relying on staff to do their job.

THE CHAIR: In this period, what were the things you were heavily involved in?

Mr Stewart: I do not know. I have not gone back and looked at the land release program from 2011-12, 2012-13, 2013-14.

THE CHAIR: So you cannot remember what you were heavily involved in when you were not heavily involved in this?

Mr Stewart: I can tell you broadly what the projects were. I could not tell you what six board papers were considered by the LDA board in September 2015; I just do not think that would be reasonable.

THE CHAIR: I am not asking you that. I am actually asking this. You said that you have a good memory and, therefore, because you have a good memory and you have no memory of this, your view is that you were not involved. You said that you were heavily involved in other things. I am asking you: what is your recollection of what you were involved in in the period immediately after you returned to the LDA in April-ish 2013 through until the final conclusion of this in December-ish 2014? Nothing springs to mind?

Mr Stewart: If I searched online now and we dragged up the government's land release program for that period of time, I am sure there were copious releases in suburbs in Gungahlin. There would have been the releases of land in Molonglo, Wright and Coombs; the tender for Denman Prospect; the negotiations with respect to Ginninderra and west Belconnen; the monthly reporting, financial and otherwise, to the LDA board, which I was responsible for delivering; all of the policy work that was coming out of economic development at the time; all the budget bids that were going up from the directorate; the annual financial reporting; and the annual reports of both organisations. The records are there.

As I said, I have no access to any documentation. If you gave me my calendar for 12 months and said, "Well, can you tell me about this?" I am pretty sure I could, if we could point to a particular meeting at a particular time and a particular date. But to say to me, "Tell me something you did in 2011-12," off the top of my head I cannot pin one down exactly on the spot.

THE CHAIR: It might be useful for you, on notice, to have a look through the land release program and perhaps come back via the secretary with—

Mr Stewart: Or maybe the secretary could have a look through the land release

program. I do not know.

MS CHEYNE: I can send it to you; I have got it open.

Mr Stewart: Well, what is your question?

THE CHAIR: My question is: can you recall, because you said you were busy with a whole lot of things and you can distinctly not recall association with this matter that we are inquiring into—

Mr Stewart: Indeed.

THE CHAIR: I am asking: if you cannot recall that, what is it that you can recall that you were doing in that period?

Mr Stewart: I think you are misinterpreting. I am saying that it is entirely plausible that the matters in relation to this transaction were being dealt with directly by the director-general.

THE CHAIR: That is not what I am asking you. I am asking you: because you have said this, and you have said that you can recall no association with this transaction, can you recall any transaction that you were involved in in that period?

Mr Stewart: I will happily go back and review—

THE CHAIR: Thank you.

Mr Stewart: the land release program for that period of time and send you a series of dot points on the work that was taking place.

THE CHAIR: About the things that you were involved in.

Mr Stewart: I would appreciate it, too, if somebody could download the entire TRIM record and the LDA's board paper record for that period of time and provide it to you also. That would give you a pretty good summation of the work that I was doing during that period.

The land release program is but a small part of the overall work of those two organisations—not a small part, a significant part. But there were a host of other things going on at the time. To say I did something on the release of Coombs is pointless, really. If you had a look at TRIM, you had a look at the cabinet record, you had a look at the budget process, you had a look at the board agendas for that entire period and you had a look at my calendar, that would give you a much better reflection of the work that was going on at the time. There would not have been many spare moments in my calendar on any given day during that period. My executive officer at the time would be able to validate that.

THE CHAIR: It is just a little puzzling that you cannot point to any highlights, anything that springs to mind. I think that if Ms Cheyne cast her mind back to 2013 or 2014, or I did, we would be able to come up with two or three things that were

significant, that you could set in a context. I find it surprising that someone who was as busy as you say you were cannot come up with a couple of highlights.

Mr Stewart: There were a lot of things happening in the program at that time. There were also a lot of things moving around within the program. As I said, I can look at what was in the release program for that year, if you are prepared to track it down. I am happy to talk at length about any of those other matters, but I am telling you right now that I cannot, off the top of my head, point to a block of land that I know with certainty was released in that window of time. There were 12,000 sites released over three years. To be able to with certainty say that one of them was released on a certain date at a certain time—

THE CHAIR: Moving on from the period until Mr Dawes signed off—the initial sign-off in December 2013—you said that you had no involvement there. It has been put to the committee that, after that sign-off, which was at about the time that Mr Ellis left EDD—and possibly the public service, but EDD at least—you took responsibility for it. You said that that is not the case, but you cannot say who did take responsibility for the finalisation of the negotiations?

Mr Stewart: Correct.

THE CHAIR: And that you had no involvement in discussions about negotiations in relation to the Tradies land in Downer?

Mr Stewart: Correct.

THE CHAIR: Not in passing?

Mr Stewart: Not that I recall.

THE CHAIR: Not that you recall. You did not see any briefings, or you did not sign off on briefings, that might have gone to Mr Dawes or the government on that subject?

Mr Stewart: Again, I do not recall.

THE CHAIR: What is the normal process of signing off on briefs that would go up the line?

Mr Stewart: It depends on their nature.

THE CHAIR: What about a brief to the minister, for instance, about a request for tender? By contrast, the sale to Coles on the corner of Antill Street would have been briefed up to the minister. Would the normal sign-off be that it would go from the action officer to the director-general?

Mr Stewart: It would go through the org chart.

THE CHAIR: It would go through the org chart?

Mr Stewart: Yes, absolutely.

THE CHAIR: So you would have been a signatory along the way?

Mr Stewart: It would have been potentially for noting or for clearance.

THE CHAIR: That would be the normal course of events, that briefs would go—

Mr Stewart: More often than not, yes.

THE CHAIR: What would be the circumstances where they would not go through?

Mr Stewart: Where somebody was working directly to somebody above me in the hierarchy.

THE CHAIR: Did that happen often, that you were—

Mr Stewart: From time to time. There were instances where people within the LDA were providing advice directly to David. It happened; it was not unusual.

THE CHAIR: Would it be your experience that that happened in other organisations—that the deputy would be bypassed?

Mr Stewart: Not bypassed. “Bypassed” is a fine word, if you wish to use it, but if a decision—

THE CHAIR: Not involved in the chain of communication.

Mr Stewart: It would happen in every organisation. If there is an assumption that every single thing has to go through every layer of a bureaucracy on every single occasion, I do not know that that is practical. I think there would always be situations where there are conversations between a CEO, a director-general or a secretary, and other staff below their deputies, perhaps without the full knowledge of the deputy or if the deputy is not around at the time.

For the purposes of moving issues forward, seeking advice and making decisions, it is not always practical to have those steps of clearance. Ultimately, with respect to the delegate, the final line in the sand for that advice is the director-general or the CEO. As long as that signature is on that piece of paper as either the approving entity or as the final signature before it goes to the minister’s office, I think that is appropriate.

THE CHAIR: By way of information, when you were Acting Under Treasurer, was anyone acting in your position?

Mr Stewart: I do not recall. I do not think so.

THE CHAIR: You do not think so, but you do not recall?

Mr Stewart: No. It might have been the case that the individuals concerned, my subordinates, were reporting directly to David.

THE CHAIR: Going back to the time line, you say that you were not involved in any way with the negotiation post the departure of Mr Ellis, that you did not have any conversations about the Downer blocks of land—not even in passing—and that you had no involvement. How is it that you were asked to set up a meeting between Mr Dawes and Mr Garrison?

Mr Stewart: I was contacted, along with the director of sales and marketing, by the GSO, or by somebody in the GSO, who was flagging some concerns.

THE CHAIR: So when—

Mr Stewart: I do not want to—

THE CHAIR: What is your recollection about the contact that you had from GSO?

Mr Stewart: Only what I have read in the report. I know that there was contact made and I know that there was a meeting held, that was set up on the basis of that contact.

THE CHAIR: Were you present at that meeting between Mr Garrison and Mr Dawes?

Mr Stewart: Yes, I was.

THE CHAIR: What is your recollection of that meeting?

Mr Stewart: Mr Dawes and Mr Garrison discussed the process to date. Mr Garrison provided his opinion, which he echoed in his testimony, that he believed that the processes were reasonable and that, from a probity perspective and a process perspective, the organisation had not stepped outside the boundaries of what would be considered reasonable through the RFT.

THE CHAIR: The person who contacted you and others, from GSO, raised concerns about whether there had been a departure from the request for tender. Was that the first time anyone had talked to you about the request for tender in a lengthy period of time?

Mr Stewart: I am saying that is my recollection. As to what prompted that person making that contact with Mr Peters and me at that time, you would have to check with them.

THE CHAIR: You do not have enough recollection of what was going on at the time to cause you to have a view about why that person contacted you?

Mr Stewart: No.

THE CHAIR: You thought it was significant enough that you set up a meeting between Mr Dawes and Mr Garrison?

Mr Stewart: Of course. If my probity adviser flags issues of probity, I respond.

I respond immediately. The fact that, all of a sudden, I have been contacted by the GSO saying, “Dan, we have concerns about the process that is being undertaken here,” means that I will organise a meeting straightaway, which I did.

THE CHAIR: What was Mr Peters’s role at this stage in that transaction?

Mr Stewart: I do not recall.

THE CHAIR: Ms Cheyne, do you have anything else?

MS CHEYNE: Yes. You organised the meeting, and that was the meeting on 19 November 2014. Is that the same meeting we are talking about?

THE CHAIR: I think so. It was roughly at that point.

MS CHEYNE: You are also in the Auditor-General’s report by name—that EDD, the deputy D-G and the LDA director of sales had been provided with advice in October 2014. That would have been you?

Mr Stewart: Yes.

MS CHEYNE: That indicated that accepting the request for concessions posed a risk, as it could result in the transaction being so divergent. It was you who received that?

Mr Stewart: Presumably, at that time the GSO would have been finalising documentation, based on the best time line that I can extract from the reports. They have contacted Mr Peters and me, and raised some concerns. We have organised a meeting between us—the Government Solicitor and the director-general. Those concerns appear to have been put to bed.

MS CHEYNE: Okay.

Mr Stewart: Wouldn’t you consider it reasonable to respond in that way?

MS CHEYNE: Definitely, yes.

THE CHAIR: What was your role in the meeting between Mr Garrison and Mr Dawes?

Mr Stewart: An observer, I would say.

THE CHAIR: Did you take notes?

Mr Stewart: No. Mr Garrison has notes, though.

THE CHAIR: I am getting a pattern here. The LDA and EDD did not take notes because they relied on Mr Garrison’s office to take notes?

Mr Stewart: When we were in negotiations where we had a probity adviser or a Government Solicitor’s office representative available—who had a reputation for

outstanding records—I would always have relied on them to be my record keepers, yes.

THE CHAIR: Formally, explicitly, or is that just what happened?

Mr Stewart: I would expect formally, yes. I would have expected my subordinates, for my direct reports, to take notes—the more junior officer. Again, Mr Ellis canvassed this and said that, at any meetings that he would have attended on this or any other matter, as the junior officer to me or David, he would have kept excellent records. They were his recollections.

THE CHAIR: Was there anyone else at that meeting?

Mr Stewart: I do not recall.

THE CHAIR: Or were you the junior officer at that meeting?

Mr Stewart: I do not recall.

THE CHAIR: You do not recall?

Mr Stewart: I do not recall who else was at that meeting, other than Peter Garrison, David Dawes, me, and either Brendan Ding or another solicitor from the GSO whose name escapes me. I am pretty sure it was Brendan who was providing the advice at that time. Was there anyone else from the LDA or EDD at that meeting? I cannot say.

THE CHAIR: Is there anything else that you want to add?

Mr Stewart: No. My opening statement stands.

THE CHAIR: Thank you, Mr Stewart, for attending today. You will receive a copy of the proof *Hansard* probably sometime next week. If there are issues that you wish to clarify that come up in that, you can start that process through Dr Lloyd, the committee secretary. The committee asked you to reflect on the period, as to what might have been going on. If you could do that, we would appreciate that.

Mr Stewart: Will I be receiving access to my calendar and—

THE CHAIR: No, we do not have access.

MS CHEYNE: We do not have that responsibility.

THE CHAIR: We do not have access to that. We asked you to review the land release program and see whether there were any particular highlights that you recollected being involved in. Also, as you are aware, there are members of the committee who are not here today. They, and us, may, on reading the transcript, have other questions which would be put on notice. Thank you for your participation today.

Short suspension.

LOVEDAY, MR ANDREW, representative of Fabcot Pty Ltd

THE CHAIR: Welcome back to the sixth public hearing of the public accounts committee inquiry into Auditor-General's report No 3 of 2018. Welcome, Mr Loveday. Thank you for your attendance here today. Have you had an opportunity to read and understand the pink privilege statement?

Mr Loveday: Yes, I have.

THE CHAIR: Thank you. Could you identify yourself, for the purposes of the *Hansard*?

Mr Loveday: My name is Andrew Loveday. I am a representative of Woolworths Ltd.

THE CHAIR: Mr Loveday, we asked Fabcot—

Mr Loveday: Fabcot is a wholly owned subsidiary of Woolworths Ltd.

THE CHAIR: What does Fabcot exactly do for Woolworths?

Mr Loveday: It is the property development division of Woolworths. It controls the freehold real estate interests of the business. Its main role is to find and identify suitable opportunities for expansion of our supermarket, Dan Murphy's network, and any other businesses for Woolworths, and to acquire sites and deliver them for the growth of the business.

THE CHAIR: We asked for Fabcot to come here today because they were the under bidders in the request for tender for the sale of block 30, section 34, Dickson. We have asked you for completeness sake, I suppose. Perhaps I should ask whether you have, on behalf of Fabcot, an opening statement to make about your experience of the tender.

Mr Loveday: I am happy to—

THE CHAIR: You do not have an opening statement?

Mr Loveday: No.

THE CHAIR: What we would like to know is, in the process, how did you become aware that this block of land was available for tender?

Mr Loveday: As is normal practice for us in our property network planning, we identify areas where there might be a market opportunity to better service our customer through the expansion of our store network. The area that has been identified fits within the criteria of the types of sites that we believe would make a good opportunity for us to deliver a new Dan Murphy's store.

THE CHAIR: You were tendering to establish a Dan Murphy's store?

Mr Loveday: Correct. We had identified the site as being one which was suitable. Through that identification process, we were made aware that it would be coming to the market at a point in time.

THE CHAIR: How did you become aware, do you recall, that it was coming on to the market?

Mr Loveday: I cannot specifically answer that.

THE CHAIR: Dan Murphy's stores—I do not want to be disparaging—come as a sort of a standard layout, configuration, single storey with a reasonable amount of car parking attached. Is that the general model?

Mr Loveday: Correct. We have standard dimensions and car parking requirements for a Dan Murphy's store.

THE CHAIR: Which are roughly what?

Mr Loveday: It can vary, based on the location.

THE CHAIR: And the population base, I presume?

Mr Loveday: And the population base, competition and all those sorts of things.

THE CHAIR: When you were thinking about that site for a Dan Murphy's, you were just thinking about a single-storey building, not perhaps some other development that had a ground floor Dan Murphy's?

Mr Loveday: To the best of my knowledge, at the time it was based on a single-storey Dan Murphy's.

MS CHEYNE: Was anyone from Fabcot approached to discuss or negotiate the offer that you had put in as part of the expression of interest at any point in time?

Mr Loveday: Do you mean prior to or after the—

MS CHEYNE: At any point.

THE CHAIR: Or during.

Mr Loveday: Not that I am aware of.

MS CHEYNE: Including after you put in your interest?

Mr Loveday: Not that I am aware of.

MS CHEYNE: What was the company's reaction to the negotiations that took place with the Tradies? Was there any thought that what was happening with them was unfair?

Mr Loveday: To my knowledge, we were not aware of any negotiations which were happening post being advised that we were not successful in the tender process.

MS CHEYNE: When you became aware at whatever point in time—it may well be once the Auditor-General’s report was released—was there any commentary within the company about what had occurred?

Mr Loveday: Not specifically.

MS CHEYNE: If Fabcot had been approached, and I appreciate that this might be too hypothetical or cannot be answered, would it have considered changing its offer or being part of a negotiation process?

Mr Loveday: I cannot respond to what may have taken place.

MS CHEYNE: Understood; that is fine.

THE CHAIR: Just on the model for a Dan Murphy’s store, was Fabcot aware that there was a move in the Dickson precinct for increased densification, more residential et cetera? Did Fabcot consider putting in a response to the tender which was more than the sort of standard single-storey Dan Murphy’s? Did it consider putting in a tender that was based on sort of more densification and more mixed use—higher development?

Mr Loveday: To the best of my knowledge, we did not. However, I am happy to look into that and come back to you with that information.

THE CHAIR: That would be good. I know that Fabcot put in a bid which was clearly based on a particular model. Also, I am wondering whether Fabcot were aware of the sort of planning and design imperative discussion that was going on about Dickson and, if they were aware of that, whether they would have considered modifying the bid.

Mr Loveday: I will have to take that on notice.

THE CHAIR: Thank you very much. You say that there is a sort of standard model for Dan Murphy’s, but are there places where it is not a standalone building, where it is actually incorporated into other sorts of developments?

Mr Loveday: There are.

THE CHAIR: But in those circumstances, are they things that have been developed by Woolworths or have you bought in or leased in to those developments?

Mr Loveday: There are instances where we have put a Dan Murphy’s in a retail development, so it may sit adjacent to a supermarket so that there are other uses in there. We have not done any mixed use developments including Dan Murphy’s. Any of those would have been leasehold deals.

MS CHEYNE: I do not have anything I specifically want to ask, but did you or the

company have any concerns, just generally, about the tender process?

Mr Loveday: We did not at the time. We participated in the tender in accordance with the requirements. We were advised that we were unsuccessful and we had no further reason to question the tender process at the time.

MS CHEYNE: Did you seek feedback about the tender process or about why you were unsuccessful?

Mr Loveday: Not to my knowledge.

THE CHAIR: Do you know—again, this may be too hypothetical because this deal has not progressed—whether, if the block came back on the market, Fabcot would still be interested or Woolworths would still be interested?

Mr Loveday: At the time we saw it as a good opportunity, a suitable site for a Dan Murphy's. That view has not changed. Whether we would be interested in participating if there was another tender, I cannot say for now. I would need to understand more.

THE CHAIR: I know that we have been quite brief. I made it clear that we were sort of just making sure that we had all the information we could.

MS CHEYNE: It is for completeness, really.

Mr Loveday: No, that is fine. We are happy to assist.

THE CHAIR: Thank you very much for your attendance today. You will receive a draft transcript, through the secretary, midway through next week. There were a couple of things that you said that you would clarify. The committee would appreciate that.

Hearing suspended from 11.43 am to 1.30 pm.

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

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

THE CHAIR: Welcome back to the sixth public hearing of the public accounts committee inquiry into Auditor-General's report No 3 of 2018, *Tender for block 30 (formerly block 20) section 34 Dickson*. This afternoon we welcome the Chief Minister and Treasurer, Mr Barr, and Mr Ponton from the Environment, Planning and Sustainable Development Directorate. I am not going to refer to the privilege statement.

Mr Barr: In pink, yes.

THE CHAIR: Chief Minister, would you like to make an opening statement?

Mr Barr: No, I do not have an opening statement.

THE CHAIR: We are here, Mr Barr, investigating and inquiring into the Auditor-General's report, which has been around for just over a year now. Could you give the committee as much background as you can about the discussions that you were aware of in relation to the block, the car park opposite the Tradies, before it went to the cabinet decision in the run-up to the 2012 election, before it was finally decided to be put out for a request for tender? With your long years in the place, what was the background of the discussions between the government, the territory and the Tradies over that block?

Mr Barr: I think that particularly related to the need for parking in the Dickson precinct during the construction of what was then proposed to be two new supermarkets. Both of the surface car parks that are to the north of what is commonly referred to as the Tradies car park, to the north of the Woolworths building and then to the east of the library, those two existing surface car parks, were at various points—and this would even precede my time as minister in that area—identified for potential supermarket releases by the former Chief Minister, Jon Stanhope, as part of his supermarket competition policy at that time.

My recollection of that era was that, after a policy decision of cabinet, he would have instructed his then agency—if I have my time line correct, it may well have been land and property services, as it was called at that time—to actively pursue new sites for supermarkets in the Dickson area, but not just there.

On the question of managing parking in that Dickson precinct, at the time, with Woolworths in Dickson, the rumour was that, per square metre, it was the highest volume trading supermarket in the entire Woolworths portfolio. There was a lot of demand there, and there has been a longstanding desire for some competition at a group centre level.

One of the issues, clearly, was managing car parking. My understanding of the origins

of conversations around the release of existing government service car parks for the supermarkets was that it would have to be managed in a way that would see alternative parking arrangements made available in Dickson, or at least not having construction simultaneously occurring on all of the government-owned surface car parks at the same time.

That is the basis on which I can best first recall there being discussion about that car park. There was then a Dickson master planning exercise undertaken. From memory, it commenced when I was planning minister.

Mr Ponton: In 2009.

Mr Barr: Yes. It may ultimately have concluded after I ceased being planning minister in 2011, from memory. I would have to check the exact dates, but I have a recollection of being planning minister for around four years, from 2007 to 2011. That Dickson master planning process identified a pocket park on part of the Tradies car park.

From memory, the question became one of how you would sequence development, if there were to be the new supermarkets, which proceeded through the various processes that were proceeded through. It was pretty clear from the beginning that, whatever happened in terms of additional supermarkets in Dickson, and the addition of new public amenity, we would have to have a significant parking plan in place, and at various points. That also countenanced what you might do on the other side of Cowper Street. There was a proposal floated around some temporary car parking on the perimeter of Dickson pool, in addition to what is already there. There was then a lot of discussion about seasonal peaks. When the Dickson pool is open, there is a lot more demand for parking at that time.

That is the basis of discussions around the government-owned car park that was referred to as the Tradies car park—obviously, it was also utilised by patrons of the Tradies club. There was then further discussion about what the Tradies would do in relation to their own car parking that is underneath the hotel. It is principally underneath the hotel, rather than on the club site itself—the extent to which that was to be available for more than just members of the club. The discussion was principally around managing parking.

THE CHAIR: Were there discussions between the territory and the Tradies about the Tradies' desire to eventually take ownership of that car park?

Mr Barr: I believe they floated that publicly in the media sometime earlier, in terms of the refurb of their building. As I understand it, they also own some of the surrounding area—the fitness club site, for example.

THE CHAIR: And the garden centre.

Mr Barr: Yes, I believe so. They had floated a development proposal. They had done that publicly. You would have to go back and check the record as to whether that proposal initially encompassed building on the car park site. Certainly, I remember at one point there was a proposal to also address some of the stormwater issues that

relate to that stormwater channel at the back of the site, between the hotel site and Daramalan College. There is a bike track and a concrete culvert for stormwater. From time to time, in flash flood situations, it has been dangerous, or there might be a better water treatment option. As I recall, in that period there was also work underway and discussions around stormwater storage for irrigation of playing fields.

THE CHAIR: There was work done in Hawdon Place as well.

Mr Barr: Yes, and there was work underway around the large storage tanks that are now in place at the Dickson playing fields. It might also have been around the time that there was discussion about the Dickson wetlands project. There have been various iterations of consideration. Parking and stormwater were issues that had an interface with what happened in that context, together with the Dickson master plan, and what has now happened and transpired in relation to the extension of Cape Street to form the new bus interchange. From memory, the Dickson master plan contemplated that street continuing. I certainly recall a discussion in relation to needing to improve traffic signals for all of the intersections and the entry points to the Dickson group centre, which has happened. It happened in advance of any of these pieces of development. A number of intersections are now signalised that were not previously.

THE CHAIR: The Auditor-General's report says that the government, in November 2010, rejected an application by the Tradies for a direct sale on block 30, section 34.

Mr Barr: Yes, that time line sounds—

THE CHAIR: Do you recall why?

Mr Barr: There is certainly not an automatic entitlement to a direct sale. Obviously, we do receive applications regularly from entities wanting to directly buy land. I would have to look at the cabinet decision papers to ascertain why. I do not recall the full extent of the discussion at that time. Presumably, as a result of the subsequent decisions, it was cabinet's desire for there to be an open process in relation to the sale of that. That ended up being the position—that the site would go to market.

THE CHAIR: Do you recollect, between November 2010 and the decision to put the block out to market in 2012, whether there were any other discussions between the territory and the Tradies about access to that block?

Mr Barr: I will need to take that on notice.

THE CHAIR: Thank you.

Mr Barr: I do not have a specific memory of any—certainly not with me. They may or may not have raised that subsequently. We will do a record search and see what we can find, if that assists the committee.

THE CHAIR: Yes, thanks. Can I compliment you on your memory? It has been a topic of discussion today, and yours is better than others.

MS CHEYNE: On that—it is probably something more for Mr Ponton, who I know

was not there, but you are now the new record keeper, I suppose—we have had a weird morning where no-one seems to be able to give us a straight answer about who really took over the tender process once Mr Ellis left. Mr Drummond was pretty certain that Dan Stewart took it over; then Mr Stewart said absolutely no. Would there be any records anywhere that can give us a definitive answer about whether someone was actually responsible for it, or is it actually revealing that it—

THE CHAIR: It fell into a hole.

MS CHEYNE: Yes. It kept moving along but no-one really had carriage of it in the way that Mr Ellis did.

Mr Ponton: I can certainly go back and have a look at what records we do have. As you know, there are issues around the records. I would have thought that, in terms of some of the briefing material that was prepared to allow Mr Dawes at the time to sign off on these transactions, those briefs, in and of themselves, would contain references to the action officers. That would give you a fairly clear indication as to who was leading the project. I am more than happy to go back and check those records and provide advice.

From what I recall—and certainly it is referenced in the Auditor-General's report—it is those people that you have been making inquiries of so far, Mr Ellis and Mr Drummond. With the lower level positions, I can certainly have a look at that, in terms of who may have been doing the legwork, if you will. In terms of signing off on those briefs, I can certainly have a look at who did that.

THE CHAIR: Mr Ellis left EDD, and I think the ACT public service, in about December 2013, about the time that there was, according to the Auditor-General, initial agreement on the terms of the request for tender. There was another year or more before the exchange was effected and everything came to pass. I think that Ms Cheyne and I are quite interested to know, after Mr Ellis left, who was the action officer.

Mr Ponton: As I said, the briefs would have been prepared for consideration by the director-general or CEO at the time, who signed off on the brief, and also would show who the action officer was that prepared the brief. So that would be a fairly good indicator for us. I will go back and have a look at those records and take that on notice.

THE CHAIR: While we are on the subject of records and briefings, I would be interested, and the committee would be interested, to know how regularly senior officers and ministers would have been briefed on that. Will TRIM, or whatever record keeping systems, indicate what the briefs were and when they went? Without calling for all those documents, it would be useful for the committee to see what records there are and what the briefing pattern was.

Mr Ponton: Certainly, in terms of formal briefings, yes, we can certainly provide that information. There may have been opportunities through regular discussions with ministers' officers—the regular agenda. I am assuming you are not asking that we go through all of those agendas.

THE CHAIR: No, I am actually asking what is on—

Mr Ponton: So formal briefs.

THE CHAIR: TRIM or equivalent.

Mr Ponton: Certainly, we can do that, yes.

THE CHAIR: On the subject of—

MS CHEYNE: Because people's memories are porous, it appears—not yours.

THE CHAIR: The thing is that sometimes we have clear memories of things. Sometimes we have clear memories of things that actually did not happen, either. Memory is like that. One of the things I would be interested to know, Chief Minister, is this: at various stages, as the minister responsible, in your presumably regular Monday briefings that you had with your agency heads, did you have a standing agenda or was it just what was the current issue at the time?

Mr Barr: In relation to this area or—

THE CHAIR: Yes, generally do you have standing agendas or are they sort or more—

Mr Barr: I guess there are some matters that are consistent, as in what is on the cabinet agenda and what might be coming before the Assembly. There would be a legislation or Assembly item often and a cabinet item often, although not for every meeting. It would be reasonably consistent. The cabinet one is most consistent because—

THE CHAIR: It meets more often than the Assembly.

Mr Barr: Yes. Then there would be, at various times, in the year a budget item that would involve discussion.

THE CHAIR: As an agency head rather than as Treasurer?

Mr Barr: Yes.

THE CHAIR: On where the agencies' budget bids were up to.

Mr Barr: Yes, you would have that process. It would be more intense at the tail end of the year and at the beginning, leading up to the budget, and then less so in the third quarter of the year. At various points, estimates and annual report hearings, and the annual report itself, would be items. Yes, the agenda would then vary depending on—

THE CHAIR: Is it your practice, or has it been your practice, to have an actual written agenda?

Mr Barr: Yes, although sometimes it would largely be a template with four or five

points, and then other business being another item. But it will vary between portfolios. In the case of economic development, it would be a few consistently set items varying during the course of the year, depending on the budget cycle, the Assembly cycle or the cabinet cycle. Then there would be project-specific discussions.

In the case of those areas, over time they have also had sport and recreation or tourism. You might then have subheadings. A very different set of officials, who would be still be working to the same director-general, would substitute in and out, depending on their particular area. I think that over that time that would be the sort of pattern of briefings. Then, depending on the area, that frequency may not necessarily happen weekly. Sometimes it would be fortnightly.

THE CHAIR: You anticipated my next question.

Mr Barr: Yes, or in certain areas it might only be once a month.

THE CHAIR: But if it was EDD-LDA, how often would you have been briefed?

Mr Barr: That would be between weekly and fortnightly. There would have been some weeks when I would not have had a briefing because there was either nothing substantive on the agenda or it was January or December.

THE CHAIR: Yes.

Mr Barr: But on average, over the year, it would be between weekly and fortnightly. I imagine that would be case for most ministers, with one or both of their major portfolios. In other instances, you might have less frequent briefings. You might program, say, a monthly one and then add in any additional ones on a needs basis.

THE CHAIR: Were you, as the minister responsible for the EDD and the LDA, briefed on board meetings?

Mr Barr: Yes, but not blow by blow. Perhaps once a year I would be invited to attend a board meeting. They would normally be aligned with the budget process. Once the budget had been set and we had the statement of expectations, we would go and have a discussion about what the government's expectations were in that coming fiscal year. That would be a more routine process, but generally annually.

If there were any significant items that came before a board, particularly where there was an interface with another area of government that might require legislative consideration or a decision of cabinet, that would be a sort of example where you would have a briefing—where the matter is before the board or, vice versa, where the cabinet is considering an item that is relevant to the organisation.

THE CHAIR: Yes.

Mr Barr: In the case of the LDA, certainly there would be a discussion and a process around setting the land release, the indicative four-year land release program. That was certainly an annual process. So there would be engagement between briefing cabinet and the board. They would make a recommendation. We would assess it and

then ask questions.

Sometimes—it certainly was the case in that era—the desire to release land was very strong, to meet pent-up demand. But that would also require decisions of cabinet around proceeding with Territory Plan variations or acknowledging that something that might have been in the fourth year of the land release program required policy agreement and that, yes, we would commence a Territory Plan variation in order to—

THE CHAIR: To meet that objective.

Mr Barr: To meet a time frame, yes.

THE CHAIR: I think that sort of covers the general questions about the sorts of briefings you have had.

MS CHEYNE: Another line of questioning has been about the advertising of the tender. The evidence we have heard, in particular from Mr Ellis and Mr Stewart, is that the advertisement was published in the *Canberra Times* before cabinet had a chance to consider it. Mr Stewart says that was erroneous. I think Mr Ellis said as well that it was just due to timing. I think we all know that to get an advertisement in the *Canberra Times* it takes a few days lead time.

Mr Barr: Yes.

MS CHEYNE: I think perhaps they thought that cabinet was meeting at some point and the agenda changed. Then cabinet did not consider it and it got published.

Mr Barr: It can sometimes happen that an item will be on the cabinet agenda. The cabinet agenda might have 20 items. Cabinet simply does not get to all of those items on that day. It then just shifts to the next cabinet meeting. That does happen.

MS CHEYNE: Yes.

Mr Barr: I think that would happen in every government. Not every item will necessarily be considered on the day that it may be first scheduled. In other instances, there are times when cabinet will have an item and begin consideration of it but seek further information before making a final decision. You would need to go back and have a look at the cabinet agenda from that time to ascertain exactly when it first appeared and when cabinet made a determination.

MS CHEYNE: But on that evidence we have heard, it would not be unfeasible—

Mr Barr: No; that is correct.

MS CHEYNE: that something was so far progressed with the *Canberra Times*. It is still not perhaps best practice to have already lodged it before cabinet had considered it and presume that cabinet would just go, “Yes, fine. Advertise it.”

Mr Barr: Yes, and agencies would have a sense from the coordination comments of other agencies as to—without second guessing—

THE CHAIR: Whether it is likely to go through or not.

Mr Barr: Yes, indeed. Without second guessing, there are times when agencies all agree but the cabinet does not. There are other times when agencies disagree and cabinet will make decisions, and one agency obviously will not necessarily have its advice adhered to. There are times in the territory government—I imagine this will happen in other administrations as well—where if you hold more than one portfolio your agencies may in fact provide different advice. This certainly was the case, as is clearly on the record, in relation to the Auditor-General's examination of this issue. There was a treasury position and there was an economic development position. The treasury position prevailed in terms of process.

MS CHEYNE: In terms of that advertisement—it is probably not the biggest issue, but it has been raised on a few occasions—for a reason that I do not think we have quite been able to work out, it appears that Mr Stewart then made the decision not to advertise in the *AFR* and, whether or not it is related, he was embarrassed that an advertisement had gone into the *Canberra Times* without cabinet's approval. Would it be feasible that he would not have sought to publish something in the *AFR* because he was chastised, or could it have been a cabinet decision to not advertise it?

Mr Barr: I do not believe it was a cabinet decision not to advertise in the *Financial Review*. I do not believe that was the case. The different publications will have different deadlines. The more local you are, presumably there is a different set of publication deadlines. There certainly was no directive from cabinet not to advertise in the *Financial Review*. For the *Canberra Times*, we would argue that they have a greater readership than the *Financial Review*. At that time it was probably true.

THE CHAIR: Moving on from there, the block was advertised, there was a request for tender process and there was a tender evaluation process. When were you, as the minister, informed about the outcome of the tender evaluation process?

Mr Barr: The conclusion of that process? It was a brief that came up that advised the outcome. That would have been for me to note, as I was not a decision-maker in that regard.

THE CHAIR: Yes.

Mr Barr: An exact date of that will be on the record, but that would have been—

THE CHAIR: I am not entirely sure it is on the record, but it may be. The RFT was concluded by mid-December 2012. Then there were a series of meetings. The Auditor-General says up to 40, but most people say considerably fewer than that. From what the committee can gather, somewhere in the first half of 2013, in one of the early meetings between the EDD and the Tradies, the land swap was suggested as part of the transaction. When did you become aware of the proposal for the land swap in the context of this request for tender? Sorry; that may have been discussed at other times. In the context of this request for tender, did anyone tell you that there was a proposal for a land swap?

Mr Barr: I will go and check the document records as to whether there was. I do not believe there was a formal brief. I will check the meeting agenda records to the extent that we have those.

THE CHAIR: Do you have a feeling for when you knew?

Mr Barr: Quite late in the piece. It was not a decision that was sought from me—or, indeed, from the cabinet—in relation to that in terms of there being a discussion.

THE CHAIR: But were you sounded out? There is a difference between asking you as a decision-maker to make a decision and saying, “I wonder what the minister thinks about this.”

Mr Barr: I do not recall there being specific discussions, as in asking what was my personal view on that matter, but, again, there was very clear cabinet direction in relation to the process as it related to the tender. For obvious reasons, ministers do not get involved in tender negotiations. That is a very clear and important distinction and line that you do not cross: you are not involved in the nitty-gritty of tender negotiations. It is just not a minister’s role under the procurement act. There is a very clear separation. We have a decision-making role in relation to the determination to sell a block of land, but we are not sitting around the table negotiating those processes.

I have reflected upon the circumstances, not in this specific tender but otherwise, where people approach a minister, raising concerns about a tender process. That raises an interesting question about to what extent you can involve yourself. A recent example has led me to ask a question as to why certain tender criteria have excluded a local operator, for example, given that the government’s policy is local participation and local procurement in a positive way. That is the sort of engagement that ministers often have: being asked to effectively be an ombudsman of sorts to ensure that the processes are followed. But that normally comes as a result of an aggrieved party and where one of the people in the tender process is not getting a satisfactory answer from the public service and is seeking to elevate the matter.

In this instance, my sense is that the appropriate response is that this remains something that should be at arm’s length from a minister, but it is appropriate to refer a complaint about a tender process to the Head of Service or to the head of procurement, depending on such a complaint.

THE CHAIR: But in this case, cabinet set up a process for divesting the territory of the Tradies car park through a request for tender, and we had lit upon a preferred tenderer, but after that process started there were a whole lot of other things that were brought into play: the Downer blocks which eventually became part of the transaction.

Mr Barr: Sorry?

THE CHAIR: Is it Downer?

Mr Ponton: The Downer Club.

THE CHAIR: The Rosevear Place blocks.

Mr Barr: You mean the blocks in Dickson that used to be the former Downer Club?

THE CHAIR: The Downer Club. That is what I mean, yes.

Mr Barr: The planetarium site.

THE CHAIR: Yes. So those blocks there became part of the calculation and part of the final transaction?

Mr Barr: Yes.

THE CHAIR: Would there be a point or should there have been a point where you as the responsible minister, or cabinet as the decision-maker on the request for tender, should have been alerted to the fact that this had become a bigger transaction than initially described and given a permission structure by cabinet to transact?

Mr Barr: I think that the policy framework around what level of the threshold discretion directors-general and agencies are given means that cabinet did not have a site-specific consideration but had set an overall framework for sites up to a certain value.

THE CHAIR: So this is not the LDA acquisition framework?

Mr Barr: No, not specifically, but that broader discussion of at what point a land acquisition requires a comeback to cabinet and then what would sit at a delegated level to a director-general—

THE CHAIR: Would it be possible to provide to the committee what those guidelines were at that time?

Mr Barr: I can certainly endeavour to get that information, yes.

THE CHAIR: Thank you. So it could possibly be covered and not go back to the minister or cabinet because it may come below the delegation threshold?

Mr Barr: Yes, or that the variance from the RFT process was not considered so significant as to require it to come back. That, obviously, is a subjective judgement.

THE CHAIR: There are some people who have a view that it was substantially variant and other people have a view that says that it was not.

Mr Barr: Yes. I have heard that it is not. I can say from subsequent experience in another circumstance that cabinet has been re-briefed on a matter that related to another tender where it was considered that there was sufficient variance that we should be briefed again and give guidance. In the last seven years there certainly have been examples of things coming back to cabinet. This specific one was not one of those.

THE CHAIR: Was there any sensitivity from your point of view, or from cabinet's

point of view, about the block because of its location and the desire of an organisation affiliated with the ALP having interests in this block?

Mr Barr: There was sensitivity to the extent that cabinet considered and rejected a direct sale and sought and made very clear, through a documented decision, the process that we wanted: that the market should be tested and there should be an expression of interest process. For the conspiracy theorists who would say, “We would have just given a direct sale,” if that been the procurement path preferred, that would have been the outcome. But it was not. It was rejected and an alternative process was put in place.

THE CHAIR: Was the alternative process put in place because the Tradies wanted access to that site or was it put in place because it was the right time to put that block up for sale?

Mr Barr: The block was part of the land release program. It was part of the Dickson master plan work that we discussed earlier that had concluded by that stage. It was obviously ultimately tied to the discussions for the land release, which I think had already then occurred, for the site to the north of—

THE CHAIR: The Coles site?

Mr Barr: Yes, the Coles site. I think at the time it was the Coles-ALDI site, but it was the Coles site once ALDI had been ruled out of the site to the east of the library.

THE CHAIR: East of the library?

Mr Barr: Yes. At one point, going back to where we began the discussion, the two supermarkets had been proposed to go either side of the Dickson library. That was one proposal that had been—

THE CHAIR: Yes, that is right.

Mr Barr: But the obvious point was raised: that would mean you were building potentially simultaneously on—

THE CHAIR: On two car parks.

Mr Barr: On most of the surface car parks. That simply was not going to be a feasible option. The thing that I distinctly recall being the subject of a major discussion around the cabinet table was managing the parking during the construction phase. The desire for an additional supermarket dates back into the previous decade. I recall that being an issue at the 2008 territory election. That is how long ago it was. This second supermarket at Dickson issue has been a decade-long one.

The very clear view of cabinet—this was something that I had a view on, being a resident of that suburb—was that there was simply no way that you could have simultaneous construction on all of those surface car parks and that, whatever happened in terms of the sequence of the development and land sale, you simply had to have a parking management strategy in place. I certainly stressed that point, both as

a local member and as minister at that time, but I was not the only person who identified that that was an issue.

THE CHAIR: You would not have to.

Mr Barr: No, indeed.

THE CHAIR: It is not rocket science.

Mr Barr: No, it is not. That is why those caveats were put in place in relation to any development on that car park, on the Tradies car park. It could not proceed; the public would need that car parking.

THE CHAIR: Was that in the RFT—that it could not proceed until the other sites were developed—or did that come later?

Mr Ponton: I would need to go back—

THE CHAIR: Could you check?

Mr Ponton: and check the record. I will take it on notice.

THE CHAIR: Thank you.

Mr Barr: Certainly, it was a very clear point of discussion at the cabinet level. I certainly recall making public statements because people obviously were asking those questions. The first question that is asked in Canberra on any development issue is: what about the car parking?

THE CHAIR: I know Ms Cheyne is interested in car parking.

Mr Barr: Yes. It is, without fail, the first question that is asked in every master plan, in every development, isn't it?

Mr Ponton: It is.

THE CHAIR: In relation to this, there was the RFT, which was for disposal of that block of land. Were there minimum planning requirements or was it just open slather?

Mr Barr: In relation to the number of car parks?

THE CHAIR: No; more about what could be built on it.

Mr Barr: It would have had to be consistent with the Territory Plan.

Mr Ponton: Absolutely, and ordinarily there would be some guidance in relation to a request for tender. Again, we can go back and check that.

THE CHAIR: We had Fabcot here this morning. They were quite up-front and said they wanted it for a Dan Murphy's, and Dan Murphy's is pretty much a cookie-cutter

development.

Mr Ponton: Liquor barn.

THE CHAIR: Yes. They follow a particular pattern of development. It only really occurred to me this morning that perhaps that was not what the territory was looking for as a planning outcome for that block of land.

Mr Ponton: I would be surprised if there were not references to what would have been a new master plan at that point in time. As I recall, it was looking, as the Chief Minister mentioned, at the pocket park, and at mixed use type activities. We can go back and check the record for the request for tender, but I would be surprised if there was not a reference to the master plan.

THE CHAIR: Would the master plan have envisaged something other than a small building with some surface parking, something that was a bit of a step up which may be mixed use development or have more activated street frontage?

Mr Ponton: From my recollection, it was the latter. It was mixed use with activated frontage, and referencing the community park.

THE CHAIR: Okay; thank you for that. Chief Minister, going back to the land swap arrangement that was part of the transaction, when you became aware of it, were you conscious that there might be sensitivities about that because of the relationship between the Labor government and the unions involved?

Mr Barr: I think there are sensitivities in relation to any land swap in the territory, full stop. If you look at the history of land swaps—

THE CHAIR: Kingston foreshore.

Mr Barr: Yes, that would be one such example.

THE CHAIR: The hospital site.

Mr Barr: Blowing up the hospital; yes, all of those—at any point, with any countenance of land swaps. We have a live issue now where the commonwealth want to have more land for embassies and are attempting to undertake land swaps with the territory government in relation to that question. Yes, there is always sensitivity. I think it is more in the context of swapping land than who the owners are.

THE CHAIR: But most of the time the land swaps are, generally speaking, between the territory and the commonwealth. I cannot think of any others that are not.

Mr Barr: There would be instances where contiguous land might be involved. There have been cases where part of blocks have been realigned—where a certain parcel at one point has come into territory government ownership. That would be with the private sector.

THE CHAIR: I cannot think of any, off the top of my head.

Mr Barr: I believe there is one on Constitution Avenue, isn't there, where there was a block that was—

Mr Ponton: Yes, a proposal on Constitution Avenue. I cannot recall the suburb, but I am thinking of a community-related centre that was privately owned. There was a park next door and there was a squaring up of the boundaries. That is years ago, and I cannot—

Mr Barr: There would be a handful of examples.

THE CHAIR: There would be a handful. None of them spring to mind.

Mr Barr: There would be a handful of examples that would be outside intergovernmental, but they would happen. I imagine that, over time, as less land is in government hands and more is in either private or community ownership or custodianship, the potential for that would certainly increase. We have no doubt that those two words, used together sequentially in a sentence now, will attract a degree of interest from anyone in a ministerial, Legislative Assembly or other role.

THE CHAIR: In relation to the land swap—putting those two words together in that order—did you have discussions with the head of your agency about the desirability of that when you became aware of it?

Mr Barr: I do not believe so, not on the desirability.

THE CHAIR: Did you discuss it in any way, shape or form?

Mr Barr: Again, I will need to check the meeting records. I do not believe so.

THE CHAIR: Did you have discussions with your senior political staff about it?

Mr Barr: It was not a topic of any particular frequency in my office. Once the cabinet decision had been made, there was a process; that was it. That is the end of the political decision-making process. It is then handed to the bureaucracy to undertake the procurement in accordance with the territory's procurement rules. At that point we are advised of an outcome, at the end of a process. That is it.

THE CHAIR: Have you always operated your office in that way?

Mr Barr: Yes.

THE CHAIR: Once the decision has been made—

Mr Barr: Once we have completed our decision-making task, as a minister or through a cabinet process, it then transitions into a formal procurement, a request for tender or otherwise, and we are simply then advised of an outcome.

THE CHAIR: No-one in your office would follow up someone in the public service and say, "Here is an issue which we've set in train but it hasn't been finalised. What's

happening?”

Mr Barr: There would be a process around ensuring that a cabinet decision was adhered to, as in cabinet would decide on date X that this process would occur and information might be sought as to whether the process had begun and whether the process had concluded, but it would be information at that level. Often you would get a brief that would say, “The tender process opens on date X and closes on date Y. The panel will consider over whatever period and a decision will be announced at a subsequent date.”

Sometimes there is not even that level of granularity around exactly when the panel might make a decision. You are then advised of the outcome. That certainly was the case in this instance. There was a brief that came up to me for noting, to say that this was the result of the process. But between the cabinet decision being enacted and that final brief to say the process is concluded, that—

THE CHAIR: That was a short period of time. That was September 2012 through to December, early January 2013.

Mr Barr: Yes.

THE CHAIR: Then there was another two-year period between the identification of the preferred tenderer and the signing of the contract and the transfer of deeds.

Mr Barr: Yes.

THE CHAIR: Then other things have not happened because of—

Mr Barr: Yes. It was likely, over that intervening period, that there would have been an update to say that negotiations were ongoing, but that would have been the extent of the information.

THE CHAIR: There would be no-one in your office who would be on the phone or sending an email to people in EDD or the LDA saying, “Where are we with this?”

Mr Barr: Periodically that might happen in the context of: “You said the process had concluded on date X. It has now been six months. What is the status of negotiation? Is this likely to be concluded?”—that sort of information. But a reasonable amount of time would have to transpire. It is not something I would expect someone to be on the phone about every day.

THE CHAIR: Having worked in the Chief Minister’s office myself, I am aware that from time to time phone calls were made and emails were sent to say, “Where are we with project X, Y or Z?” You are saying that in this case there was no follow-up and there was no discussion with you?

Mr Barr: No. There may well have been updates to say that the process of negotiation had commenced, that it would take further time and that there was not anticipated to be an answer for a period of time. But that was not a regular standing item. I did not have a weekly update.

THE CHAIR: I would not expect that you would do that.

Mr Ponton: If I may, in terms of probity for all of these types of matters, it is the nature of the negotiations that would not be shared with a minister. In fact, even with me as D-G there are procurements that occur within my organisation that I am not advised about whilst the evaluation panel is undertaking them.

THE CHAIR: But the evaluation panel had finished its work. It had done its work. It had identified the preferred tenderer. Then there was a two-year-ish lag.

Mr Ponton: It is not uncommon, once the preferred tenderer has been identified, for negotiations to continue. Again, in terms of probity it is important that we keep that separation, being a procurement process—the distinction between the executive and the public service.

MS CHEYNE: Chief Minister, given the relationship between the Tradies and the Labor Party, and not doing a direct sale, at what point were you made aware, if you were ever made aware, that there had been some GSO advice that there might be some risk, in terms of how the negotiations were going, that this could be perceived to be a direct sale?

Mr Barr: Not until those matters became—I just simply do not—my engagement in that—

MS CHEYNE: That level of granularity.

Mr Barr: Yes. Engagement in the process relates to the cabinet process. To take the counterfactual here, I would be in a lot of trouble if I were in there negotiating a request for tender process or attempting to influence an evaluation panel.

MS CHEYNE: People would also be wondering if you did not have better things to do.

Mr Barr: Yes. But that is the obvious counterfactual here: we have had no involvement in this because it would be improper to have involvement in it. If I had been involved, you would have every right to ask me why. Because I was not, you are asking me why wasn't I? I have given you the answer to that.

THE CHAIR: No-one is asking the question—

MS CHEYNE: We are just trying to get a sense of—

THE CHAIR: What was happening.

MS CHEYNE: Yes, and what is the role. While we have a pretty good sense, publicly that sense is not as well understood. You are not an influencer; you are a receiver of information and a noter once it has got to a certain point.

Mr Barr: Yes. My decision-making role, along with every other member of cabinet,

is to determine a process for a procurement. The two options in this instance were direct sale or a public process, a request for tender process. We determined not to pursue a direct sale process. That, by and large, is the position that is taken. There has to be a very good reason for a direct sale. For most government land sales, it is through a competitive process. I can think of a handful of examples over time where direct sales have been undertaken.

THE CHAIR: And they are all tortuous.

Mr Barr: Yes; necessarily they are. Sometimes people complain that they take too long. Then you can have a legitimate policy debate as it relates to, for example—and it did 10 years ago—the supermarket competition policy. The then Chief Minister took a very interventionist and active role. He did pursue a direct sale policy, with a view to ensuring competition in the supermarket sector, with mixed success, let us be honest. It was a valid and valiant attempt, but it did not work.

In terms of this process and the interface with this process, it is a relevant point to consider, because one of the questions around the Tradies car park site is its ongoing availability as a public car park, and its ongoing revenue stream to government. Based on the car parking fees, each year you could expect \$600,000 in revenue or thereabouts, assuming about an 80 per cent occupancy of the spots. That that revenue continues to flow to government is a benefit of the current negotiated arrangement. Had the land been sold without those caveats, there would not be the public revenue stream and potentially the public car parking.

THE CHAIR: Technically speaking, has the land been sold?

Mr Parton: No, but the contracts have exchanged.

THE CHAIR: Contracts have exchanged.

Mr Ponton: Yes, but we have not yet settled.

THE CHAIR: Has there been any exchange of moneys? I honestly cannot recall.

Mr Ponton: There was a deposit paid, yes.

THE CHAIR: A deposit of?

Mr Ponton: The standard five per cent. I can clarify this, but my understanding is, too, that it is ordinarily held in trust, but that was released by the purchaser to the government, so that did go through to part of the dividend.

THE CHAIR: So that went to consolidated revenue rather than being in trust?

Mr Ponton: That is my understanding, yes.

THE CHAIR: Going back to the cabinet process, you said, Chief Minister, that there is a cabinet process and that in a sense you wind it up and set it, and it is for somebody else to steer it through the process. The cabinet process that you set up was

a request for tender for someone to come and buy that block of land under a certain set of circumstances. We ended up with something more than that. Why did it not come back to cabinet?

Mr Barr: That is ultimately a subjective view as to how much it has varied and what is within the—

THE CHAIR: When you were at the cabinet table and you were the minister with carriage of this, wearing two hats as the minister for EDD and the Treasurer, did you envisage that there might be other elements to the final transaction?

Mr Barr: At the time that we commenced the process for that block, no. Our principal concerns, as I have outlined, related to the parking.

THE CHAIR: The staging and the parking?

Mr Barr: Yes, the staging and the parking.

THE CHAIR: Notwithstanding that there have been lots of arguments put forward that there is a lot of merit to the consolidation of land behind the Dickson pool, up Antill Street, at any stage, did you think, “Perhaps I should take this back to cabinet?”

Mr Barr: No, because subsequently, in light of all of these issues, cabinet is looking at it.

THE CHAIR: You became aware at some stage that the Rosevear Place lots were part of the negotiation. At any time did you think, “I should take this back to cabinet”?

Mr Barr: No.

THE CHAIR: It never crossed your mind?

Mr Barr: No. The extent of all of that is not something I had visibility of, because I was not involved in the negotiations. It is very difficult to form an opinion on what should come back to cabinet if you are not privy to the negotiations.

THE CHAIR: You were aware that the Rosevear—

Mr Barr: I was aware that there were negotiations going on and that there were outstanding matters, but the fine detail of any of that was, rightly, not before me. I would not have expected it to be.

THE CHAIR: You would not have expected a substantial departure? In September 2012 the cabinet decision was an RFT for this block of land. The outcome for the Tradies block was that that block was sold to the preferred tenderer. As part of the negotiation, the territory acquired land that the tenderer had an interest in.

Mr Ponton: If I may, I think it might be useful for us to go back and check the record in terms of when the Chief Minister, as the Minister for Economic Development at the

time, was advised of the various decisions. I think that is where you are going here. If the Chief Minister is—

THE CHAIR: In a sense, I do not care about when he was advised, but presumably he was advised before—

Mr Ponton: This is the point I am making. It may have been that the decision was made by the delegate and the Chief Minister was then advised of that decision. It would be useful for us to go back and check that record.

THE CHAIR: Okay.

Mr Ponton: Whilst we use the term “land swap”, my understanding is that these were different transactions and therefore it was the chief executive at the time who made the decision to purchase those two blocks. I would expect, under normal process, that the minister or Chief Minister would have then been advised of that decision. I just think it will be useful for us to go back and check that record.

THE CHAIR: Yes, but the Auditor-General’s time line has it that the director-general of economic development endorsed the financial terms for the negotiated land swap on 17 December 2013. The actual handing over—the transaction itself, the settlement—was in December 2014, and the parties settled on block 6 section 72 and executed a sublease to the Tradies for 42 months without rent. There was a 12-month period in that. Are you saying that in that time you were not alerted formally or otherwise about the terms of the land swap?

Mr Barr: I will check the records in relation to that time period, but that would have been subsequent to a decision being made by the chief executive, as you have just read out there.

THE CHAIR: Yes, but is a decision made by the chief executive irrevocable? Can cabinet not say, “Perhaps not,” or “Maybe we should reconsider this”?

Mr Ponton: If it relates to a contract of sale, I would argue that that would be challenging.

THE CHAIR: I am relying on the wording of the Auditor-General here. The report said that the D-G of economic development endorsed the financial terms of the negotiation, which is not a contract for sale, in December 2013, and that the contracts for sale were executed another year down the track.

Mr Barr: I guess the logical extension of that line of argument would be that cabinet would have to put itself in the negotiating, because you can go back—

THE CHAIR: Not necessarily. The cabinet could make a decision. It could be brought back to cabinet. It could be said: “This is not what you asked for. Are you still happy to go down this path?” You could say yes or no. That is not putting you in the negotiation.

Mr Barr: Evidently it was not.

THE CHAIR: Yes, but it does not necessarily require you to interpose yourself in the negotiation. You can still be above it.

Mr Barr: You could in theory say no and then restart a process.

THE CHAIR: It would not be unheard of to restart a process in government.

Mr Barr: I guess not. In the history of government, that would be a fair observation.

THE CHAIR: Thank you very much for your attendance today, Mr Barr and Mr Ponton. There are a number of issues where you have said that you will take things on notice.

Mr Barr: We will, yes.

MS CHEYNE: I cannot wait to find out who that action officer is. It is a burning question.

THE CHAIR: It is a burning question.

You will receive a proof *Hansard* in the course of next week. The standing orders say that questions on notice must be dealt with within five days of the delivery of the *Hansard*. The clock starts the next day.

Mr Barr: Sure. Some of it will be relatively straightforward.

THE CHAIR: And some maybe not so much.

The committee adjourned at 2.36 pm.