



**Solicitor-General for the
Australian Capital Territory**



Our Reference
634181

Contact
Peter Garrison
(02) 620 70654

20 December 2018

Mrs Vicki Dunne MLA
Chair
Standing Committee on Public Accounts
ACT Legislative Assembly
GPO Box 1020
CANBERRA CITY ACT 2601

Dear Mrs Dunne

Standing Committee on Public Accounts – Inquiry into Auditor General's Report No 3 of 2018

I refer to the email from Mr Brian Lloyd of the Office of Legislative Assembly of 13 December 2018 in which Mr Lloyd provided me with details of the questions taken on notice referable to my appearance before the Standing Committee on Public Accounts on 6 December 2018. I now provide the answers to the questions taken on notice which I have supplied in the usual format (including attachments being the emails referred to in paragraphs 2.77 and 2.103 of the Auditor General's Report (including associated email chains)).

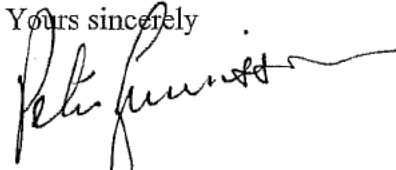
It is my recollection that there may have been other matters which were to be taken on notice but which are not listed in the questions provided by the Committee to me. I have assumed these are queries on which the Committee has determined they no longer require answers. If this is not the position, please advise accordingly as I would be happy to assist the Committee further if required.

I take this opportunity to remind the Committee of my letter of 27 April 2018 (copy attached) in which I requested the identity of the lawyers, formerly of the ACT Government Solicitor's Office, disclosed in that letter be kept confidential to the Committee. The provision of the email chains provided in response question no. 4 discloses the identities of those lawyers and as such I ask that the identity of those lawyers continue to be kept confidential to the Committee. In addition, the email chain of 15 April 2014 discloses the identity of solicitor [REDACTED] (who

is no longer employed in the office of the ACT Government Solicitor) and both email chains disclose the identity of [REDACTED], currently employed with the ACT Government Solicitor. I ask that the identities of [REDACTED] and [REDACTED] also be kept confidential to the Committee.

Further, one email chain discloses the identity of lawyers acting for the other party being [REDACTED] (partner of Clayton Utz) and [REDACTED] (who I am advised is no longer employed by Clayton Utz). I ask that the identities of [REDACTED] and [REDACTED] also be kept confidential to the Committee.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Peter Garrison', with a long horizontal flourish extending to the right.

Peter Garrison AM SC
Solicitor-General



STANDING COMMITTEE ON PUBLIC ACCOUNTS
Vicki Dunne MLA (Chair), Tara Cheyne MLA (Deputy Chair)
Nicole Lawder MLA, Bec Cody MLA

Questions Taken on Notice – Inquiry into Auditor-General’s Report No 3 of 2018:
Tender for Block 30 (formerly Block 20) Section 34, Dickson

ANSWER TO QUESTION ON NOTICE

Asked by: Mrs Dunne MLA:

In relation to:

Page 127, Proof Transcript

- Mr Garrison, can you provide for the committee the full email that is referred to in paragraph 2.77 and also the full email referred to in paragraph 2.103?

Mr Peter Garrison, Solicitor-General: The answer to the Member’s question is as follows:–

The email referred to in paragraph 2.77 is that of 15 April 2014 which is attached with the applicable email chain.

The email referred to in paragraph 2.103 is that of 28 October 2014 which is attached with the applicable email chain.

Approved for circulation to the Standing Committee on Public Accounts

Signature:

Mr Peter Garrison AM SC
Solicitor-General for the ACT

Date: 20/12/18

From: [REDACTED]
Sent: Tuesday, 15 April 2014 1:40 PM
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Block 20 Section 34 Dickson -- probity

Dear [REDACTED]

Regards

From: [REDACTED]
Sent: Tuesday, 15 April 2014 12:36 PM
To: [REDACTED]
Cc: [REDACTED]
Subject: Block 20 Section 34 Dickson - probity

Dear [REDACTED]

1

██████████ | Solicitor | ACT Government Solicitor

██████████ | ██████████ | DX 5602 Canberra |  PO Box 260 Civic Square ACT 2608

www.actgs.act.gov.au

Our reference: 621909

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[REDACTED]

From: [REDACTED]
Sent: Tuesday, 28 October 2014 11:49 AM
To: [REDACTED]
Cc: [REDACTED]
Subject: Block 30 Section 34 Dickson - Crown lease

Dear [REDACTED]

The difference between the Crown lease that has been endorsed and the position presented in [REDACTED] email is Tradies are requesting (as they believe they were offered during the valuation process):

- car park be included as an independent use in the Crown lease. Currently, it is only an ancillary use to any other use permitted on the land;
- commercial accommodation not be limited to hotel and community use not be limited to community activity centre;
- the current limitation of 300m² on shops selling food be removed; and
- the removal of the clause which relates to any building which straddle both Blocks 28 and 30 Section 34 Dickson with frontage to that proposed access way.

These divergences from the original offering in the RFT can possible be viewed as the normal post tender negotiations that the Territory engages in with most transactions.

This really only becomes an issue if a reasonable person (say the Auditor General) considers that negotiations have gone so far that the terms of the sale no longer reflect the offering to the market in the RFT.

As you know, section 240 of the *Planning and Development Act 2007* prohibits ACTPLA issuing a Crown lease via direct sale except in circumstances set out in the Act and the Regs. If the terms of sale are so divergent from the terms of the RFT, it may be considered a direct sale rather than the outcome of the RFT process.

If this were the case, the exemption for the direct sale of land offered under a tender but not sold (reg 130(1)(b)) would not be effective because the conditions of sale were not materially the same as those in the tender.

Whether the terms to the Tradies are "conditions materially similar to the conditions of the lease offered by tender" are a matter of degree and judgement, however, we have concerns that making any of the requested concessions may move the terms offered beyond what is "materially similar" to the original tender.

Please advise us of your position and we will respond appropriately to

We look forward to you instructions

If you have any question please do not hesitate to contact [REDACTED] or me.

Kind regards

[REDACTED] Solicitor | ACT Government Solicitor
[REDACTED] DX 5602 Canberra | [REDACTED] PO Box 260 Civic Square ACT 2608
www.actgs.act.gov.au

Our reference: 621909

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From: [REDACTED]
Sent: Monday, 27 October 2014 2:36 PM
To: [REDACTED]

Subject: RE: Block 30 Section 34 Dickson - Crown lease
Importance: High

[REDACTED]

I would rather not go into the detail of the RFT, what I would like is to understand in your opinion what the differences are that are being requested?

In order to prevent it becoming another Kingston (protected negotiations, he said she said and other complexities) I am prepared to work through each issue and move forward. I am very reluctant to negotiate a new price or terminate this arrangement and start the negotiation process again.

Simply, please advise me of the best position the LDA can take so I can discuss these options with [REDACTED]

[REDACTED]

From: [REDACTED]
Sent: Friday, 24 October 2014 11:05 AM
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Block 30 Section 34 Dickson - Crown lease

Dear

Please find attached further correspondence from Alfonso below.

It appears there is a misunderstanding of what was offered to Tradies. Whether or not this misunderstanding is justified is irrelevant, the question remains what the LDA is willing to offer.

We note our previous advice that the concessions they are seeking are at odds with the Minister's brief signed by David Dawes and the content of the RFT. We would expect that any changes inconsistent with Mr Dawes briefing would need to be cleared through him or the Minister.

It appears that the options at this stage are either they agree with our position, we agree to negotiate a new price or we terminate this arrangement and start the negotiation process again.

Any further concessions at this stage may contaminate the RFT process to the point that there may be a significant probity issues in selling the Land on that basis. If you wish for further advice on this matter please instruct us accordingly.

We look forward to your instructions on this matter.

If you have any questions please do not hesitate to contact [REDACTED] or me.

Kind regards

[REDACTED] Solicitor | ACT Government Solicitor
[REDACTED] DX 5602 Canberra | PO Box 260 Civic Square ACT 2608
www.actgs.act.gov.au

Our reference: 62

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From: [REDACTED]
Sent: Friday, 24 October 2014 9:39 AM
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Block 30 Section 34 Dickson - Crown lease

[REDACTED]
The valuers have met and discussed this morning.

My instructions are to seek the following changes to the purpose clause:

- add car park (as a stand alone use)
- remove the limitation in relation to commercial accommodation use i.e. delete "LIMITED TO hotel"

In addition in relation to shop can you please delete the words "or shop selling food".

The valuers advised that there was no limitation on the shop use however I accept that there are requirements in the Territory Plan.

At one level the limitation should be removed entirely as the Territory Plan limitations apply irrespective of the terms of the crown lease but I don't have an issue including a limitation.

The land is zoned CZ3 so the relevant limitation (section 13.2 rule 42) see below

13.2 Shops – floor area limit – CZ3

R42

This rule applies to CZ3.

The maximum *gross floor area* for a shop used or intended to be used as a supermarket is 300m².

This is a mandatory requirement. There is no applicable criterion.

I have no issue if the limitation was in the terms set out in the Territory Plan (i.e. extended reference to "intended to be used")

I think this is the last remaining issue so I believe you should be able to issue and execution version of the contract.

I think you have execution copies of contracts in relation to

- Block 26 Section 72

- Block 6 Section 72

Can you confirm?

Happy to go through those one more time to make sure our counterparts are identical.

Let me know if there is anything you would like to discuss.

[REDACTED]
Clayton Utz

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adelrio@claytonutz.com | www.claytonutz.com

 Please consider the environment before printing this e-mail

From: [REDACTED]
Sent: Wednesday, 22 October 2014 1:10 PM
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Block 30 Section 34 Dickson - Crown lease

Hi,

Office - sorry I can't recall seeing a new crown lease with the 4,000sqm noted. I did not appreciate your note 'amended to suit precinct code' meant the 4,000 sqm was agreed.

Uses - I will confirm but my understanding was that the agreed value was based on a presumed purpose clause based on what I set out in my email. I understood the use and value were discussed between our clients respective valuers (Steve Flannery and Paul Powderly). It may be that there has been a communication problem. The discussion paper was the paper which outlined the commercial terms of the 'land swap' noting that this transaction involves more than the sale of 30/34 Dickson.

Pedestrian Plaza - all noted and thanks.

The request for a meeting was by my client and I will advise them that your client is not interested in meeting at this stage.

I will come back to you once I hear back from the valuer on the use issue.

Clayton Utz

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adelrio@claytonutz.com | www.claytonutz.com

 Please consider the environment before printing this e-mail

From: [REDACTED]
Sent: Wednesday, 22 October 2014 12:31 PM
To: [REDACTED]
Cc: [REDACTED]
Subject: Block 30 Section 34 Dickson - Crown lease

Dear [REDACTED]

It was LDA's understanding that there was only a couple of outstanding issues on this matter.

In relation to the limitation of 2,000m² for the use of office, as discussed previously there is a discrepancy between the Development Code (which limits office GFA to 2,000m²) and the Precinct Code (which limits office GFA to 4,000m²). As noted in previous correspondence, LDA has addressed this concern and amended the Crown lease to allow for the higher limit of 4,000m² permitted under the Territory Plan.

In relation to car parking, we are not aware of discussions following the release of the RFT that permits car parking as an independent use. Car parking is only permitted as an ancillary use to the permitted uses on the block.

Likewise all uses permitted in the specimen Crown lease are what was provided in the RFT. We are not aware of any a "discussion paper" which allowed uses outside of what is in the specimen Crown lease.

In relation to your proposed amendment to the pedestrian plaza, we agreed to amending 3(d) to limit the pedestrian plaza to the ground floor and amending the wording to refer to Area in the place of GFA.

LDA does not believe that it has limited uses without cause. All uses permitted under the Crown lease are what was contained in the RFT or agreed to in consequent discussions.

Without clarity on the outstanding issues LDA does not believe a meeting is necessary at this stage.

Kind regards

[REDACTED] Solicitor | ACT Government Solicitor
[REDACTED] DX 5602 Canberra |  PO Box 260 Civic Square ACT 2608
www.actgs.act.gov.au

Our reference: 621909

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From: [REDACTED]
Sent: Tuesday, 21 October 2014 11:42 AM
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Block 30 Section 34 Dickson - Crown lease

Hi,

I have discussed with my client who has asked that I request a meeting with your client to discuss this as they feel the lease does not reflect what was previously agreed.
Issues to be discussed are set out below.

Permitted use

Why the limitation to 2,000 sqm office?

Why is car park not permitted as a stand alone use?

Why are some of the uses that were on the original discussion paper not included?

I am not seeking a general right "any use permitted under the Territory Plan" just trying to understand what is motivation behind excluding some uses.

Please note that I have had issues before where parking is charged and managed by an independent operator as the operator wants certainty and are concerned about references to "ancillary".

Pedestrian plaza

Clause 3(d) refers to pedestrian access (can we limit this to "ground level" please)

The area uses GFA as a measurement which is wrong as it should be an area (GFA needs walls) i.e. delete "gross floor" in clause 3(b).

Clayton Utz

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From: [REDACTED]
Sent: Tuesday, 21 October 2014 11:15 AM
To: [REDACTED]
Cc: [REDACTED]
Subject: Block 30 Section 34 Dickson - Crown lease

Dear [REDACTED]

Please see our response in red below.

Kind regards

[REDACTED] Solicitor | ACT Government Solicitor
[REDACTED] DX 5602 Canberra |  PO Box 260 Civic Square ACT 2608
www.actgs.act.gov.au

Our reference: 621909

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From: [REDACTED]
Sent: Friday, 19 September 2014 10:35 AM
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Block 30 Section 34 Dickson - Crown lease

Hi,

I am not sure of the relevance of the tender in light of the negotiations in this matter which relate to what is effectively a land swap.

The commercial discussions between my client and Greg Ellis as evidenced by various drafts of a discussion paper (last version issued in December 2013) stated that the crown lease would include the following:

The Crown Lease Purpose Clause is to read as follows:

To use land for one or more of the following:

- (i) *business agency;*
- (ii) *car parking;*
- (iii) *club;*
- (iv) *commercial accommodation;*
- (v) *community use;*
- (vi) *drink establishment;*
- (vii) *financial establishment;*
- (viii) *indoor entertainment facility;*
- (ix) *indoor recreation facility;*
- (x) *office LIMITED TO a maximum combined gross floor area of 4,000 square metres and RESTRICTED TO the first floor and above;*
- (xi) *parkland;*
- (xii) *pedestrian plaza;*
- (xiii) *place of assembly;*
- (xiv) *public agency;*
- (xv) *residential use RESTRICTED TO the first floor and above;*
- (xvi) *restaurant; or*
- (xvii) *shop*

PROVIDED THAT not less than 1,300 square metres of parkland shall be provided on the land and at all times accessible to the public;

GFA: That the combined gross floor area of all buildings erected on the land shall not exceed 14,000 square metres PROVIDED ALWAYS that the maximum gross floor area for the use of office shall be 4,000 square metres;

It is my understanding that the value was based on these uses.

We are not aware of any such discussions and have not seen the extract from the Crown lease included above. As noted previously, car parking is only permitted as an ancillary use to the permitted uses on the block.

If uses are restricted by the Territory Plan then that is fine but that would seem to mean that there is no need to put them in the crown lease?

The permitted uses are generally consistent with the zoning. However, ACTPLA does not grant a general right to do anything permitted under the zoning.

The Plan - Area C in particular makes no sense in my view as it relates to a different block and is not tied to the Crown Lease.

The plan annexed to the specimen Crown lease will be amended to remove reference to "Area C" and the following will be removed from the purpose clause:

PROVIDED THAT the ground floor of any building facing Badham Street and the area shown by cross hatching identified as 'C' on the legend on the plan annexed hereto ("the plan") shall only be used for one or more of the following:

- (A) club;
- (B) drink establishment;
- (C) hotel;
- (D) indoor entertainment facility;

- (E) indoor recreation facility;
- (F) restaurant; and
- (G) shop

I am not sure why you refer to DV132 when it is variation 311 that applies <http://www.legislation.act.gov.au/nl/2013-208/20130503-55143/pdf/2013-208.pdf>

Noted

The land is in a CZ3 zone which permits car parking as a stand alone use so why are you seeking to restrict to ancillary?

As noted above, car parking is only permitted as an ancillary use to the permitted uses on the block.

In relation to the plaza the purpose clause says:

To use the land for the purpose of a pedestrian plaza on the corner of Badham Street and Dickson Place with a minimum gross floor area of 1,300 square metres

All I want to do is clarify that that area can also be used as a car park.

The clause reads:

"To use the land for the purpose of a pedestrian plaza on the corner of Badham Street and Dickson Place with a minimum gross floor area of 1,300 square metres and IN ADDITION the premises may also be used for one or more of the following purposes"

This does not prohibit a subterranean car park to be constructed under the plaza.

Can we please arrange another meeting and discuss this (with clients) as what you have stated in the email does not reflect my client's understanding of what was agreed.

I am sure everyone is keen to finalize this matter.

Clayton Utz

Level 10, 2 Phillip Law Street, Canberra ACT 2601 Australia | D +612 6279 4009 | F +612 6279 4099 | M +614 07 489 973 | adelrio@claytonutz.com | www.claytonutz.com

 Please consider the environment before printing this e-mail

From: [REDACTED]
Sent: Friday, 19 September 2014 9:30 AM
To: [REDACTED]
Cc: [REDACTED]
Subject: Block 30 Section 34 Dickson - Crown lease

ACT GOVERNMENT SOLICITOR
(see confidentiality notice below)

Dear [REDACTED]

We refer to your email dated 2 September 2014. Please find attached the amended specimen Crown lease and our response to the Tradies's concerns in the table below.

	Clayton Utz comments	LDA's Response
1.	Permitted uses should also include (based on a document	Car parking is only permitted as an ancillary use to

	I have dated December 2013 setting out some principles/heads of agreement) car park (noting that the car park may be run independently of other uses and therefore not (arguably) ancillary	the permitted uses on the block.
2.	Commercial accommodation (not limited to hotel)	This was a requirement of the RFT.
3.	Community use (not limited to community activity centre)	This was a requirement of the RFT.
4.	Office limitation was 4,000 sqm and was limited to first floor and above (not just first floor)	Amended to reflect Dickson Precinct Code.
5.	Shop had no limitation on areas for supermarkets or shops selling food (limited to 300 sqm)	Rule 13.2 of the commercial development code notes the GFA for a supermarket is limited to 300 sqm. The Crown lease was endorsed in reference to DV 312 where shops selling food (including restaurants) was limited to 300 sqm.
6.	Line A I don't understand what this is intended to represent.	Line A is the boundary of the block. This is a standard notation in ACTPLA leasing plans, but is not referenced in the Crown lease.
7.	Area B appears to be larger than 1300 sqm contemplated for the pedestrian plaza and shown on variation 311. I note there is a registered DP do you know if this area (Area B) has been surveyed? In addition do you know why it extends from the edge of the proposed plaza down Badham Street? In figure two this is a primary active frontage again I think it might be an error in the plan to include it in the pedestrian plaza I note that the proposed access easement is unlimited as to height over all of Area B? We had agreed that a basement car park under Area B was permitted but arguably this area is limited to a pedestrian Plaza based on wording of 3(b)	This plan was modelled on figure 2 of the Dickson Precinct Code. The plan is not a surveyed plan and the hatched area is only intended to cover 1300sqm for the required pedestrian plaza. ACTPLA has agreed to remove the "tail" from the plan. With respect to the concern raised that underground car parking will not be permitted under Area B we respectfully disagree. Provided the surface of Area B is available for pedestrian plaza there is nothing in the Crown lease which purports to restrict its underground use.
8.	Area C relates to blocks 28 and 29 and therefore all references to it need to be removed from the lease (which only relates to Block 30). The plan legend contemplates that there is only one Crown lease over blocks 28, 29 & 30? Note that the Area C as identified would have the effect of prohibiting the existing club use through the middle of existing buildings located on Blocks 28 & 29.	We don't accept that the legend contemplates any particular number of leases over Blocks 28, 29 and 30 Section 34 Dickson. The intention of clause 3(b) concerning Area C is to ensure that, to the extent that there are improvements which straddle Blocks 28 and 30 Section 34 Dickson, such improvements must satisfy the purposes set out in clause 3(b). To the extent that any building is wholly confined within Block 30 Section 34 Dickson the reference to Area C does not apply. The purpose for this requirement stems from the terms of the RFT and Tradies tender. In particular, the Tradies is required to construct a pedestrian access way from Badham Street to Dickson Place with a minimum width of 11 metres. The RFT was silent on the location for that access way, however, as the owner of Blocks 28 and 29, Tradies is in a position to create the access on the southern and eastern boundaries of Block 28 Section 34 Dickson

passing through Block 29 Section 34 . Any building with frontage to that access way was intended to be used for one of the purposes listed in clause 3(b).

Kind regards

[REDACTED] Solicitor | ACT Government Solicitor
[REDACTED] | DX 5602 Canberra | PO Box 260 Civic Square ACT 2608
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LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY



STANDING COMMITTEE ON PUBLIC ACCOUNTS
Vicki Dunne MLA (Chair), Tara Cheyne MLA (Deputy Chair)
Nicole Lawder MLA, Bec Cody MLA

Questions Taken on Notice – Inquiry into Auditor-General’s Report No 3 of 2018:
Tender for Block 30 (formerly Block 20) Section 34, Dickson

ANSWER TO QUESTION ON NOTICE

Asked by: Mrs Dunne MLA:

In relation to:

Page 126, Proof Transcript

Mr Garrison: ‘The Tradies, I will call it, bought one and was the owner of another. But there was another company. I cannot remember the name of it now but it was—

- Could you get back to us on notice the name of the other company?

Mr Peter Garrison, Solicitor-General: The answer to the Member’s question is as follows:–

Hadwon Pty Limited ACN 114 173 634 was the seller of Block 25 Section 72 Dickson.

Approved for circulation to the Standing Committee on Public Accounts

Signature:

Mr Peter Garrison AM SC
Solicitor-General for the ACT

Date:

20/12/18



STANDING COMMITTEE ON PUBLIC ACCOUNTS
Vicki Dunne MLA (Chair), Tara Cheyne MLA (Deputy Chair)
Nicole Lawder MLA, Bec Cody MLA

Questions Taken on Notice – Inquiry into Auditor-General's Report No 3 of 2018:
Tender for Block 30 (formerly Block 20) Section 34, Dickson

ANSWER TO QUESTION ON NOTICE

Asked by: Mr Dunne MLA:

In relation to:

Page 133-134, Proof Transcript

'When you were initially instructed, January-ish 2014, was the acquisition of the Downer blocks part of the deal? Were you instructed on that?

...

THE CHAIR: The purchase of the car park and the sale of the two blocks in Downer in Rosevear Place.
Mr Garrison: Yes, my recollection is that our instructions at that point—'

- Could you confirm that for us?

Mr Peter Garrison AM SC, Solicitor-General: The answer to the Member's question is as follows:—

Based upon a search of the physical files held by my office the instructions to the ACT Government Solicitor regarding the proposal that Block 6 Section 72 Dickson and Block 25 Section 72 Dickson were to be purchased at the same time as Block 30 Section 34 Dickson was to be sold were received by email on 19 December 2013.

Approved for circulation to the Standing Committee on Public Accounts

Signature:

Mr Peter Garrison AM SC
Solicitor-General for the ACT

Date: 20/12/18