Inquiry into Auditor-General’s report No. 7 of 2016: Certain Land Development Agency acquisitions

Standing Committee on Public Accounts

November 2019

Report 8

Committee membership

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Resolution of appointment

At its meeting of 13 December 2016 the Legislative Assembly resolved to create ‘a Standing Committee on Public Accounts to:

(i) examine:

(A) the accounts of the receipts and expenditure of the Australian Capital Territory and its authorities; and

(B) all reports of the Auditor-General which have been presented to the Assembly;

(ii) report to the Assembly any items or matters in those accounts, statements and reports, or any circumstances connected with them, to which the Committee is of the opinion that the attention of the Assembly should be directed; and

(iii) inquire into any question in connection with the public accounts which is referred to it by the Assembly and to report to the Assembly on that question’.[[1]](#footnote-1)

On 26 October 2017 the Legislative Assembly resolved to amend the above resolution as follows:

“Insert after (e)(i)(A), the words:

(AA) matters relating to market and regulatory reform (excluding Access Canberra), public sector management, taxation and revenue.” [[2]](#footnote-2)

Terms of reference

The Assembly’s Resolution of Appointment for the Committee of 13 September 2016, cited above, provides for the Committee to ‘examine … all reports of the Auditor-General which have been presented to the Assembly’ and:

report to the Assembly any items or matters in those … reports, or any circumstances connected with them, to which the Committee is of the opinion that the attention of the Assembly should be directed.[[3]](#footnote-3)

It follows that Terms of Reference for each of the Standing Committee’s inquiries into Auditor-General’s performance audit reports are, in effect, the Auditor-General’s report itself.

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Executive summary

Auditor-General’s Report No 7 of 2016, *Certain Land Development Agency acquisitions*, considers the acquisitions by the Land Development Agency (LDA) of the leases for land adjacent to Glebe Park, Mr Spokes Bike Hire, Dobel Boat Hire and Lake Burley Griffin Boat Hire and raises significant questions over the probity of these transactions.

The LDA acquired these leases and businesses for the stated purpose of supporting the City to the Lake project, however in conducting these acquisitions the LDA failed to follow due process, in several ways.

First, the LDA was subject to the regulatory instrument: *Planning and Development (Land Acquisition Policy Framework) Direction 2014 (No 1)*, which provided greater autonomy to the LDA in making acquisitions in exchange for meeting a series of tests set out in the regulation. The LDA failed to satisfy these tests for acquisitions made under its own authority, and so did not comply with ACT law as it stood at the time.

Second, the LDA should have had current formal valuations for all of the acquisitions, but did not for the land adjacent to Glebe Park at the time it was acquired. It also applied pressure to valuers regarding valuation reports commissioned by the LDA to support other acquisitions.

Third, it would have been preferable for the LDA to have adopted, as far as possible, a consistent approach across the four acquisitions. In the event there was insufficient record-keeping, or evidence of a rationale for prices ultimately paid by the LDA, to demonstrate that this was so. Evidence provided by the Audit Report, and that was provided directly to the Committee, showed that different approaches were taken to the acquisitions without stated rationales for those differences.

In the case of Mr Spokes Bike Hire, the LDA’s approach resulted in the LDA negotiating with the owners over a five-year period during which they were given early assurances that they could relocate. Owners of the land adjacent to Glebe Park, Dobel Boat Hire, and Lake Burley Griffin Boat Hire, on the other hand, had a very different experience and received payments that can be seen as generous in the light of valuation advice initially provided to the LDA, and other factors which go to determining value.

Fourth, these higher than expected payments were defended on the basis that they included compensation for disturbance under the terms of the *Lands Acquisition Act 1994* (ACT). However, for this Act to be engaged, it is necessary for the acquisition in question to be declared a ‘public purpose’, and no such declaration was ever made in relation to any of the four acquisitions. While there is broad scope for the Territory to enter into contracts, in practice the amount of compensation in each case was not justified by specific indications of comparable cases, which may have provided a basis for defending the payments.

Fifth, the LDA, in the course of pursuing these acquisitions, on a number of occasions asked valuers to find ways to increase their valuation figures, which in some cases were rebuffed. This increases the sense that the LDA was, in conducting these acquisitions, operating in what can be described, at best, as a ‘grey area’ of law, where the *Lands Acquisition Act* was not engaged, but the LDA was attempting to proceed as if it were, using the Act as a template. Arguably, transparency suffered because of this approach.

Some key witnesses, including the responsible minister of the time—who is currently the Chief Minister and Treasurer—have denied knowledge of details of the acquisitions. During the course of the inquiry the Committee asked questions about the Minister’s knowledge of the acquisition of land adjacent to Glebe Park and whether there was any connection between the acquisition and plans by Aquis Entertainment to re-develop Casino Canberra in such a way that would entail building on the land. Other former and present ACT government witnesses were also asked this question, and denied that there was a link between the two. Representations that were made to the Committee were that Aquis Entertainment’s August 2015 development proposal for the expansion of Casino Canberra was an unsolicited development bid, and that the sole purpose of the LDA’s acquisition was to allow a stormwater pond to be relocated from a roundabout at the intersection of Parkes Way and Corranderrk St to be relocated to the land adjacent to Glebe Park.

Late in the inquiry, however, the Committee wrote to Aquis Entertainment posing eight questions regarding its development proposal. The answers provided by Aquis show that the ACT government was well aware of, and indeed encouraged, Aquis’ plans for development on the land adjacent to Glebe Park. This raises the question of why the ACT government would intervene by acquiring the land when a transaction could have taken place directly between Aquis Entertainment and the then lease-holders, Glebe Park Pty Ltd, without involvement by government. In light of this, the ACT government’s role as: current owner of the land adjacent to Glebe Park; decision-maker on planning and lease conditions; and regulator of gaming in the Territory, together with unresolved questions over the future of the land amounts to an apprehended conflict of interest on the part of the ACT government, which should be resolved.

During the inquiry the Auditor-General told the Committee, as she had on other occasions, that there were limits on what an audit could consider, and consequently on the conclusions to which she could come in the course of conducting an audit. The remit of this Committee is to go beyond, to the best of its ability, the strict limits imposed on the work of the Auditor-General. This present report certainly does that. However, there are also limits on the capacity of the Committee to adjudicate on a number of matters arising. For this reason, and in view of the questions of probity raised in this report, the Committee has recommended that the matters considered here and in the Audit Report be further considered by the ACT Integrity Commission.

Recommendations

[Recommendation 1](#_Toc25325599)

[2.169 The Committee recommends that the ACT Government commission formal valuations for all purchases of land by the ACT government, paid for at market rate.](#_Toc25325600)

[Recommendation 2](#_Toc25325601)

[2.170 The Committee recommends the ACT Government obtain at least two valuations current at time of purchase when it seeks to acquire land.](#_Toc25325602)

[Recommendation 3](#_Toc25325603)

[2.171 The Committee recommends the ACT Government, when seeking to secure services to government in the property sector other than valuations, such as training and liaison with prospective sellers, obtain these under formal contract.](#_Toc25325604)

[Recommendation 4](#_Toc25325605)

[4.113 The Committee recommends that the ACT Government conduct all negotiations for acquisitions, or any other contractual matter, in a manner consistent with Clause 3.1 of the *Law Officer (Model Litigant) Guidelines 2010 (No 1)*, and the principles of the Guidelines more generally.](#_Toc25325606)

[Recommendation 5](#_Toc25325607)

[5.52 The Committee recommends that the ACT Government apply a consistent approach to dealing with other parties in land acquisitions, applying similar approaches in similar settings while allowing for variations according to documented specific and defensible requirements.](#_Toc25325608)

[Recommendation 6](#_Toc25325609)

[8.37 The Committee recommends that the ACT Government consider amending the *City Renewal Authority and Suburban Land Agency (City Renewal Authority Land Acquisition) Direction 2017* to provide legislative tests for land acquisitions by the ACT government.](#_Toc25325610)

[Recommendation 7](#_Toc25325611)

[9.19 The Committee recommends that wherever possible the ACT Government acquire land for large projects under the provisions of the *Lands Acquisition Act 1994,* or equivalent legislation, and that this be the default setting for such acquisitions in the future.](#_Toc25325612)

[Recommendation 8](#_Toc25325613)

[9.20 The Committee recommends that where the ‘public purpose’ character of an ACT Government project is not clear that the ACT government either make a declaration to the Assembly under Section 19 of the *Lands Acquisition Act 1994* or present in the Assembly legislation which, if passed, would make specific provision for land acquisitions for that project.](#_Toc25325614)

[Recommendation 9](#_Toc25325615)

[9.21 The Committee recommends that the ACT Government review the *Lands Acquisition Act 1994* to determine the suitability of the Act in its present form as a basis for land acquisitions by the ACT government.](#_Toc25325616)

[Recommendation 10](#_Toc25325617)

[9.22 The Committee recommends that any proposals to amend the *Lands Acquisition Act 1994* which proceed from a review of the Act be referred to the Standing Committee on Public Accounts for inquiry and report.](#_Toc25325618)

[Recommendation 11](#_Toc25325619)

[10.51 The Committee recommends that the ACT Government define and apply appropriate sanctions for staff who do not comply with legislatively-defined processes for responding to requests for information under *Freedom of Information Act* requests.](#_Toc25325620)

[Recommendation 12](#_Toc25325621)

[10.55 The Committee recommends that the ACT Government clarify principles and constraints for the hire and retention of contractors so that government agencies will not re-hire recent employees as contractors.](#_Toc25325622)

[Recommendation 13](#_Toc25325623)

[11.14 The Committee recommends that the ACT Integrity Commission investigate the four acquisitions and any other matters raised in this Report.](#_Toc25325624)

# The inquiry

* 1. Introduction

The Auditor-General’s performance audit report No. 7 of 2016, *Certain Land Development Agency acquisitions* considered acquisitions of leases[[4]](#footnote-4) and businesses by the Land Development Agency which occurred between March 2014 and February 2016:

* land adjacent to Glebe Park (Block 24 Section 65, City);
* Mr Spokes Bike Hire (Block 13, Section 33, Acton, lease and business);
* Dobel Boat Hire (Block 16, Section 33, Acton lease); and
* Lake Burley Griffin Boat Hire.[[5]](#footnote-5)

These acquisitions were made for the stated purpose of implementing the *City to the Lake* project.[[6]](#footnote-6)

The Audit Report was provided to the Speaker of the Legislative Assembly for the ACT on 30 September 2016. The Speaker tabled the report in the Assembly on 31 October 2016.[[7]](#footnote-7)

* 1. Audit Report

The Auditor-General, Dr Maxine Cooper and the Director, Performance Audits, Mr Brett Stanton, told the Committee about the inception, conduct and findings of the performance audit.[[8]](#footnote-8) Dr Cooper said the performance audit on certain Land Development Agency acquisitions had not been in the forward program for performance audits. She had received information about, which was subsequently considered to be a Public Interest Disclosure (PID). Following this, after further investigation, she had decided that it was best dealt with as a report for the Assembly and as a result closed the PID and conducted a performance audit to give it ‘full transparency’.[[9]](#footnote-9)

She told the Committee that the audit considered:

* the application of the Lands Acquisition Policy Framework;
* governance and project management of procurement and contracting for the City to the Lake project;
* the response to a freedom of information request; and
* relationships with Colliers International.[[10]](#footnote-10)

There were also other matters which arose as a result of closer examination of the acquisitions. The findings of the Audit Report were that:

* ‘transparency, accountability and rigour were lacking in the processes used by the Land Development Agency for acquiring the three sites and two associated businesses’; and that
* it was not possible for the Audit to verify ‘integrity and probity’ for the acquisitions.[[11]](#footnote-11)
  1. Conduct of the inquiry

On 17 March 2017 the Dr Cooper and Mr Stanton provided the Committee with a private briefing on the Audit Report. In a further private meeting of 17 March 2017, the Committee resolved to inquire further into the report, and the Chair of the Committee made a statement to the Assembly to this effect on 28 March 2018.[[12]](#footnote-12)

In the course of the inquiry the Committee conducted public hearings on:

* 26 July 2017;
* 27 September 2017;
* 13 October 2017;
* 20 October 2017; and
* 22 November 2017.

Witnesses who appeared included:

* owners of properties and businesses acquired by the Land Development Agency;
* valuers retained by the Land Development Agency;
* officers and former employees of the Land Development Agency;
* the Solicitor-General; and
* the then Minister for Economic Development, who was the minister responsible for the Land Development Agency at the time of events considered in the report.[[13]](#footnote-13)

Witnesses are listed in Appendix A. No submissions were provided to the Committee during the inquiry.

* 1. Agency changes

After the Audit Report was tabled in the Legislative Assembly on 31 October 2016 the key agency referred to in the Auditor-General’s report, the Land Development Agency, was dissolved as a result of legislative changes passed by the Legislative Assembly.[[14]](#footnote-14)

The Land Development Agency’s *Annual Report 2016-17* stated that:

The LDA ceased as an agency on 30 June 2017. Its responsibilities were assumed by the City Renewal Authority, the Suburban Land Agency and the Environment, Planning and Sustainable Development Directorate (EPSDD).[[15]](#footnote-15)

* 1. Structure of report

This report consists of eight chapters:

* Chapter 1, the present chapter, which provides background to the inquiry;
* Chapter 2, which considers the acquisition of land adjacent to Glebe Park;
* Chapter 3, which considers Aquis Entertainment’s interest in the land adjacent to Glebe Park;
* Chapter 4, which considers the acquisition of Mr Spokes Bike Hire;
* Chapter 5, which considers the acquisition of Dobel Boat Hire;
* Chapter 6, which considers the acquisition of Lake Burley Griffin Boat Hire;
* Chapter 7, which considers who was responsible for the events considered in this and the Auditor-General’s report;
* Chapter 8, which considers the degree to which the LDA complied with the *Land Acquisition Policy Framework*, a Notifiable Instrument
* Chapter 9, which considers legislative provision for acquisitions of land, the *Lands Acquisition Act 1994*, and a role for enabling legislation for major projects;
* Chapter 10, which considers the LDA’s response to a request under the *Freedom of Information Act 2016*; provision of mentoring and meeting space by a person from the private sector; and the role of a consulting firm; and
* Chapter 11, a *Committee conclusion* to the report.

There are four appendices:

* Appendix A, which lists witnesses who appeared before the Committee;
* Appendix B, which provides a copy of the *Lands Acquisition Policy Framework* referenced in this report;
* Appendix C, which provides a map showing the properties the acquisition of which was the subject of the Audit Report and this present report; and
* Appendix D, which provides an account of an ethics matter raised in hearings of 26 July 2017 by Mr Alistair Coe MLA, who was then a member of the Committee.

# Land adjacent to Glebe Park

* 1. Introduction

Block 24 Section 65, City, (land adjacent to Glebe Park) is bordered by:

* Glebe Park to the north;
* Glebe Park Residences apartments to the east;
* land owned by Casino Canberra adjoining the National Convention Centre to the south; and
* Casino Canberra to the west.[[16]](#footnote-16)

It will subsequently be referred to in this report as ‘the land adjacent to Glebe Park’. Its location is indicated on the map provided at Appendix C.

* 1. Timeline
* June 2011 — the Minister for Planning, Mr Simon Corbell MLA, made a statement in the Legislative Assembly ruling out residential development or ‘any other development beyond that which has already been granted under the lease’ regarding the land adjacent to Glebe Park;[[17]](#footnote-17)
* Before March 2014 (un-dated) — the land adjacent to Glebe Park identified as a site for the relocation of Coranderrk Pond;[[18]](#footnote-18)
* March 2014 — ‘Glebe Park wetlands draft discussion paper’ created, showing a map labelling the northern part of the block ‘Surrendered to the Territory’ — although ownership of the site had not changed — and the southern part labelled ’Future development by existing lessee’;[[19]](#footnote-19)
* May 2014 — a senior manager in the LDA circulated Glebe Park wetlands design options document, including a pond in the northern part of the site and a range of options for the southern part of the site, ranging from no residential development through to 271 residential units in three eight-storey blocks;[[20]](#footnote-20)
* July 2014 — the City to the Lake project team engaged Opteon to provide a valuation ‘as is as a baseline to start a discussion for the purposes of acquiring the land’;[[21]](#footnote-21)
* August 2014 — valuation provided, valuing the land at $950,000 to $1.05 million, calculated on the basis of market value ‘as is’—subject to all present lease conditions;[[22]](#footnote-22)
* October 2014 — report provided by SMEC for the LDA identified the northern part of Block 24 Section 65, as the most appropriate site for a relocated pond;[[23]](#footnote-23)
* April 2015 — renewed interest from LDA executives in pursuing the acquisition; [[24]](#footnote-24) former Deputy Chief Executive Officer of the LDA sought advice from the principal of Colliers International, at the suggestion of the Chief Executive Officer of the LDA, for which there was no service agreement or written instructions nor any specific payment (undated);[[25]](#footnote-25)
* Early June 2015 —Principal of Colliers International provided a two-page *Valuation considerations May 2015* document that identified ‘a range of values for the site based on whether the site was used for a hotel, serviced apartments or residential units’;[[26]](#footnote-26)
* Mid-June 2015 —Principal of Colliers International provided a further two-page document titled ‘Block 24 Section 65, Division of City, Glebe Park land May 2015 discussion paper’, proposing a range of values ‘to settle the matter’ at $2.8 million to $4.6 million with a recommendation of $3.6 million to $3.8 million;[[27]](#footnote-27)
* June 2015 — former Deputy Chief Executive Officer of the LDA negotiated with the owners of the land adjacent to Glebe Park, for the surrender of the lease for a purchase price of $4.18 million, comprising $3.8 million plus $380,000 GST;[[28]](#footnote-28)
* August 2015 — Aquis Entertainment lodged an unsolicited development bid for the re-development of Casino Canberra;[[29]](#footnote-29)
* September 2015 — on 9 September 2015, the lease for the land adjacent to Glebe Park was surrendered to the ACT Government for $4.18 million including GST.[[30]](#footnote-30)
  1. Background

Mr Barry Morris was one of two directors of the company which owned the land adjacent to Glebe Park prior to its sale to the LDA. He told the Committee that the Glebe Park Pty Ltd had purchased the land in the early 2000s and had subdivided it to create the parcel upon which the Glebe Park Residences now stood (that is, Block 25), and the remaining 12,000 square metres, which was the land adjacent to Glebe Park.[[31]](#footnote-31) Glebe Park Pty Ltd was a bare trust which held the interests of four joint venture parties who owned the land.[[32]](#footnote-32)

* 1. Purpose of the acquisition

ACT Audit Office

Mr Stanton told the Committee that the land adjacent to Glebe Park had been identified as a site for the relocation of Coranderrk Pond.[[33]](#footnote-33) It was believed within the LDA that the relocation of the pond to the northern part of the land adjacent to Glebe Park would facilitate the urban redevelopment goals of the City to the Lake project, and would address shortcomings in stormwater management in the eastern part of Canberra City.[[34]](#footnote-34)

Mr Stanton told the Committee that in March 2014, a document, entitled ‘Glebe Park wetlands draft discussion paper’ had been created, which included a map which labelled the northern part of the block as ‘Surrendered to the Territory’. The southern part was labelled ’Future development by existing lessee’. At this point an Economic Development senior manager had identified actions to be carried out by the owners of Block 24 Section 65, which included constructing a new stormwater pond, ‘parkland improvements’, and provision of services in connection with the owners’ plans for future development in the southern part of the block.[[35]](#footnote-35)

In May 2014 a senior manager circulated to Economic Development and LDA staff a ‘Glebe Park wetlands design options document’, which included a pond in the northern part of the site and options for the development of the southern part of the site, ranging from non-residential development through to plans to build 271 residential units in three eight-storey blocks.[[36]](#footnote-36)

Mr Stanton told the Committee that in July 2014 the City to the Lake project team had engaged a valuation firm to provide one valuation ‘as is’ as a baseline, in order to ‘to start a discussion for the purposes of acquiring the land’. The resulting August 2015 valuation, provided on the basis of market value as-is, subject to all present lease conditions, valued the land at $950,000 to $1.05 million.[[37]](#footnote-37)

Subsequently an October 2014 report by SMEC for the LDA had identified the northern part of the land adjacent to Glebe Park as the most appropriate site for a relocated stormwater pond.[[38]](#footnote-38) However from August 2014 to April 2015 there was not much activity associated with the site.[[39]](#footnote-39)

Former Chief Executive Officer, LDA

The former Chief Executive Officer of the LDA, Mr David Dawes, told the Committee that the purpose of the acquisition of the land adjacent to Glebe Park had always been to replace Coranderrk Pond, and that it was never intended to be part of a redeveloped Canberra Casino.[[40]](#footnote-40)

He told the Committee that the LDA had contemplated the future of Coranderrk Pond because it wanted an additional 11 metres to accommodate the stadium proposed for the site currently occupied by Canberra Olympic Pool. This could be achieved by moving the pond, and would also add area, and thus value, to the site known as ‘Parkes 3’: the CIT (Canberra Institute of Technology) car park between Constitution Avenue and Parkes Way.[[41]](#footnote-41)

A replacement for Coranderrk Pond could have been situated on Parkes 3, which was owned by the LDA,[[42]](#footnote-42) however a valuation had shown that additional land that would have been added to the block through the adjustments to Parkes Way without Corranderk Pond would have added approximately $15 million in value to Parkes 3. Placing the pond on Parkes 3 would have sacrificed this additional value.[[43]](#footnote-43)

In addition, he told the Committee, it was considered practical to site the replacement pond at Glebe Park because infrastructure for stormwater was already located there. Immediately behind the Convention Centre was a structure through which stormwater could drain if there were ‘a massive overflow’, and in light of this it appeared to make sense to place the replacement pond on the land adjacent to Glebe Park. A commissioned report[[44]](#footnote-44) and historical records supported the view that this was the best place for the pond, and that siting it there would provide better water quality for stormwater flowing into Nerang Pool and Lake Burley Griffin.[[45]](#footnote-45)

In his view, this was the best way to support the City to the Lake project which, he told the Committee, was worth approximately $2 billion in revenue to the Territory.[[46]](#footnote-46)

Former Deputy Chief Executive Officer, LDA

When asked whether the acquisition was linked to an intention by the owners of Casino Canberra to develop the land, the former Deputy Chief Executive Officer of the LDA, Mr Dan Stewart, told the Committee that the initial design for the redevelopment of the casino, of early 2015, included an expansion of the existing convention centre, with Aquis assuming management rights of the convention centre, and that these plans were initially ‘confined to their existing land right’. He understood from subsequent discussions with Aquis that the first time it considered a large development on the block was when the government acquisition of the land became public knowledge. However he agreed that images of the design released by Aquis did appear to include buildings situated on the land adjacent to Glebe Park.[[47]](#footnote-47)

Principal, Colliers International

The Principal, Colliers International, Mr Paul Powderly, told the Committee that the proposed redevelopment of the casino had not been part of initial discussions regarding the land, and that they focused on the relocation of the stormwater retention pond, in light of the fact that relocating Coranderrk Pond to Parkes 3 would entail a loss of $10 million in value for the site.[[48]](#footnote-48)

When asked whether valuations, and thus the subsequent purchase price, should have been calculated purely on the basis that the land was to be used to replace Coranderrk Pond, Mr Powderly told the Committee that this was not the case: there had been many properties suitable for development purchased for a public purpose, and if public purpose acquisitions in New South Wales for major infrastructure were considered a precedent it was clear that government, in acquiring the properties, paid owners the value of their properties based on their residential or development value, rather than the purpose for which it would be used.[[49]](#footnote-49)

* 1. Initial contact with owners

Mr Barry Morris

Mr Barry Morris, speaking as one of the directors of Glebe Park Pty Ltd, told the Committee that the Chief Executive Officer at Amalgamated Property Group—of which the Principal was another Director of Glebe Park Pty Ltd—had emailed him in approximately July 2014 to say that he had been approached by Mr Tim Xirakis, the former City to the Lake Project Director, about buying the land because the government wanted to find a solution for the relocation of a pond as part of plans to re-model Parkes Way.[[50]](#footnote-50)

Mr Graham Potts

Mr Graham Potts, another director of Glebe Park Pty Ltd, told the Committee that his General Manager had an initial meeting with the former Project Director in 2014, and that this was the first that he knew of the government’s interest.[[51]](#footnote-51)

Owners’ expectations on value

Mr Morris told the Committee that at this stage Glebe Park Pty Ltd had already made plans ‘with a view to giving the casino access, a front door et cetera’. This was a proposal for a development with 140 to 150 units with a land value of $50,000 per unit site, which with a profit component at 150 units would amount to an overall value of $7.5 million. To calculate final value, it would be necessary to deduct from this amount the Lease Variation Charge the developer would be obliged to pay to the ACT government.[[52]](#footnote-52)

Despite the government ruling out residential development on the site, Mr Morris told the Committee that residential development was an allowable use for the site under the Territory Plan, and that the ACT Planning & Land Authority (ACTPLA) would be obliged to accept a development application, if lodged, and deal with it in the normal way.[[53]](#footnote-53) Based on experience, he would have anticipated that an approval would have been provided at some point. While objections could have been be anticipated, normally these could be dealt with: people would ‘push and pull, but ultimately a development approval would be obtained for that land’.[[54]](#footnote-54) In his view, assuming a development with 150 units and allowing for costs, the amount that the ACT government paid for the land matched the value of the land.[[55]](#footnote-55)

Consideration of compulsory acquisition

Audit Report

The Audit Report identified two periods of activity on the acquisition: one from March 2014 to August 2014 and another from April 2015 to striking the agreement to surrender the lease in June 2015.[[56]](#footnote-56)

In the first there was consideration of whether the LDA would use the compulsory acquisition provisions of the *Lands Acquisition Act 1994* (ACT) to acquire the land adjacent to Glebe Park.[[57]](#footnote-57) The Audit Report noted that acquisitions could be made by the ACT government under the *Lands Acquisition Act 1994* either by agreement or compulsory acquisition, where it was considered that the acquisition is for a ‘public purpose’, which circumstances the Act set out the process for conducting the acquisition and the basis upon which compensation would be paid.[[58]](#footnote-58)

Audit Office

Dr Cooper told the Committee that proposals to proceed by way of compulsory acquisition had been raised by the City to the Lake project team—not the CEO or Deputy CEO of the time—and there was a significant difference in approach between these parts of the LDA.[[59]](#footnote-59) From the first consideration of the site, the City to the Lake project team was intent on pursuing compulsory acquisition, believing that this was required so that the project could proceed. However, following the ‘break period’, after which the LDA executive took carriage of the acquisition, compulsory acquisition was ‘completely off the table’.[[60]](#footnote-60)

Mr Stanton told the Committee told the Committee that initial efforts to acquire the land adjacent to Glebe Park suggested that the City to the Lake project team was genuinely intent on pursuing compulsory acquisition rather than as a way to put pressure on the owners. This was supported by the fact that there were three occasions between March 2014 and March 2015 on which the LDA sought legal advice on compulsory acquisition of land, of which at least one related to the land adjacent to Glebe Park and another to blocks on the shores of Lake Burley Griffin.[[61]](#footnote-61)

He told the Committee that advice provided by the ACT Government Solicitor to the LDA on whether the acquisition met the public purpose test in the *Lands Acquisition Act 1994* was equivocal. At one point the advice stated that there was ‘uncertainty whether the proposed acquisitions are for public purpose’, while at another it stated that ‘on balance the acquisition is for a public purpose and therefore permitted’, but the matter was ‘not entirely free from doubt’.[[62]](#footnote-62)

Mr Stanton told the Committee that the Chief Executive Officer of the LDA had also advised under oath or affirmation that the suitability of the land for compulsory acquisition was uncertain, due to doubts over whether the purchase of the land met the public purpose test for compulsory acquisitions, given that a small portion of land was intended for the relocated pond.[[63]](#footnote-63)

The Committee asked how it came to be that the City to the Lake project team and the executive of the LDA had formed such different views on the practicability of compulsory acquisition.[[64]](#footnote-64) Dr Cooper told the Committee that, as for other matters considered by the Audit Report, views and assumptions by different people were not documented, and as a result the Audit was not able to discover the underlying reasons for decisions.[[65]](#footnote-65)

When asked whether differences of opinion between the City to the Lake project team and the executive of the LDA were based on legal opinion, Mr Stanton told the Committee that the ACT Government Solicitor had written to the LDA regarding questions of public purpose and compulsory acquisition, stating that he required further instructions regarding plans for the blocks before he could provide definitive advice as to whether the public purpose test was satisfied, and that once this had been provided he would examine the issue further.[[66]](#footnote-66) It was not known whether this further information was provided, but the LDA had nevertheless decided to pursue an open market transaction rather than a compulsory acquisition.[[67]](#footnote-67)

Former Director, City to the Lake Project

Mr Xirakis told the Committee that he had explored the possibility of employing compulsory acquisition on all three blocks considered in the Audit Report.[[68]](#footnote-68) He could not recall whether he had specifically advised the owners of the land adjacent to Glebe Park that the LDA was considering compulsory acquisition but he had certainly said that it would consider all options, given that he had received a negative response to the initial valuation. This was followed up by a suggestion that the owners obtain their own valuation as a place to start negotiations, but this was declined.[[69]](#footnote-69) All of this took place in August 2014.[[70]](#footnote-70)

Former Chief Executive Officer, LDA

When asked whether acquiring the land adjacent to Glebe Park for stormwater management represented a clear case of ‘public purpose’ for the purposes of the *Lands Acquisition Act 1994*, Mr Dawes told the Committee that it was not clear. Whether it was or it was not, government agencies were obliged to pay fair value for land, or face litigation, and where there was disagreement about the amount of compensation compulsory acquisitions could remain unresolved after three or four years in the courts. In his view compulsory acquisitions in general benefited neither the buyer nor the seller, but only lawyers acting on their behalf.[[71]](#footnote-71)

When asked whether compulsory acquisition was cost effective, and whether costs could be high, Mr Dawes told the Committee that this depended on the owner of the land and the purpose of the acquisition. Previously, the Territory had acquired land for an electrical substation without compulsory acquisition, which was ‘a lot easier to negotiate’. More difficult scenarios were also possible. The main variables were: the value of the land; the degree to which acquisition could be considered as being for a public purpose; and the views of the property owner. If there were marked differences, the parties could find themselves in legal dispute. The potential for higher costs arising from legal disputes over compulsory acquisition was difficult to quantify: it could be anything from small to large amounts, but if it were considered in the Supreme Court, legal costs could well run into the hundreds of thousands of dollars.[[72]](#footnote-72)

Solicitor-General

When asked about compulsory acquisition of land by government, Mr Garrisson told the Committee that compulsory acquisition was used infrequently, and was most often associated with acquisitions for public utilities, roads and similar purposes, if it were not possible to come to agreement by negotiation. A problem with compulsory acquisitions was that it was sometimes difficult to reach agreement over the amount of compensation to be paid, and then there would be a dispute. If it were possible to reach agreement on an acquisition then this was better than proceeding by way of compulsory acquisition, which entailed a series of formal steps which could take some time, particularly if the seller was not in agreement.[[73]](#footnote-73)

When asked whether the stormwater pond intended for the land adjacent to Glebe Park would be the sort of acquisition for which the *Lands Acquisition Act 1994* was framed, Mr Garrisson told the Committee that the *Lands Acquisition Act* could only be used for a public purpose, and that this was prescribed under the Act.[[74]](#footnote-74)

When asked to define ‘public purpose’, Mr Garrisson told the Committee that this was not easy to do. There were obvious examples, such as roads. A less obvious example was acquiring land to release it for public sale in order to meet housing demand, in relation to which there was an active debate as to whether it amounted to a public purpose or not. One view held that acquiring land to resell it to a third party was not a public purpose, because there was a private interest involved, although there were other views.[[75]](#footnote-75)

However, if a seller was agreeable to land being acquired then it did not matter government used processes set out in the *Lands Acquisition Act* or pursued the acquisition by way of private treaty. Private treaty was preferable, as the terms were identified and known, and the sale could proceed quickly once the parties had agreed on a price. His office had occasionally advised on acquisitions conducted under the *Lands Acquisition Act*, but they were not common because the formal elements of the process were not conducive to a swift resolution.[[76]](#footnote-76)

As to whether it was possible to use the *Lands Acquisition Act 1994* as a template for acquisition, even if not in the context of a compulsory acquisition,[[77]](#footnote-77) the Solicitor-General advised that this would be ‘difficult’. It was a specific, formal process under the Act, requiring the provision of a notice of acquisition, then a response by owner of the land. If an acquisition were dealt with by negotiation under the Act, government negotiated, provided notice, the two parties negotiated and agreed on a price and, then it was acquired by agreement. In general, he told the Committee, the key elements of acquisitions were: the would-be buyer notifying the owner that it wished to acquire the land; the two parties agreeing on terms; and the terms being documented.[[78]](#footnote-78)

He told the Committee that there could be good reasons for using the *Lands Acquisition Act* rather than a negotiated arrangement, however the *Lands Acquisition Act* did not allow the party from whom the land was being acquired to set terms and conditions, because under compulsory acquisition, once the acquisition notice was issued the land was surrendered under the terms of that notice, and all that remained to be decided was the money to be paid. This could be subject to litigation, and this could take time.[[79]](#footnote-79)

Principal, Colliers International

Mr Powderly told the Committee that in relation to the land adjacent to Glebe Park, the government had two choices. One was to pay a price that would get the property out of private ownership, whether for market value or market value plus a small premium. The second was to ‘go down the litigious route of trying to compulsorily acquire it’, which had ‘some pitfalls’.[[80]](#footnote-80) ACT legislation on compulsory acquisition had not been tested in court, and it was uncertain what view a court would take if ACT government were seen to be using its powers to acquire a parcel of land where it was the buyer, the planning authority, the monopoly provider of land, and had responsibility for administering legislation in the area.[[81]](#footnote-81) While there were courts available outside the ACT if avenues of appeal were pursued, the fact that ACT legislation had not been tested in area increased uncertainty about outcomes for compulsory acquisition in the ACT.[[82]](#footnote-82)

Discussion with LDA regarding compulsory acquisition

Mr Powderly told the Committee that he and the LDA had discussed arguments for and against compulsory acquisition. His notes about this stated: ‘You cannot use the argument that you are a monopoly planning authority buyer for the site and approving authority and say that is the reason why you should buy it cheap’. A court would take a negative view if the government employed those factors as a means to argue for a lower purchase price.[[83]](#footnote-83)

Regarding the valuation for the land adjacent to Glebe Park, he had given Mr Stewart a range of approximately $3.2 to 4.2 million, and had advised that in his view a purchase price would most likely be between $ 3.6 and 3.8 million. He told the Committee that given that comparable properties in Braddon and Deakin had just sold for similar figures, this was defensible, as permitted uses for those properties were also constrained.[[84]](#footnote-84)

Potential for resumption of lease

The Committee asked witnesses whether consideration had been given to resuming the lease for the land adjacent to Glebe Park on grounds that lease conditions requiring $1 million expenditure on landscaping had not been met.[[85]](#footnote-85)

Former Director, City to the Lake project

Mr Xirakis told the Committee that:

* it was a condition of the lease to spend $1 million on landscaping;
* a requirement to spend $1 million would imply ‘significant and high quality landscaping’;
* he did not think that this had occurred; and
* the valuer that he engaged had also considered whether the owners had met the lease conditions and came to the conclusion that the owners had not.[[86]](#footnote-86)

He had asked the owners whether the work had been done to meet the lease conditions, including a request to the owners’ representative as to whether he could show receipts proving they had spent $1 million, but got ‘no sensible response’. Following this, he had asked the GSO, first, to what extent those conditions could be relied upon, and then whether there was capacity to resume the lease due to failure to comply. However, he told the Committee this was ‘put to bed pretty quickly’ because it had ‘never been done’ and it was ‘struck off as an option’. As a result, at this stage compulsory acquisition appeared to him the most likely avenue through which to acquire the lease.[[87]](#footnote-87)

Mr Xirakis went on to observe that not just for leases, but for contracts in general, the ACT government spent much time and effort specifying details in contracts and very little on ensuring compliance, and asked why, in relation to the requirement for landscaping works on the land adjacent to Glebe Park, the ACT government had placed conditions on the lease if they were not to be complied with.[[88]](#footnote-88)

Former Chief Executive Officer, LDA

Mr Dawes told the Committee that it was his understanding that the owners had performed the required works, and that he had verified this by visual inspection.[[89]](#footnote-89)

Glebe Park Pty Ltd

Mr Morris agreed that it was a condition attached to the lease that a certain amount of money was to be spent on landscaping. He could not recall how much had been spent on these works. In early days there had been maintenance and tree removal but as time went on Glebe Park Pty Ltd considered redevelopment options for the site, and it was proposed to conduct the required million dollars’ worth of works at that stage, to provide more car parking and access to the casino. Mr Morris told the Committee that it was not widely known that the casino did not have driveway access and Glebe Park Pty Ltd had, as part of a proposed redevelopment, been proposing ‘to give the casino a front door’ as an alternative to its present access via a laneway adjacent to the Crowne Plaza Hotel.[[90]](#footnote-90)

Effect of lease conditions on purchase price

Former Deputy CEO, LDA

The Committee asked Mr Stewart why—given the nature of the lease and specific conditions on the lease for the land adjacent to Glebe Park—the final offer for the land had appeared to reflect a broader interpretation of ‘highest and best use’ than that employed in the Opteon valuation. He told the Committee that while there were constraints on the lease, leases could be changed, and frequently were. The valuation advice provided by Mr Powderly had factored in lease variation and, based on highest and best use, and including the cost of lease variation as charges that would be paid to government, this was considered an appropriate fair value figure.[[91]](#footnote-91)

When asked why this was done when the ACT government had indicated that it would not consider a lease variation on the site, he told the Committee that in other cases government had made similar comment regarding sites where lease conditions had subsequently changed.[[92]](#footnote-92) In addition, the lessee had the right to claim fair market value, which took into account best and highest use. He told the Committee that this had been borne out by valuations undertaken on behalf of the Auditor-General and a subsequent valuation done to establish the value of the land as an asset on the LDA’s balance-sheet.[[93]](#footnote-93)

Former Director, City to the Lake Project

Mr Xirakis told the Committee that the statement by the former Minister for Planning that the ACT government would not allow any other development beyond that granted by the existing lease was a clear indicator that the land should be valued ‘as is’.[[94]](#footnote-94)

A consultants’ report supported the land adjacent to Glebe Park as the site for a replacement pond, and it was the only block available that was not NCA (National Capital Authority) controlled, and so, unless it Glebe Park itself were used there were not any other blocks of land available on which to place the replacement pond, and it was decided that the land adjacent to Glebe Park was required. In view of the Minister’s statement he had not thought that it was necessary to consider what the block was worth in terms of its potential for residential development, nor had he received advice from the GSO that it should be.[[95]](#footnote-95)

Glebe Park Pty Ltd

Mr Potts told the Committee that Glebe Park Pty Ltd had owned the land from 2000. It had subdivided the site and built the Glebe Park Residences, and the remaining land was to be the site of a new development by Glebe Park Pty Ltd ‘in front of the casino’. This would not have required a change to the Territory Plan but would, as for Glebe Park Residences, have required a change to the terms of the Crown lease. Glebe Park Pty Ltd would have pursued this and, he expected, been successful.[[96]](#footnote-96)

An architect had been engaged to draft a proposal for what could be done on the site, completed in 2012 or 2013, which had included various proposals for numbers and schemes for apartments: it was common to provide a variety of one, two and three bedroom apartments. The size, frontage, depth and width of the apartments would have determined whether 120 or 150 units would have been built on the land adjacent to Glebe Park.[[97]](#footnote-97)

At this point Glebe Park Pty Ltd had not yet decided on its plans. Plans to develop were not urgent as this was one of a number of sites owned by the company at various stages of construction, completion or planning. Development was not an exact science: rather, it involved ‘trying to get the timing as correct as you can for … market acceptance’, and this was ‘not easy’.[[98]](#footnote-98)

Mr Potts did not recall Minister Corbell ruling out residential development on the land, however the company would have considered that while the minister was ‘entitled to his opinion’, the company would ‘treat it the way we treat it’.[[99]](#footnote-99) But this was one of the few times that Amalgamated Property Group had ever sold a stake in a block of land: in general it developed blocks and if it had purchased a block of land, its intent was to ‘develop the land to its fullest’.[[100]](#footnote-100)

* 1. Opteon valuation

Audit Report

According to the Audit Report, the LDA relied upon two sources of information in attempting to arrive at a price at which it could acquire the land adjacent to Glebe Park. The first of these was a formal valuation by Opteon.[[101]](#footnote-101) The second was informal advice on value provided by Mr Powderly.[[102]](#footnote-102)

In relation to the first, Mr Stewart approved the use of Opteon to provide a valuation for the land adjacent to Glebe Park on 30 July 2014. Although there was an expectation in some quarters that three valuers would be engaged, Opteon was engaged as sole valuer. This valuation identified a value for the site of between $950,000 and $1,050,000 (GST exclusive), provided on the basis of market value ‘as is’: that is, ‘subject to all present Lease conditions’.[[103]](#footnote-103)

Mr Xirakis advised Audit that the valuation was requested ‘simply [to get] a baseline valuation to start a negotiating process’.[[104]](#footnote-104)

* + 1. Opteon valuation
       1. Whether the valuation reflected instructions

Ms Narelle Byrne, Manager at Opteon, told the Committee that Opteon’s instructions for the valuation were to undertake a market valuation, for negotiation purposes, of the land adjacent to Glebe Park, and to assume that there was no prospect of changes to zoning or the purpose clause for the land. Opteon was asked to take into account all terms and conditions contained within the lease, in particular ‘the permitted use, purpose and gross floor area’, and had carried out the valuation in accordance with these instructions.[[105]](#footnote-105)

The instructions reflected both those provided to Opteon by its client—the LDA—and publicly-available information about the site, in particular information in the public domain regarding former Minister Corbell’s comments that ‘no further uses would be permitted for the site beyond those granted and that residential use would not be permitted for the site’.[[106]](#footnote-106)

Regarding the assessments of value provided formally by Opteon and informally by Colliers International, Ms Byrne told the Committee that the two figures should not be compared as the instructions that had been provided in each case were quite different. The Opteon valuation had been described by a number of people as the ‘low valuation’, but she rejected this and considered that the valuation figure reflected Opteon’s instructions and the state of the market.[[107]](#footnote-107)

* + - * 1. Whether Opteon valuation should have considered compulsory acquisition

Ms Byrne noted that the Audit Report included questions on whether the Opteon valuation should have considered compulsory acquisition. However, she said, Opteon asked at the outset, even before providing a quote, whether the valuation should take this into account— because valuations for compulsory acquisition were more complex than for open market transactions—and had received ‘a definitive answer’ that the valuation would not be used for a compulsory acquisition process.[[108]](#footnote-108)

When asked what elements would have been brought into play had the Opteon valuation considered compulsory acquisition, and whether this would have resulted in a different valuation,[[109]](#footnote-109) Ms Byrne told the Committee that valuations for compulsory acquisition were a specialised area of valuation advice, which in ‘most cases’ relied on examples of acquisitions made under the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW).[[110]](#footnote-110) There were certain considerations which could not be excluded when a valuation was part of a compulsory acquisition process, and a minister saying that they would never allow a certain use was not sufficient to rule out such a use being considered. There are were also other elements which came into play, including provision for ‘disturbance’ and other components under the compulsory acquisition framework, however in this case it was clear that it was not necessary to consider these factors.[[111]](#footnote-111)

* + - * 1. Highest and best use

The Committee asked Ms Byrne about ‘highest and best use’ considerations for the valuation, and in particular whether she had considered the possibility of a variation to the lease for the land adjacent to Glebe Park, or a variation to the Territory Plan which would have allowed for a higher use.[[112]](#footnote-112)

She told the Committee that a number of other uses were listed for the applicable CZ6 leisure and accommodation zone and within the precinct code of the Territory Plan, however none of them could be achieved without a lease variation. The instructions provided to Opteon had been specifically to assume that the lease could not be varied, and that alternative uses were not to be considered.[[113]](#footnote-113)

When asked whether she knew why the instructions took this form, Ms Byrne told the Committee that it was common in the ACT to value a property in accordance with its Crown lease, and thus to value properties on the basis of two considerations: ‘What are the uses it is currently permitted for?’ and ‘What is the value of that property on that basis?’ In this case a third element arose from the fact that Minister Corbell had ruled out any further uses and, specifically, that residential use would not be permitted on the site, and this information was consistent with the assumptions specified for the valuation.[[114]](#footnote-114)

When asked how it came to be that she was aware of Minister Corbell’s comments indicating ACT government policy on the land adjacent to Glebe Park, Ms Byrne told the Committee that in her view they were widely known. She was aware of them due to her family’s interest in politics; Mr Corbell’s statement had been reported in the *Canberra Times* and other media; and the North Canberra Community Council had referred to it when car parking was being constructed in Glebe Park.[[115]](#footnote-115)

The Committee asked what might have been the outcome for the valuation if the instructions had included the possibility of a lease variation.[[116]](#footnote-116) Ms Byrne said that if a variation had been permitted then the valuation would have considered other uses. ‘Highest and best use’ was defined as:

the most probable use of a property which is physically possible, appropriately justified, legally permissible, financially feasible, and which results in the highest value of the property being valued.[[117]](#footnote-117)

She went on to say that that ‘most probable’ meant most ‘likely to happen or be the case’, and it would be drawing a long bow to say that to say that residential use was the most probable use of the land adjacent to Glebe Park at the time of the valuation. If the land were compared to sites for which no statements had been made ruling out further uses, and the possibility of variations to the lease or the Territory Plan were considered within the terms of the valuation, it would have resulted in higher risk attaching to the valuation report, due to the risk that an application for a lease variation would be refused. This was particularly so in this case, where there was information in the public domain indicating a negative view from government regarding additional uses.[[118]](#footnote-118)

* + - * 1. Works required

When asked about works required under the terms of the Crown lease, Ms Byrne told the Committee that in her dealings with Mr Xirakis, who as Project Manager of the City to the Lake project had provided instructions for the valuation, she had asked whether the million dollars in landscaping and works had been done. She had advised that there may have been scope for the lease to be surrendered if they had not and this was referenced in the valuation report.[[119]](#footnote-119) However one of the specified assumptions for the valuation, ultimately, was that an assessment of the value of the lease under the *Planning and Development Act 2007*, sections 293 and 294, which deal with termination of lease, was outside the scope of the instructions for the valuation. This was part of a wider consideration of elements that may have applied to the site—including compulsory acquisition, surrender of lease and whether the land was leased on a concessional basis—that were ultimately excluded from the valuation.[[120]](#footnote-120)

* + - 1. Director, Capital Valuers

As noted above, Audit engaged Mr Richard Swinbourne, Principal of Capital Valuers, as a subject matter expert to review Opteon’s formal valuation and Mr Powderly’s information valuation of the land.

Mr Swinbourne told the Committee that the Opteon report was a standalone document, which was clearly a valuation was framed with regard to professional standards and what would be expected in the marketplace, with ‘a few provisos’. In this instance the valuer did everything that was instructed. In normal circumstances it would have been usual to consider the future potential of the land, but it was quite clear that Opteon had been instructed to exclude this.[[121]](#footnote-121)

This was ‘a little unusual’. It could be confusing in Canberra because the lease variation system required valuations for lease variations which excluded potential, and as a result valuers were familiar with excluding potential in a theoretical sense. However it was most unusual to have instructions along these lines for the purpose for which these valuations were required.[[122]](#footnote-122) Nevertheless, Opteon had stated clearly in the report that it had been instructed to do the valuation on this basis, and it should have been quite clear to anyone reading the report that this was a qualified report, not a market value report taking into account future potential.[[123]](#footnote-123)

Asked whether he had reservations about the premise upon which the Opteon report was prepared, Mr Swinbourne told the Committee that there were four questions a valuer should ask when they received instructions. The first was who was instructing them; second was were the instructions; third was whether the instructions were appropriate for the purpose; and the fourth was who would be relying on the advice. It was important that valuers looked at the instructions, understood the purpose of the report, and advised clients if instructions did not match the purpose of the report. However, he was not party to what was said when Opteon received instructions, had not seen a copy of the instructions, and relied entirely on what was in the report for his review.[[124]](#footnote-124)

Occasionally, valuers received instructions which made it clear that the instructions stood regardless of purpose. It was not normal to exclude potential for another use from a valuation unless the valuer was specifically requested to do so. As Opteon had stated this seven or eight times in the report he had no doubt that that is what they were asked to do.[[125]](#footnote-125)

Owners’ response to valuation

* + - 1. Mr Graham Potts

Mr Potts told the Committee that after initial contact the LDA provided a valuation, although it did not approach a figure for which he was prepared to sell. The valuation was between $950,000 and $1.5 million. Mr Xirakis had suggested that Glebe Park Pty Ltd could obtain its own valuation, but Mr Potts was not interested, as the company had no intention of selling and intended to develop the block. All of this took place in August 2014. Glebe Park Pty Ltd had not rejected the ACT government valuation outright: the government had provided a valuation, and Glebe Park Pty Ltd had responded by saying ‘We are not interested. Thanks anyway’.[[126]](#footnote-126)

* + - 1. Mr Barry Morris

Mr Morris thought the original valuation had been provided to Glebe Park Pty Ltd in August 2014. In an email of July 2014 Mr Potts had advised him that Mr Xirakis would seek a valuation. Approximately a month later Mr Morris received another email from Mr Potts with the valuation attached. The valuation stated that it was ‘for negotiation purposes’, which Mr Morris thought strange, because ‘normally you get a valuation for valuation purposes’.[[127]](#footnote-127)

He told the Committee that the valuation indicated a range of $950,000 to $1,050,000, and that he had considered this ‘totally ridiculous’ as it hadn’t ‘taken into consideration the potential development value of the land’ as the General Manager had insisted on when Mr Xirakis announced that he would seek a valuation. He responded to the General Manager saying, “It is so far away from what would be acceptable to the joint venture; why would we engage?” [[128]](#footnote-128)

Ten months later he received an email from Mr Potts saying that he had had a meeting with Mr Stewart and after discussion had agreed to a sale price. Between these two dates, however, there was a ‘huge void’ in which ‘nothing much’ appeared to take place.[[129]](#footnote-129)

* 1. Renewed interest in acquisition

Auditor-General

Mr Stanton told the Committee that after April 2015 there was renewed interest from LDA executives in pursuing the acquisition of Block 24 Section 65.[[130]](#footnote-130)

In early June 2015 Mr Powderly provided a two-page *Valuation considerations May 2015* document which values for the site based on the different use scenarios: that is, whether it was used for a hotel, serviced apartments or residential units.[[131]](#footnote-131) This two-page document was followed in mid-June 2015 by another, entitled *Block 24 Section 65, Division of City, Glebe Park land May 2015 discussion paper*,which proposed a range of values to settle the matter from $2.8 million to $4.6 million with a recommendation of $3.6 million to $3.8 million.[[132]](#footnote-132) In June 2015 Mr Stewart reached agreement with the owners of the land adjacent to Glebe Park for the surrender of the lease for a purchase price of $4.18 million, comprising $3.8 million plus $380,000 GST.[[133]](#footnote-133) Settlement subsequently took place on 9 September 2015.[[134]](#footnote-134)

Former Chief Executive Officer, LDA

Mr Dawes told the Committee that the effort to acquire the land adjacent to Glebe Park recommenced and accelerated from April 2015 was due to the emergence of a plan to apply to Infrastructure Australia for funding to modify Parkes Way, as part of the City to the Lake project.[[135]](#footnote-135)

Former Deputy Chief Executive Officer, LDA

Mr Stewart told the Committee that there had been a meeting of a sub-committee of Cabinet held in either late April or early May 2015. The purpose of the meeting was for Mr Stewart—as Coordinator-General for City to the Lake—to give the subcommittee an update on the City to the Lake project with particular emphasis on options for the realignment of Parkes Way.[[136]](#footnote-136)

He told the Committee that at the meeting the sub-committee resolved to pursue Commonwealth funding for the re-modelling of Parkes Way, and to put a business case to Infrastructure Australia as a way to obtain federal government funding for this work. There was ‘a strong predilection’ at the time on the part of the Commonwealth government for road funding, and the proposal to re-model Parkes Way was seen as a strong candidate for funding. This was particularly so in view of opportunities and potential revenue which realignment would bring in the form of additional land development on the northern side of West Basin and Parkes 3, and to redevelop the Civic pool site for a future stadium.[[137]](#footnote-137)

Design options for Parkes Way were at this point ‘reasonably well advanced’. It was felt that there needed to be a proposal for the relocation of Coranderrk Pond in order to lodge a submission to Infrastructure Australia, and the land adjacent to Glebe Park was considered ‘key to that’.[[138]](#footnote-138) After analysis a number of options had been considered, but there were really only two options for the new pond: either the land adjacent to Glebe Park or Parkes 3, which had ‘significant value’.[[139]](#footnote-139) The application was, however, never lodged with Infrastructure Australia.[[140]](#footnote-140)

Mr Stewart told the Committee that he had wanted to see the City to the Lake project progress, and a lot of work had been done to get to that point. Much time and energy had been spent in considering different options for Parkes Way and Coranderrk Pond, and this ‘seemed like an opportune time to move’.[[141]](#footnote-141) He agreed that the meeting of the ‘sub-committee’ of Cabinet had taken place at approximately the same time as meetings between the Chief Minister and others regarding the unsolicited development bid by Canberra Casino.[[142]](#footnote-142)

He told the Committee that his role as Coordinator-General was to draw together work being done across a number of different agencies. The City to the Lake project, as one of the government's priority projects, together with the renewal of Northbourne Avenue, lay within his area of responsibility. City to the Lake had originally been ‘a very high level but reasonably detailed master plan’, which needed a lot of work to give life to the vision, including studies, further designs and further analysis: it was a very complex project with ‘a lot of moving parts’. [[143]](#footnote-143)

At the time of the sub-committee meeting, there was enough information to suggest that Coranderrk Pond could be relocated to the land adjacent to Glebe Park, in view of its proximity to main stormwater lines running from the inner north. The ACT government was willing to consider the proposals that had been put forward, including those for Parkes Way, and apply for commonwealth funding on this basis. While the ACT government had not identified a preferred option, and final work for a proposal had not been completed at this stage, that was what preparing a business case was ‘all about’. [[144]](#footnote-144)

These developments were considered confidential at this point: there had been no discussions with the owners of the land adjacent to Glebe Park. He and Mr Dawes came out of the sub-committee meeting and agreed that for the time being they would manage the matter between the two of them.[[145]](#footnote-145)

* 1. Colliers advice on land value

Audit Report

The second source of information about value for the land was a document produced by Mr Powderly titled ‘Valuation Considerations’. In May 2015 Mr Stewart had sought verbal advice from Mr Powderly in relation to the land adjacent to Glebe Park and had asked for ‘indicative valuations’.[[146]](#footnote-146) Mr Powderly advised Audit that he had met with Mr Stewart sometime between 8 June and 10 June 2015 and provided a two-page document on Colliers International letterhead titled *Valuation Considerations May 2015*, without charge. This document proposed a value for the site of $1,000,000, on the assumption that there would be no changes to restrictions on use.[[147]](#footnote-147)

The Audit Report stated:

The *Valuation Considerations May 2015* document identified that the site was zoned CZ6 ‘which permits uses such as commercial accommodation, serviced apartments’. It presented three development options and their associated value:

* a 250 to 280 room eight storey hotel, with a ‘current market value for hotel use’ of $3,800,000 (GST exclusive);
* 122 serviced apartments over eight storeys, with a ‘current value for services apartments’ of $3,750,000 (GST exclusive); and
* 122 residential apartments, with a ‘net value if approval secured for [Territory Plan variation]’ of $4,185,000 (GST exclusive).[[148]](#footnote-148)

The Audit Report stated that the *Valuation Considerations May 2015* document identified that the site currently did not permit residential use and that a Territory Plan variation would be required.[[149]](#footnote-149)

The Audit Report also said that there was no evidence of the *Valuation Considerations May 2015* document in the Land Development Agency’s records.[[150]](#footnote-150)

Principal, Colliers International

Initial request

Mr Powderly, relying on diary notes, told the Committee that on 11 May 2015 he received a phone call from Mr Stewart and was asked to review the Opteon valuation report. He received the report, read it over, wrote some notes, and arranged to meet Mr Stewart on or about 21 May 2015. At the meeting he presented his first paper regarding the land adjacent to Glebe Park to Mr Stewart, who then left to discuss the matter with his superiors.[[151]](#footnote-151)

Later, Mr Stewart came back to him and said that he was ‘happy to look at going forward and having a conversation to see whether they are interested in selling it’. Mr Powderly suggested that he could set up a meeting with the owners. He subsequently sent an email arranging that and emailed the discussion paper on approximately 16 June, so Mr Stewart had it for his meeting of the 19th. They then had a brief discussion immediately before the meeting to make sure Mr Stewart ‘had a handle on everything he had been given for his conversation’.[[152]](#footnote-152)

Valuation considerations and permitted uses

Mr Powderly told the Committee that he had made notes of the meeting with Mr Stewart, before he met Mr Potts:

Review of discussion papers and advice provided. Site could be hotel, serviced apartments. Developer wants [residential development], but it would need a change of government.[[153]](#footnote-153)

He noted that the government of the time had said that it would not allow residential development on the site.[[154]](#footnote-154) Residential use had formerly been a permitted use for the land and was permitted for every other block in Canberra zoned ‘CZ’,[[155]](#footnote-155) but the ACT government had removed it from the site.[[156]](#footnote-156)

The Committee asked whether a valuation for the land adjacent to Glebe Park which took account of possible residential uses of the site in the future would increase risk and so bring down the valuation for the site.[[157]](#footnote-157) He said that this was a possible scenario, but that the main thing was to consider what similar properties were selling for in the marketplace. This which was the rule for all valuations. If others were buying CZ-zoned sites which did not have permits for residential use and were paying ‘big money’, a valuer could not ignore such evidence: no valuation was above the market. While he acknowledged that an application for residential development might not have been approved, this may not have been the case in perpetuity.[[158]](#footnote-158) Mr Powderly told the Committee that planning constraints on the land adjacent to Glebe Park ruled out residential development of the site but not some other purposes.[[159]](#footnote-159)

Difference between formal and informal valuation advice

The Committee asked Mr Powderly to comment on differences between formal and informal valuation advice.[[160]](#footnote-160) He told the Committee that there a number of critical elements for formal valuations, first and most important of which was that the valuer receives an instruction from a client stipulating what was wanted, and the purpose of the valuation: whether the valuation was related to mortgage business, was a market value, or an open market value. Instructions were important because the most common issue leading to litigation over valuations were mismatches between the person instructing and the person writing the valuation report as to what the advice should be.[[161]](#footnote-161)

The LDA, under a panel arrangement for valuation firms, had a template that set out definitions and what valuation instructions should specify. The valuation firms, which all carried professional indemnity insurance, would then go through a quality assurance matrix, including elements from with ISO 9004 and 9001.[[162]](#footnote-162) This involved an internal process which noted that the valuer had been instructed to do a valuation, considered whether it was a high-risk valuation, and a formal sign-off for an approval to do the valuation.[[163]](#footnote-163)

The valuer then issued an instruction or a quotation letter to the person instructing, saying: ‘These are your instructions. We're clear this is what you want us to do. This is the fee. These are the terms of payment and attached are the terms and conditions’.[[164]](#footnote-164)

Once signed the valuation proceeded. The valuation report should then specify the instructions, and it must be signed and show the valuer’s qualifications. Importantly, the valuation contained in the report must be expressed as a single figure: formal valuations were not expressed as value ranges.[[165]](#footnote-165)

Producing formal valuation advice involved consideration of location, planning constraints, title for the property, any improvements, sales evidence, the rationale for the valuation; and the valuation itself. This took days or weeks to do, hence formal valuations were expensive.[[166]](#footnote-166)

Lease conditions

The Committee asked Mr Powderly why he was confident, in providing advice about the value of the land adjacent to Glebe Park, that the ACT government would approve a lease variation,[[167]](#footnote-167) noting that it was clear that the lease did not allow other uses, other than for a restaurant or drinking establishment of no more than 650 square metres [[168]](#footnote-168)

Mr Powderly noted that the leasehold system in the ACT allowed anybody to lodge an application for a lease variation and—if successful—pay a Lease Variation Charge to bring the variation into effect. Leases for other parcels of land with similar zoning, where purpose clauses allowed other non-commercial uses, had been varied. He told the Committee that this had been happening for many years, and he knew of many instances where planning ministers had ruled out rezoning of particular parcels of land, but later it had taken place. An example was land at Holt golf course, where building on 350 housing blocks was taking place at time of hearings. [[169]](#footnote-169)

The Committee asked whether leaseholders in the ACT had a right to right to request lease variations. Mr Powderly said that this was so: under the Territory Plan there were different types of development, for which there were merit and other tracks. Different developments would be more likely or less likely, depending on specific details. However, he told the Committee, it was routine for properties with a similar purpose clause to that applied to the land adjacent to Glebe Park to be sold, with no immediate certainty that development applications would be approved.[[170]](#footnote-170)

Colliers’ relationship with the LDA

The Committee asked how many valuations Colliers conducted on behalf of the LDA.[[171]](#footnote-171) Mr Powderly said that it would vary: if the LDA were selling a lot of land, Colliers would initially perform two or three valuations to establish reserve prices and then, potentially, do valuations for 200 blocks for a land-sale ballot, which would involve 200 individual valuations. The tempo of work varied from year to year and depended on panel arrangements at the time. If the Colliers real-estate agency were appointed to sell land for the LDA, then the Colliers valuation arm was not engaged to perform valuations for that land, as this would be a conflict of interest. But if the job of selling the property was given to another firm to sell then Colliers was one of two or three valuers that would perform valuations to establish reserve prices. It would vary, but it would be reasonable to expect that Colliers would perform between 50 and 100 different valuations over the course of a year for the LDA, and if the LDA was planning to sell larger volumes of land it could be a lot more.[[172]](#footnote-172)

Colliers’ management of conflicts of interest

The Committee asked Mr Powderly how Colliers managed conflicts of interest.[[173]](#footnote-173)

In the case of the Glebe Park owners, Mr Powderly told the Committee that Colliers had not at the time been engaged to do any work for the owner of the land.[[174]](#footnote-174) Mr Potts, who handled the transaction on behalf of Glebe Park Pty Ltd, used the Independent Property Group for all of his selling, and Colliers did not handle any of his business at all. Colliers had sold an apartment building for the Morris Property Group in 2015, but Mr Morris had nothing to do with the transaction as it was managed by Mr Potts.[[175]](#footnote-175)

If Colliers had been asked to be engaged to do a formal valuation, it would have made an assessment under its conflict of interest policy, to establish whether there was reason for concern. It could not do valuation work for somebody for whom it was selling property. This was standard policy, strengthened by legal requirements by virtue of Colliers being a listed company on the US stock exchange.[[176]](#footnote-176)

When asked whether Colliers could at that time have performed a formal valuation on behalf of the LDA, the Principal told the Committee that had he been asked he would have referred it to the Colliers valuations team which, as part of the conflicts of interest process, would have assessed whether Colliers were acting for Mr Morris or any of the other owners of the land adjacent to Glebe Park. It was not a conflict of interest to ‘act for the same client’; conflict of interest procedures prevented valuers from acting for one client while acting for the other: that is, for both the vendor and the purchaser.[[177]](#footnote-177)

If Colliers had done any work on the Glebe Park site at any time in the last five years for the current owners, this would have raised a conflict of interest. Conflict of interest was first property specific, and then specific to the client. If Colliers had previously done work on Glebe Park for the owners, it would not have been able to act for the LDA. However, if Colliers had done work for one of those four owners over the previous two years, this would not be considered a conflict of interest, especially if it were a different service such as representing them for the sale of property.[[178]](#footnote-178)

Fees and commissions

The Committee asked Mr Powderly whether he received a fee for the work he had done in connection with the acquisition of the land adjacent to Glebe Park, and how many hours he had spent producing advice for the LDA in this case.[[179]](#footnote-179) Mr Powderly told the Committee that he had not received any fees or commissions. What he had provided represented two or three hours’ work. He had 29 years’ experience and could develop an appraisal quickly. He had only provided initial advice, after which he had expected the LDA to seek formal valuation advice.[[180]](#footnote-180)

He was concerned about perceptions that Colliers had done ‘dodgy work’ or had ‘not done the right thing by the government’. He said this was not a reasonable characterisation of Colliers. If it were commissioned to do formal valuation reports, it did them. If he were asked to give advice, he gave advice, and he did this for ‘many people in government and opposition’, whether it was ‘about playgrounds in Weston Creek or rates and land tax’. He believed that his role as a senior person in the industry was to be available to give people advice and was disappointed to see ‘just one side of the argument’ canvassed in the public domain.[[181]](#footnote-181)

Provision of advice

The Audit Report stated that the second of two sources of information relied upon by the LDA for a valuation of the land adjacent to Glebe Park, were documents produced by Mr Powderly variously titled *Valuation Considerations*, *Discussion Paper* and *Valuation Advice*.[[182]](#footnote-182)

The two‐page *Valuation Considerations* May 2015 document provided by Mr Powderly between 8 June and 10 June 2015 proposed a range of values between $3,750,000 (GST exclusive) for serviced apartments to $4,185,000 (GST exclusive) for residential units’.[[183]](#footnote-183) The *Block 24 Section 65, Division of City ‘Glebe Park Land’ May 2015 Discussion Paper*, also provided by Mr Powderly to the LDA, provided for a range of $2,800,000 to $4,600,000, with a recommendation of $3,600,000 to $3,800,000.[[184]](#footnote-184) The document entitled ‘Valuation Advice’ provided by Mr Powderly was a re-titling of the May 2015 Discussion Paper.[[185]](#footnote-185)

The Audit Report stated:

In May 2015 [Mr Stewart] verbally sought advice from [Mr Powderly] in relation to Block 24 Section 65, City (land adjacent to Glebe Park). [Mr Stewart] advised under oath/affirmation that the instructions provided to Colliers were to the effect of:

Can you provide us with some advice on Glebe Park … can I get some advice on … indicative valuations for the Glebe Park land?[[186]](#footnote-186)

The Committee put questions about this to Mr Powderly.[[187]](#footnote-187) He said that Mr Stewart had called him after a meeting, which he presumed was the Cabinet meeting referred to in the Audit Report,[[188]](#footnote-188) where there had been discussion regarding the City to the Lake project and the relocation of the retention pond from Parkes Way.[[189]](#footnote-189) The LDA had received valuation advice stating that the pond would have a substantial impact on the Parkes 3 site, so it was looking for an alternative location, and the land adjacent to Glebe Park ‘had floated back to the top’. He received a phone call from Mr Stewart saying:

Look, we had a valuation on this property for $1 million a year ago. We have approached the owners. They've told us to take a flying leap. Can you give us some advice as to what's wrong with this $1 million valuation?

Mr Powderly told the Committee that he had responded by saying that he ‘was happy to have a look at it if they wanted to shoot me over a copy’.[[190]](#footnote-190) Papers provided by the LDA, upon which he was to base his advice, were ‘dropped off to the office’ rather than emailed, although it was not a large document.[[191]](#footnote-191)

Formal elements of valuations

When asked whether he considered these papers to constitute a request for a formal valuation, Mr Powderly told the Committee:

Absolutely not. Just to be clear, the State Chief Executive of Colliers International does not do valuations; it is a real estate agency business. Colliers has a national valuation business, which I am not employed in. I have not been involved in that for three years.[[192]](#footnote-192)

When asked if he was a valuer, Mr Powderly told the Committee that he was qualified as a valuer but did not do many valuations. His job was to run Colliers International and business units within it. He had made it clear that if Mr Stewart were to proceed beyond initial advice, he should get formal valuation advice. He could have got this from the Colliers International Director of Valuations or from any provider on the LDA panel.[[193]](#footnote-193) The cost of a formal valuation, if it was a normal valuation, would be approximately $5,000 to $6,000, but if it had to be prioritised ahead of other jobs, the cost could be $8,000 or $9,000. In practice, the Colliers Director of Valuations would perform between 50 and 100 valuations each year for the LDA and would quote based on workload.[[194]](#footnote-194)

Basis for advice

When asked about the basis for his valuation advice for the land adjacent to Glebe Park, Mr Powderly told the Committee that his notes stated: ‘Glebe Park land and review, existing valuation based on not variation and not market value’. This indicated that the valuation was being done on the assumption of ‘as-is’ use. He had considered other similar sites that had sold, such as a bowling club in Braddon with a restrictive purpose clause, which was an 8,000-metre site which sold that month for $3.8 million. Another site in Deakin, the Southern Cross Club bowling club, had also sold, and both sites had similar zoning to that for the land adjacent to Glebe Park. Notes he had made at the time stated: ‘Must be market value as lessee has the rights to vary the lease’ and ‘Territory Plan would block variation’.[[195]](#footnote-195)

Status of advice

At this point, the Committee put it to Mr Powderly that the advice he provided to the LDA appeared similar to ‘valuation advice’, to which he responded by saying that it not, and that it was ‘market advice’.[[196]](#footnote-196) He said that this was where confusion had arisen: Mr Stewart had taken what he had provided as valuation advice, and commented that if Mr Stewart thought this was valuation advice, he did not have much experience of valuations.[[197]](#footnote-197)

Mr Powderly noted that the Freedom of Information request which had been lodged had asked for instructions, the letter of engagement of the valuation of Colliers, and the invoice for the valuation, but none of these existed because Colliers did not do valuations unless it was instructed to do them. He was critical of the fact that the advice had been taken to be more than it really was. In fact, it was initial advice as a basis for further decision-making by the LDA on how it wished to proceed, including whether to consider compulsory acquisition or not buy at all. The failure to seek formal valuation advice on the basis of highest and best use had led to a situation in which his documentary advice had been held up to be something greater than what it was.[[198]](#footnote-198)

Purpose of discussion paper

Mr Powderly told the Committee that the purpose of the discussion paper was to support Mr Stewart in a meeting with Glebe Park Pty Ltd, who viewed the site in terms opportunities for residential development. Mr Stewart was to go to that meeting prepared with knowledge from the paper about what their thinking would be, and ranges, provided in the paper, for what the land would be worth if it became a residential development. The LDA had relied upon the previous document, using it to consider different options for the site.[[199]](#footnote-199)

He told the Committee that the discussion paper was created for this meeting, that it had no significance for the LDA's decision-making process; and that its change of title was ‘irrelevant’, because the primary document was *Valuation considerations*. Mr Stewart took the discussion paper to the meeting with the owners of the land adjacent to Glebe Park because he wanted to know Mr Powderly’s advice had on residential value, and this was the sole reason for the creation of the document.[[200]](#footnote-200) Mr Powderly had advised the LDA that if was planning to proceed beyond preliminary advice that it should get formal valuation advice, but this did not eventuate because ‘somebody left the LDA and the process ran awry’.[[201]](#footnote-201)

Whether usual practice to provide informal advice

The Committee asked whether it was common for Colliers to make unpaid informal valuations for clients.[[202]](#footnote-202) Mr Powderly told the Committee that Colliers provided the LDA with advice on a number of occasions during the course of the year under a commercial agency contract, where Colliers was asked to provide informal advice on the value of properties the LDA was seeking to purchase. Colliers did this as an agent under a panel arrangement and would not charge in all cases. He could cite 30 or 40 instances where he and other agents had been asked to provide such advice to the LDA as part of process to pitch for business, and this was ‘not uncommon’ in the industry.[[203]](#footnote-203)

Colliers conducted work through the commercial advisory panel, under the terms of which it was asked by the LDA to give advice on subdivisions at Molonglo and Gungahlin, and other matters. If Colliers was asked to do this for a fee, it would, but in most cases it was provided as informal market advice, and this was what Colliers thought it was providing in connection with the land adjacent to Glebe Park. In this case, the LDA had obtained a valuation, expected not to pay more than one million dollars, and Colliers was asked to provide further advice as to market value.[[204]](#footnote-204)

Director, Capital Valuers

As noted, the Audit engaged Capital Valuers as a subject matter expert. In this capacity, the Director of Capital Valuers reviewed the advice provided by Mr Powderly, regarding the value the land adjacent to Glebe Park.[[205]](#footnote-205)

In hearings, the Director of Capital Valuers, Mr Richard Swinbourne, told the Committee that:

With the Colliers reports, I did not see that they were valuations at all, so I could not really judge them on whether they were appropriate in terms of the valuations that would be provided by a valuer. So I did not need to assess those on that basis.[[206]](#footnote-206)

He had never viewed them as valuations, as they were not set out as valuations and they were not ‘ever instructed to be valuations or expected by anyone to be valuations’, and he had not needed to think about whether they met the normal commercial standards for valuation reports.[[207]](#footnote-207)

Differences between valuations and other forms of advice were that a valuation report should state the process the valuer has used to arrive at a figure, not just the figure at the end. The Colliers advice had provided just the figures, with no reasoning behind them. In contrast, in a valuation a reader should be able to cover up the figure, read the report, and be able to work out what the figure is by reading the report. This kind of information was not provided in the Colliers advice.[[208]](#footnote-208)

As to whether there were variations in the practice of valuers, Mr Swinbourne told the Committee there were standards set out by the Australian Property Institute in guidance notes and standards; international valuation standards which determined what information should be included valuations; and a standard on reviewing valuations. As a result, standards for valuation were quite specific. By this criterion, the Colliers advice could not be regarded as a valuation, and could not be relied upon ‘other than to take the information for what it is’.[[209]](#footnote-209)

There was also an important further characteristic of valuation reports, which was that they entailed liability on the part of the valuer: if the valuer were proven to be negligent, then he or she would be liable to the extent that a loss was suffered. For this reason valuers had high overheads due to a requirement for professional indemnity insurance. In the case of the Colliers documents there did not appear to be any liability on the part of their author.[[210]](#footnote-210) However if he were asked to do a valuation for the land adjacent to Glebe Park it would be closer to the figure quoted in the Colliers report than the qualified figure quoted by Opteon.[[211]](#footnote-211)

* 1. Second round of negotiations

Former Deputy Chief Executive Officer, LDA

The Committee asked Mr Stewart about negotiations between himself and the owners of the land adjacent to Glebe Park which ultimately led to the acquisition of the land by the LDA.[[212]](#footnote-212) Mr Stewart agreed that his initial conversation with the owners’ representative had taken place at the office of Colliers International, and that the purpose of this conversation, where Mr Potts acted on behalf of the owners, was to determine whether they were willing sellers. Mr Potts had said they were and they agreed to have a follow-up conversation.[[213]](#footnote-213)

After having met in person, he and Mr Potts had two or three further conversations by phone in late June and early July, of which there were no written records.[[214]](#footnote-214) He was not able to say whether this was standard practice, as this was the first land acquisition he had undertaken.[[215]](#footnote-215)

When asked why, in view of the fact that this was the first such negotiation he had conducted, he had not done things strictly by the rules and sought a formal valuation, Mr Stewart told the Committee the purpose of his initial meeting with the owners was to establish whether the land was for sale. The advice on which they had relied was based on ‘logic … reasoning and … rationale’ and had been prepared the President of the Australian Property Institute, Mr Powderly, and he and Mr Dawes considered this a sufficient basis upon which to establish whether the Glebe Park Pty Ltd would sell the land to the LDA.[[216]](#footnote-216)

From ‘advice’ to ‘sale’

Glebe Park Pty Ltd

The Committee asked what led the owners of the land adjacent to Glebe Park to be more receptive to a later offer when there was renewed interest by the LDA in acquiring the land.[[217]](#footnote-217)

Mr Potts told the Committee that in this case an approach had been made by Mr Powderly, who asked whether he would meet Mr Stewart regarding the potential sale of the block, to which he agreed, and they met 19 June 2015 at the office of Colliers International. Mr Stewart had begun discussion by stating that the LDA wanted to purchase the land for the City to the Lake project for the purpose of relocating Corranderrk Pond and asked whether Glebe Park Pty Ltd would sell the land. He had replied that it would be considered if an appropriate price was offered: he had in mind what he thought it was worth and also had the views of the three other owners of the block to consider, but if he thought that an offer was ‘fair and reasonable’, he would consider it.[[218]](#footnote-218)

He told the Committee that Mr Stewart had initially offered $3 million, to which he replied saying that it was in his view worth approximately $5 million. When Mr Stewart said that the LDA would not pay that amount, he observed that Glebe Park Pty Ltd were not very much interested in selling, in any case. Mr Stewart made a further offer of $3.5 million, and when this was not accepted asked Mr Potts for a price he would consider. At this stage he did not know whether the offer would reach a figure acceptable to the partners in Glebe Park Pty Ltd, but if he could get the other partners to accept a figure in the vicinity of $4 million he thought ‘we might be able to go to the next stage’.[[219]](#footnote-219)

Mr Stewart had said that the LDA would not pay $4 million and the meeting ended.[[220]](#footnote-220) Subsequently, Mr Stewart called him, on the following day or the day after, to say that the LDA was willing to pay $ 3.6 million, and he had replied the sale could be done at $4 million. Mr Stewart asked whether Glebe Park would contemplate $ 3.8 to which he replied ‘Oh, god, we are going around in circles’, but then agreed to $3.8 million with a quick exchange and settlement, saying that he would discuss the offer with the other owners.[[221]](#footnote-221) This conversation took place on or about 20 June 2015. In subsequent discussions the shareholders of Glebe Park Pty Ltd agreed to a purchase price of $3.8 million, with quick settlement, for the land adjacent to Glebe Park.[[222]](#footnote-222)

Departure of former Director, City to the Lake project

Former Director, City to the Lake project

Sale of land adjacent to Glebe Park

Mr Xirakis told the Committee about his experience of the completion of the acquisition. At this stage he had not been informed that the acquisition process had restarted and that negotiations for the sale of the land adjacent to Glebe Park had taken place. In view of the fact that he was Project Director, he told the Committee, this indicated a surprising degree of secrecy about the negotiations.[[223]](#footnote-223)

His first knowledge of these events when he was attending a workshop in Brisbane with a contractor, working on an engineering solution for Parkes Way, as until there was a solution there was ‘no point acquiring a block of land’.[[224]](#footnote-224) He had no wish to pre-empt any decision that had been made to acquire the land adjacent to Glebe Park before an application was lodged with Infrastructure Australia, but there were ‘thousands of requests to Infrastructure Australia’, and applicants did not acquire land until funding was in place. Governments did not speculate on potential infrastructure and did not run processes they did not need to run.[[225]](#footnote-225)

While he was at the workshop, he received a call from the LDA office,[[226]](#footnote-226) saying that an envelope had arrived from Clayton Utz, containing a contract for the purchase of the land adjacent to Glebe Park.[[227]](#footnote-227) His first reaction was that the vendors were ‘trying it on’, and that he would attend to the matter when he returned to Canberra the following Monday.[[228]](#footnote-228)

In the event, he did not wait until he returned, but rang the LDA office from Brisbane. He was aware that there was a spending cap provided for by the *Framework*, under which this acquisition would fall. There was a committee of two that administered the cap, and no acquisition could take place unless the committee had been consulted. Knowing this, he spoke to the Executive Director, who also a member of the committee, who told him that he was unaware of any agreement to purchase the land.[[229]](#footnote-229)

He then attempted to contact the other member of the committee, the Chief Financial Officer. She was not available then, but he went to see her immediately on his return on the following Monday. She also had no knowledge that this had happened. He was concerned, because these were the people who had responsibility to decide whether acquisitions would fit under the spending cap, and therefore whether it went to Cabinet. He also knew that nothing had gone to the Board, for its consideration, regarding the acquisition.[[230]](#footnote-230)

At this point, he thought that someone was ‘trying something on’: he did not think there was a real transaction. Rather he thought it was a negotiating technique on the part of the vendors’ solicitors. He did not believe the sale was taking place, as it had not come up in anything he had discussed with anyone, and he had no knowledge of it.[[231]](#footnote-231) He did not see the contract as he was away when it arrived, and gave instructions for it to be sent back as in his view at the time it was ‘clearly a mistake’.[[232]](#footnote-232)

He had not had discussions with Mr Dawes or Mr Stewart in the period between 11 May and 25 June 2015, when agreement was reached with owners of the land adjacent to Glebe Park, as they were ‘the two hardest men to get a meeting with face to face’. His regular contact was his direct supervisor, to whom he expressed his concern regarding the apparent contract for sale, but he tried and failed to get in contact with Mr Dawes and Mr Stewarts.[[233]](#footnote-233)

Departure from the LDA

The Committee asked Mr Xirakis how he came to leave the LDA.[[234]](#footnote-234) He told the Committee that in September 2015 he was called to a meeting to discuss the City to the Lake Project with Ben Ponton and Nick Holt.[[235]](#footnote-235)

A week or so earlier, Mr Nick Holt, another LDA officer, had been put in charge of the City to the Lake project while a permanent officer was recruited. Mr Ponton had recently taken over from Mr Stewart as Deputy Chief Executive Officer of the LDA. Mr Dawes had asked Mr Xirakis to stand down from the City to the Lake project while he put in the interim position and built a permanent team. Mr Xirakis, as Project Director, offered a handover but was told that it wasn’t required, which to him seemed strange, since he had run the project from early on.[[236]](#footnote-236)

Subsequently, Mr Holt had approached him and told him that a transition was in fact required and that he needed help as he did not have ‘great knowledge’ about the project. As a result, Mr Xirakis ‘worked with him on and off’, and was also ‘working on other projects, both to Nick and to Tom Gordon’.[[237]](#footnote-237)

Mr Xirakis told the Committee that he had assumed that the September 2015 meeting was called to give Mr Ponton, as the new Deputy CEO, a briefing on the City to the Lake project. However, at the meeting they told him they were terminating his contract, ‘effective immediately’, and handed him a document stating they were invoking a ‘no fault’ clause, signed by Mr Dawes. Mr Dawes had often said ‘what a good job he had done’ so he assumed that ‘no fault’ meant that he had done something wrong that he did not know about.[[238]](#footnote-238)

However, at that meeting Mr Ponton and Mr Holt proceeded to say that there were problems with the financial management of the project. He said that neither understood the financial beginnings of the project, including that while he did not hold a financial delegation and was not a member of the public service, he was managing the all processes for the project. He asked if they had discussed this with Liz Lopa, his direct report, who held a financial delegation, and this was met with ‘deathly silence’. He was told that in any event he was finishing up and that he should clear his desk and be off the premises by 5 o'clock. At this point it was just after 4 o'clock, so he had less than an hour to leave the office. They told him to leave all information and all of his notes, and spent more time telling him about confidentiality requirements than explaining why, after four years of employment with the ACT government, he was being ‘unceremoniously dumped’.[[239]](#footnote-239)

At this point the Committee asked Mr Xirakis why, he believed, he had been asked to leave the LDA.[[240]](#footnote-240) He said that at the time he thought, ‘I've hit someone's nerve and I need to be removed’. Nine weeks earlier his contract had been extended, and if they had not been happy with his performance, that would have been an opportunity to raise any concerns because there were extensive negotiations at the time.[[241]](#footnote-241)

He noted comment by Mr Dawes that there had been bad publicity on the lease arrangements, and that this had been a contributing factor. But, he told the Committee, there had been ‘bad publicity for 12 months’. There were ‘unhealthy’ aspects to lease negotiations, for a number of reasons, but these factors were in existence on 30 June 2015, when his contract was renewed, and could have been discussed at that point.[[242]](#footnote-242)

He had always understood that he was not permanent: his was an interim position managing ‘a multifaceted, unbudgeted, complicated project with multiple dealings with the private sector’, and he had taken the position knowing this. He had not thought that he would be in place to see the project completed: he was there to ‘coordinate the beginning stages, to build a team, to get a position on the core pieces of infrastructure and then transition it across’, and had had ‘no expectations of longevity’.[[243]](#footnote-243)

However, he did expect that when his contract was extended for six months on 30 June, that if there were concerns about performance that this would be the time to bring it up. This did not take place: he was told that he was doing a ‘magnificent job’ on a ‘complicated project’, and that his team was doing well. The team was providing regular briefs to the executive, and he had been appointed to a review panel for Denman Prospect. These were not indications that he was not doing a good job, and he was surprised at the outcome of the meeting with Mr Holt and Mr Ponton.[[244]](#footnote-244)

Reflecting on this, Mr Xirakis told the Committee:

Two years have passed; lots of things have happened. I have racked my brains. Remember that I said I had to be out of that office at 5 o'clock? At one minute past five my calendar was removed, my email was stopped, every contact I had ever received as a result of going through the governance system was removed from my phone. At that time I could not clarify a meeting. I could not work out what had gone wrong. I really had to rely, as I do to this day, on my memory. Most of that conversation was about reminding me that I had confidentiality.[[245]](#footnote-245)

As to the effect on him personally, it had been a difficult time. It had been put to him that obligations on him to maintain confidentiality were to remain in place but these were, apparently, not binding on the LDA, as ‘stories’ had come back to him, which had made it very difficult for him to operate in private sector roles where there were dealings with government. It had been a tough period and he had been shocked at the way the LDA had terminated his employment.[[246]](#footnote-246)

The end of his term of employment was handled differently to comparable situations in the LDA of which he was aware. He had known of instances where there were government agencies were not happy with contractors or employees, and in these instances there were a series of warnings and processes. When a decision was made to terminate the arrangement, the agency would make a redundancy payment or, in the case of a contractor, pay them for a further six weeks so that they could look for another contract. There were a number of ways in which it could be done, but he had never seen it done in the way it had been in this case.

As to why this happened, he considered it likely that there was something he knew or had raised that had been of such concern to a decision-maker that they thought the best course of action was to remove him. This was the only reason he could find, given the circumstances, and no alternative explanations had been put to him.[[247]](#footnote-247)

* 1. Committee comment

This report shows poor performance by the LDA in that:

* it purchased the land adjacent to Glebe Park without a valid valuation, without adequate documentation of its actions and decision-making, and without meeting its statutory obligations under the *Lands Acquisition Policy Framework*;
* it increased risk from conflict of interest by allowing its Mr Stewart to be mentored by Mr Powderly in an informal arrangement;
* it sought to evade ACT government staff funding caps by re-hiring former employees as consultants; and
* it falsified a document provided in response to a request under the *Freedom of Information Act 2016* (ACT).[[248]](#footnote-248)

A central point to be considered is the difficulty of establishing ‘highest and best use’ where there is a lack of transparency. In the Committee’s view factors for land value which should have been taken into account include: statements ruling out residential development; then-current zoning and lease restrictions; perceptions that government planning constraints on particular parcels of land could be changed by powerful interests; and Aquis’ plans to develop the land. In practice, these elements were never systematically reflected in a formal valuation.

This combination of factors has led to uncertainty about the true value of the land. The initial, lower, assessment of the market value of the land adjacent to Glebe Park, subject to instructions, represented a point in a spectrum of possible values. The other, higher, end of the spectrum was not assessed because Aquis’ plans were not taken into account, and as a result a true market value for the land, at that point in time, was never established. Because public money was expended to purchase the land, this is a matter for concern.

It is reasonable to ask how, in future, any parcel of land in the ACT might be valued accurately if, as a number of witnesses told the Committee, essentially any parcel of land can be put to a commercial purpose if sufficiently powerful interests are brought to bear. In the Committee’s view, this issue must be dealt with so that the value of property can be established more predictably and transparently than has so far been the case for the land adjacent to Glebe Park. The Committee considers that ACT residents expect that government should resist private interest and act instead in the public interest. Evidence provided to the Committee raises questions about this, which should be resolved if the probity of government is to be established beyond question.

Further, the ambiguous nature of the advice provided by the GSO did not provide the LDA with strong legal guidance on how to meet the standards expected of public agencies. There is a question as to whether it was open to the LDA to seek advice further afield and, if not, whether it should be open to ACT government agencies to seek the best possible legal advice rather than that provided by a pre-determined source.[[249]](#footnote-249)

There was a confluence of factors which allowed the LDA to employ informal methods for the acquisition of the land adjacent to Glebe Park. These included: the lack of a clear remit for the agency; informal relationships between the agency and persons in the private sector; a lack of authoritative advice and awareness regarding the legal underpinnings of the environment in which it operated; and, importantly, the presence of powerful private interests in a small jurisdiction which, it appears, was not well placed to resist. It is important that these errors not be replicated in the replacement agency.

These elements, together, account for a body of poor practice. Ultimately, where due process is not followed by government agencies acquiring land or other assets, there must be doubts as to the extent to which value for money is achieved and is seen to be achieved. The overriding principle, in our system of government, is that public entities are given the power to expend money, provided by taxpayers, subject to certain requirements as to the probity of the agency and correct authorisation by government. Where there are unresolved questions about this the Territory’s actions are open to challenge, and this imposes additional costs which flow from lower levels of accountability and transparency, and concomitant reductions in certainty and predictability.

In this case, these elements are indeed in doubt. As a result, there should be further consideration of the acquisition of the land adjacent to Glebe Park by the ACT integrity commission.

The Committee recommends that the ACT Government commission formal valuations for all purchases of land by the ACT government, paid for at market rate.

The Committee recommends the ACT Government obtain at least two valuations current at time of purchase when it seeks to acquire land.

The Committee recommends the ACT Government, when seeking to secure services to government in the property sector other than valuations, such as training and liaison with prospective sellers, obtain these under formal contract.

# Aquis Entertainment’s interest in the land adjacent to Glebe Park

* 1. Introduction

In August 2015 the owner of Casino Canberra, Aquis Entertainment, lodged an unsolicited development bid with the ACT government which indicated an intention to build on the land adjacent to Glebe Park, although Aquis Entertainment had no ownership rights over the land at the time. At the time, Glebe Park Pty Ltd had recently agreed to sell the land to the ACT government, and settlement occurred on 9 September 2015. In light of this, the Committee considered whether there was a link between the unsolicited development bid and the ACT government’s acquisition of the land.[[250]](#footnote-250)

Witnesses in general denied a connection. As noted elsewhere in this report:

* Mr Dawes said that there was no connection and that the ACT government sought to acquire the land adjacent to Glebe Park only for the purposes of finding an alternate location for a stormwater pond at Parkes Way;[[251]](#footnote-251)
* Mr Stewart told the Committee that Aquis initially only had an interest in developing land already owned by the Casino, which was at the rear boundary of the National Convention Centre Canberra (NCCC), until after the ‘information about the government acquiring this land first came to public light’;[[252]](#footnote-252)
* Mr Xirakis told the Committee that he had attended a meeting with an architect about providing street access for the Casino, but that this had ‘ended pretty much there’ because the land adjacent to Glebe Park was in private hands, and that the owners of the land were not aware of any interest by Aquis in developing the land until such time as it became public knowledge;[[253]](#footnote-253)
* Mr Powderly told the Committee that he was not aware of Aquis’ interest in the land adjacent to Glebe Park at the time when he provided valuation advice on the land;[[254]](#footnote-254) and
* Mr Barr, who was minister responsible for the LDA, said that he was aware only of policy-level matters in relation to the City to the Lake project, not those regarding individual acquisitions for the project; that he met the LDA Board once a year; and otherwise relied on Mr Dawes and Mr Stewart for information on the LDA’s activities.[[255]](#footnote-255)

In hearings, when asked to comment on the Brief on Canberra Casino’s unsolicited development bid retrieved under the *Freedom of Information Act 1989* (ACT), which showed his notations on the Brief, the Chief Minister said that the ACT government had not acquired the land adjacent to Glebe Park in order to assist Aquis with its development plans, and that there had been no decision by the ACT government to give the casino any rights over the land. He told the Committee that there was no map associated with the Brief and that he may have been confused as to whether Aquis’ proposal included plans for the land adjacent to Glebe Park.[[256]](#footnote-256)

* 1. Redacted brief

At this point in the inquiry, there was not much direct evidence available to the Committee that showed a link between the ACT government’s acquisition of the land adjacent to Glebe Park and the advent of Casino Canberra’s unsolicited development bid, despite a correlation in time-frames for the acquisition and the bid. However the Committee did have available to it at this time a redacted copy of the Brief to the responsible minister—Mr Barr—regarding Aquis’ unsolicited development proposal for the expansion of Casino Canberra, provided in response to a Freedom on Information request, some features of which suggested closer ties between the bid and the acquisition.

In view of this the Committee wrote on 31 January 2018 to Mr Ponton as the Director-General of the Environment, Planning and Sustainable Development Directorate (EPSDD), head of the relevant government agency, seeking a less redacted version of the Brief. After further exchanges of letters, which included provision of a less redacted version, the Committee wrote to the Director-General asking for an un-redacted copy. This was provided to the Committee on 9 March 2018, together with a copy of Casino Canberra’s unsolicited development proposal.[[257]](#footnote-257)

* 1. Correspondence with Aquis

Having received a copy of Aquis’ development proposal, the Committee considered that features of the unsolicited development proposal, such as references to a proposed stormwater management pond and to Aquis’ ‘rights’ to the land adjacent to Glebe Park, could support a view that some degree of publication was in the public interest.

With this in mind, and aware that the unsolicited bid could be considered commercially sensitive, the Committee wrote on 4 June 2018 to Casino Canberra asking which parts of the bid document it considered sensitive and should be held in confidence, and why. On 28 June 2018 Casino Canberra wrote back to say that it considered all parts of the bid document to be sensitive. No further progress was made in a letter by the Committee of 6 July 2018 and responded to by Casino Canberra on 10 July 2018.

On 10 October 2018, the Committee wrote to Casino Canberra asking eight questions regarding: its knowledge of the ACT government’s acquisition of the land adjacent to Glebe Park at the time the unsolicited bid was lodged; the inclusion of a stormwater management pond in the proposal; and other matters. On 29 October 2018 Casino Canberra wrote to the Committee responding to the questions, also providing a copy of a Memo by one of its consultants describing a meeting of 16 December 2014 between himself and ACT government representatives, including Mr Xirakis, which the Committee received and authorised for publication.[[258]](#footnote-258)

* 1. Questions and answers

Communication between Aquis and the ACT government

The first question put by the Committee was:

What communication – on what dates and between whom – took place between Aquis and ACT Government which allowed Aquis to be aware of the government’s plan for Corranderrk Pond so that this could be included in the proposal? [[259]](#footnote-259)

In response, Aquis advised that:

* there had been ‘on-going discussions with the owners of Block 24 (adjacent to the Casino)’ which ‘extends either side of the ROW’: a Right of Way held by the Casino ‘over Block 24 Section 65, City, which provides access to the Casino from Coranderrk Street’;
* the Territory had been ‘considering a new stormwater detention pond north of the ROW’ and was ‘also considering compulsory acquisition of Block 24 from the existing private lessees’, who only had ‘development approval for about 600m2 of space on Block 24’;
* the ownership of Block 24 was ‘held by several parties without common agreement as to future development of the site’;
* a ‘Cabinet paper [was] being prepared to consider compulsory acquisition of Block 24’; and that
* ‘there would be some possibility of a negotiated outcome between the Territory from the adjacent private lessee and the Casino regarding a win-win outcome for a substantial development project should Aquis want to get involved’.[[260]](#footnote-260)

The letter also provided the text of an email of 3 March 2015 from Ms Jessica Mellor, Executive Director, Strategy & Project Development, Aquis Developments, to Mr Stewart as follows:

Hi Dan

Thanks for your time yesterday- it was a very encouraging exchange and I see there being a lot of synergies between our interests.

I am hoping that we can work towards solidifying some ideas in relation to the expansion of the Convention Centre sooner rather than later and have briefed Cox Architecture to consider some further alternatives following our discussion.

This will also tie into the Economic benefits study being undertaken by Deloitte. To aid their study, they have asked whether there is any information available in relation to the current space being ‘at capacity’, or evidence (even anecdotal) of potential conferences being turned away?

Anything that you are able to assist in providing, or any other relevant people you could put us in touch with would be beneficial.

I also look forward to hearing from you in relation to any progress on the acquisition of the APG site next door.[[261]](#footnote-261)

The letter included an email of 5 March 2015 from Mr Stewart in reply:

My apologies for not getting back to you sooner. I will track down the information and contacts you are seeking and send them through as soon as possible. Conversations on the additional site are underway and, so far at least, are progressing well.[[262]](#footnote-262)

The letter said that ‘having reviewed the email exchange’, Ms Mellor had advised that she understood ‘in general terms, that the ACT Government had commenced taking steps to acquire [the land adjacent to Glebe Park] as part of the City to the Lake Project’, and that Mr Stewart had advised her, in early March 2015, that conversations with the owner of the land were “progressing well”’, although she did not ‘recall the specific terms of the discussions she had with [him] in and around early March 2015’. She also did not ‘recall any other specific conversations with officials from the ACT Government in relation to [the land] in the lead up to the Casino lodging the Re-development Proposal’.[[263]](#footnote-263)

Replacement storm-water pond

The second question put by the Committee was:

Why did Aquis wish to build the replacement storm-water pond? [[264]](#footnote-264)

In answering, Aquis said that this part of the proposal was intended to respond to the Territory’s *Investment Proposal Guidelines for Investors*, particularly principles outlined in the Guidelines to:

* ‘Encourage unique and innovative opportunities and ideas from the private sector that provide economic development opportunities for the ACT’;
* ‘Ensure that decisions deliver public value from an economic, social and environmental perspective’; and
* ‘Focus primarily on ideas that align with current ACT Government strategic priorities’.[[265]](#footnote-265)

The letter said that Aquis had determined, ‘after extensive internal deliberations (and with a view to maximising the attractiveness and amenity of a re-developed Casino), that a re-development proposal that incorporated the replacement storm water pond on the Adjoining Block’ [that is, the land adjacent to Glebe Park] would:

* ‘incorporate an additional unique and innovative element to the Re-development Proposal (i.e. in addition to all the other unique and innovative elements to the proposal)’;
* ‘deliver public value from an economic and environmental perspective to the ACT;’
* ‘align with what the Casino had understood to be a major strategic priority of the ACT Government (i.e. the City to the Lake Project)’; and
* ‘in short, maximise the chances of success for the Redevelopment Proposal – given the core Principles stated in the Guidelines’.[[266]](#footnote-266)

‘Appropriate property rights’

In its third question the Committee asked:

How it came to be that the Proposal included a request for ‘appropriate property rights of the land known as [the land adjacent to Glebe Park], referenced later in the proposal where it states:

Aquis will also need some assistance to ensure that it has appropriate property rights over some adjoining land described as [the land adjacent to Glebe Park] which we understand the Government has *recently acquired [Committee’s emphasis]*.[[267]](#footnote-267)

In response, Aquis’ letter said that:

Given the Casino had determined to incorporate the stormwater pond as part of its Re-Development Proposal – and it was proposed that the pond would be located on the Adjoining Block – it followed that the Casino would need to acquire “appropriate property rights” to that land.[[268]](#footnote-268)

Ownership and possible uses of the land adjacent to Glebe Park

The fourth question put by the Committee was: ‘What was Aquis’ understanding of the ownership and possible uses of [the land adjacent to Glebe Park]?

Aquis responded by saying that its understanding ‘was consistent with what was stated in the attached Minutes of Meeting’. This document said that the Territory was ‘considering compulsory acquisition of [the land] from the existing private lessees’.[[269]](#footnote-269) It also said that ‘“approved uses” of land [were] able to be changed (and [were] not “fixed” for all time)’.[[270]](#footnote-270)

Why Aquis wanted property rights

In its fifth question the Committee asked why Aquis wanted property rights over the land adjacent to Glebe Park, to which Aquis responded by saying that it considered it had answered this question in its answers to the second and third questions.[[271]](#footnote-271)

Aquis’ expectations of being granted property rights

In its sixth question the Committee asked on what basis Aquis expected that property rights to the land adjacent to Glebe Park would be granted it by the ACT government.[[272]](#footnote-272)

In responding, Aquis said that it ‘did not consider that rights in [the land] would definitely be granted to it by the ACT Government’ but ‘expected that the acquisition of any rights over [the land] would be closely tied to the overall fate of the Re-development Proposal’. The Casino had considered that ‘incorporating the re-location of the stormwater pond into the Re-development Proposal, enhanced the prospects of the Re-development Proposal being seen to be consistent with the Principles stated in the Guidelines’, while ‘also addressing frontage/ vehicular access issues’. At the time the development proposal was lodged with the ACT Government, the Casino ‘considered there to be reasonable prospects’, if the proposal was ‘viewed favourably’, that the ACT Government may have negotiated ‘appropriate property rights over [the land] as part of the Re-development Proposal process’; and that ‘the Casino may [have been] able to obtain those rights’.[[273]](#footnote-273)

The letter said that Aquis considered that there were ‘reasonable prospects of this’ because it was ‘proposing to deliver an important piece of public infrastructure’ on the land, and that as ‘this was something that was aligned with a key priority of the ACT Government (i.e. the City to the Lake project)’, Aquis ‘took the view that this element of the Re-Development Proposal would likely be attractive to the ACT Government’, if the proposal was ‘viewed favourably’. It noted that ‘this was all in the context of the Casino proposing to undertake a $300m development project that would deliver significant jobs and growth to the ACT, and re-vitalise an area of the city that, on any view, [was] long overdue for revitalisation’.[[274]](#footnote-274)

The letter also said that at the time the development proposal was lodged, Aquis ‘did not have a definitive view as to what “appropriate property rights” might look like’, and that this was reflected in the proposal where it said that ‘Aquis will work with the Government to find a mutually acceptable way forward’.[[275]](#footnote-275)

Belief that government owned the land adjacent to Glebe Park

In its seventh question, the Committee asked on what basis Aquis had believed that the ACT government owned the land adjacent to Glebe Park in August 2015, when settlement for the ACT government’s acquisition of the block occurred on 8 September 2015.[[276]](#footnote-276)

In response, Aquis referred to its development proposal where it said that it understood that the ACT government had ‘recently acquired’ the land adjacent to Glebe Park,[[277]](#footnote-277) and said that Ms Mellor had advised ‘to the best of her recollection’ that she had been advised by ‘one of the Casino’s consultants shortly prior to the Redevelopment Proposal being lodged … that it was understood that the ACT Government had recently acquired’ the land, and that she did not ‘have a specific recollection of this conversation’, including ‘as to who, among the Casino’s consultants, may have provided her with this advice’.[[278]](#footnote-278)

Extent of communications between Aquis and the ACT government

The Committee’s eighth question asked ‘what communications took place between Aquis and the ACT government, when and between whom, so that [knowledge of the ACT government’s acquisition of the land adjacent to Glebe Park] could be included in the Proposal’? [[279]](#footnote-279) In answering this, the Casino’s letter referred to its responses to Questions 1 to 7.[[280]](#footnote-280)

* 1. Committee comment

Answers to questions the Committee put to Aquis Entertainment add further cause for concern. Up until the point at which the Committee received Aquis’ answers to questions, present and former ACT government witnesses had told the Committee that the land adjacent to Glebe Park was acquired for the sole purpose of supporting implementation of the City to the Lake project: in particular so that the stormwater pond at the intersection of Corranderrk Street and Parkes Way could be relocated, providing an opportunity to increase the value of the land known as ‘Parkes 3’ and re-model Parkes Way.

In answer to the Committee’s questions, ACT government witnesses consistently denied a connection between the ACT government’s acquisition of the land adjacent to Glebe Park and the ‘unsolicited’ development proposal submitted by Aquis Entertainment for the expansion of Casino Canberra, which happened to coincide with the ACT government’s plans to further the City to the Lake project by relocating the stormwater pond from the corner of Corranderrk Street and Parkes Way.

Answers to the Committee’s questions by Aquis Entertainment show that this was not the case, and that rather than the proposal being unsolicited it was lodged after discussion with—and encouragement from—the ACT government.

The evidence, despite denials, points to a possible connection between the ACT government’s acquisition of the land adjacent to Glebe Park and Aquis’ plans to develop the land, and that the ACT government acquired it with a view to supporting Aquis’ development proposal. Aquis sought a number of concessions from the ACT government in connection with the proposed redevelopment, including a change of policy so that poker machines could be operated at the casino, and it appears that the acquisition may have been an additional concession, shielding Aquis from the much higher price it would have paid in the open market.

The Committee considers that it was unwise of the ACT government to make the acquisition rather than leaving it to Aquis to deal directly with Glebe Park Pty Ltd. The fact that the ACT government was also, at the same time, considering whether to change constraints on gaming machines at the Casino created a likely conflict of interest on the part of the ACT government: as both a facilitator and a regulator of the Casino’s business. These matters go to the heart of probity in the public sphere.

This scenario places the LDA’s decision to rely on informal rather than formal valuation advice for the land adjacent to Glebe Park in a poor light, as it removed objective elements against which the acquisition could be judged, including on price. The Committee heard in the course of the inquiry that formal valuations have a number of characteristics—including being paid for; setting value as a figure rather than a range; and being signed by the valuer— without which they were not considered valuations in good standing. One of the implications of obtaining a formal valuation was that the valuer took on legal liability, and therefore could be sued, in the event that the valuation were incorrect and led to financial loss by parties involved. Clearly, this is the gold standard for valuations and would have provided a more transparent basis on which to assess whether the price paid by the ACT government represented value for money. In this instance, however, persons acting on behalf of the ACT government did not obtain a formal valuation, and this left the ACT government exposed to increased risk, both in terms of value for money and for probity.

An allied concern relates to the difference between the initial valuation for the land adjacent to Glebe Park and the final price paid. In the early phases of the inquiry, it appeared that the LDA may have paid too much for the land on grounds that there was insufficient documentary evidence in the shape of a formal valuation, and that there was uncertainty as to whether permissions would be granted for alternative uses of the land.

Aquis’ answers to the Committee’s questions, however, paints this in a different light, raising the possibility that the price paid for Block 24 was less than market value, particularly taking into account: Aquis’ development plans; the absence of alternative sites suitable for the Aquis’ redevelopment; and government encouragement of those plans, which would have appeared to increase the probability that lease and planning conditions would be changed. These factors, together, support a view that the price paid for the land adjacent to Glebe Park by the ACT government was potentially considerably less than could reasonably have been expected, in view of Aquis’ level of interest in the land and the anticipated commercial benefits to Aquis of pursuing the redevelopment. This raises further questions about probity.

# Mr Spokes bike hire

* 1. Introduction

Introduction

Block 13, Section 33, Acton, formerly the site of Mr Spokes Bike Hire, is situated at the corner of Barrine Drive and Kuttabul Place in the West Basin of Lake Burley Griffin. This chapter deals with the acquisition of the lease and business associated with Block 13 Section 33, Acton, which is referred to from this point as ‘Mr Spokes Bike Hire’. Its location is shown on the map provided at Appendix C.

Audit Office

Mr Stanton told the Committee that the lease for Mr Spokes Bike Hire was surrendered on 1 February 2016 for $1.1 million and the associated business sold for $1. The LDA also paid $52,338 for the owner’s costs associated with the surrender. Discussions with the owners had commenced in April 2014, and there was a ‘difficult relationship that deteriorated over time’ between the owners and the LDA.[[281]](#footnote-281)

He told the Committee that three valuations were conducted for the lease and business in April and May 2015. Initial valuations had valued the real estate and the business at $275,000 and $610,000 and a third valuation at between $220,000 and $551,000. Later in August 2015 additional information was sent by the owners’ broker, including financial records. This was significant because initial valuations had been ‘conducted more or less from the kerbside without any access to documentation and records from the owners’. A second series of valuations valued the land and business at $647,000; $680,000; and between $600,000 and $700,000.[[282]](#footnote-282) Final negotiations had taken place in November 2015, although there was very little documentation. There was also little in the way of documentation on the rationale for the acquisition price of $1.1 million.[[283]](#footnote-283)

When asked whether the absence of record-keeping amounted to an entrenched culture in the LDA, Dr Cooper said that she could not generalise from these instances, but could say that for the instances considered by the Audit Report there were very significant problems.[[284]](#footnote-284) The Audit Report had stated that in view of its findings an independent audit of other activities of the LDA was warranted,[[285]](#footnote-285) and this subsequently led to the Auditor-General’s performance audit on acquisitions of rural land by the LDA which was being conducted at the time of the hearings.[[286]](#footnote-286)

In response to further questions regarding a perceived unwillingness to communicate in writing,[[287]](#footnote-287) Dr Cooper told the Committee that there appeared to be a culture of verbal advice, but that it was also possible that LDA staff ‘just did not like what they received’ when they sought advice and failed to document matters for that reason. In her view, there appeared to be a number of communication problems within the agency, compounded by a lack of detail in records, staff changes, and contradictory approaches, and that these elements characterised the communication and management culture of the LDA.[[288]](#footnote-288)

Mr Spokes Bike Hire

Ms Gillian Edwards, an owner of Mr Spokes Bike Hire, appeared before the Committee and provided a general account of her ownership, with her husband Mr Martin Shanahan, of the lease and business.[[289]](#footnote-289) She said that she and her husband had purchased the lease and business in November 2006, for $480,000. They were obliged immediately to buy a new fleet of bikes and so considered the purchase as slightly more than $500,000 in total. It mostly catered for tourists and had some local custom. She and her husband ran the business for almost 10 years before the LDA acquired the lease.[[290]](#footnote-290)

Mr Spokes operated almost every week of the year, and for the most part seven days a week. Much of the custom was from school groups. It was well reviewed on TripAdvisor, and was often ranked competitively with the War Memorial and Questacon as ‘one of the great family things to do in Canberra’. As a husband and wife team they were proud of how the business was run. [[291]](#footnote-291)

The lease that she and her husband acquired in 2006 was for 25-years and would have expired in 2027. This lease permitted them specifically to operate a bike hire business and a café.[[292]](#footnote-292) The previous owners of the business had owned the building on the site, and she and her husband had acquired this when they acquired the lease and business.[[293]](#footnote-293)

* 1. Timeline
* November 2006 —Jillian Edwards and Martin Shanahan purchased Mr Spokes Bike Hire and became the lessees for Block 13, Section 33; [[294]](#footnote-294)
* April 2011 — an ACT government officer contacted the owners of Mr Spokes Bike Hire regarding the re-development of the site for the City to the Lake project; [[295]](#footnote-295)
* July 2011 — owners of Mr Spokes Bike Hire met with Simon Corbell MLA as Minister for Planning, regarding the proposed re-development of the site; [[296]](#footnote-296)
* March 2014 —a ‘media consultant for the city to the lake project’, contacted the owners of Mr Spokes asking them to pose for photographs for an article for the Canberra Times regarding the city to the lake development;[[297]](#footnote-297) owners of Mr Spokes subsequently contacted the LDA; [[298]](#footnote-298)
* November 2014 — a significant meeting was held between owners of Mr Spokes, its legal representative, LDA representatives, an advisor from Andrew Barr MLA’s office, and representatives of the Government Solicitor’s Office; [[299]](#footnote-299)
* February 2015 — from the ACT Government Solicitor sent an email to Mr Spokes’ legal representative, explaining ‘why the LDA were not taking up the processes that were discussed in the meeting the previous year’; [[300]](#footnote-300)
* February to August 2015 — period of uncertainty in which owners of Mr Spokes reportedly were not able to determine whether the LDA in fact wished to acquire Block 13, Section 33; threatening communications reportedly received from ACT government; [[301]](#footnote-301)
* August 2015 — owners of Mr Spokes went to the media; owners and the then Chief Executive Officer of the LDA interviewed on ABC radio 666; [[302]](#footnote-302)
* August 2015 — Mr Ben Parsons offered to assist owners in negotiations with LDA;[[303]](#footnote-303)
* February 2016 — the lease for Mr Spokes Bike Hire was surrendered to the ACT government; the owners were paid of $1.1 milllion for the Crown lease, and $1 for the business.[[304]](#footnote-304)
  1. Initial contact

Mr Spokes Bike Hire

Ms Edwards told the Committee that she and her husband were first aware of government interest in their lease in April 2011 when an ACT government officer rang and asked for a face-to-face meeting, saying that they were about to issue a press release about development of the site occupied by Mr Spokes Bike Hire. He visited them at their home, because it was their afternoon off, and told them that the project would affect them and that there was ‘a lot of weight’ behind the project, but he could not tell them exactly how they would be affected. This initiated a period of uncertainty for the owners.[[305]](#footnote-305)

Subsequently on 25 July 2011 they met with Simon Corbell MLA, the responsible minister at the time, and one of his advisers. They took a *Canberra Times* article which talked about plans for the Australia Forum and the City to the Lake project. Although Minister Corbell said that he was not in a position to advise them, he told them that there would be ‘some sort of process that would be followed when it came time for us to have to surrender our lease’; that there was no Development Application in progress; and that it was ‘way too early in the piece to be at all helpful’.[[306]](#footnote-306)

At the meeting the owners told Minister Corbell that they knew that it would be difficult to find them another location, in view of tight regulation of the lake foreshore and their need to be situated close to the cyclepath around the lake.[[307]](#footnote-307)

The owners anticipated that moving Mr Spokes and the paddleboat business would have to come first in any project of that scale. The scale of the capital works appeared to be such that ‘the whole area would be locked down for development for some years’, so it was not practicable to move for six months and then be moved back to West Basin. This was a major project: there was discussion of reclaiming land at West Best and routing Parkes Way through a tunnel. In light of this, the owners had anticipated discussions on a possible site for relocation, but initially they heard nothing.[[308]](#footnote-308)

Former Project Director, City to the Lake

When asked to describe the beginning of the acquisition process for Mr Spokes Bike Hire, Mr Xirakis told the Committee that there had been an initial meeting with the owners at which the City to the Lake project and its implications were discussed. In this meeting the LDA had indicated that it wished to acquire the lease as part of the project. ACT government representatives had described a process for this to take place, but this was met with ‘relative hostility’ as the owners did not wish to leave the location.[[309]](#footnote-309)

The LDA’s instructions were to acquire the land, and as part of that negotiation its representatives offered to relocate the business. The owners wanted to know for what purpose the land would be used, but this question could not be answered as the future use had not yet been determined. Various alternative sites were discussed, and the LDA offered to relocate the business, pay for the relocation, and potentially find a place so that the business could relocated in the completed new West Basin ‘if that was appropriate’ but, he told the Committee, these offers were not accepted.[[310]](#footnote-310)

* 1. Events between March 2014 and February 2015

Mr Spokes Bike Hire

On 17 March 2014 the owners received a phone call from a media consultant for the City to the Lake project, asking if the owners would pose for photographs for a *Canberra Times* article on the project. At this stage the owners did not know how their business would be affected, although they knew it was a large-scale project and that it was likely to entail either complete relocation or the resumption of their lease.[[311]](#footnote-311)

The owners then contacted the LDA. In the beginning they met with LDA representatives who told them that there was a location on the lake foreshore close to Commonwealth Avenue Bridge that could be suitable for collocating Mr Spokes Bike Hire with Lake Burley Griffin Boat Hire. When asked by the LDA whether they were interested in this proposal, the owners indicated that they needed more detail on both options—relocation or compensation—in order to respond. If the proposed new location was far away from the CBD and hotels then they would be more interested in compensation for the lease rather than relocation.[[312]](#footnote-312)

It appeared that the project was underway at this stage. Initially, the owners met twice with two officers representing the City to the Lake project team and were shown maps of the project, indicating its scale. It appeared that there would be roads over the area where Mr Spokes was situated and that land would be reclaimed, and the owners were told they would not be able to stay.[[313]](#footnote-313)

This was confirmed when Mr Spokes received its first letter from the LDA regarding the development, stating that: the project would result in significant changes to the road and block layout in the West Basin precinct; it would result in the extinguishment of the lease as it currently existed; and that the Territory had the option to acquire the lease by either commercial negotiation or compulsory acquisition. After they received the letter, the owners met the LDA again, and received different advice about the options open to them. LDA representatives asked whether the owners wanted to be relocated, sometimes suggesting that the business could be temporarily relocated and then brought back to West Basin. Ms Edwards told the Committee that she did not welcome this suggestion because she had observed other capital works projects extending for double the number of years initially anticipated. Consequently, she thought that if they as owners chose to relocate it was important to choose the right location and stay there.[[314]](#footnote-314)

In meetings, the owners were asked what was necessary for a site, and consistently answered that it should be close to the CBD, next to the lake cyclepath, with coach parking and a big enough space for bikes. If there were to be a relocation, the owners needed to see—and consult their lawyer on—the terms and conditions of the lease. However, she told the Committee, in the event the owners were never actually offered a replacement site. One near Commonwealth Avenue Bridge had been offered in the course of these discussions, but this was soon withdrawn.[[315]](#footnote-315)

At the same time, the owners were seeing media reports about the project and were becoming ‘increasingly nervous’. She spoke to an adviser in Chief Minister Gallagher’s office at this time about failures to reply to their letters; their frustration; and in their view the lack of professionalism shown by the LDA, leading to three years of uncertainty in relation to the lease and business. Immediately after this the GSO called a meeting with their lawyers.[[316]](#footnote-316)

The owners sent a letter to Minister Gentleman and received a reply from Mr Barr saying that he understood that there would be a meeting, and that this should resolve matters. This meeting was subsequently held on 19 November 2014, and present were a number of LDA staff, including Mr Xirakis; Mr Barr’s adviser, Mr Tony Hodges; the owners’ lawyer; and representatives of the GSO. At the meeting the LDA again confirmed that it would not be viable to run a business during construction because there would be hundreds of truck movements each day and the area would be noisy and dusty. The LDA hoped to have control of the land by Christmas, and to sign contracts with construction companies in the very near future.[[317]](#footnote-317)

The owners’ lawyer advised them that it was too late to be talking about relocation at this stage because the LDA appeared to want the land in a month. At the meeting, it had been agreed that the owners’ lawyer would make an estimate of what it would cost to engage valuers, forensic accountants and legal advice required during the negotiation period. Subsequently, in early December, the owners’ lawyer sent a letter to the LDA and the GSO with this estimate, however the LDA did not respond. Just before Christmas the owners received a request for financial and tax records for the business, but they were unable to provide these for some time because the business was in its peak season and their accountant was unavailable.[[318]](#footnote-318)

The owners, at this point, had already spent a significant amount on legal representation, and were apprehensive about legal fees.[[319]](#footnote-319) In February 2015, they received an email which the sender, at the GSO, had intended to send to their lawyer, explaining that the LDA was following up on processes that had been discussed in the previous years’ meeting ‘because of a notifiable instrument that they had found’. The owners did not understand the implications of this, but they could see that things were no longer proceeding on the basis agreed in the meeting of 14 November 2014.[[320]](#footnote-320)

* 1. Events from February to August 2015

Mr Spokes Bike Hire

Ms Edwards told the Committee that this was ‘the beginning of the fog’. It appeared the LDA did not know how to deal with the matter. The LDA’s approach was threatening: periodically the owners would receive letters from the LDA promising adverse outcomes if the owners did not respond.[[321]](#footnote-321)

The owners’ lawyer said on their behalf that the owners were happy to provide financial information on the business, conditional on the LDA providing particulars of:

the use to which the land would be put, the reasons why the land was suitable for that use, whether an alternative location for our business was proposed, the time frame for the purchase, the time frame for conducting the valuation, [and] the terms of engagement of the valuers. [[322]](#footnote-322)

This was, in effect, asking the LDA to commit to a process before the owners provided their financials. The owners wanted answers to the questions:

Why do you want us to get a valuation? What are we doing? Are you resuming our land? What’s your time frame? Why are you resuming it? What are you valuing? Is it just the business? Are you valuing the lease? Are you valuing our interests in that land? [[323]](#footnote-323)

Ms Edwards said that at this point she would have been happy for the LDA to use the *Lands Acquisition Act* to make the acquisition, noting that the Act allowed for reimbursement of the owners’ fees for legal representation and expert advice, such as that from accountants and valuers.[[324]](#footnote-324)

During this period there was limited correspondence. Letters written by the owners would be answered by letters which seemed to ‘be answering a different letter that did not exist’ and contained few specifics. Ms Edwards suspected that attention was focused on ‘more exciting parts of the project’; that the Mr Spokes business was ‘a tricky part’ the LDA did not know how to handle, and that it was not a priority.[[325]](#footnote-325)

There were times when junior staff of the LDA would call a meeting with the owners of Mr Spokes to discuss the project, who would employ casual staff to run the business while they went to the meeting, only to discover that they were being consulted on minor matters such as temporary road closures to the Westside pop-up village. The people they were meeting were not able to discuss the future of the business or the resumption of the lease, and the owners found this ‘exceedingly frustrating’.[[326]](#footnote-326)

In April 2015 the owners’ lawyer received letters from the GSO stating that the LDA remained committed to negotiating a commercial solution. Their lawyer responded by saying that the owners would allow access to financial figures on the condition that the valuers adopt a value to sell and methodology as set out in the *Lands Acquisition Act*, and that the LDA agreed to reimburse professional costs incurred by the owners, as it would be obliged to under the Act. The lawyer also lodged a Freedom of Information request to see if he could find out more about what might be going on.[[327]](#footnote-327)

In May 2015 the owners of Mr Spokes advised their lawyer that they had reached their limit for legal fees, and that they would represent themselves. The lawyer sent a final letter to the LDA in May 2015, attaching cost estimates from his letter of December 2014. The owners had also instructed him to state in that letter that if conditions stated in earlier correspondence were not met they would not provide their financials to valuers working on behalf of the LDA and would not enter into any further correspondence.[[328]](#footnote-328)

Ms Edwards told the Committee that at this point, they had had enough. They were not convinced that the LDA wanted the land and could not understand why it would not use the *Lands Acquisition Act* as it had told them it would. They thought that the project had lost momentum and were concerned that they, the owners, could have spent $20,000 of legal costs for no benefit.[[329]](#footnote-329) They considered pursuing other avenues, but these all proved too expensive. If the owners obtained a valuation themselves it would only be valid for 12 months, and would represent a further cost of $8,000 to $10,000. In addition their lawyer received a letter regarding his Freedom of Information (FOI) request, stating that the request referred to over 7,000 documents and would cost $40,000 to retrieve, and this was not pursued.[[330]](#footnote-330)

In June 2015 the LDA completed valuations of the business, without having access to financials, and told the owners that those valuations would go to the LDA Board for final consideration. The owners found this hard to understand because every four years lease-holders with the ACT government had their rent reappraised, and in order to do that had to provide profit and loss statements. As a result, the ACT government would have had access to financials on which it could have based a figure for compensation for Mr Spokes Bike Hire.[[331]](#footnote-331)

At this point the owners believed the only way they could escalate the matter was to go to Mr Barr’s office or the media.[[332]](#footnote-332) In February 2015 her husband called Andrew Barr’s office asking for someone to return his call. An adviser returned his call in the afternoon, and her husband expressed frustration with the LDA and the outcome of negotiations, and the LDA’s reluctance to put any offer of relocation or a process in writing.[[333]](#footnote-333) The adviser rang back later that afternoon:

It was at home. I was standing beside my husband; I heard this phone call, listening in to the phone. He raised his voice and he said, “If you don’t agree to sit down and meet with the LDA, things are going to get a lot tougher for you.” He did not elaborate on what he meant.[[334]](#footnote-334)

Ms Edwards told the Committee that the LDA told them that it was considering a shipping crate for the business, next to the existing site.[[335]](#footnote-335) In the meantime, the environment around Mr Spokes Bike Hire had changed significantly. The owners had already heard from a number of clients, including coach companies who brought school groups to Mr Spokes Bike Hire, who believed the business had closed. People saw the area as a construction site due to the presence of the container village, and the owners anticipated the start of construction work on City to the Lake would only add to that perception.[[336]](#footnote-336)

At this point, the owners accepted that the scale of the project meant that the business would have to go, but the LDA didn’t seem to want the land. If it had, she thought it would use the *Lands Acquisition Act,* come up with an alternative approach, or propose a possible relocation.[[337]](#footnote-337) After the conversation with the adviser from Andrew Barr’s office the owners considered that there was nowhere higher to go in government and that the media was their only avenue. As a result they spoke to ABC Radio Canberra.[[338]](#footnote-338)

Just before they went to the media, the owners met with Mr Dawes at their lawyer’s office. At the meeting the LDA was to hand over the valuations they had done without having current financials for the business. Mr Dawes was there with representatives of the GSO, and during this meeting Mr Dawes told them that the he had been speaking to the ACT Work Safety Commissioner and on the basis of his advice the LDA had decided that Mr Spokes could stay where it was and the project be built around it.[[339]](#footnote-339)

This was a shock to the owners due to the scale of construction work for the project. It was proposed that there be a five-metre high hoarding around the perimeter of the Mr Spokes lease, and this would end views of the cyclepath or the lake from Mr Spokes. On the other side of the hoarding would be a staging area where trucks would be dumping fill to be used to reclaim areas of West Basin, and there was to be a ‘sort of tunnel of hoarding’ over the cyclepath. It was obvious to the owners that this would not work.[[340]](#footnote-340)

She could not envisage anyone running an outdoor bike hire service for ‘hundreds of kids on interstate school groups Monday to Friday’ surrounded by trucks carrying fill and with no view of the cyclepath or the lake. The business entailed ‘putting 50 kids on bikes’ who were about 11 years old, were meant to be riding in single file, and did not know the area they were in because they were from interstate, and it was alarming to consider the additional dangers and complications that would result from the site being modified in this way.[[341]](#footnote-341) She feared that the business was ‘just going to go broke slowly’ and that they, as owners, and would either have to surrender the lease themselves or that under the circumstances the LDA would be able to buy the lease at a lower price.[[342]](#footnote-342)

* 1. Valuations

PwC

Mr Eugene Kalenjuk, a Partner at PwC, told the Committee that PwC was engaged by the LDA in April 2015 to provide valuation services, and he was the partner who for the most part worked on this. PwC provided three pieces of work in relation to the Mr Spokes Bike Hire business: a first report of 21 April 2015; a second of 4 September 2015; and a third report of 6 October 2015.[[343]](#footnote-343)

Nature of service

Mr Kalenjuk told the Committee that the scope of the services provided by PwC was limited to providing comments on the valuation of the business rather than a formal valuation. The different reports reflected the information available at each point in time, and did not include verification of the financial information provided: PwC did not do an industry analysis or any valuations of improvements, and did not visit the premises. In light of this, the PwC report was best considered a ‘high-level analysis’ of the Mr Spokes Bike Hire business.[[344]](#footnote-344) This reflected instructions provided by the LDA in a series of emails and letters. There was not at any time discussion between PwC and the LDA regarding compulsory acquisition of the lease associated with Mr Spokes Bike Hire.[[345]](#footnote-345)

Changes to advice

The Committee asked what advice PwC had initially provided, what was changed in the second and third iterations of its advice, and why these changes were made.[[346]](#footnote-346) Mr Kalenjuk told the Committee that usually when PwC performed such services it provided a list of information requirements, such as financial statements, tax returns, and copies of any forecasts and business plans, and that usually this initial list was comprehensive. In this case however PwC received very little information: for the initial report PwC received a set of financial statements for the 12-month period ending March 2009, with comparatives for March 2008. This was unusual and he expressed concern at the time that there was not much information to work with.[[347]](#footnote-347)

In addition, information provided on the finances of Mr Spokes Bike Hire was six years out of date.[[348]](#footnote-348) Nevertheless, PwC continued with the task and provided advice based on this limited information, which led to a valuation in the range of $220,000 to $550,000: given limited information, it was not possible to establish a firm figure. In September PwC received further information in the form of financial statements for 2013 to 2015, and comparative figures for 2012, which was a significant addition to the information on-hand, and PwC was able to provide a revision to its advice of April 2015 and a narrowing of the range.[[349]](#footnote-349)

Mr Kalenjuk told the Committee that in this new assessment the midpoint of the valuation range was $550,000. Following this PwC was in communication with Mr Parsons and requested additional information to see if there could be further revision of the valuation, including: whether there was any history or pattern of projections for business growth; a history of the business; and whether there were opportunities for growth that had not yet been taken up. When this information was supplied it provided PwC with a better view of the potential for growth of the business, which was incorporated into a third report which indicated a valuation with a mid-point of $650,000.[[350]](#footnote-350)

Meeting with LDA

After providing the third report, Mr Kalenjuk told the Committee, there was a meeting with Mr Dawes and other representatives of the LDA, and the two other valuers who had been engaged by the LDA, at which questions were asked on whether there was scope to increase the valuations.[[351]](#footnote-351)

At the meeting the valuers were asked whether it would be possible to factor-in undisclosed cash as a way of increasing the assessed value of the business. He and the other the valuers expressed doubt because the figures could not be substantiated and refused.[[352]](#footnote-352) The valuers were then asked whether they had missed anything else which might result in a different valuation but said that there was not.[[353]](#footnote-353)

Disruption

When asked whether there was any discussion, over this period, of placing a value on inconvenience to the lessee—that is, ‘disturbance’—Mr Kalenjuk said that there was not.[[354]](#footnote-354) In this instance PwC valued the business as a going concern, continuing to operate at its location of the time. He had no experience in doing valuations which considered the present value of a business and its value if it were to be moved to another location, although there were team members in PwC who had. Such valuations involved a range of additional variables and, while it was possible, there would be a number of assumptions involved, and it would be necessary to test them and prove that they were reasonable.[[355]](#footnote-355)

Purchase price

When asked as to his reaction when it was reported that $1.1 million had been paid for Mr Spokes, Mr Kalenjuk said that he was not able to offer a view as there were a number of factors that could account for a client paying more or less than was indicated in a valuation.[[356]](#footnote-356) It was accepted practice for valuations to be used as a starting point in negotiations, and the figure paid in an acquisition could be higher or lower than the valuation, depending on factors such as negotiating power of the buyer or seller, and whether it was considered a strategic acquisition.[[357]](#footnote-357)

Herron Todd White

Mr David James, formerly a valuer with Herron Todd White, appeared before the Committee to answer questions about valuations he provided in relation to Mr Spokes Bike Hire. He also provided a valuation for Dobell Boat Hire, the acquisition of which is considered in another chapter of this report.[[358]](#footnote-358)

Valuations at Acton

Mr James told the Committee that he completed valuations for the two Acton properties considered in the Audit Report in early to mid-2015. His firm had received instructions up to a year prior, but at first there was little on which to base the valuations and obtaining information took time.[[359]](#footnote-359)

He was been briefed on the two valuation tasks at the same time—for Mr Spokes Bike Hire and Dobel Boat Hire. The lessees had not provided much of the information that was needed, although the valuations were relatively simple because both properties were held under rental lease. In order to value improvements his firm needed to inspect both premises, but it took some months before it was able to gain entry to the sites, and at least a year for other information to be provided so that the valuations could be finalised. In the end, his firm requested a higher fee because it had taken a significant amount of time to get the information required.[[360]](#footnote-360)

Mr Spokes valuation

Regarding the value he provided for Mr Spokes Bike Hire, Mr James told the Committee that there was ‘no value apportioned to the land because there was a rental lease in place’. Mr Spokes Bike Hire was paying rent of $10,850 per annum and there were improvements of roughly 200 square metres. Calculations of the approximate value of the improvements was based on ‘physical observations of those improvements’, ‘relative to cost guides that we hold’.[[361]](#footnote-361)

For the valuation of the business, again it was a long time before the information was provided. His firm had put together a draft report nine months earlier on the basis of limited financial information that had been provided and later, after the leaseholders had provided financial information for the previous one or two years, it was determined that the business operated on a gross trading profit of approximately $320,000 and a net figure of $160,000.[[362]](#footnote-362) Because he had previously sold his own business in Canberra, he was aware of what multiples should be applied—including figures for earnings before interest, depreciation and amortisation—for valuing smaller businesses. In this case the firm had applied a multiple of 3.25, which generated a value for the business of $520,000, qualified by the fact that it was based on only two years of financials.[[363]](#footnote-363)

The amount of time remaining before the expiry of the lease was also factored into the valuation. In this case the lease was due to expire in 2028. Calculating value for each further year into the lease involved reducing the multiple so that the business would be worth zero on expiration of the lease.[[364]](#footnote-364) The Territory owned the land, had leased it to Mr Spokes Bike Hire until 2028, and the tenant had rights over that property until that date. Because there was nothing in the lease that provided for any sort of compensation—except where the lessee failed to pay rent—the firm considered that there should be some sort of negotiation if the Territory wanted to acquire have the use of the land.[[365]](#footnote-365) In light of this, he could not see how a zero value could be assigned to the business. He also struggled to understand how the lease could be valued at $1.1 million.[[366]](#footnote-366)

Meeting of October 2015

The Committee asked Mr James whether he had been present at a further meeting which had been held in October 2015, at which LDA representatives had asked valuers whether there was a way to increase their valuations.[[367]](#footnote-367) He agreed that the meeting had taken place, and told the Committee that from the start the valuers all knew that there the ACT government intended to make an acquisition. While there was not one set value for a business or improvements, and it was common for different valuers to arrive at different valuations for the same property, in general there was a conventional range based on common understandings of how valuations should be done.[[368]](#footnote-368)

He told the Committee that the valuers were ‘under no illusions’ as to what the LDA wanted, and that they had been encouraged to produce valuations at the upper end of the range. The valuers could understand that when it came to acquisitions there was sometimes a need to get somebody out, and as a result it may be necessary to pay more. In his experience, this was a familiar predicament. Valuers tended to respond to such cases by establishing a range and then indicating a value within that range they felt was defensible.[[369]](#footnote-369)

As to whether other means were explored to increase valuations, he told the Committee that he had not spoken to the other valuers about their valuations but believed that they were all in a similar range, even though one was not a property valuer and they looked at things in different ways. The only way valuers could increase their valuations was on the basis of further information, and after the meeting this was provided.[[370]](#footnote-370)

Undeclared income

When asked whether there were ways to include undisclosed cash earnings in valuations, Mr James told the Committee that there were not. He thought that it was mentioned at the time that there were other accounts, but his firm had advised that taking this into account would lead to other problems—amongst other things that including undeclared cash in a valuation would not bear scrutiny in court—and the firm proceeded with the information which it had on hand.[[371]](#footnote-371)

As to whether he, as a valuer, had had access to the business records of either Mr Spokes Bike Hire or Dobel Boat Hire, Mr James told the Committee that at first he did not. For the Dobel Boar Hire he did not remember there being any financials at all, or if there were, they were minimal. For Mr Spokes Bike Hire his firm had nothing at first and then after the meeting between the LDA and the valuers more information was provided. His firm received financials for one or two years, and calculated a value based on that. This was a valuation of a small business, and having sold his own small business, he had a good idea of what the value should be, and this made him wonder ‘how they got to $1 million’.[[372]](#footnote-372)

* 1. Events in August 2015

Mr Spokes Bike Hire

The owners of Mr Spokes approached ABC Radio Canberra regarding their situation.[[373]](#footnote-373) Mr Dawes was invited on the same morning that the owner spoke the ABC, so it was akin to an interview with the two of them.[[374]](#footnote-374) It was then that she heard Mr Dawes say that the LDA would attend to another site first. She took this as implying that the LDA did not need the Mr Spokes lease at this stage. The interviewer pushed Mr Dawes on this question, asking whether the project would require the land at some point in the future, and Mr Dawes’ reply appeared to her to indicate that the LDA did indeed require the land.[[375]](#footnote-375)

By this stage she had lost hope, but the interview changed this. She had not had much experience in dealing with Mr Dawes, except when he came to that meeting where he announced that the owners could stay where they were and the project would build around the business.[[376]](#footnote-376) The interview made her think that:

Well, they’re now saying they do want the land ultimately. There’s no point just saying, ‘We’re going to build around you and leave you as an island,’ because they’re not going to leave me an island forever. They are saying they will ultimately want that land.[[377]](#footnote-377)

As a result she had hoped that they, the owners of Mr Spokes Bike Hire, would see ‘some sort of action’ by the ACT government to acquire the lease and business under the *Lands Acquisition Act*.[[378]](#footnote-378)

As a consequence of the interview on ABC Radio Canberra the owners of Mr Spokes Bike Hire were approached by Mr Ben Parsons offering to mediate between Mr Spokes and the LDA, Ms Edwards told the Committee. He told the owners that he could hear that a stalemate had been reached but that he had experience which would allow him to act as broker or mediator.[[379]](#footnote-379)

The owners were at first confused but thought the offer warranted consideration.[[380]](#footnote-380) Mr Parsons offered to meet with Mr Dawes to see if they could find common ground and restart negotiations. He thought that Mr Dawes wanted the land, and he saw how frustrated she was. Mr Parsons told the owners that he had previously met Mr Dawes on one or two occasions, and that this acquaintance could allow him to make contact so that the matter could be resolved.[[381]](#footnote-381)

Mr Parsons had said that he was willing to do this at no cost to the owners. He had pursued a career in Sydney before moving back to Canberra for personal reasons and was hoping that the LDA would view his role in this as being an expert acting on behalf of the owners. Possibly the LDA would pay him, but he was not counting on that and was willing to assist the owners without payment.[[382]](#footnote-382)

When asked whether Mr Parsons was paid, ultimately, for providing these services, Ms Edwards told the Committee that he was, but—as was her accountant—the payment was made by the ACT government on settlement date.[[383]](#footnote-383) These payments amounted to more than $25,000, of which payments to her accountant amounted to approximately $2,000.[[384]](#footnote-384)

* 1. Events from August 2015 to February 2016

Mr Spokes Bike Hire

When asked what happened after she and her husband accepted Mr Parsons’ offer of assistance, Ms Edwards told the Committee that following this there was a negotiation which took place over some months. A contributing factor was that it was very difficult for Mr Parsons to get access to Mr Dawes, who was busy and was often interstate.[[385]](#footnote-385)

She told the Committee that that she and her husband were obliged to provide extensive documentary evidence, although owners for the other acquisitions for City to the Lake had not. In the case of Mr Spokes Bike Hire the owners had to go to the extent of providing financials from previous owner, and to provide a quantity of other information before they were able to discuss figures for the surrender of the lease.[[386]](#footnote-386)

Former Chief Executive Officer, LDA

The Committee asked Mr Dawes when he had become directly involved in negotiations for Mr Spokes Bike Hire. He said that he had taken over negotiations after Mr Xirakis left the LDA in August 2015,[[387]](#footnote-387) had only conducted negotiations for the acquisition of Mr Spokes Bike Hire at the end of the process; a representative of the GSO, was present when he had first met with the owners of Mr Spokes Bike Hire in their lawyer’s office, and that the same representative had also present in any subsequent meeting Mr Dawes had with Mr Parsons as negotiator on behalf of the owners.[[388]](#footnote-388)

Mr Ben Parsons, negotiator for Mr Spokes

When asked what led him to offer to negotiate on behalf of the owners of Mr Spokes Bike Hire, Mr Parsons told the Committee that he was listening to ABC Radio Canberra when he heard an interview between Mr Dawes, Philip Clark and Ms Edwards about the Mr Spokes Bike Hire business. Listening to the interview he sensed frustration and stress on the part of Ms Edwards. He felt that Mr Dawes and Ms Edwards wanted the same result, but were speaking at cross-purposes, and thought that he could bring them back to the negotiating table.[[389]](#footnote-389)

Mr Parsons advised that in his former business this was not an unusual sort of thing for him to do. After 20 years as a lawyer and then partner in a large legal firm, in 2004 he had left the firm to operate a small investment bank. In that role seeking work was ‘an opportunistic endeavour’, and much of the business came as a result of making cold calls. In this case his motivation was not a personal one: rather his offer was a response to the stress and the frustration he sensed Ms Edwards and her husband were facing as a result of the situation.[[390]](#footnote-390)

Mr Parsons told the Committee he had recently retired from full-time work after having lived in Sydney for 30 years, and he had come into contact with Mr Dawes when he returned to Canberra at the end of 2014. He needed to find accommodation, and a friend had told him that Mr Dawes was building a new house. The new house was almost completed and the friend thought that Mr Dawes’s original house might suit him.[[391]](#footnote-391) He had cold-called Mr Dawes to ask if he was hoping to sell the house, who said that he was. He inspected the house twice and had two conversations with Mr Dawes about the house, but for a number of reasons it did not suit him and he did not pursue the matter. His brother was also interested in the house, and Mr Parsons had tried to negotiate a sale on his behalf, however Mr Dawes indicated that he had decided to take the house to auction, which he did on 8 August 2015, and at which Mr Parsons’ brother was the under-bidder. This, he told the Committee, was the full extent of his dealings with Mr Dawes prior to negotiating on behalf of Mr Spokes.[[392]](#footnote-392)

Beginning of role as negotiator

When asked on what basis he was engaged by the owners of Mr Spokes Bike Hire as a negotiator on their behalf Mr Parsons told the Committee that they had a verbal agreement. He told the owners at the time that he knew Mr Dawes, and the circumstances under which they had met, and that this could help him to make contact. He told them that his motivation was to help them and that he would not seek to charge them anything directly but would hope, consistent with the principles set out in the *Lands Acquisition Act*, to be paid by the LDA. He was prepared to take the risk that if he did not achieve a result a fee may not be paid.[[393]](#footnote-393)

After being engaged by the owners he asked Ms Edwards for correspondence regarding the negotiations to date. Reading these letters he confirmed his view that the two parties were at cross-purposes. He also knew that a valuation of the business which had been based on financials for the three preceding years from 2009 would be comparatively low because the business had grown significantly since then, and that the lawyer who had previously represented Mr Spokes Bike Hire had under instruction imposed conditions for the release of more recent financials, which the LDA had not found acceptable.[[394]](#footnote-394)

He could see that it was in the interests of Mr Spokes Bike Hire to release more recent trading information as it would generate a figure which was a better representation of the current value of the business. His opening proposition to the owners was that it best to be open and cooperative, and to work with the LDA to obtain a valuation of the business. He told the owners that the LDA, as an organisation spending government money, ‘needed to do things according to a process’, and that it was in the owners’ interest to engage in that process.[[395]](#footnote-395)

He had identified Mr Dawes as a person with whom it would be useful to negotiate, because he had heard him say on radio that he was taking over responsibility for negotiations, and told the owners that, in view of his acquaintance with Mr Dawes, dealing with him directly was likely to achieve the best result.[[396]](#footnote-396)

His next step was on 23 August to provide a detailed analysis to the proprietors of Mr Spokes Bike Hire of the value of the business, based on a review of financial statements for the previous three years, and to indicate the principles that would apply under the *Lands Acquisition Act* for the acquisition of the business.[[397]](#footnote-397)

He then suggested that he approach Mr Dawes to set up a meeting and that, in view of the history of the relationship, it was best if he went alone. He drafted a short letter of authorisation, which he asked the owners to sign and send to Mr Dawes, which also disclosed that the owners were aware that he had previously met Mr Dawes. Subsequently he had a number of meetings with Mr Dawes. Mr Gray was present in at least one of those meetings.[[398]](#footnote-398)

Negotiations

At this point, Mr Parsons provided a chronology of the negotiations. On 24 August he had spoken to Mr Dawes, and sent an email providing the last three years’ financials. On 11 September he had a phone conversation with Mr Dawes, who acknowledged that there had been some fault on the part of the LDA, and saying that this was one of the reasons why he was taking over the negotiations. Mr Dawes had told him that three valuers—PwC, Herron Todd White and MMJ—were looking at the business and the land; that all of the valuers wanted additional information; and that two of the valuers wished to inspect the premises.[[399]](#footnote-399)

Mr Dawes asked him whether he would deal directly with the valuers to provide them with the additional information they had requested and to arrange for site inspections. As a result between 11 September and 29 September he provided PwC with ‘significant further information’ so that they could complete their valuation, including financials for the years 2004, 2005, and 2006, which were the three years prior to the purchase of the business by the present owners. He also answered questions regarding Mr Spokes’ accounts.[[400]](#footnote-400)

He provided the two property valuers with similar information regarding six years of financial statements, answered questions, and arranged for them to make on-site inspections. On 1 October Mr Dawes sent him an email acknowledging receipt of the information and advising that the valuers would be working on their valuations while he was overseas in the first half of October 2015.[[401]](#footnote-401)

On 22 October Mr Dawes’s personal assistant emailed Mr Parsons copies of the three valuations, and the next morning, 23 October, they met.[[402]](#footnote-402) That evening he sent an email to the owners of Mr Spokes summarising the meeting:

…

1. David Dawes was very keen to see if he was able to keep your business operating and paying you some compensation for the disruption of moving locations. I made it clear to him that this was all too uncertain and stressful for you and that you would prefer to be bought out.

2. This led to a discussion about a potential buy-out price.

3. David Dawes started by saying he was limited by the valuations and could only make an offer consistent with them being at circa $650,000.

4. I said your starting position was as in the Vandenberg’s letter [[403]](#footnote-403) and that it was up to him and I to work out a solution where both parties were satisfied with the outcome. He acknowledged that.

5. We then looked at ways we could the valuations. I suggested the following:

Firstly, increasing the earnings reflecting that, as is the case with most small cash-based businesses, not all income is necessarily reflected in the accounts. He said he had experience with small businesses and agreed that this did happen.

Increase the earnings to reflect the potential to run a café, as has been permitted under the terms of the lease.[[404]](#footnote-404)

Increase the earnings multiples that the valuers had used on the valuations and include an amount for disturbance, which is provided for under the Lands Acquisition Act. I pushed the fact that you would be both unemployed as a result of the acquisition of your businesses and it would take two years to get a job and they would need to be retrained in the time.

6. David Dawes felt that it might be possible using the items in 5 above to perhaps, though with no certainty, get the valuers to support a figure closer to $1 million. I told him that would obviously be a move in the right direction but I felt that this would still be short of where we needed to be. I told him I did not know what you would accept but that it needed to be more than the sum of what Pat [Seears] was getting—on the basis that you had a better business and a bigger block of land and a longer lease. He acknowledged yours was a better business but said that the paddleboat land was more valuable because it was on the water and the lake infill would mean it would no longer be on the water. The valuers had used this to justify a higher valuation of the paddleboat land.

7. He said then if he did buy the business he did not want to run a bike hire business and asked me if I thought that you would be interested in operating the business on the basis they would provide you with a site and not charge rent and you would be able to keep all the profits. I said I would raise it with you.

8. In summary, no formal offers were made, but at the moment David is looking to see if he can move up the valuation to support paying you circa $1 million, whatever figure he was able to justify. He would then give you the option to run the bike hire business. I am hoping we might be able to get him a bit higher than the $1 million, though acknowledging that whatever payment is made needs to be supported by a valuation.

Hope the above is clear. If not, please call me.[[405]](#footnote-405)

Mr Parsons told the Committee that on that day he had also sent a more detailed email to Mr Dawes summarising the basis on which amounts the valuers had provided could be increased.[[406]](#footnote-406)

When asked about statements about ways to arrive at a higher valuation for the Mr Spokes lease and business, and a reference to ‘cash non-accounted income’, Mr Parsons told the Committee that the valuations had been done on the basis of the financial statements. He did not know what the position was with the Mr Spokes business, but that Mr Dawes had put the view that it was not uncommon in businesses which received a large portion of their revenue in cash not to have report all of revenue in their accounts.[[407]](#footnote-407)

When asked whether the LDA had asked valuers to consider undeclared cash earnings in valuations, he told the Committee that it seemed that it had, but did not know what conversations were had with valuers or how the valuers had responded. Mr Parsons told the Committee that between the meeting of 23 October and their next meeting, Mr Dawes had indicated to him that he was having ‘difficulty getting the valuers to move from their previous figures’, and that the valuers ‘were comfortable with the valuations they had previously given’.[[408]](#footnote-408)

When asked about the means used to calculate the value of a business by multiplying yearly earnings by a ‘multiplier’, Mr Parsons told the Committee that for a small business such as this the multiplier would generally be between two and five, and that the exact figure would depend on an assessment of the strengths of the business. In this case strengths included the fact that it was growing: revenues were increasing, indicating strong business since the owners had acquired it, and this was supported though an examination of accounts in the three years prior to the purchase and the three years prior leading up to the valuations. There was ‘significant’ repeat business, particularly from school groups, and no competition or potential for competition because there was no other comparable site on the lake on which another business could operate. In addition, there were opportunities to expand the business which had not yet been fully explored. At present, the business did not operate in the evenings, and there was potential for the business to do this successfully in evenings in summertime. There was also potential to leverage the hotel trade by delivering bikes to hotels, and to operate a café from the premises, as was specifically permitted under the lease.[[409]](#footnote-409)

When asked whether attempts to increase the price paid by the purchaser represented the reverse of conventional approaches, in which buyers typically seek to pay less rather than more for a property, Mr Parsons told the Committee that he did not believe that in the event the valuers had changed their valuations: despite his representations, valuations remained at $650,000 to $700,000. He did not know how the LDA got to the figure for the offer that was accepted, but thought that one of the things they may have taken into account was Section 45 of the *Lands Acquisition Act*, which provided for compensation for disturbance as a consequence of an acquisition.[[410]](#footnote-410)

This provision, he told the Committee, made it possible to value the business. Section 45 of the Act also provided a mechanism for payment of legal or professional costs incurred by a person in relation to the acquisition, and this was the basis upon which he had assumed the LDA would meet his fees. Sub-section (c) of Section 45 provided that—as he paraphrased it—‘any loss reasonably incurred by the person, having regard to all relevant considerations, including any circumstances peculiar to the person, suffered as a direct and natural consequence of the acquisition of the interest’ could be compensated.[[411]](#footnote-411)

In light of these provisions he had advised the LDA of the owners’ age and   
the fact that because of an injury Mr Shanahan would not able to return to work in his previous occupation; that they had operated the business for 10 years; and that it was difficult for somebody in their late 40s or 50s to find alternate employment. As a result he, as negotiator on their behalf, had proposed to the LDA that they should be compensated for disturbance. The figure he had proposed was $100,000 a year for each of them for two years, amounting to $400,000 in total.[[412]](#footnote-412)

Mr Parsons noted that one of the valuations specifically stated that it had not considered disturbance, but that, as negotiator on behalf of the owners, his main concern was to get to a figure that would provide a fair result for the owners: how the LDA got to that figure was not his concern, as long as they got there. He had provided them with all the information which he thought they ‘could move the dial on’, but he did not know what the LDA had used.[[413]](#footnote-413)

Following the meeting of 23 October there was a further meeting on 27 November with Mr Dawes, and with Mr Gray in attendance. During that meeting and in two subsequent telephone calls with Mr Dawes, two firm offers were made. The first was that the LDA would pay $1.1 million plus GST for the business and the surrender of the lease and the owners would ‘walk away’. The second was that the LDA would pay $900,000 for the business assets and the surrender of the lease and then grant the owners a licence over the premises and assets for a peppercorn rent. They would continue to operate the business and keep the profits, although there would need to be a relocation at some stage, and there was no certainty as to what the future held. He put both proposals to the owners they selected the former: they ‘just wanted out at that stage’.[[414]](#footnote-414)

Settlement

Mr Parsons told the Committee that at this point he sent an email to Mr Dawes, summarising the terms of the agreement that had been had reached, and which had been accepted by the proprietors of Mr Spokes:

David, I refer to our recent telephone conversation. I confirm that I have spoken with Jillian Edwards and Martin Shanahan and they have agreed as follows.

1. JE & MS Pty Ltd as trustee of the JE & MS Trust will sell to the LDA or a government entity nominated by the LDA the Mr Spokes bike hire business for the sum of $1.1 million plus GST. The business includes the lease over the premises.

2. The sale will not include the Subaru Forester, which will be retained by the vendor.

3. Some of the items listed on the depreciation schedule previously provided to the LDA and attached for your convenience are no longer part of the business.

…

4. Settlement of the sale will take place as soon as possible and before Christmas 2015. But the vendor will, at their option, be permitted to carry on running the business and retain all income until Sunday, 31 January 2016.

5. The LDA will pay the costs of the vendor, being my costs in negotiating the settlement, $43,000 plus GST, being 4 per cent up to $1 million and 3 per cent above $1 million, and the reasonable legal and accounting costs of having the sale documentation reviewed.

I would appreciate it if you were able to confirm your verbal advice that this is acceptable and arrange for formal documentation reflecting the above terms to be prepared and issued.[[415]](#footnote-415)

The legal review which was to be done, to be paid for by the LDA, was limited because Mr Parson had a legal background, although he no longer had a practising certificate. As a result he told the owners of Mr Spokes that he would review the documents but that they should be given a final review by their lawyer.[[416]](#footnote-416) The cost of the legal review, amounting to $1,500 plus GST, was paid by the LDA at settlement, as was the accountant’s fee of approximately $3,500.[[417]](#footnote-417)

Regarding conveyancing for the transaction, the GSO had prepared the first drafts of the documents and all drafts which were subject to negotiation in January and February 2016. He conducted negotiations on those agreements on behalf of the owners and got them to a stage he considered acceptable before getting the final sign-off from the accountant and the owners’ lawyer.[[418]](#footnote-418)

When asked why the Mr Spokes Bike Hire business was ultimately valued at $1 at settlement, Mr Parsons told the Committee that this had occurred because the GSO had sent him documents stating that the consideration for the two components was $1.1 million, and asking how this should be reflected in documenting the sale. The decision to place a value of $1.00 for the business at settlement was a decision of the owners, based on the advice of their accountant.[[419]](#footnote-419)

When asked about the fee paid to him by the LDA for representing the owners, Mr Parsons told the Committee that he had raised the basis for calculating the fee in his first email to the owners of Mr Spokes Bike Hire of 23 August 2015, in which he told them that costs which were reasonably incurred by the owners in relation to the acquisition were covered by relevant provisions of the *Lands Acquisition Act*, and that this was simply ‘cost recovery’; should be ‘uncontroversial’; and that these provisions would also cover legal fees incurred by the owners to date, which the LDA had already agreed to pay. As his main motivation was to help the owners, he would only seek to raise this with the LDA if and when they were close to agreement on a figure for settlement. The reason he took this approach was that he did not want any fee that was payable to him to detract from what was to be paid the owners.[[420]](#footnote-420)

In discussion, he and Mr Dawes had agreed on ‘the parameters of the amounts that would be paid to Mr Spokes’, and after this was agreed, Mr Parsons had said that he would expect that the LDA should cover his reasonable fees. Mr Dawes said to him:

“Yes, as long as they are not hundreds of thousands of dollars, as you would expect from a Sydney person.” He knew that I had come from Sydney. I said, “No.” At that stage I said, “I think a reasonable fee is four per cent up to a million and three per cent over,” and he said, “Fine.” [[421]](#footnote-421)

At this stage he had not anticipated that he was going to spend a significant further amount of time in December and January negotiating the terms of the sale, and that it would take another six months of work before the matter was concluded.[[422]](#footnote-422) Had Mr Dawes refused to pay him he would have been disappointed, but he could not have forced him to pay. In the event, he put provided a formal invoice to the ACT government together with the invoices from the owners’ accountants and lawyers for the limited legal review.[[423]](#footnote-423)

Mr Parsons said that prior to settlement he had prepared a checklist which listed the things that he would provide and receive at settlement, which included a cheque for $1.1 million for the owners of Mr Spokes; a cheque for his own fees; a cheque for the accountants’ fees; and a cheque for fees for the limited legal review.[[424]](#footnote-424)

The legislative basis for the payment of his fees was that he was acting for Mr Spokes and consistent with section 45 of the *Lands Acquisition Act*, those fees were to be reimbursed by the government. When asked whether this was a valid arrangement in view of the fact that the purchase had not been made under the *Lands Acquisition Act*, Mr Parsons told the Committee that the approach that he took, and which was accepted by Mr Dawes, was that they were reaching a negotiated settlement using ‘the parameters’ of the *Lands Acquisition Act*.[[425]](#footnote-425)

* 1. Reflections after the fact

Mr Spokes Bike Hire

Reflecting on the process as a whole, Ms Edwards told the Committee that the owners were satisfied in the end for the process to come to a conclusion. Had they been relocated, the outcome would have been uncertain, and towards the end of negotiations the owners lost the desire to operate the business. Even in the construction phase of the Westside Container Village, the owners had construction workers accessing water mains in front of the business, and hoses going across the bike path. They were dealing with foremen from the construction site, saying, ‘We’re about to get 100 kids for a bike ride. We cannot have this hose across the path’. [[426]](#footnote-426)

It was not possible to relate all of the day-to-day events over the years that led to the failure of the relationship with the LDA, but she was grateful that they, as owners of Mr Spokes, did not end up being ‘collateral damage’. But it was difficult to put a value on the stress and emotional toll, on her family, of years of attempts at negotiations. Although she was not easily intimidated, there were times when she felt bullied, and she was concerned about the consequences for their family.[[427]](#footnote-427)

She said it was possible that they, as owners, developed a reputation as hard negotiators, but she did not feel that they had a choice. This was why they met with Simon Corbell in the beginning and said, ‘Don’t forget we’re down here. We’ve got this long lease. The government’s going to need to sort us out first. You’re going to have to move us before you start digging up the ground.’ She had known that it would be complicated; that it would be difficult to get like for like in a location; and that it would take a lot of work from someone in government to identify a similar location. She had realised the scale of the problem from the start, and that was why she thought that this part of the work needed to be started long before it did.[[428]](#footnote-428)

She noted that Mr Spokes Bike Hire was a tourist operator. The business was performing well, had a good reputation, and was providing a valuable service for Canberra’s tourists. But it was not looked after by government: she felt that the Chief Minister’s office was too willing to accept the LDA’s claim that they, as owners of Mr Spokes, had had been offered a number of different locations and were simply difficult to deal with.[[429]](#footnote-429)

She told the Committee that she was satisfied with the sum they were paid in the end, but she found it striking that other players who had been paid out for the same project seemed to have received generous amounts without much in the way of documentary evidence.[[430]](#footnote-430)

In total, the acquisition process for Mr Spokes Bike Hire began in 2011 when she was first contacted about the project, and finished when settlement was reached in February 2016: a period of approximately five years.[[431]](#footnote-431) The health of the business over that period was strong and it was still growing up until the time Mr Spokes Bike Hire was acquired by the ACT government. While the business did not suffer or lose value as a result of the events under discussion, she and her husband had aged as a result of their experience, and had suffered in other ways: they did their best not show it in their dealings with clients.[[432]](#footnote-432)

* 1. Committee comment

The process by which the ACT government acquired Mr Spokes Bike Hire was protracted and fraught. The process involved a number of players from the ACT government and there was little evidence of effective communication, or continuity of purpose, between them.

The Committee was concerned to be told of the character of the LDA’s actions in conducting negotiations with the owners in this instance. By way of comparison, for the acquisition of the land at Glebe Park, the LDA had gone to some lengths to expedite the sale and negotiations, once begun in earnest, had taken place over a relatively short space of time. In contrast, dealings between the LDA and the owners of Mr Spokes Bike Hire were lengthy, confused, and inconsistent, and the Committee considers that the ACT government should conduct its business to a higher standard.

The Committee notes the negative impact of this process on the owners of Mr Spokes Bike Hire and considers that this should not be the lot of small-holders who engage in business dealings with the ACT government. The Committee is acutely aware, in this instance, of the *Law Officer (Model Litigant) Guidelines 2010 (No 1)*, which describe an altogether different approach to dealing with parties who hold a view different to that of the ACT government.[[433]](#footnote-433) The *Guidelines* provide an obligation such that ‘the Territory and its agencies act honestly and fairly in handling claims and litigation brought by or against the Territory or an agency’, in the context of court proceedings.[[434]](#footnote-434)

While the transactions between the ACT government and the owners of Mr Spokes Bike Hire did not take place in court, the obligation defined by the Guidelines is nevertheless an appropriate standard for the behaviour of the ACT government. In this instance the LDA, and thus the ACT government, failed to do this, and that as a result costs for the leaseholders—financial and otherwise—were unacceptably high.

Without question this was an asymmetrical transaction, in which the resources of the lease-holders could not possibly match those available to the ACT government. The decision by the lease-holders to cease their legal representation due to mounting costs is a concrete indicator of differences in resources between the parties, and of the implications of the LDA’s approach.

In the event, it appears that an outcome to the negotiations was only achieved when a third party offered to act on the lease-holders’ behalf and brought negotiations to a conclusion. While this provided a resolution, it would not have been necessary if the conduct of the LDA, as an ACT government agency, had been consistent with accepted principles of due process.

The Committee recommends that the ACT Government conduct all negotiations for acquisitions, or any other contractual matter, in a manner consistent with Clause 3.1 of the *Law Officer (Model Litigant) Guidelines 2010 (No 1)*, and the principles of the Guidelines more generally.

# Dobel Boat Hire

* 1. Introduction

This chapter considers the acquisition by the LDA of Dobel Boat Hire. Its location at Block 16 Section 33, Acton, on the edge of Lake Burley Griffin, near Kuttabul Place, West Basin, is shown on the map provided at Appendix C of this report.

Audit Report

The Audit Report states that Dobel Boat Hire held the lease for Block 16 Section 33 and that Dobel Boat Hire had in turn sub-leased to Lake Burley Griffin Boat Hire.[[435]](#footnote-435) There were two unusual aspects to arrangements for Dobel Boat Hire. The first was the sub-lease to Lake Burley Griffin Boat Hire for which no permission was ever obtained.[[436]](#footnote-436) The second unusual feature arose from tenure of the property as a Crown lease over ‘air space’. The subject-matter expert retained for the Audit advised that Crown leases for air space in Canberra were not uncommon but that this property was a very rare example of a Crown lease for air space not attached to another Crown lease or structure under the same ownership.[[437]](#footnote-437) The LDA began negotiations in relation to the Dobel Boat Hire lease and business in December 2014 and settled on 17 December 2015 for $1.0 million.

Former Project Director, City to the Lake

Mr Xirakis told the Committee that the ACT government owned the building occupied by Dobel Boat Hire and was leasing it to the business for the specific purpose of operating a paddleboat business,[[438]](#footnote-438) under rolling 25-year leases, for which the annual payment to government was approximately $14,000 per annum.[[439]](#footnote-439) The lessee had then sublet to Lake Burley Griffin Boat Hire. Under the terms of the lease the lessee was required to seek territory permission for a sub-lease.

He spent some time attempting to find out if permission had ever been sought, and asked himself whether, if it proved to be an illegal arrangement whether the LDA needed to honour any commitments that had been made to the boat hire business; to ‘just stick with the lessee’; or to compensate the operator of the business and ignore the fact that the lessee had breached his obligations by subletting. These factors, he told the Committee, made the situation far more complicated than that of Mr Spokes Bike Hire.[[440]](#footnote-440)

Former owner, Dobel Boat Hire

When asked how he had acquired the lease and business, how it was operated and how he came to surrender the lease,[[441]](#footnote-441) Mr Pat Seears told the Committee he had acquired the lease in 1997 or 1998, for approximately $230,000.[[442]](#footnote-442)

He told the Committee that he bought the lease for the sole purpose of developing the site. Initially his son had run the paddleboat hire business for two years, and he then leased the lease and business to his brother. He had spent hundreds of thousands of dollars over the next 10 to 15 years in efforts to have development plans approved.[[443]](#footnote-443)

* 1. Timeline
* May 2014 to June 2014 — the LDA attempted to communicate with Dobel Boat Hire Pty Ltd, lessee of Block 16 Section 33 via telephone and email in order to discuss the City to the Lake Project; [[444]](#footnote-444)
* 19 September 2014 — the lease-holder contacted the former City to the Lake Project Director; [[445]](#footnote-445)
* 2 December 2014 — representatives from the City to the Lake Project Team and the GSO met with the lease-holder and the lease-holder’s business adviser; [[446]](#footnote-446)
* 24 December 2014 — representatives of the lease-holder sent a letter to the LDA offering to surrender the lease for a price of $3,075,300; [[447]](#footnote-447)
* 19 January 2015 — the lease-holder sent a revised estimate to the LDA offering to surrender the lease for $2,650,170; [[448]](#footnote-448)
* March 2015 — Herron Todd White and MMJ Valuers commissioned by the LDA to provide valuations for the lease;[[449]](#footnote-449)
* 2 April 2015 — ACT Government Solicitor wrote to the owner of the lease asking for access to further information on which to base a valuation;[[450]](#footnote-450)
* 16 April 2015 — report provided by Herron Todd White valuing the interest of Dobel Boat Hire Pty Ltd in the land as $50,000 (GST exclusive), and valuing the business at $270,000 (GST exclusive);[[451]](#footnote-451)
* 29 May 2015 — report provided by MMJ Valuers valuing the lessee’s interest in the land at $100,000 (GST exclusive) and the business operating from the site at $278,750 (GST exclusive);[[452]](#footnote-452)
* June 2015 — legal representatives representing Dobel Boat Hire Pty Ltd requested retrospective approval for the sub‐lease to Lake Burley Griffin Boat hire, but this was not granted; [[453]](#footnote-453)
* 23 November 2015 — approximately six months after the two initial valuations, the Land Development Agency sought a further valuation from Colliers International of the lease for Block 16, Section 33, and Colliers International advised that a total acquisition price could be in the range of $900,000 ‐ $1,000,000; [[454]](#footnote-454)
* 10 December 2015 — the LDA Board was advised of the acquisition; [[455]](#footnote-455)
* 17 December 2015 — the lease for Block 16 Section 33, Acton (Dobel Boat Hire) was surrendered to the ACT government for $1.0 million.[[456]](#footnote-456)
  1. Negotiations

Former owner of Dobel Boat Hire

The Committee asked Mr Pat Seears when he was first approached by government representatives seeking to acquire the lease associated with Dobel Boat Hire.[[457]](#footnote-457) He told the Committee he first heard rumours about this in 2015.[[458]](#footnote-458) Initially, when the government expressed interest in resuming the land he did not take it seriously, but subsequently, his consultant met Tim Xirakis, other staff of the LDA and a representative of the GSO[[459]](#footnote-459) a number of times in 2015, and this was later followed by an offer which he accepted. [[460]](#footnote-460) He told the Committee that his lawyer did most of the negotiations, and that he was not directly involved.[[461]](#footnote-461)

Mr Seears confirmed that his lawyer had received a letter from a government representative regarding an offer approximately six months before this, and that he himself received an offer in late November or December of 2015.[[462]](#footnote-462) He told the Committee that the offer was ‘reasonable enough’, and while it would not cover the money he had spent in preparing plans for development, he did not think the plans were viable in view of the ACT government’s intention to proceed with the City to the Lake project.[[463]](#footnote-463)

When asked about the sub-lease to Lake Burley Griffin Boat Hire, Mr Seears told the Committee that he knew not long after he signed the sub-lease that it was illegal and had gone to his solicitor to seek to clarify these arrangements. The lawyer had told him that he had no right to sublease, but he had let it go and had not pursued the matter further.[[464]](#footnote-464) The sub-lease had commenced in approximately 2000. There was no formal lease in place at the beginning. His brother had liked the business and had a lease drawn up: he himself just signed it. The lease he himself held was for a 25-year period, and if left to run would have expired in 2028.[[465]](#footnote-465)

* 1. Valuations

Audit Office

Regarding valuations obtained by the LDA to support the acquisition, Mr Stanton told the Committee that in April and May 2015 there were two initial valuations for Dobel Boat Hire. One of these valued it at $50,000 and the other at $100,000. In November 2015 a third valuation had been sought from Colliers International, which indicated a range of $900,000 to $1 million for ‘a total acquisition price’.[[466]](#footnote-466)

Audit had sought advice from Capital Valuers, which made negative comment on the Colliers valuation report.[[467]](#footnote-467) When he appeared in hearings and was asked whether it had amounted to a full valuation, Mr Swinbourne told the Committee that the Colliers report was about half a dozen pages or so in length, had the character of a discussion or issues paper, and that it was not possible to say whether Colliers had been paid for the advice.[[468]](#footnote-468)

Dr Cooper told the Committee that while conducting the Audit it had been difficult to establish ‘who paid for what’, and that this was ‘near impossible’ in some instances’. For this reason Audit had specifically asked in each instance whether free advice had been provided, to which responses were either confirmed that it was or that there had been ‘a lot of services from Colliers and we clustered them’, and that as a result Audit was not always able to match payments with services that had been provided.[[469]](#footnote-469)

Dr Cooper acknowledged ’the difficulty and the complexity’ of making a valuation in this instance, given the circumstances of lease and business, but told the Committee that to go from initial valuations of $50,000 and $100,000 to close to $1 million was ‘quite a jump’. [[470]](#footnote-470)

Former Project Director, City to the Lake

When asked about valuations for Dobel Boat Hire, Mr Xirakis told the Committee that he had sought three valuations, and that at least one of the valuers had said it had no value; another said it could be worth $50,000 in order to have the land vacated; and the third valuer did not see the point and declined to put a value on it.[[471]](#footnote-471)

He told the Committee that the Crown lessee had asked to be paid considerably more than $1 million, based on claims that there had been work done to change the conditions of the lease some years earlier, and that much money had been spent. The object of the claims was to recover this money. The lessee also took the view that if there were a restaurant the lease would be worth a lot more. Mr Xirakis told the Committee that he had regarded this as an ambit claim and did not consider it an appropriate basis for an offer.[[472]](#footnote-472)

He confirmed that in this case the lease was in fact not a Crown lease for the land but a rental lease on the building that was on the land, a ‘rental crown lease’, and that the holder of the Crown lease over the land was in fact the ACT government: Dobel Boat Hire did not own the lease. Typically, the owner of a Crown lease would own improvements the Crown lease—that is, buildings on the site— however in this instance, due to the nature of the lease, they did not: the ACT government owned all of the improvements on the site.[[473]](#footnote-473)

When asked whether a price-to-earnings ratio or ‘multiplier’ of three-to-one was a reasonable way to establish a value for business, Mr Xirakis told the Committee that in the valuations he commissioned the multiplier ‘came in at around the high twos to threes’.[[474]](#footnote-474)

Mr David James, formerly of Herron Todd White valuers

Mr David James, formerly of Herron Todd White valuers, appeared before the Committee in hearings and answered questions regarding valuations for Dobel Boat Hire.[[475]](#footnote-475)

Approach to valuation

When asked about how he had approached the valuation of Dobel Boat Hire, Mr James told the Committee that it took a long time for information to be provided. In this case there was no saleable interest in the land as it was owned by the Territory. After clarifying the nature of the tenant agreement, his firm had ascribed a nominal value for the premises, after inspection, of $50,000.[[476]](#footnote-476)

As to whether it was possible for a valuation to take into account development plans by a lease-holder for a site, and whether his valuation had included this kind of calculation, Mr James answered that it was not. He told the Committee when he met the lessee at the property when he went to inspect it, the lessee had spoken about plans for a restaurant and other developments, but that his valuation was based on a valuation of formal lease alone.[[477]](#footnote-477)

When the Committee noted that the head lessee received $1 million and the sub-lessee received $575,000, with an additional $10,000 for legal and accounting fees and rental arrears of $17,000, Mr James told the Committee that given the terms of the Crown lease he did not see how this was possible, and that there was nothing in his report that would support such a figure.[[478]](#footnote-478)

Mr Tim Heaton, formerly of MMJ Valuers

When Mr Tim Heaton, formerly of MMJ Valuers, appeared before the Committee he was asked about nature of the lease associated with Dobel Boat Hire.[[479]](#footnote-479)

He told the Committee that the lease was one in which operators of the businesses did not have ‘a sale of interest’ as it was concessional. It could reasonably be described as a ‘license to operate’, meaning that the lessee would pay rent and occupy the premises for the period of time covered by the agreement, which at that time would have expired in about eight years.[[480]](#footnote-480)

When asked about his initial assessment of the value of the land, Mr Heaton told the Committee that he had been obliged to make a hypothetical assessment on the land because in the marketplace the land would not be saleable. It was a ‘stratum parcel’, which was in most cases ‘a parcel of land which does not have a direct or full connection to ground’. This was a type of valuation which sought to value air or subterranean space. When asked, initially, by the LDA about the value of the land, he had advised that he believed there was ‘no saleable amount on the land’. While he had provided a lessor and lessee apportionment in the valuation report, this was heavily qualified and was provided just for information purposes and was not intended to be relied upon.[[481]](#footnote-481)

When asked whether he had made a valuation on the business associated with the land, Mr Heaton told the Committee that he had, but that the information was not good; it was difficult to get physical access to the business, and he did not receive information directly from the business. As a result, this part of the valuation was heavily qualified.[[482]](#footnote-482)

When asked whether, ultimately, he was happy with the valuation, he told the Committee that what he had provided was a report and assessment. In the end it was not regarded as a ‘number we could 100 per cent rely upon’ due to a lack of access to reliable financial information on the business, and as a result he could not say whether the financial information to which he had access represented the true state of affairs. In this instance, not all of the information could be verified, and this meant that what he provided was something different from a valuation report, which was ‘fully qualified, with information that has been fully verified’. [[483]](#footnote-483)

When asked whether he had made an assessment of the value of the land, he told the Committee that as the lease holder did not have a saleable interest in the land, the valuations made a hypothetical assessment as to whether the lease-holder had a legal right to the rental or the land. This was provided for information purposes, ‘if it was felt that that was an amount deemed payable’.[[484]](#footnote-484)

Capital Valuers review of Herron Todd White and MMJ valuations

Capital Valuers was engaged by the Audit as a subject matter expert to review valuations.[[485]](#footnote-485)

In relation to the valuations by Herron Todd White and MMJ for Dobel Boat Hire, Capital Valuers put the view that the Herron Todd White and MMJ reports ‘complied with industry standards but lack some important detail’ and that due to ‘poor data’ the reports were ‘heavily qualified’.[[486]](#footnote-486)

Colliers International

Instructions for and provision of advice

The Committee asked Mr Powderly questions about the process by which Colliers International provided a valuation for Dobel Boat Hire.

Mr Powderly told the Committee that Colliers had received written instructions from the LDA on 23 November 2015, following a week of discussions about the purpose of the valuation and what the instructions would be. Because it was a complicated property with more than one interest, the LDA wanted to make sure the instructions were appropriate and it received correct advice. Colliers emailed draft advice to the LDA on 30 November. This was not the final valuation report but draft advice which provided for a market value of $296,000, calculated on the basis of a raw market value of $426,000, less a figure of $130,000 to pay out the concessional lease. He thought that Colliers had forwarded the final draft of the valuation, together with an invoice, to the LDA in February 2016.[[487]](#footnote-487)

Change in valuation between draft and final advice

When asked how the valuation of $296,000 in the draft valuation increased to a range of $900,000 to $1 million in the final valuation advice, Mr Powderly told the Committee that in the final valuation of the property, market value was deemed to be $438,000, however in the period between the draft and final advice the LDA had contacted Colliers to say that it was considering whether it would pay ‘just compensation’ under the *Lands Acquisition Act*, and had asked what premium should be paid to avoid a compulsory acquisition process.[[488]](#footnote-488)

He told the Committee that the LDA asked Colliers to look at other jurisdictions, such as New South Wales, to see what was occurring and whether there were premiums paid in excess of market value. He had spoken to valuers in the Colliers team working on New South Wales infrastructure projects, such as WestConnex and NorthConnex, and found that premiums in excess of market value were being paid on grounds of disturbance, and for *solatium* in the case of residential properties, and that these ranged from $50,000 to $500,000 depending on circumstances.[[489]](#footnote-489)

He told the Committee that Colliers had provided advice to the LDA based on this information, saying that the market value of the property was $438,000 but that if the LDA wished to avoid a drawn-out litigation process it could pay up to $500,000 for disturbance, since this was consistent with payments in other jurisdictions. Colliers then advised the LDA that the maximum that could be paid for the property could be calculated by adding the two figures identified for market value and disturbance. Mr Powderly told the Committee that Colliers had not advised that the market value of the property was $950,000, but rather that this would be the maximum amount which could be paid in order to avoid litigation.[[490]](#footnote-490)

Mr Powderly confirmed that the advice provided by Colliers clearly stated the market value of the property as $438,000, considered compensation, and advised what other governments were doing in relation to compensation. Colliers had done the research it was asked to do and had advised as to the maximum to be paid in such cases.[[491]](#footnote-491)

As to whether court costs could be equal to these sums if there were extended litigation, Mr Powderly stated that they could, although this would be excessive. The greatest risk was, as in instances in New South Wales, costs resulting from holding up the construction of public infrastructure. In this instance, Colliers’ brief and instructions showed that this was a project which the ACT government wanted to progress. Although nothing of an urgent nature had happened since, if a government wished to pursue a project that had economic benefits it would not wish it to be delayed and have continuing questions over whether the project could go ahead. Governments were obliged to put a price on that. This was central to the whole argument: it was advisable for governments, when contemplating such projects, to formulate business cases as a basis on which to make decisions about whether or not they paid more than the market value in order to facilitate the project.[[492]](#footnote-492)

Calculation of base figure

When asked more information as to how the base valuation of $438,000 for Dobel Boat Hire had been calculated by Colliers, Mr Powderly told the Committee that he could not speak for the person who had done the valuation, but reading from the file there was limited evidence of two boat storage type properties situated on the foreshore that had sold—both in Yarralumla—and that the valuer had used these as a basis on which to determine a rate per square metre. The lease associated with Dobel Boat Hire was substantially smaller, and the valuer had applied a higher rate per square metre. The initial assessment was $296,000, which increased to $438,000 during the process between draft and final. It was not the sort of property for which there were many comparable examples. The valuer provided evidence of comparable sales, provided his interpretation of those sales, and provided his assessment of the value of the property in the valuation report.[[493]](#footnote-493)

The Committee noted that the site rate calculated for Block 16, Section 33 was $4,000 per square metre. Mr Powderly told the Committee that originally the site rate had been $3,000 per square metre, which was then increased to $4,000 per square metre.[[494]](#footnote-494) When asked how it this came to be,[[495]](#footnote-495) he told the Committee that between the draft and final reports, a conversation had taken place with the LDA about what they were doing with another property, and that this must have influenced the decision to change the site valuation by $1,000 a square metre, which had added more than $100,000 to the value of the property.[[496]](#footnote-496) In many instances, he told the Committee, Colliers issued draft reports, because there was scope to take account of the clients’ interpretation of evidence and opinion. Sometimes as a part of that process Colliers was convinced that a slightly higher or a lower value was warranted, and this was simply part of the process of formulating a valuation.[[497]](#footnote-497)

The Committee asked whether the change in the site rate was the result of a negotiation between Colliers and the LDA, to which the Principal responded by saying that it was not. Rather, the LDA had provided more information on other things that were taking place: there was another property with boat frontage for which the LDA was negotiating, of which Colliers was not aware until advised by the LDA.[[498]](#footnote-498)

He told the Committee that in hindsight if Colliers had been able to obtain more evidence and given more time it may have been able to reduce the difference between the draft and final valuation, however in this instance Colliers was given seven to 10 days to do the work, and he had no reason to question the competence of the Colliers valuer.[[499]](#footnote-499)

Response to review of Colliers valuation

The Committee noted comments by Capital Valuers, the Audit Office subject-matter expert, that the Colliers report did not stand on its own; could not be relied upon without further review of anomalies in the report; and that the final value lacked evidence and methodology and had not been justified.[[500]](#footnote-500) Mr Powderly told the Committee he thought that in this instance Capital Valuers was referring to the difference between the valuation proposed in the draft report and that provided in the final version, however, getting governments to release information about matters to do with compulsory acquisition was very difficult. Mr Powderly thought that if Colliers had been given that information with which to prepare its report then perhaps Capital Values would not have made such comments.[[501]](#footnote-501)

Purported conversion from concessional to market-value lease

The Committee noted that a baseline for the valuation of Dobel Boat Hire was a payment to the ACT government in 1997 of $230,000, and that the owner of Dobel Boat Hire had taken the payment of this sum to be a means to convert the concessional lease into a market value lease, although there was no documentation to support this.[[502]](#footnote-502) When asked to comment on the influence of this factor on the valuation, Mr Powderly told the Committee that information and instructions provided by the LDA to Colliers, and the report that was provided to the LDA, were predicated on the view that this sum had been paid and the matter dealt with. If that was not the case, the LDA should have advised Colliers and asked for a valuation based on the premise that this had not taken place, in which case Colliers would have provided a different valuation.[[503]](#footnote-503)

The Committee asked Mr Powderly to confirm that Colliers had been instructed by the LDA to assume that there had been a conversion from concessional to Crown lease,[[504]](#footnote-504) which he did. He also told the Committee that it was possible that the government had not processed the payment correctly, and if so this would not be a unique event.[[505]](#footnote-505)

When asked whether Colliers conducted a title search on Block 16 Section 33 to establish the type of lease through which Dobel Boat Hire had tenure, the Principal answered by saying that it had not. Colliers had been given documents, including a copy of the lease and background information by the LDA. The valuation report was predicated on the assumption that it was to be done on the information provided; and the Colliers valuer had conditioned the report to reflect this.[[506]](#footnote-506) In this instance the client was the ACT government, which had recourse to the Titles Office, the GSO and the LDA, and that this aspect of due diligence did not fall under Colliers’ responsibility if it were asked to do something in a short time-line.[[507]](#footnote-507)

Capital Valuers view on Colliers valuations

Capital Valuers, as the subject-matter expert engaged for the Audit, put the view regarding Colliers’ advice on the value of Block 16 Section 33, that:

The Colliers report does not stand on its own and cannot be relied upon without further review of a number of anomalies in the report. The final ascribed value lacks evidence and methodology and has not been justified.[[508]](#footnote-508)

Former Chief Executive Officer, LDA

In putting questions to Mr Dawes the Committee noted that the Auditor-General’s report had found that: the Colliers International advice provided in relation to Dobel Boat Hire did not stand on its own and could not be relied upon without further review; that the valuation lacked evidence and methodology and had not been justified; and that no rationale was provided for the acquisition price and the amount to be paid to the owner for the business.[[509]](#footnote-509)

The Committee asked Mr Dawes why this was so.[[510]](#footnote-510) He did not answer the question directly but justified the settlement as follows:

There were three valuations done for the boat hire business as well. If you look at those leases, I can’t remember what the Latin term is, but there is a disruption fee that you can pay as well. Part of the negotiations was about realising a price. You have to remember that when those three businesses started negotiating, they wanted in excess of $12 million for their businesses, land and all of that. We paid less than $3 million, about $2.775 million, from memory, for all of them, including GST. So it was a substantial amount less than what they wanted.[[511]](#footnote-511)

In his view, any negotiations reached a point where the purchaser was obliged to pay fair value, if it wished to avoid litigation. Where litigation took place, the winners were not the two parties, but their lawyers, so it was advisable to negotiate in the best way possible. This accorded with advice from the GSO that the LDA should attempt to negotiate privately. After the fact, he told the Committee, valuations of the businesses and land the LDA acquired was shown on the LDA books at a higher price than the LDA paid, based on a separate valuation, and this vindicated the amounts paid.[[512]](#footnote-512)

He told the Committee that he was relying on professional advice to assess the value of Dobel Boat Hire.[[513]](#footnote-513) The former owner of Dobel Boat Hire was not happy with the offer of $1 million and had only reluctantly agreed: he had asked initially for $3 million.[[514]](#footnote-514)

* 1. Committee comment

The acquisition of Dobell Boat Hire further highlights the LDA’s lack of a uniform approach to the acquisitions considered in this report. Rather, the LDA reserved to itself a broad discretion which in the Committee’s view was at odds with community expectations that government agencies will behave predictably, fairly, and spend public money wisely.

The acquisition of Mr Spokes Bike Hire was characterised by a process of negotiation which was both long and arduous. In the case of Dobel Boat Hire however, the opposite was true: the owner was paid $1 million after a relatively short period of negotiation. This was in spite of the fact that the lease was concessional and would have required a further payment to convert it to a conventional ACT Crown lease, making it inherently less valuable. This raises questions as to whether the LDA achieved appropriate value in expending public money.

The Committee recommends that the ACT Government apply a consistent approach to dealing with other parties in land acquisitions, applying similar approaches in similar settings while allowing for variations according to documented specific and defensible requirements.

# Lake Burley Griffin Boat Hire

* 1. Introduction

This chapter considers the acquisition of Lake Burley Griffin Boat Hire. Its location at Block 16 Section 33, Acton, on the edge of Lake Burley Griffin, near Kuttabul Place, West Basin, is shown on the map provided at Appendix B of this report.

Audit Report

The Audit Report states that the LDA began negotiations to purchase the Lake Burley Griffin Boat Hire business in October 2014 and settled on 17 December 2015, paying $575,000 (GST exclusive) for the business; $10,000 toward legal and accounting fees; and $16,387 to settle unpaid rent owed to Dobel Boat Hire.[[515]](#footnote-515)

Former owner, Lake Burley Griffin Boat Hire

The former owner of Lake Burley Griffin Boat Hire, Mr Jim Seears, appeared before the Committee in hearings.[[516]](#footnote-516)

When asked how he had come to operate Lake Burley Griffin Boat Hire, he said that he had purchased the business from his brother, Mr Pat Seears, for $90,000 in 1999, and had operated it until 2015.[[517]](#footnote-517) He was not aware that the sub-lease which allowed him to operate the business was illegal until the LDA expressed interest in acquiring the lease. Until that point, he had believed he had a valid sub-lease because he had paid stamp duty for the acquisition of the lease to the ACT government’s Revenue Office, and the documentation for the sub-lease was ‘stamped with their stamp’.[[518]](#footnote-518)

* 1. Timeline
* 1 January 2003 — sub-lease of boat hire and cafe business to Lake Burley Griffin Boat Hire without the approval from the ACT Planning and Land Authority, for an initial period of five years, with three options of five years each, i.e. 20 years in total and expiring in December 2022, with annual rent payable to the ACT government of $18,000;[[519]](#footnote-519)
* 27 May 2014 — the LDA commenced discussions with the owners of Lake Burley Griffin Boat Hire;[[520]](#footnote-520)
* 20 October 2014 — the LDA met with the owner and his legal adviser for a formal discussion, at which the owner indicated that he had a lack of desire to continue working the business and would consider an offer;[[521]](#footnote-521)
* February 2015 — LDA informed owners that three valuers had been appointed to undertake a valuation of the business, stock and any other items of value associated with the business, and requested access to the premises for the purposes of valuation;[[522]](#footnote-522)
* April 2015 — Herron Todd White provided valuation report, valuing Lake Burley Griffin Boat Hire at $270,000 (GST exclusive);[[523]](#footnote-523)
* May 2015 — MMJ Valuers provided valuation report, valuing business at $278,750 (GST exclusive);[[524]](#footnote-524)
* 29 July 2015 — PwC provided valuation report, valuing business at $270,000 (GST exclusive);[[525]](#footnote-525)
* 31 August 2015 — Chief Executive Officer of the LDA agreed to the purchase of Lake Burley Griffin Boat Hire Pty Ltd, including goodwill and inventory for a price of $575,000 plus GST; to pay rental arrears on behalf of Lake Burley Griffin Boat Hire from January 2014, amounting to approximately $17,000; and $10,000 for legal and accountancy fees;[[526]](#footnote-526)
* 25 August 2016 — Chief Executive Officer of the LDA corrected advice to LDA Board of 10 December 2015; advised the Board that the LDA had paid $1 million for the surrender of the lease; and that the LDA had purchased the boat hire business operating on the that land for $575,000 (excluding GST).[[527]](#footnote-527)
  1. Negotiations

Former owner, Lake Burley Griffin Boat Hire

Initial contact and negotiations

Mr Jim Seears told the Committee that he was first approached by consultants working for the LDA 18 months before he surrendered the business, after which he dealt with representatives of the LDA, who initially spoke about relocating the business however there were few options for relocation due to prevailing winds and nothing ‘ever eventuated’.[[528]](#footnote-528) Initially the LDA did not seek to acquire the business: rather it argued that he should vacate the lease because the sub-lease was invalid. His view was that he had a lease, confirmed by the fact that he had paid stamp duty on his purchase of the business. A meeting took place at the end of 2014 or early 2015 between himself, his solicitor, Mr Xirakis and a representative of the GSO, who agreed to acknowledge the lease and told him that they would pay him for loss of wages and the value of the stock held by the business.[[529]](#footnote-529)

Further negotiations

Mr Jim Seears told the Committee that Mr Dawes had contacted him when he was in Sydney for a long period, and that when he returned to Canberra he rang Mr Dawes and had the first of several meetings with him in early 2015.[[530]](#footnote-530)

Mr Jim Seears said that at the first meeting Mr Dawes had told him that the lease was not valid, to which he had responded by saying that it had been recognised by the GSO. The first meeting was mainly about the lease. In a second meeting Mr Dawes made an offer of half a million dollars, in writing, and Mr Seears had gone home to discuss it with his wife. Then he spoke to his accountant and who said the offer was too low. At a third meeting he and Mr Dawes came to an agreement on a figure, and ‘that was it’.[[531]](#footnote-531)

After the sale, the boats that had been operated by the business were ‘just sitting there rotting’. He had asked the LDA if he could operate the business until the buildings were to be demolished, but received no response. He put other proposals regarding the boats to the LDA and never received a response. As a result, the boats were ‘just sitting down there’, so ‘thick with spider webs you can hardly see the boats’.[[532]](#footnote-532)

* 1. Valuations

Audit Office

Dr Cooper told the Committee that Lake Burley Griffin Boat Hire, at settlement, received $575,000 for the purchase of the actual business; an additional $10,000 to cover legal and accountancy fees; and the payment $17,000 of rental arrears owed by Lake Burley Griffin Boat Hire to Dobel Boat Hire. As a result Dobel Boat Hire received $1 million plus an additional $17,000 in total.[[533]](#footnote-533)

Mr Stanton told the Committee that the amount paid for Lake Burley Griffin Boat Hire was for the business as a going concern. Initial valuations from three valuers had valued the business in a range from $270,000 to $278,750.[[534]](#footnote-534) Dr Cooper said that the final figure paid for the business was significantly above those of the valuations, and was in fact ‘nearly double’.[[535]](#footnote-535) The Audit had not been able to find any documentation which showed how the LDA had come to the figure ultimately paid for the acquisition of Lake Burley Griffin Boat Hire.[[536]](#footnote-536)

Mr David James, formerly of Herron Todd White valuers — as valuer

Mr David James, formerly of Herron Todd White valuers, appeared before the Committee in hearings and answered questions regarding valuations for Lake Burley Griffin Boat Hire and in particular the approach Mr James had followed in making the valuation.[[537]](#footnote-537)

He told the Committee that the financial information which was provided for Lake Burley Griffin Boat Hire was limited. It gave an indication of an annual net return of $97,500, but did not provide any other information to confirm it. Based on this he calculated a ‘potential certainty of income’ at $90,000 per annum; considered what multiplier was appropriate; decided on a multiplier of three; and proposed a value of $270,000 for the business.[[538]](#footnote-538)

When asked whether this figure took into account the period of time before the lease expired,[[539]](#footnote-539) Mr James said that it did, and that the lease was due to expire in 2028. There was an under-lease for a term of five years, between family members, which was not registered correctly, and this was not taken into account at all in the valuation, which was based, alone, on the fact that they held leasing rights up to 2028 and information received about net profit.[[540]](#footnote-540)

As to whether this valuation of $270,000 was for both lease and business, Mr James told the Committee that this would have been so if the business had been run by the original party—that is the person whose name was on the lease—rather than the under-lessee. Under arrangements as he found them, he thought that if any money from the sale had gone to that under-lessee, it would have to have come from money paid to the lessee of the premises. If money were paid, then a portion of that could have been paid in turn to the under-lessee, although this would have been made more difficult due to the fact that the lessee and sub-lessee were ‘not getting on’.[[541]](#footnote-541)

When asked whether Lake Burley Griffin Boat Hire, the sub-lessee to Block 16 Section 33, was a registered business, Mr James told the Committee that his report described it as ‘registered incorrectly’, and his view at the time was that it was not registered and had no licence to operate.[[542]](#footnote-542)

The formal lease was specific in its requirements, and made no reference to an under-lease. Because the business was not registered and was not allowable under the formal lease, his valuation had held that it was not in existence and had disregarded it. On the other hand, Pat Seears, the registered lessee, was entitled to operate such a business even though he was not operating one at the time, hence the valuation of $270,000 based on reports on net yearly earnings.[[543]](#footnote-543)

Paying $575,000 to the sub-lessee was not defensible because the sub-lessee’s business was not registered. While the under-lease between the lessee and his brother ran, with options, to 2022, as the sub-lessee’s business was not registered he could not see how its acquisition by the LDA was valid in a legal sense.[[544]](#footnote-544)

Mr Tim Heaton, formerly of MMJ Valuers – as valuer

When Mr Tim Heaton, formerly of MMJ Valuers, appeared he told the Committee he told the Committee that, for the purposes of the valuation, the sublease to Lake Burley Griffin Boat hire was not considered, as in a legal sense there was essentially only one interest in the property. Instructions were to assume that there was one legal entity associated with the lease and to factor-in projections of income that entity would receive.[[545]](#footnote-545)

* 1. Committee comment

The previous chapter raised concerns on whether value for money was achieved by the LDA in its purchase of Dobel Boat Hire. However, grounds for concern are increased when the acquisition of Lake Burley Griffin Boat Hire is considered. In this instance, Lake Burley Griffin Boat Hire’s tenure consisted of an illegal sub-lease. In strict terms, the ACT government had no obligation to compensate its owner for the loss of capacity to trade, and was advised of this. However, in the event the ACT government paid the owner $602,000 in total, including payments for the business.

This payment included $10,000 in legal and accountancy fees apparently incurred by the holder of the sub-lease and the payment of nearly $17,000 to cover rental arrears owed by the sub-lessee, Mr Jim Seears, to the leaseholder, Mr Pat Seears. In the absence of supporting documentation, it is difficult to ascertain that the LDA achieved value for money in purchasing the business known as Dobel Boat Hire, or that there was a defensible foundation for the purchase.

A further concern is that the ACT government purchased the business as a going concern but it ceased to operate at the time of acquisition. This raises further doubts on whether value for money was achieved

# Authorisation and responsibility

* 1. Introduction

This section of the report considers evidence presented to the Committee regarding the authorisation of, and responsibility for, the acquisitions considered in this and the Audit Report.

* 1. Chief Minister, Treasurer, and Minister for Economic Development

Background

As Minister for Economic Development, Mr Andrew Barr MLA was the minister responsible for the LDA during the period covered by the Auditor-General’s report. Mr Barr appeared before the Committee in hearings in the capacity of Chief Minister, Treasurer, and Minister for Economic Development.[[546]](#footnote-546)

Extent of knowledge of acquisitions

The Committee asked Mr Barr what he knew about each of the land sales at the time they were being conducted.[[547]](#footnote-547) When asked whether he had been briefed on the project, Mr Barr told the Committee that he had not been briefed on specific sites: it was understood by Cabinet, by the Cabinet subcommittee and by himself as responsible minister at the time that land acquisition would be necessary.[[548]](#footnote-548)

When asked whether he was briefed on matters during the various stages of the project, Mr Barr told the Committee that it was intended that the Land Development Agency would take the lead on the land acquisition process. This was one of the catalysts for the broader policy framework for the City to the Lake project, the City Plan and the *Lands Acquisition Policy Framework*.[[549]](#footnote-549)

His own engagement was in relation to policy and planning frameworks for the project, and he was not briefed on details of land acquisitions in connection with Mr Spokes Bike Hire, Dobel Bike Hire or the land adjacent to Glebe Park. He had simply been advised that there would be land acquisition and it would be the subject of the LDA's processes around negotiation, the appointment of a negotiator, valuers and so forth, but not on the commercial nature of the negotiation, as it would not have been appropriate for a minister to be engaged in commercial negotiations. Rather, under the *Lands Acquisition Policy Framework*, these responsibilities were delegated to the Chief Executive of the LDA, the LDA, and the LDA Board.[[550]](#footnote-550)

When asked whether he, as the responsible minister, would have been informed of completed or anticipated acquisitions, he said that he was not informed of such things as a matter of course, and whether or not he was informed regarding a particular acquisition would have depended on the amount to be paid for the acquisition, in accordance with the *Lands Acquisition Policy Framework*.[[551]](#footnote-551)

As responsible minister, he had received briefings from the Board of the LDA each year; would attend one board meeting each year; and would on occasion meet with its chair, although not more than once as a year. Most of his engagement with the LDA would have taken place through contact with its chief executive, deputy chief executive, or LDA staff associated with particular projects.[[552]](#footnote-552)

When asked who kept an eye on the Board to make sure it was fulfilling its responsibilities, Mr Barr told the Committee that the Board had responsibilities outlined under legislation. There was a range of entities within the public sector who provided accountability for boards, chief executives and others. Neither he nor his office received copies of LDA Board agendas or minutes, and did not scrutinise the work of the Board in that way.[[553]](#footnote-553)

Approvals for acquisitions exceeding $20 million per year

When asked whether he, his office or Cabinet had been approached to approve sales of more than $20 million a year, as provided for under the *Lands Acquisition Policy Framework*, Mr Barr told the Committee that according to his recollection acquisitions for the most part fell either in the category of above the $20 million threshold prescribed in the Framework, in which case decisions would come before Cabinet, or below the threshold, in which case it would be a matter within either the chief executive's delegation, or the that of the chief executive and board in combination. There were very few which were considered by just the minister with the board and the chief executive, as most were Cabinet-level decisions regarding large scale transactions, and there were not many of those.[[554]](#footnote-554)

As to the process followed when presented with acquisitions in excess of $20 million, Mr Barr told the Committee that there would be a brief agency comment, and that Treasury would make comment. The brief with agency comments would precede a decision by Cabinet and this went through a coordination comment process. Sometimes ministers would ask questions and seek further information before making a final decision and as a result a decision could be considered over the course of more than one cabinet meeting.[[555]](#footnote-555)

The kind of information that would be provided in such a brief, he told the Committee, would be information that would outline the business case for the acquisition.[[556]](#footnote-556) However, this was a rare thing which had occurred infrequently in relation to the work of the LDA. There were occasions, though, when due to a desire for strategic acquisition government sought to add to land supply for the medium term, and it was in this area that most activity had taken place in recent times, rather than purchases within existing urban areas.[[557]](#footnote-557)

Valuations would be included in such a business case as these would be the foundation of any Treasury assessment of an acquisition. However, there would also be an assessment against other strategic priorities. An example of this would be the acquisition of land that was contiguous with other government land that would deliver a public benefit or acquisitions of land that could resolve other policy challenges. Regarding the land adjacent to Glebe Park, for example, there was a need for a better water treatment solution for stormwater flowing into Lake Burley Griffin, a re-alignment of Parkes Way, and the release of some parcels of land adjacent to Parkes Way.[[558]](#footnote-558)

Role of responsible minister in overseeing LDA

Mr Barr was asked to describe the role of the responsible minister in overseeing the LDA. He told the Committee that the LDA had been established by the Stanhope government under a set of legislative parameters that provided for an independent board to be appointed. There was necessarily a degree of arm's length oversight by a minister in relation to the commercial activities the LDA had been required to undertake. The establishing legislation for the LDA provided for a skills-based board, a chief executive, and an administrative structure which allowed interaction with the commercial property sector.[[559]](#footnote-559)

In this instance, he said, this process had been tested and found wanting, particularly regarding documentation of decisions that were delegated to the LDA and its board. In his view there was no point in having a board and a chief executive officer if every business decision were required to be approved either by Cabinet or a minister, although it was clearly necessary to have some degree of ministerial oversight.[[560]](#footnote-560)

There were lessons on which the government had drawn in proposing a legislative framework for new entities which were successors to the LDA: the Suburban Land Authority and the City Renewal Authority. Lessons learned from the Auditor-General’s report had been put into practice in the legislation which governed the new agencies, and this included clarification of the responsibility of their boards and chief executive officers.[[561]](#footnote-561)

Land adjacent to Glebe Park and Canberra Casino

The Committee referred Mr Barr to the FOI documents discussed in Chapter 3 and asked whether he had given instructions to accelerate the acquisition of the land adjacent to Glebe Park, to which he replied that he had not.[[562]](#footnote-562) Point 30 of the Brief stated that community consultation would be important ‘given concerns by residents affected by Aquis rights to block 24 section 65’.[[563]](#footnote-563)

The Committee asked Mr Barr what rights to the land were held by Aquis.[[564]](#footnote-564) He said that Aquis held no rights of which he was aware. The Committee noted that in the document Mr Barr had ticked the dot-point referencing ‘rights’ held by Aquis, to which Mr Barr agreed, adding that he had notated this as being ‘essential’.[[565]](#footnote-565) The Committee asked whether the government had acquired the block for the use of the casino,[[566]](#footnote-566) to which Mr Barr responded: ‘No, the government purpose for the acquisition has been outlined’. He told the Committee that was not aware that the casino held any rights to the land adjacent to Glebe Park.[[567]](#footnote-567)

Mr Barr told the Committee that there was no map associated with the brief and that he may have confused the two blocks.[[568]](#footnote-568)

Mr Barr told the Committee that the ACT government had made no decision giving the casino rights to the land adjacent to Glebe Park. When Aquis Entertainment released their initial proposal they expressed interest in taking over the convention centre, together with land adjacent to it, but the ACT government had agreed not to support that aspect of the proposal. Cabinet had had a number of discussions, and had made public its position, particularly regarding the land adjacent to Glebe Park. The Committee also asked whether the Minister had met with the owner of the casino in May 2015, to which the Minister replied that he had.[[569]](#footnote-569)

Renewal of activity

The Committee asked whether there were other circumstances which contributed to the renewal of activity in efforts to acquire the land adjacent to Glebe Park in April 2015.[[570]](#footnote-570) Mr Barr told the Committee that at this point there had been an update to Cabinet and to a relevant Cabinet subcommittee in relation to the City to the Lake project.[[571]](#footnote-571)

As to whether this would have taken the form of instructions from Cabinet as to why it was important to progress the acquisition, Mr Barr told the Committee that it did not, and that it consisted of discussion about various elements of the City to the Lake project, and progress on the City Plan and the City to the Lake project.[[572]](#footnote-572)

As to whether there was a perception that the acquisition was taking too long, Mr Barr said there was not: the acquisition was not a major feature of the broader project. Most discussion was focused on the proposed realignment of Parkes Way and major pieces of public infrastructure such as convention centres, stadia, the West Basin public realm, the sequencing of land release, and consideration of how best to provide a connection between Vernon Circle and the Constitution Avenue project.[[573]](#footnote-573)

Changes made since the Auditor-General’s report

Mr Barr told the Committee that a number of changes had been made to the former LDA after the Auditor-General’s report was released.[[574]](#footnote-574) The government had accepted and implemented all seven recommendations contained in the Auditor-General's report so as to enhance probity and governance when undertaking such activities. The Land Development Agency, when it still existed, had established a governance program to address all of the Auditor-General's recommendations, relating particularly to executive ownership and accountability for governance, and training was undertaken for all staff.[[575]](#footnote-575)

He told the Committee that this process of investing in public sector governance was a continuous process, continuing into new agencies for land development commencing 1 July 2017 with the creation of the City Renewal Authority and the Suburban Land Agency. The two new separate land development agencies had been established with clear reporting mechanisms and governance structures, and the Assembly had passed new legislation and the new agencies had commenced at the start of the first financial year following the most recent ACT election.[[576]](#footnote-576)

A better model of governance was demonstrated by the appointment of independent governing boards that were accountable to their minister for agency performance; the creation of dedicated chief executive officers for each agency to ensure clear lines of accountability to boards; annual direction-setting by ministers through a legislative statement of expectation; and enhanced statutory reporting requirements for land acquisition.[[577]](#footnote-577)

As to how oversight arrangements for the newly-created Suburban Land Agency and City Renewal Authority compared with those for the LDA, the government had made changes regarding board membership, delegations and chief executive responsibilities, and levels of ministerial oversight. In this, it sought to find a balance between competing priorities. Officers were often told to operate more commercially and to not be excessively bureaucratic.[[578]](#footnote-578) However, the lessons learned from the experience with the LDA was that this view should be resisted in favour of stricter public sector governance protocols, the details of which were outlined in legislation and instruments supporting this change.[[579]](#footnote-579)

Regarding the significance of changes to board structures in the new organisations, Mr Barr told the Committee that:

* for the City Renewal Authority, for which he had ministerial responsibility, legislation required a range of different skills amongst members of the board;
* another change addressed concerns about the closeness of relationships between board members and the development industry; and that
* as a result, amongst the membership of the board of the City Renewal Authority there was no-one, with the exception of the National Capital Authority's nominee, who resided or had business dealings in Canberra.[[580]](#footnote-580)
  1. Former Project Director, City to the Lake

Background

The Committee asked Mr Xirakis questions regarding knowledge of, and responsibility for, the actions of the LDA when he appeared before the Committee.[[581]](#footnote-581)

Briefings to LDA executive and ministers

Mr Xirakis was asked whether he had briefed senior executives and ministers on the City to the Lake project. He told the Committee that he had briefed ministers and been present at briefings. One of the most surprising things from his point of view was the large volume of briefing and reporting done by the City the Lake team. In the end, this accounted for the output of two full-time positions, senior officers in the team who were constantly involved in providing briefs to Cabinet and the responsible minister. Briefing began in earnest in July 2014 as soon as there was the resourcing became available to engage this staff,[[582]](#footnote-582) and were provided to Mr Dawes through his direct line manager and Mr Stewart, to Mr Dawes. If the team were briefing to the minister, the brief would go through all those three positions and then to the minister.[[583]](#footnote-583)

There were also face-to-face meetings with one of the minister's advisers. The City to the Lake project team had been asked if it could hold these meetings so that the minister's office was more aware of what the team was doing. As a result, the City to the Lake project team organised a weekly meeting with one of the minister’s advisers for approximately an hour and review topical issues for the project. The minister for whom the adviser worked was Mr Barr as Minister for Economic Development.[[584]](#footnote-584)

Mr Xirakis told the Committee that the City to the Lake team was constantly writing briefs and briefed every day. He had a team of experienced brief writers from the ACT government who were ‘elite brief writers’. Some persons within the scope of the Audit had claimed that they were not getting enough information but, he told the Committee, he consistently briefed senior staff of the LDA, including Mr Dawes, and the responsible minister, and that every report and brief went through the sequence of officers he described. He also had regular meetings with his immediate supervisor in which they discussed issues of the day, and his team also had meetings with the minister's office.[[585]](#footnote-585)

However, he told the Committee, Mr Dawes and Mr Stewart were very difficult men to get a meeting with. It had been one of his complaints that he was running a big project but wasn’t able to schedule a 15-minute with members of the senior executive. As a result, he met Mr Dawes, directly, approximately once every three months.[[586]](#footnote-586)

Involvement of Government Solicitors Office

Regarding the involvement of the Government Solicitors Office (GSO), Mr Xirakis told the Committee that no meeting was held, or item of correspondence sent, without consultation with the GSO, and that at times there were three senior people from the GSO, including the Solicitor-General, providing advice on how to deal with particular issues.[[587]](#footnote-587)

* 1. Former Chief Executive Officer, LDA

Background

The Committee asked Mr Dawes questions about responsibility for, and knowledge of, the acquisitions considered in the Auditor-General’s report.[[588]](#footnote-588)

Role in negotiations

The Committee noted that Mr Dawes had taken an active role in negotiations for acquisitions considered in the Auditor-General’s report and asked whether this was usual practice for the CEO of a government agency to do this.[[589]](#footnote-589) Mr Dawes told the Committee:

I did not do the negotiations on Glebe Park. That was done by my deputy at the time. But obviously my deputy kept me up to date on that particular transaction. Initially I was not involved in the Spokes or the Seears purchases. That was done by the project director of the City to the Lake project at the time. But I think everyone is well aware of some of the discussions that appeared on the front page of the Canberra Times through those negotiations. After the project director was finished up at the LDA, I then took over those negotiations, yes, to try to actually get things back to at least people talking to one another.[[590]](#footnote-590)

As to whether he had taken over negotiations on the land adjacent to Glebe Park after Mr Stewart had left the LDA on 7 August 2015, he said that the transaction was ‘virtually finished and finalised at that point in time’.[[591]](#footnote-591)

Regarding negotiations for land at West Basin, he said that negotiations for these blocks were initiated by the former Project Director, and that he—Mr Dawes—had taken over negotiations when Mr Xirakis had left the LDA in August of 2015.[[592]](#footnote-592) As to whether, specifically, he had conducted negotiations for the acquisition of Mr Spokes Bike Hire, he said ‘At the end I did, yes’. He met the owners at a lawyer's office in Marcus Clarke Street, and an officer from the GSO[[593]](#footnote-593) was present, as he was at any meeting the former CEO subsequently held with Mr Parsons, the negotiator acting on behalf of the owners of Mr Spokes.[[594]](#footnote-594)

He was not involved in negotiations for Dobel Boat Hire but was for negotiations regarding Lake Burley Griffin Boat Hire, in relation to which he met and negotiated directly with the owner. Again, the representative from GSO was present at this meeting.[[595]](#footnote-595)

Absence of documentation

The Committee asked Mr Dawes why it was that no documentation of negotiations or rationale for the final purchase price existed for the acquisitions of Dobel Boat Hire, Lake Burley Griffin Boat Hire, and Mr Spokes Bike Hire.[[596]](#footnote-596) He said that in hindsight he would do things differently and agreed that there was insufficient documentation.[[597]](#footnote-597)

He told the Committee that he had been very disappointed at the state of record-keeping on negotiations. When he asked the GSO for minutes or notes taken by Mr Gray, he found that they were not legible. He was relying on others to maintain records, but this was not an excuse, as he should have been making more detailed file notes himself.[[598]](#footnote-598) At the time he was asking for various reports and not getting records which he thought should have been readily available, and as a result chose to terminate Mr Xirakis’ contract.[[599]](#footnote-599)

He told the Committee that the Public Interest Disclosure [PID] which led to the Auditor-General’s Performance Audit, had arisen after the LDA had terminated Mr Xirakis’ contract. He had done some ‘very good things’, but negotiations were failing, and record keeping was not good, so he was let go. Subsequently the LDA appointed a new director for the City to the Lake project, and implemented a new governance regime.[[600]](#footnote-600)

* 1. Government Solicitors Office

Background

Mr Peter Garrisson, Solicitor-General (executive in charge of the GSO), appeared before the Committee and responded to questions about the GSO’s role in matters considered by the Auditor-General’s report.[[601]](#footnote-601)

Role of the GSO in supporting land acquisitions

The Committee asked Mr Garrisson to describe the role of the GSO in supporting land acquisitions by government.[[602]](#footnote-602) He told the Committee:

The office of the Government Solicitor supports the government and its agencies in relation to, in essence, almost all of its legal services. Amongst those is land acquisition. Land acquisition takes a variety of forms. Our involvement can range from simply providing advice to the drafting and settling of the relevant transactional documents once it is done. I would say that with the overwhelming majority of our work in the field there is already, in effect, a deal done and then they come to us.[[603]](#footnote-603)

When asked whether the upshot of this was that the GSO performed conveyancing for government acquisitions of land, Mr Garrisson told the Committee that most of the Territory’s conveyancing was dealt with by private law firms, as he had made a decision that this should be outsourced. In addition, there were a handful of major development transactions that were done by private firms on behalf of the GSO, dependent on considerations of expertise and capacity.[[604]](#footnote-604)

His office dealt with large developments on behalf of government, which could range from acquisitions by way of purchase at auction, negotiated deals with sellers, or acquisition under the *Lands Acquisition Act*, either by agreement or by compulsion. These were avenues open to government, depending on circumstances.[[605]](#footnote-605)

Role of the GSO

The Committee asked Mr Garrisson what advice the GSO had provided in relation to the acquisition of the land adjacent to Glebe Park.[[606]](#footnote-606)

He told the Committee that he could not give the detail of the advices, due to the constraints of legal professional privilege. The GSO had provided an initial advice about acquisition options for the land in the early days of the acquisition process, he thought on 9 May 2014, and there were some further minor communications after that, but his office had no further significant involvement until June 2015, when it received a contract of sale for the transaction.[[607]](#footnote-607)

As to whether there was ‘radio silence’ between the GSO’s initial advice on the land adjacent to Glebe Park, and receipt of the contract at the end of June in 2015, he agreed that this was so. After minor communications in the two months after May 2015 the GSO’s next substantive involvement was when it received the contract: a deal had been done and the GSO was instructed to finalise the contract.[[608]](#footnote-608)

He told the Committee that the GSO did not provide advice to government regarding the *Lands Acquisition Policy Framework*, and did not provide any advice regarding the acquisition to the Board of the LDA during this period. He provided informal advice to the Board regarding the *Framework*,[[609]](#footnote-609) when concerns that the Board had not complied with the terms of the policy became public, at which point he expressed a view which aligned with that of the Australian Government Solicitor: that ‘the direction meant what the direction said’.[[610]](#footnote-610)

GSO support for West Basin acquisitions

The Committee asked whether the GSO had been more involved in the acquisitions of Mr Spokes Bike Hire and Dobel Boat Hire than it had been with the acquisition of the land adjacent to Glebe Park.[[611]](#footnote-611)

Mr Garrisson said that there had indeed been more involvement in relation to these transactions, although it was ‘intermittent’, occurring every few weeks. Sometimes there would be an intense period, in which the GSO provided advice about possible ways to resolve matters, but the key role of the GSO was to support negotiations. In both cases, negotiations were difficult, and were untidy in that at some times his office was dealing with lawyers, at others with the parties directly, while at other times the parties were dealing directly but with lawyers involved, and this made communication more difficult.[[612]](#footnote-612)

When asked whether, in relation to Dobel Boat Hire, the GSO was operating without written instructions from the LDA, Mr Garrisson agreed, and described this as not the best way for the transaction to proceed. As to whether this was usual or unusual, there were some instances where, due to urgency, the GSO took oral instructions and documents were settled on the basis of the client’s instructions.[[613]](#footnote-613) One of the principles of running of a commercial legal practice, which in large part described the GSO’s property and commercial work, was responsiveness to the needs of the client. This included flexibility about the way in which instructions were received and responded to: excessive bureaucratisation of legal work attracted negative comment from clients. Sometimes the GSO did not receive instructions until a matter was closer to resolution than was ideal, in which case it had to respond quickly to clarify instructions and draft documents as required.[[614]](#footnote-614)

However, it was more usual for instructions to come into the office in written form as requests for legal advice accompanied by relevant documents.[[615]](#footnote-615) In this case the acquisitions of lease and business for Mr Spokes Bike Hire and Dobel Boat Hire were iterative processes, in which different players were involved in providing advice to the owners. As a result of discussions and negotiations, deals were struck which the GSO was instructed to document, which it did.[[616]](#footnote-616)

The Committee noted that the Audit Report had stated that a ministerial advisor had been present at a meeting between the owners of Mr Spokes, the former Project Director and a representative of the GSO,[[617]](#footnote-617) and asked whether it was usual to have ministerial involvement and interest in land acquisitions at this level of detail.[[618]](#footnote-618) Mr Garrisson said that this was not ordinarily the case. On the other hand, a minister’s office or ministerial advisers could become involved because a party had made a representation to the minister’s office, in the context of a constituent raising an issue with a minister, and the minister would often feel some obligation to ensure that these concerns were being addressed.[[619]](#footnote-619)

Acquisitions of businesses by government

The Committee asked about the acquisition of businesses by the ACT government, and whether this was usual. Mr Garrisson told the Committee that in this instance what was being acquired was the land but, according to the principles of compensation, this involved not buying the land alone because there was also value apportionable to the business. In a consensual transaction, a seller would wish to attribute a value to the business, and a buyer should take this into account to ensure a willing seller.[[620]](#footnote-620)

Mr Garrison advised that if the land were being acquired under the *Lands Acquisition Act* a compensation obligation under the Act would take into account matters that were beyond the property value of the land. This could include legal costs, transactional costs, the cost of moving a business or house, and a range of other things. As a result, he told the Committee regardless of the structure of the transaction, the end result was that the buyer paid compensation for the land and what was on the land. If the seller were attributing a value to its business, such as fixtures and fittings, the building and other things, which were ordinary incidents of such a transaction, these were also subject to compensation under the *Lands Acquisition Act,* which set out a list of items which could be taken into account.[[621]](#footnote-621)

When asked whether he was aware of other instances in which the Territory had acquired a business, Mr Garrisson told the Committee that he could not recall a specific instance in the time he had been employed by the Territory. He said that the Territory had entered into business agreements on different occasions, although he had no recollection of specific examples. While they were not commonplace, in such circumstances the value of a business would form part of the consideration for buying a block of land. When asked under what head of power, or legislative provision, the Territory had acquired these businesses Mr Garrisson told the Committee that the Territory had acquired them simply as a function of its ordinary power to enter into contracts.[[622]](#footnote-622)

When asked whether the business acquisitions were simply seen as a part of moves to acquire the land, Mr Garrisson told the Committee that this was the way the matter was viewed and that instructions received by the GSO reflected this.[[623]](#footnote-623)

* 1. Committee comment

Roles and responsibilities in connection with the acquisitions considered in this report were complex, and that in general persons who were involved in these transactions appear to have disavowed their responsibility. If all of these representations were to be believed, then the events considered in this report would have no author. It appears more likely that a number of participants contributed to practices that can be considered, at best, ‘informal’. In aggregate the Committee believes these actions do not meet an acceptable standard for the conduct of transactions by government. Taken as a whole, these actions are suggestive of an environment in which compliance with relevant principles was low. This indicates low levels of transparency and accountability and is a matter of grave concern.

# The *Lands Acquisition Policy Framework*

* 1. Introduction

The Audit Report found that the LDA had not complied with the *Lands Acquisition Policy Framework* in making the acquisitions considered in the Audit Report. In particular it found that:

None of the acquisitions were approved by the Land Development Agency Board, despite the *Land Acquisition Policy Framework* stating that acquisitions for less than $5 million needed to be approved by that body.[[624]](#footnote-624)

The Audit Report found that the LDA had relied upon an ‘interpretation document’ which provided an inaccurate representation of the provisions of the *Framework*, rather than the *Framework* itself, and that this had contributed to failures in compliance.[[625]](#footnote-625)

The *Framework* provided principles that were to govern the exercise of the LDA’s functions under the *Planning and Development Act 1997*; to support the ACT Government’s Statement of Governance Arrangements for the LDA; and to improve the LDA’s capacity to pursue land acquisitions in the open market.[[626]](#footnote-626)

The Minister for Economic Development signed the *Planning and Development (Land Acquisition Policy Framework) Direction 2014 (No 1)* on 14 June 2014, and it came into effect in June 2014.[[627]](#footnote-627)

* 1. The *Framework*

The *Planning and Development (Land Acquisition Policy Framework) Direction 2014 (No 1)* was in effect from 20 June 2014 to 30 June 2017 and set out criteria and principles for the acquisition of Crown leases by the ACT government.[[628]](#footnote-628)

The Schedule to the *Framework* stated:

All proposed acquisitions are to be assessed against the principles and associated tests provided in this Land Acquisition Policy Framework. All tests must be followed for an acquisition.[[629]](#footnote-629)

A section made provision for ‘Acquisition Thresholds and Approved Decision Makers’:

The following thresholds and decision makers apply to all LDA land acquisitions:

a. below $5 million – agreement by the LDA Board with advice to the Minister for Economic Development or the Minister responsible for administering Chapter 4 of the Planning and Development Act 1997;

b. between $5 million and $20 million – agreement by the Chief Minister and Treasurer. LDA is to provide a business case to ACT Treasury for all such proposals; and

c. above $20 million - agreement by the government.[[630]](#footnote-630)

Another section provided:

The LDA Board may refer any acquisition below $5 million to the government should it consider it is appropriate.[[631]](#footnote-631)

A further section provided:

Government agreement is required for any acquisition by the LDA that results in a cumulative annual total of $20 million in acquisition being exceeded. The cumulative annual total means all acquisitions within a financial year - 1 July to 30 June.[[632]](#footnote-632)

Principles

The *Framework* set out four principles against which proposed acquisitions were to be assessed, each of which gave rise to ‘guiding questions’ and tests. It was necessary for these to be successfully applied for an acquisition to meet the requirements set out in the *Framework*.

The ‘Intended Outcome Principle’ gave rise to Test 1, ‘An intended outcome has been identified for the proposed acquisition site’.[[633]](#footnote-633)

The ‘Policy Alignment Principle’ gave rise to Tests 2, 3 and 4:

Test 2: The intended outcome for the proposed acquisition advances the Government’s land development policies as set out in the ACT Planning Strategy and any other relevant Government strategic spatial planning documents and requirements.

Test 3: The intended outcome for the proposed acquisition is consistent with the Statement of Government Policy for the Land Development Agency.

Test 4: The intended outcome for the proposed acquisition is consistent with any other relevant Government policies.[[634]](#footnote-634)

The ‘Value for Money Principle’ gave rise to Tests 5, 6 and 7:

Test 5: The proposed purchase price for the site is consistent with the independent market valuation.

Test 6: If a commercial outcome is sought from the proposed acquisition site, a business case has been prepared that demonstrates that a satisfactory commercial return will be realised, taking into consideration any holding costs, redevelopment costs, and opportunity costs.

Test 7: If a non-commercial outcome is sought from the proposed acquisition site, any holding costs, redevelopment costs, and opportunity costs have been demonstrated to be reasonable and not onerous.[[635]](#footnote-635)

The ‘Risk Management Principle’ gave rise to Tests 8 and 9:

Test 8: The proposed acquisition will not expose the Territory to risks that are not able to be appropriately managed.

Test 9: The intended outcome for the proposed acquisition is reasonably achievable.[[636]](#footnote-636)

* 1. Application of the *Framework*

The Committee asked questions regarding the application of the *Land Acquisition Policy Framework* in hearings of 27 September 2017.

Chief Minister

When asked whether he had approved the *Planning and Development (Land Acquisition Policy Framework) Direction 2014 (No 1)* in June 2014 and whether this was the first time there had been such a framework for the LDA, Mr Barr agreed.[[637]](#footnote-637) When asked about the process for finalising the *Framework*, Mr Barr told the Committee that there had been Cabinet-level consideration and approval, and that a full cabinet submission had been made for the proposal.[[638]](#footnote-638)

The Committee noted that in August or September of the following year, 2015, the Board of the LDA had approved a ‘guidance procedure’ for the LDA’s interpretation of the *Framework* which appeared to diverge from the plain words of the Framework. When asked when he first became aware that the LDA held a different interpretation of the *Framework*, Mr Barr told the Committee that he became aware of this only with the release of the Audit Report.[[639]](#footnote-639)

Former Chief Executive Officer of the LDA

When asked about an interpretation, in documentary form, which had been developed and put into effect in the LDA, and which the agency relied upon rather than the text of the *Lands Acquisition Policy Framework* itself Mr Dawes told the Committee that the original proposal for the *Framework* had been initiated by the LDA in 2012, following the purchase of Glenloch Station. In this instance the transaction had been considered and approved by Cabinet, and the LDA sought an alternative process for future acquisitions.[[640]](#footnote-640)

As a result of questioning in an Estimates hearing of 22 June 2016,[[641]](#footnote-641) and it being referenced in the Audit Report, the LDA checked the provisions of the *Framework*. Mr Dawes told the Committee that differences between the interpretation document and the *Lands Acquisition Policy Framework* had been caused by a change in wording in the *Framework* prior to it being enacted. He told the Committee that in his view this hinged on the fact that the word ‘strategic’ had been removed and the word ‘all’ added.[[642]](#footnote-642)

Prior to the change of wording coming to light, he was working on the assumption that there were two approaches to acquisitions. One was strategic acquisition, which would be used in situations similar to the purchase of Glenloch Station. These would be referred to Cabinet and the various thresholds provided for in the *Framework* would apply. If however the LDA was pursuing a particular project—a ‘project acquisition’—then payment for the acquisition would be within his delegation as Chief Executive Officer of the LDA, which allowed him to authorise purchases up to $10 million.[[643]](#footnote-643)

Similarly the LDA Board, on the basis of the interpretation document, believed that the *Framework* applied to strategic acquisitions and not to project acquisitions. Because the purchases of the land adjacent to Glebe Park and the other acquisitions considered in the Audit Report were made specifically for the City to the Lake project, the LDA’s view was that these were project rather than strategic acquisitions and were thus not subject to the requirements set out in the *Framework*.[[644]](#footnote-644)

Later in hearings, the Committee noted that Mr Dawes had told the Committee that problems with the LDA’s reliance on its interpretation of the *Lands Acquisition Policy Framework* had arisen due to a change of wording between the early drafts of the *Framework* proposed by the LDA and the final version put into effect. It asked when the LDA had realised that there was a difference between the *Framework* and the interpretation document, and how it was that nobody from the LDA had read the version of the *Framework* that was put into law.[[645]](#footnote-645)

Mr Dawes told the Committee that he and others in the LDA realised there was a discrepancy between the interpretation document and the *Framework* ‘very late in the piece’. This was, he said, demonstrated by the fact that he was still making statements on differences between strategic and project acquisitions for some months after the Estimates hearing. As to why no-one in the LDA had read the published version of the *Framework*, he told the Committee that because the *Framework* had been initiated from within the LDA in 2012 and, had taken it through a number of iterations, LDA staff assumed that they knew its contents.[[646]](#footnote-646)

Former Deputy Chief Executive Officer, LDA

The Committee asked Mr Stewart questions about protocols for acquisition of land by the ACT government, in relation to the purchase of the land adjacent to Glebe Park.[[647]](#footnote-647)

Mr Stewart told the Committee that once he and the owners of the land adjacent to Glebe Park had a verbal agreement on a price, he had assumed that the acquisition would have gone to the LDA Board for consideration. Other acquisitions had, although he was hampered in commenting on approaches to land acquisition under the *Framework* because he not been directly involved in negotiations for land other than those for the land adjacent to Glebe Park.[[648]](#footnote-648)

When asked whether a Treasury assessment had been conducted for the land adjacent to Glebe Park, Mr Stewart told the Committee that it had not, because the *Framework* identified dollar-value thresholds up to which point decisions could be made by the LDA Board. A Treasury assessment was unlikely for purchases under the first threshold, and anything over the threshold would have been considered by the Chief Minister or Cabinet.[[649]](#footnote-649)

* 1. Committee comment

The Committee is concerned that a significant government agency—the LDA—did not comply with a legislative instrument specifically designed to govern the agency’s acquisitions of land.

As noted, some witnesses believed that the LDA’s failure to comply with the *Framework* was the result of a minor change which had crept into the wording of the regulation, and that in this final form the regulation was not consistent with the purpose for which it was developed. It also emerged that the LDA was not relying on the *Framework* itself as the primary authority on acquisitions, but an interpretation document which provided an inaccurate characterisation of the Framework. Taken together, these aspects of reported actions by the LDA raise questions as to whether compliance with statute was the LDA’s first priority.

Other statements by former staff of the agency provided some basis for a view that the LDA’s purpose as an agency was ambiguous. Frequent references to ‘value’ and ‘uplift’ in the context of the City to Lake project suggest that it was not clear whether the purpose of project was to provide a public benefit or to generate revenue for the ACT government.[[650]](#footnote-650) To the extent that the agency took the second view it was operating as if it were a private-sector entity, rather than a public one. This may help to explain why some of the LDA’s processes diverged so remarkably from those expected of a government agency, not least its compliance with relevant legislation.

In any case, explanations given by relevant witnesses as to why the LDA did not comply with the *Land Acquisition Policy Framework* were not satisfactory. The *Framework* was a key piece of legislation for the operation of the LDA, to which it appeared to pay scant regard, and this raises questions about probity.

Assurance for the future

It is important to ask whether there could be a repeat of such behaviour, and whether all reasonable steps have been taken to ensure a better standard of practice in the future for government acquisitions and disposals of land. As noted elsewhere in this report, the *Land Acquisition Policy Framework* is no longer in force because the relevant statutory provision ‘lapsed on omission of the authorising provision by *City Renewal Authority and Suburban Land Agency Act 2017*’.[[651]](#footnote-651)

Assessment of regulations and instruments issued under the *City Renewal Authority and Suburban Land Agency Act 2017* shows that the counterpart of the *Land Acquisition Policy Framework*, for operation of the City Renewal Authority, is the *City Renewal Authority and Suburban Land Agency (City Renewal Authority Land Acquisition) Direction 2017*.[[652]](#footnote-652) This provides that the ‘City Renewal Authority must provide to the Minister for endorsement a business case for all proposed land acquisitions to which this direction applies’, and specifies the matters to be addressed in the business case.[[653]](#footnote-653)

The Direction provides that the City Renewal Authority ‘may only acquire land following the Minister’s approval of the final business case in accordance with this Direction’.[[654]](#footnote-654) Similar provision is made for the Suburban Land Authority by the *City Renewal Authority and Suburban Land Agency (Suburban Land Agency Land Acquisition) Direction 2017*.[[655]](#footnote-655)

In considering whether these two items of legislation—both successors to the *Land Acquisition Policy Framework*—adequately provide assurance against a repetition of the events considered in this and the Audit Report, the Committee notes two things. One is that acquisitions can only be made, under these regulations, with the provision and approval of a business case to the relevant minister. This represents a reversal of the decentralisation of decision-making on land acquisitions provided for under the *Lands Acquisition Policy Framework*. Under the *Framework*, decision-making power was accorded to the LDA in exchange for the requirement to comply with a series of tests. In the Committee’s view this new arrangement has the advantage of re-establishing the relevant minister’s direct formal responsibility for land acquisitions and, if complied with, would prevent a recurrence of an ACT government agency acquiring land under its own discretion.

A second feature, however, is that the two instruments which are successors to the *Lands Acquisition Policy Framework* dispense with the tests set out in that instrument. Under the *Framework*, the agency—although not a minister or the ACT government—was required to comply with tests which appear, to the Committee, to have been reasonable.[[656]](#footnote-656) This element of the new arrangements can be seen as a downgrading of formal requirements to be met before acquisitions are made.

Importantly, the two instruments which succeed the *Land Acquisition Policy Framework* are less stringent than the *Framework* in that their requirements are not framed as tests. This means that—leaving aside requirements for business cases and ministerial approval—there is more room in which to exercise discretion in the application of these instruments than there was in the *Framework*.

The Committee recommends that the ACT Government consider amending the *City Renewal Authority and Suburban Land Agency (City Renewal Authority Land Acquisition) Direction 2017* to provide legislative tests for land acquisitions by the ACT government.

# Legislative provision

* 1. Introduction

The Committee has already noted its concern that the LDA did not comply with the terms of the *Land Acquisition Policy Framework*.

This chapter considers other aspects of legislative provision for acquisitions of land by the ACT government. In particular, it considers the relationship between the events considered in this and the Audit Report and legislative provision made in the *Lands Acquisition Act 1994* (ACT), and the potential role of enabling legislation for major projects.

* 1. Interpretation of the *Lands Acquisition Act 1994*

The *Lands Acquisition Act* provides for acquisition by government of privately-held land by compulsion or by agreement.[[657]](#footnote-657) Witnesses to the inquiry equated the use of the Act with compulsory acquisitions, and suggested that any use of the Act would inevitably lead to extended litigation, although no evidence was presented to establish that this was the case.[[658]](#footnote-658)

Under the provisions of the Act, acquisitions—whether by agreement or compulsion—must be for a ‘public purpose’. Sections 19 (compulsory acquisition) and 32 (acquisition by agreement) of the *Lands Acquisition Act* provide that where government intends to acquire land, it may make a declaration that it is for a public purpose. The Act’s dictionary defines ‘public purpose’ as ‘a purpose in respect of which the Legislative Assembly or the Commonwealth Parliament has power to make laws’.[[659]](#footnote-659) This means that the purpose must lie within the competency of the Assembly or the Commonwealth Parliament, and thus the potential scope of ‘public purpose’ is broad.

This combination of provisions describes a requirement for government to declare an acquisition as being for a public purpose, and to declare the purpose. A body of precedent exists in the form of legislative instruments issued under the *Lands Acquisition Act*.[[660]](#footnote-660) These instruments declare acquisitions for public purposes such as roads and public infrastructure. The *Lands Acquisition (Reconsideration of preacquisition declaration—Block 4 Section 33 Division of Dickson) Confirmation 2015*, for example, confirms a declaration for acquisition of land for ‘the establishment of the Dickson Bus Interchange’.[[661]](#footnote-661) The *Lands Acquisition Declaration 2010 (No 1)*, declares an acquisition for the public purpose of providing a road.[[662]](#footnote-662)

Powers to acquire land

The *Lands Acquisition Act 1994* provides at Section 19(1) that: ‘The Executive may declare that it is considering the acquisition by an acquiring authority of an interest in land (other than a mortgage interest) for a public purpose’.[[663]](#footnote-663) As noted in debate on the Bill which led to the Act, this and other elements of the Act are closely modelled on the *Lands Acquisition Act 1989*(Cth).[[664]](#footnote-664)

Much hinges on definitions of ‘public purpose’. A representative view of what it means is provided in *Swan Yacht Club Inc -V- Town Of East Fremantle [2005]*:

For a purpose to be a “public purpose” [it must be] a purpose which relates or pertains to the people of the State or of some particular region or locality as a whole, and so relate or pertain in the sense of the provision of some service, utility or benefit to the public which would not be otherwise provided, and which is not provided with the primary purpose of producing profit (although profitability might well flow from charges or fees imposed or monies collected or earned in respect of such a provision).[[665]](#footnote-665)

One part of the legal advice provided to the ACT government by the GSO suggested—in effect—that ‘public purpose’ was in doubt for acquisitions for the City to the Lake project because it was not clear that the project, was not ‘provided with the primary purpose of producing profit’. [[666]](#footnote-666) As noted above, consideration of declarations made under the *Lands Acquisition Act 1994* (ACT) supports this view, in that all of the declarations assert ‘public purpose’ in conventional terms for the provision of infrastructure such as roads or other public facilities: not residential developments where commercial profit is a likely outcome.[[667]](#footnote-667)

* 1. Enabling legislation

However, this does not necessarily mean that in making acquisitions government is constrained, absolutely, by the view of public purpose quoted above. Barnes states that:

The totality of the statutory law on compulsory purchase and compensation falls into three categories. First, there are the statutes which confer a power of compulsory purchase, either in relation to *defined areas of land required for a specific project* or in general terms such as the power to acquire land needed for the construction or improvement of highways.[[668]](#footnote-668) [emphasis added]

From this it is clear that there an avenue exists for governments to provide for lands acquisition through ‘statutes which confer a power of compulsory purchase … in relation to defined areas of land required for a specific project’, such as City to the Lake.[[669]](#footnote-669) In other words, it was open to the ACT government to introduce legislation in the Assembly which would have provided for land acquisition for City to the Lake which would otherwise have failed a ‘public purpose’ test in the more stringent terms set out in *Swan Yacht Club,* for example. Such legislation could have provided for acquisitions within the terms set out in that legislation or, more usefully, by referencing the terms of the *Lands Acquisition Act 1994* (ACT). The *Gungahlin Drive Extension Authorisation Act 2004*, particularly at Sections 6 and 6A, is an example of such enabling legislation for a project in the ACT.[[670]](#footnote-670)

There are examples of this type of legislation in other Australian jurisdictions. The *Major Transport Projects Facilitation Act 2009* (Vic) provides, at Section 112, that:

A project authority may acquire an interest in land in the project area by agreement or by a compulsory process for the purposes of an approved project or any purpose connected with the approved project.[[671]](#footnote-671)

Most relevantly to matters under consideration in the present report, Section 118 of the Act provides that:

Land in a project area is taken to have been reserved under a planning instrument for a public purpose for the purposes of section 5 of the *Land Acquisition and Compensation Act 1986*.[[672]](#footnote-672)

This provision resolves questions of public purpose for matters under the scope of the *Major Transport Projects Facilitation Act 2009*, in part by providing an articulation with relevant provision in the *Land Acquisition and Compensation Act 1986* (Vic): that is, the Victorian counterpart of the ACT’s *Lands Acquisition Act 1994*.

* 1. Committee comment

The ACT government was not obliged to make use of the *Lands Acquisition Act 1994* in conducting the transactions considered in this report. The Act makes processes available rather than mandatory for government acquisition of land. As noted in this report, there was uncertainty about the suitability of the City to the Lake project for moves to acquire land for a public purpose.[[673]](#footnote-673)

Nevertheless, it was open to the ACT government to propose legislation—for example a ‘City to the Lake project Bill’—which would have allowed the acquisitions considered in this report to have been made under the terms of the *Lands Acquisition Act 1994*—either by agreement or compulsion—or similar terms provided for in the Bill—or to declare the project a public purpose on grounds that it would contribute to the economic development of the Territory. This would have seen the declaration made openly in the Assembly and subject to public scrutiny, and would have made the acquisition process more conventional and transparent, because it would have obliged the LDA to pay a defensible ‘market value’ as compensation under the terms of the Act. This, in turn, would have assisted the LDA in demonstrating that it had achieved value for money in making the acquisitions.

In the absence of a statute or declaration of this kind, the LDA, operating on behalf of the ACT government, purchased leases and businesses as if it were operating under the terms of the *Lands Acquisition Act* when, in fact, it was not. It was never made clear, in strict terms, as to whether these were acquisitions or attempts to compensate lease-holders and business owners.[[674]](#footnote-674) In fact, they appear rather more to have been attempts to compensate. This was evidenced in the use of the *Lands Acquisition Act 1994* as a ‘template’ for negotiations over Mr Spokes Bike Hire.[[675]](#footnote-675) However, because the public purpose test in the *Lands Acquisition Act* was not met—in that no declaration was made—the Act could not be engaged, and this detracted from the transparency of these transactions. Even if, as proved to be the case, the ACT government chose not formally to engage the *Lands Acquisition Act* while making no other provision, it was still could have adopted standards of transparency and accountability as if it had used the Act, which it did not.

There are also concerns about value for money. While, as some witnesses suggested, non-government entities making purchases may pay more or less than market price according to their discretion, those in the public sector must—because they are dealing with public money—pay prices that are defensible and adopt a process that is transparent and accountable.

In this instance it is far from clear whether public money was spent at the direction of the Executive, or at the discretion of un-elected officials. However, it is clear that in formal terms relevant provisions of the *Lands Acquisition Act* were not engaged, and that the LDA did not comply with the *Lands Acquisition Policy Framework*. This combination throws in doubt the defensibility of the acquisitions considered in this report.

The Committee recommends that wherever possible the ACT Government acquire land for large projects under the provisions of the *Lands Acquisition Act 1994,* or equivalent legislation, and that this be the default setting for such acquisitions in the future.

The Committee recommends that where the ‘public purpose’ character of an ACT Government project is not clear that the ACT government either make a declaration to the Assembly under Section 19 of the *Lands Acquisition Act 1994* or present in the Assembly legislation which, if passed, would make specific provision for land acquisitions for that project.

The Committee recommends that the ACT Government review the *Lands Acquisition Act 1994* to determine the suitability of the Act in its present form as a basis for land acquisitions by the ACT government.

The Committee recommends that any proposals to amend the *Lands Acquisition Act 1994* which proceed from a review of the Act be referred to the Standing Committee on Public Accounts for inquiry and report.

# Other matters

* 1. Introduction

This chapter considers the LDA’s response to a request under the *Freedom of Information Act 2016*; provision of mentoring and meeting space by a person from the private sector; and the role of a consulting firm.

* 1. Freedom of Information request

Introduction

The Audit Report stated that:

The Land Development Agency received a Freedom of Information request on 5 November 2015 in relation to the acquisition of Block 24 Section 65, City (land adjacent to Glebe Park). A Land Development Agency senior manager (now executive) provided a document to Land Development Agency officers responding to this request which had only been created after the Freedom of Information request was received. The title of the Colliers International Block 24 Section 65, Division of City ‘Glebe Park Land’ May 2015 Discussion Paper was amended by the Principal of Colliers International from ‘Discussion Paper’ to ‘Valuation Advice’ on 12 November 2015 and accepted by the Land Development Agency senior manager (now executive). This document was then provided in response to the Freedom of Information request received by the Land Development Agency on 5 November 2015’.[[676]](#footnote-676)

Regarding this, the Audit Report stated that it was not acceptable to provide altered information in a response to a Freedom of information request.[[677]](#footnote-677)

Auditor-General

The Committee asked questions regarding the Freedom of Information request when Dr Cooper and Mr Stanton appeared before the Committee.[[678]](#footnote-678) Mr Stanton told the Committee that the Audit Office believed that an FOI request had been received by the LDA on 5 November 2015, and that those in the LDA responding to the request then sought to locate the Colliers International discussion paper.[[679]](#footnote-679)

According to the Audit report, a second version of the document was created after a senior manager from the LDA contacted Mr Powderly, requesting a copy of the discussion paper. Mr Powderly had sent through a copy of the original discussion paper at 9.57 am on 12 November 2015, with a message saying that the attachment was what had been provided to Mr Stewart, and that: ‘If you want it changed to say valuation advice I can change’. Eight minutes later, at 10.05 am, Mr Powderly sent a further email stating that attached was a copy of the advice provided to Mr Stewart, except that the title ‘discussion paper’ had been changed to ‘valuation advice’.[[680]](#footnote-680)

Dr Cooper told the Committee that significance of this change was that a discussion paper could be taken to be less specific, while valuation advice was ‘a lot firmer’. The title of the document at the time of payment was ‘discussion paper’, a less specific kind of document. To later imply that it was more than a discussion paper was misleading and the document would hold more authority with an amended title. As to whether the ACT government could reasonably depend on such a document as a basis for an offer, the Auditor-General said that she would not have imagined so.[[681]](#footnote-681)

Mr Stanton told the Committee that a copy of the original June 2015 discussion paper had been provided in response to a further, second, Freedom of Information request, however in releasing this document the LDA did not correct the record by advising that the first document it had provided was created in November 2015.[[682]](#footnote-682)

The Audit Report had stated that the ‘senior manager, now executive’ responsible for providing the amended document had been counselled in relation to these actions.[[683]](#footnote-683) Dr Cooper and Mr Stanton told the Committee that an investigation into this had been conducted within the agency, for which there records, but they were not able to tell the Committee who had instigated or conducted this investigation.[[684]](#footnote-684)

They told the Committee that the LDA had advised the Audit Office that it had responded to these events by establishing training for all staff on how to deal with Freedom of Information requests.[[685]](#footnote-685) The senior manager responsible for procurement of the amended document, and providing it in response to the Freedom of Information request, was counselled and subsequently promoted.[[686]](#footnote-686)

Former Chief Executive Officer, LDA

Questions were asked regarding the LDA’s handling of the Freedom of Information request when Mr Dawes appeared before the Committee in hearings of 27 September 2017.

When asked whether the fact that the Freedom of Information document had been ‘doctored’ was not seen by the LDA as a serious issue, Mr Dawes told the Committee that this was only one interpretation of events and he did not believe that it had been doctored. He did not think there was any ‘malice’ or ‘deliberate manipulation’ of the FOI document, and told the Committee that the private investigator engaged by the LDA had found that there was ‘nothing untoward’.[[687]](#footnote-687)

The Committee put the view that adding the word ‘valuation’ to the title of the document was significant for claims made by Mr Dawes in hearings of 5 November 2015 that the LDA had a valuation for the land adjacent to Glebe Park of between $3.6 to $3.8 million.[[688]](#footnote-688) Mr Dawes told the Committee that the document had had a number of different titles, including ‘market advice’, ‘discussion paper’ and ‘valuation advice’. A proper valuation should have been done, but there was ‘no point getting a proper valuation done after the event’. When asked whether the LDA had in fact had a valuation for the land adjacent to Glebe Park of $3.6 to $3.8 million, Mr Dawes told the Committee that while this had been his view at the time, in fact it did not.[[689]](#footnote-689)

He said that when the LDA discovered that an amended document had been provided in response to the FOI request, it reported the matter to the Chief Minister's corporate and governance area, and a private investigator was engaged. Subsequently the officer responsible for amending the document was counselled and the LDA Board had a meeting with the Solicitor-General to ascertain whether the action taken had been appropriate, and ‘he said it was’.[[690]](#footnote-690) Later, the person who had provided the amended document was promoted to a director’s position. While he was uncertain as to timing,[[691]](#footnote-691) a recruitment process had taken place and, having been successful, the person was promoted.[[692]](#footnote-692)

Director-General, EPSDD

In the latter period of the events covered by the Audit Report, Mr Ponton, the present Director-General, Environment, Planning and Sustainable Development Directorate was Deputy Chief Executive Officer of the LDA. The Committee asked Mr Ponton when he first became aware that the document that had been provided in response to the original Freedom of Information request was not the document that had been requested, and how it came to his attention.[[693]](#footnote-693)

He told the Committee he believed that he became aware of this on 15 December 2015, and that it came to his attention because a second FOI request had been submitted. The LDA had, through his office, asked for officers to provide documentation. The officer who was ‘subsequently found to have tampered with that document’ provided access to all of his emails. Mr Ponton’s Executive Officer reviewed the emails and identified ‘a particular email of concern’ and brought it to his attention, and that same day he had referred this to the Directorate’s Senior Executive Responsible for Business Integrity and Risk (SERBIR). [[694]](#footnote-694)

When asked whether he had counselled the person responsible, Mr Ponton told the Committee that he had not. It was referred to the SERBIR, who instigated an investigation which concluded when Mr Ponton was no longer with the LDA, and the counselling was conducted by another person.[[695]](#footnote-695)

Principal, Colliers International

Questions were asked regarding the response to the Freedom of Information request when Mr Powderly appeared before the Committee.

When asked what had happened in November 2015, he said that he had received a phone call from an ex-employee of the LDA saying that Mr Dawes had asked for a file on Glebe Park and no file could be found. Mr Powderly had advised that he had done initial work on the property, and was surprised to be told that there was nothing on file at the LDA. He rang one of his colleagues at his office and asked whether Colliers had conducted a valuation and was told it had not. As Mr Powderly was out of the office at the time, he asked his Executive Assistant to go through his emails and send the ex-employee of the LDA a copy of items in the Principal’s outbox regarding ‘Glebe Park’ and ‘Dan Stewart’. The Principal’s Executive Assistant forwarded the first email, and he received a phone call 30 or 40 minutes later, saying, ‘We should have got valuation advice’.[[696]](#footnote-696)

Mr Powderly told the Committee that he had responded by saying there was no valuation, only the initial paper, and the ex-employee asked whether the heading on the document could be changed. The Principal had said, ‘I have no issue with it; it's not a formal valuation, but I don't understand why you'd want to have a discussion paper labelled that’. Subsequently, he phoned the Colliers office and asked for the document to be amended and sent.[[697]](#footnote-697)

He told the Committee that four weeks later, in early December, he became aware that there had been a Freedom of Information request. The person who had provided the document in response to the request had been subject to an inquiry, and the Principal had given evidence to an investigator in February. The Principal had given the investigator copies of his advice at the time and also provided them to the Auditor-General.[[698]](#footnote-698)

* 1. Mentoring

Audit Office

Mr Stanton told the Committee about concerns raised in the Audit Report about the relationship between Mr Stewart, who was managing the acquisition of the land adjacent to Glebe Park, and Mr Powderly. [[699]](#footnote-699) This, he told the Committee was ‘some sort of mentoring relationship’ initiated by Mr Dawes, and who had asked Mr Powderly provide this as support to Mr Stewart.[[700]](#footnote-700) Dr Cooper told the Committee that this arrangement raised concerns over potential conflicts of interest.[[701]](#footnote-701)

Former Chief Executive Officer, LDA

The Committee asked about the mentoring arrangement between Mr Powderly and Mr Stewart.[[702]](#footnote-702) Mr Dawes told the Committee that while he himself had ‘been involved in the property industry since the late 1970s he had appointed a new deputy CEO, Mr Stewart, who had a strong background in Treasury but did not have much experience with property.[[703]](#footnote-703)

Mr Dawes had been associated with Mr Powderly for 20 to 25 years since he had worked for the Master Builders Association, and thought he knew a lot about property in the Territory. Accordingly, he had suggested that Mr Stewart speak to Mr Powderly in order to get a sense of the property market in the ACT,[[704]](#footnote-704) and he had facilitated meetings between them in order to provide Mr Stewart with a sense of the background to land development and transactions in the Territory.[[705]](#footnote-705)

He told the Committee that this arrangement was not exclusive to Mr Powderly. There were also other real estate agents with whom the LDA had regular dialogue. Mr Dawes would instigate occasional meetings with valuers, because their expertise varied as to whether they knew more about sales or rentals, and it was important for the LDA to maintain awareness of the state of the market.[[706]](#footnote-706)

Former Deputy CEO, LDA

Mentoring of Mr Stewart by Mr Powderly was discussed when Mr Stewart appeared before the Committee.[[707]](#footnote-707) He told the Committee he had been in the ACT treasury for seven years, in a number of roles, and then became director of the Chief Minister's economic, regional and planning policy area for a further four years. He had had no direct involvement in the property industry when he commenced in his role with the Land Development Agency, although he had worked closely with the LDA while at Treasury in relation to financial monitoring and budget work and then in Chief Minister's in connection with the annual land release program.[[708]](#footnote-708)

When he won the role at the LDA, Mr Dawes had suggested that he hold, at least initially, regular meetings with Mr Powderly, who was the president of the Australian Property Institute at the time. Regular meetings also took place between himself and the Chair of the LDA Board. He met Mr Dawes fortnightly during his first two or three months in the role, and met the Chair of the LDA Board fortnightly throughout the period of his employment at the LDA.[[709]](#footnote-709)

Principal, Colliers International

The Committee asked Mr Powderly questions regarding mentoring of Mr Stewart when Mr Stewart was Deputy Chief Executive Officer of the LDA.[[710]](#footnote-710) He told the Committee that he had been asked by the former Chief Executive Officer of the LDA, Mr Dawes, to hold meetings with Mr Stewart because his background was exclusively with Treasury. At the time, Mr Powderly was a member of a commercial advisory board representing Master Builders, the Australian Property Institute and other organisations, as a result of which he had a thorough knowledge of the ACT industrial and residential property market.[[711]](#footnote-711)

The aim of the meetings was to make Mr Stewart aware of what was happening in the ACT property market.[[712]](#footnote-712) However it was more difficult than anticipated to have the meetings. There were two a month for two or three months and after that Mr Stewart’s diary was full. Meetings were often arranged and then cancelled. The result was that, in the end, these meetings took place for only a number of months.[[713]](#footnote-713)

Mr Powderly advised the Committee that he had mentored a number of people in Canberra, not only LDA staff, and this was one of his roles as a senior person in the property industry. He did not see anything wrong with doing it, believed it was part of what he should be doing, and disagreed with suggestions that it was not acceptable for him to mentor government employees.[[714]](#footnote-714)

* 1. Provision of liaison and office-space for meeting

Former Deputy CEO, LDA

The Committee asked the former Deputy CEO, Mr Stewart, about liaison and office-space provided by Colliers International.[[715]](#footnote-715) When asked why the LDA had chosen to use the Mr Powderly as an intermediary with the owners of Block 24 Section 65 rather than approach them directly he told the Committee that he did not know, and that he assumed that it was ‘simply a matter of expediency’. There had been discussion about valuation advice and Mr Powderly had offered to arrange a meeting with the vendors.[[716]](#footnote-716) He did not know whether a commission was paid to Mr Powderly as a result of the sale, but given that he was already working on behalf of the LDA in a panel arrangement he presumed he had not.[[717]](#footnote-717)

When asked why the meeting of Friday 19 June 2015 between the LDA and the owners of Block 24 Section 65 was held at the offices of Colliers International, he told the Committee that Mr Powderly at the time was an agent representing the LDA and that he did not think it exceptional. In retrospect he wished that the meeting had taken place in his own office at the LDA.[[718]](#footnote-718)

He told the Committee that, as far as he was aware, meetings with were held in ‘all manner of locations, usually to suit the individuals concerned’.[[719]](#footnote-719) It may have been that on the day of the meeting he was already in town for a meeting but he could not recall.[[720]](#footnote-720) He also did not know why a copy of the Opteon valuation had been hand-delivered to the office of Colliers International in preparation for the meeting.[[721]](#footnote-721)

Principal, Colliers International

The Committee asked Mr Powderly questions about his provision of liaison and office space for a meeting between Mr Stewart and the owners of Block 24 Section 65.[[722]](#footnote-722) He said that Mr Stewart had acknowledged that he was not highly experienced in such matters, and noted that, despite this, the LDA had not engaged Colliers to conduct negotiations. At the time he—Mr Powderly— was busy dealing with another matter, did not have the time, and was not interested in acting on behalf of the ACT government in the matter, but knew the owners’ representative and offered to set up a meeting with the owners. He had introduced them in the foyer of the Colliers office before they met briefly, for 10 to 15 minutes in the Colliers office.[[723]](#footnote-723)

When asked whether he was present at the meeting, he told the Committee he was not: he had simply arranged it and provided the venue. ‘For some reason’ it had taken place in his office. He did not know why, but he thought it may have been that Mr Stewart ‘had another meeting in the city that day’. It was ‘an LDA-requested meeting’, and he had said that he was ‘happy to send out the calendar invite’ to both parties. He had sent out the invitation and the owners and the LDA had met. It was his understanding that the meeting was ‘just really to trade details so that they could have further conversations’, and that the parties ‘did not actually … do any deals that particular day’.[[724]](#footnote-724)

* 1. Role of Elleven Consulting

Background

The Audit Report considered the LDA’s hiring of consultants by way of a third-party entity, Elleven Consulting, as a way provide personnel to support the City to the Lake project and identified problematic elements of this approach.[[725]](#footnote-725)

Audit Report

According to the Audit Report:

Since 2011 approximately $2.66 million in payments have been made to Elleven Consulting Pty Ltd and Elleven Project Coordination Pty Ltd for services to the Land Development Agency/Economic Development Directorate. These services were all approved on a single-select non-competitive basis, with the Chief Executive Officer of the Land Development Agency approving their exemption from the requirements of the *Government Procurement Regulation 2007*. A significant proportion of these payments relates to services provided by former executives of the Land Development Agency/Economic Development Directorate.[[726]](#footnote-726)

The Audit Report stated that the former Project Director for the City to the Lake project had advised that the former executives were employed ‘on the basis that their previous public service remuneration package was matched by the company’, and that an additional profit component built in to fees charged to the contracting agencies. The Report went on to say that administrative arrangements used to hire the consultants, which were successive single-select non-competitive procurement processes, made it difficult to show that the purchase of these services was an effective use of public money.[[727]](#footnote-727)

Auditor-General

These matters were the subject of questions by the Committee when the Auditor-General and the Director, Performance Audits, appeared before the Committee in hearings of 26 July 2017.[[728]](#footnote-728)

Nature and extent of services provided

The Director told the Committee that a handful of people were employed by the LDA through Elleven Consulting for the City to the Lake project. A key person was a former executive of the Economic Development Directorate who finished as a temporary employee of the directorate on 21 April 2012 and commenced as a contractor two days later, on 23 April 2012. This former executive was providing financial, taxation and other services but there were other people providing those services through Elleven Consulting.[[729]](#footnote-729) In September 2012, Elleven Consulting Pty Ltd had been engaged to provide further services to the directorate for the City to the Lake project. This arrangement was varied in September 2013 and November 2013.[[730]](#footnote-730)

Another key person was a former executive of the LDA. In this case, the Director told the Committee, the person’s employment at the LDA finished on 19 September 2012 and the person was engaged the next day, on 20 September 2012, through Elleven Project Consulting, to support the City to the Lake project.[[731]](#footnote-731) In this instance the person was initially engaged by contract directly by the LDA. Once the contract expired the person was engaged again by the LDA, but this time through Elleven Consulting.[[732]](#footnote-732)

Reasons for hiring staff through Elleven Consulting

The Committee asked why the LDA would take this approach.[[733]](#footnote-733) The Director said that Audit was told that there was an effort at the time to try to calibrate staffing and executive needs for the LDA and the Economic Development Directorate. As a result, some positions phased out, but the people in those positions whose contracts had been terminated were subsequently re-employed through Elleven Consulting.[[734]](#footnote-734)

As to whether executives of the LDA had been told to shed staff as an efficiency measure, and had used the same people in the capacity of consultants because they were still needed, the Auditor-General told the Committee that audits tended to ‘shy away’ from considering motive, but that paragraphs 4.110 and 4.163 of the Audit Report were relevant to the question.[[735]](#footnote-735)

Paragraph 4.110 of the Audit Report read as follows:

In relation to the employment of the former executive, the former Project Director for the City to the Lake Project, in an interview under oath/affirmation, advised:

[The Chief Executive Officer of the Land Development Agency] came to me and said, “We can’t lose [the former executive] but I can’t be seen to be employing [them].

…

[The former executive] and [the Chief Executive Officer of the Land Development Agency] came to see me to say, “Look, is there a way we can get [them] into your company as a consultant?” [[736]](#footnote-736)

Despite this, the former Chief Executive Officer of the LDA, when questioned for the audit, had denied that he had asked for staff at end of contract to be re-hired by the LDA by way of Elleven Consulting. Audit asked the former Project Director whether it would have been cheaper and more cost-effective for the government to maintain the second former executive’s employment than to obtain their services by way of an external consultancy to which agreed, noting a profit component of fees charged by Elleven Consulting.[[737]](#footnote-737)

When asked why, if these employees were too valuable to lose, the LDA did not keep them in its employ, the Auditor-General told the Committee that while this was a valid question it had not been part of the Audit’s central focus. However, by way of recommendation, government agencies, rather than bringing an *ad hoc* approach to such matters, should as a matter of good practice formulate a workforce plan, as a basis on which to determine, systematically, whether to keep staff or to employ the services of external consultants.[[738]](#footnote-738)

Former Project Director, City to the Lake

These matters were taken up with the former Projector Director for City to the Lake, Mr Xirakis, when he appeared before the Committee in hearings of 27 September 2018.[[739]](#footnote-739)

The Committee asked whether, in the case of two persons first employed by the LDA and then through Elleven Consulting, remuneration was matched to that which had applied when they worked directly for the LDA.[[740]](#footnote-740) Mr Xirakis told the Committee that the circumstances of the two cases were different, although both of them were with the company of which he was a senior employee. While he was not a director, he did much of the negotiating on behalf of the company.[[741]](#footnote-741)

In the first instance a person came to the consultancy after finishing his employ with the LDA. He was an owner of specialised knowledge, and there was a wish for him to continue in some capacity with the LDA. He needed a consulting firm and Elleven was such a firm. The former employee had asked if he could be employed through the company. Mr Xirakis had said he would check, and subsequently the former employee was taken on as a consultant. The terms of employment were not intended to equal those the person had experienced at the LDA: the arrangement was simply to provide specialised advice at an hourly rate.[[742]](#footnote-742)

The second case involved Ian Wood-Bradley, who had approached him and wanted to pursue the City to Lake project. He was the architect of the project. At the time, government had not made a decision to go ahead, and there was no permanent position for him to continue work on the project. Decisions were pending on the City Plan and the City to Lake project. In this instance, Mr Xirakis told the Committee he agreed to put together an offer to match what he was currently getting paid, including negotiating to pay superannuation and other entitlements.[[743]](#footnote-743) As to whether it was unusual for someone leaving the public sector to enter the private sector,[[744]](#footnote-744) he told the Committee that it was not: in fact in the ACT it was one of the most common ways to become a consultant.[[745]](#footnote-745)

* 1. Committee comment

It is a matter of concern that in the course of responding to a Freedom of Information request, ACT government staff amended the material to be provided. This Committee is concerned that the person responsible for this significant breach of standards had merely received ‘counselling’ and was later promoted. In the Committee’s view, this cannot be seen as sending a strong message to staff as to the importance of complying with professional obligations and statute.

The Committee recommends that the ACT Government define and apply appropriate sanctions for staff who do not comply with legislatively-defined processes for responding to requests for information under *Freedom of Information Act* requests.

The mentoring arrangement between the Principal of Colliers and the former Deputy Chief Executive Officer of the LDA raises questions, for three reasons:

* first, the boundaries of the relationship were unclear. For the sake of transparency there should have been an understanding and documentation of what was entailed;
* second, this arrangement placed those involved in an apprehended conflict of interest; and
* third, if it were true that the former Deputy CEO was less experienced in the ways of the property market, then placing him under the tutelage of a very experienced person from the private sector could, again, place both participants in an apprehended conflict of interest, due to perceptions that the more experienced participant could have special access to a senior decision–maker in an agency which had considerable significance for the property market in the ACT.

Regarding the use of consultants from Elleven Consulting, the hiring of staff recently separated from the LDA as consultants to the LDA is a further element in an overall climate of below-standard practice revealed in the Audit Report and in evidence provided to the present inquiry.

Such practices undermine the principle of achieving value for money for expenditure of public funds, and contribute to a broader climate in which failure to follow due process is an accepted part of everyday practice. This is to be avoided, and the ACT Government should send a positive signal by ensuring that such practices are no longer followed in the ACT public sector.

The Committee recommends that the ACT Government clarify principles and constraints for the hire and retention of contractors so that government agencies will not re-hire recent employees as contractors.

# Committee conclusion

* 1. Introduction

The conduct of the LDA in making the four acquisitions considered in this report raises a number of concerns about due process, compliance with ACT legislation, record keeping, transparency, value for money, and conflicting and incomplete evidence.

* 1. Due process

The acquisitions considered in this report are linked in that their stated purpose was to support the City to the Lake project. Information coming late in the inquiry, however, suggests that the acquisition of the land adjacent to Glebe Park was different to those of Mr Spokes Bike Hire, Dobel Boat Hire and Lake Burley Griffin Boat Hire. In this instance there are grounds to believe that actions of the ACT Government were influenced by Aquis Entertainment as the owner of Casino Canberra.

This is important because it goes to the question of whether government serves public or private interests. Public expectations are that it will serve the public interest. Where it does not, government is in danger of losing the confidence of its constituents, and a number of problems follow.

Forms of preferential treatment represent increased risk to probity. It is a given of our system of government that persons will be equal before the law. The correlative is that government, in dealing with entities outside of government, will also deal with them equally: both as a function of procedural fairness and also as a means to demonstrate that government actions are not arbitrary and do not discriminate between like cases.

Actions relating to the four acquisitions considered in this report do not bear out such expectations: very different approaches were taken by government in dealing with Glebe Park Pty Ltd; Mr Spokes Bike Hire; Dobell Boat Hire and Lake Burley Griffin Boat Hire. To the extent that this is taken to mean that private influence prevails, it will have a negative effect on the culture of governance and if not checked, will reduce confidence in government and throw a cloud over future dealings between public and private entities.

* 1. Compliance with ACT legislation

Evidence available to the Committee suggests that in making the four acquisitions considered in this report the LDA did not comply with the *Lands Acquisition Policy Framework*. This is a matter of concern and, as noted in a previous chapter, present legislative arrangements put in place of the Framework are not in every respect more reliable in that while on one hand decisions are now reserved to the relevant minister, threshold questions are now no longer framed as tests, thus reducing the rigour with which government acquisitions of land can be assessed.

The status of the *Lands Acquisition Act 1994,* in the context of actions considered in this report, is ambiguous. As noted previously in this report, it appears that the provisions of the Act are not well understood. Of particular concern are statements to the Committee by witnesses that employing the *Lands Acquisition Act 1994* is inherently litigious, time-consuming, and expensive.[[746]](#footnote-746) This is not borne out by any record of court proceedings in the Territory.

Moreover, the provisions of the Act have not been used as they should. If they were, the ACT Government would have made declarations that acquisitions were for a public purpose, and the LDA would have been considering how to compensate owners, in accordance with Territory law, for surrendering their leases to the ACT Government, rather than seeking ways to increase valuations as a way to achieve acceptance for an offer of sale. It could also have been seeking, in accordance with the *Lands Acquisition Act 1994* and/or any other relevant legislation, to compensate lease-holders and business owners for the loss of their ability to trade rather than attempting to ‘buy’ businesses. This would have been a more defensible, transparent and accountable approach.

As noted above, the ACT Government was not obliged to make use of the *Lands Acquisition Act 1994*, which makes mechanisms available rather than mandatory for government acquisitions of land. While there was some uncertainty about the suitability of the City to the Lake project for acquisition of land for a public purpose, this could have been resolved if the ACT Government had made a declaration that economic development from the project was a public purpose. This would have seen the declaration made openly in the Assembly and subject to public scrutiny. As the ACT government chose not to engage the *Lands Acquisition Act*, it was open to the Government to adopt similar standards of transparency and accountability in its dealings as if it had used the Act. This did not occur, to the detriment of probity for the matters considered in this report.

* 1. Record-keeping

A further concern for each of the acquisitions considered in this report is record-keeping. The Auditor-General found in each case that note-taking and record-keeping did not allow the procedures followed to be verified for probity and assurance. The LDA was not assiduous in creating a paper-trail and there was found to be an absence of records.

* 1. Use of public money

This is all the more notable because the LDA was proposing to expend significant amounts of public money, in the service of a project which, it was suggested, would involve further large sums of money: both expended and received. At the same time, the LDA frustrated the purpose of the *Land Acquisition Policy Framework*, which was to provide greater autonomy to the LDA in making acquisitions in exchange for meeting tests to ensure probity. In the event, the LDA accepted greater autonomy while refusing the prescribed statutory tests. Failing to comply with Territory law, and failing to keep records of activity in such a sphere—or indeed, any area of government—both fall significantly short of the community’s reasonable expectations of government.

As noted at the close of the previous chapter, in the absence of mechanisms which would have engaged the *Lands Acquisition Act*, or other similar avenues, transparency for the acquisition of the properties considered in this report was not achieved. Without this, and in view of contraventions of the *Lands Acquisition Policy Framework* by the LDA, it is difficult to view these transactions as being consistent with basic principles of accountability and transparency which apply to the expenditure of public money.

* 1. Conflicting and incomplete evidence

In the course of the inquiry a number of matters were not able to be established beyond doubt, often because they were the subject of conflicting evidence. In particular, statements from a number of witnesses that they were not involved in, or responsible for, actions which are the subject of this and the Auditor-General’s report, are a matter for concern. In some cases, evidence such as the documentary evidence provided by Aquis Entertainment at the request of the Committee, has reduced the Committee’s confidence in other testimony provided to the Committee. The present inquiry has to a large extent exhausted avenues available to committees of the Assembly to resolve such discrepancies.

The Committee recommends that the ACT Integrity Commission investigate the four acquisitions and any other matters raised in this Report.

Vicki Dunne MLA  
Chair

Witnesses

Wednesday, 26 July 2017

* Dr Maxine Cooper, Auditor-General, ACT Audit Office
* Mr Brett Stanton, Director, Performance Audits, ACT Audit Office

Wednesday, 27 September 2017

* Mr Andrew Barr, Chief Minister, Treasurer, Minister for Economic Development and Minister for Tourism and Major Events
* Mr David Dawes, former Chief Executive Officer, Land Development Agency
* Mr Barry Morris, Director, Glebe Park Pty Ltd
* Mr Ben Ponton, Director-General, Environment, Planning and Sustainable Development Directorate
* Mr Paul Powderly, State Chief Executive, Colliers International and Colliers International and Colliers ACT Pty Ltd
* Mr Dan Stewart, former Deputy Chief Executive Officer, Land Development Agency
* Mr Tim Xirakis, former Project Director, City to Lake Project, Land Development Agency

Friday, 13 October 2017

* Ms Narelle Byrne, Manager, Commercial Valuations, Opteon Property Group
* Mr Timothy Heaton, formerly of MMJ Valuers
* Mr Graham Potts, Director, Glebe Park Pty Ltd
* Mr Jim Seears, former owner, Lake Burley Griffin Boat Hire
* Mr Richard Swinbourne, Director, Capital Valuers

Friday, 20 October 2017

* Ms Jillian Edwards, former owner, Mr Spokes Bike Hire
* Mr David James, formerly of Herron Todd White
* Mr Eugene Kalenjuk, Partner, PwC
* Mr Ben Parsons
* Mr Pat Seears, former owner, Dobel Boat Hire

Wednesday, 22 November 2017

* Mr Peter Garrisson SC, Solicitor-General for the ACT
* Mr Paul Powderly, State Chief Executive, Colliers International and Colliers ACT Pty Ltd

Land Acquisition Policy Framework[[747]](#footnote-747)

Australian Capital Territory

Planning and Development (Land Acquisition Policy Framework) Direction 2014 (No 1)

**Notifiable instrument NI2014–264**

made under the

*Planning and Development Act 2007*, subsection 37(1)

**1 Name of instrument**

This instrument is the *Planning and Development (Land Acquisition Policy Framework) Direction 2014 (No 1).*

**2 Commencement**

This instrument commences on the day after notification.

**3 Direction**

I direct the Land Development Agency to act in accordance with the principles of the Land Development Agency - Land Acquisition Policy Framework, attached as a Schedule to this Instrument, when exercising the Agency’s functions under the *Planning and Development Act 1997*.

Andrew Barr MLA  
Minister for Economic Development

14 June 2014

**SCHEDULE**

**LAND DEVELOPMENT AGENCY – LAND ACQUISITON POLICY FRAMEWORK**

1. **Introduction**

1.1 The Land Acquisition Policy Framework provides the principles that are to govern the exercise of the Land Development Agency (LDA) functions under the *Planning and Development Act* *1997.* The framework also supports the ACT Government’s *Statement of Governance Arrangements* for the Land Development Agency.

1.2 The framework is to enable the LDA to pursue business opportunities for the acquisition of land available on the market.

1.3 The framework consists of two components, namely:

1. a process through which potential acquisitions are to be pursued; and
2. the principles to be applied in making decisions under clause 1.3(a).

**2. The Acquisition Process and Framework**

2.1 All proposed acquisitions are to be assessed against the principles and associated tests provided in this Land Acquisition Policy Framework. All tests must be followed for an acquisition.

**2.2 Acquisition Thresholds and Approved Decision Makers**

2.2.1 The following thresholds and decision makers apply to all LDA land acquisitions:

1. below $5 million – agreement by the LDA Board with advice to the Minister for Economic Development or the Minister responsible for administering Chapter 4 of the *Planning and Development Act 1997*;
2. between $5 million and $20 million – agreement by the Chief Minister and Treasurer. LDA is to provide a business case to ACT Treasury for all such proposals; and
3. above $20 million - agreement by the government.

2.2.2 The LDA Board may refer any acquisition below $5 million to the government should it consider it is appropriate.

**2.3 Annual Acquisition Limit**

2.3.1 Government agreement is required for any acquisition by the LDA that results in a cumulative annual total of $20 million in acquisition being exceeded. The cumulative annual total means all acquisitions within a financial year - 1 July to 30 June.

**2.4 Reporting Requirements**

2.4.1 The LDA is to provide information to support the Economic Development Directorate (EDD), or the responsible government directorate, in the preparation of quarterly reports for the ACT Government.

2.4.2 The LDA must inform EDD, or the responsible government directorate, regarding the proposed acquisition of sensitive sites (including, but not limited to – sites containing heritage, contamination, cross-border issues) at an early stage in the process and prior to any purchase occurring.

2.4.3 Details of all acquisitions completed during a financial year, and this Direction, must be included in the LDA’s annual report.

**3. The Principles**

**3.1 The Intended Outcome Principle**

3.1.1 An intended outcome must be identified for the ‘to-be-acquired site’.

*Guiding Questions*

1. Why is the site being purchased?
2. What future use of the site is envisaged?

*Test 1: An intended outcome has been identified for the proposed acquisition site.*

**3.2 The Policy Alignment Principle**

3.2.2 The intended outcome for the acquisition aligns with other relevant government policies.

*Guiding Questions*

1. Will the proposed acquisition advance the land development policy directions set out in the ACT Planning Strategy and other relevant Government strategic spatial planning documents and requirements (for example, but not limited to, any master plan that may apply to the location)?
2. Is the proposed acquisition consistent with the *Statement of Government Policy for the Land Development Agency*?
3. Is the proposed acquisition consistent with any other relevant Government policies?

*Test 2: The intended outcome for the proposed acquisition advances the Government’s land development policies as set out in the ACT Planning Strategy and any other relevant Government strategic spatial planning documents and requirements.*

*Test 3: The intended outcome for the proposed acquisition is consistent with the Statement of Government Policy for the Land Development Agency.*

*Test 4: The intended outcome for the proposed acquisition is consistent with any other relevant Government policies.*

**3.3 The Value for Money Principle**

3.3.1 The acquisition represents value for money for the Territory.

*Guiding Questions*

1. Is the proposed purchase price consistent with the independent market valuation of the site which has taken into account its current and anticipated uses?
2. If a commercial outcome is sought from the site, does a business case suggest that a satisfactory commercial return will be realised, taking into consideration any holding costs, redevelopment costs, and opportunity costs?
3. If a non-commercial outcome is sought from the site, what are the holding costs, redevelopment costs, and opportunity costs of the purchase?

*Test 5: The proposed purchase price for the site is consistent with the independent market valuation.*

*Test 6: If a commercial outcome is sought from the proposed acquisition site, a business case has been prepared that demonstrates that a satisfactory commercial return will be realised, taking into consideration any holding costs, redevelopment costs, and opportunity costs.*

*Test 7: If a non-commercial outcome is sought from the proposed acquisition site, any holding costs, redevelopment costs, and opportunity costs have been demonstrated to be reasonable and not onerous.*

**3.4 The Risk Management Principle**

3.4.1 Risks associated with the acquisition can be appropriately managed.

*Guiding Questions*

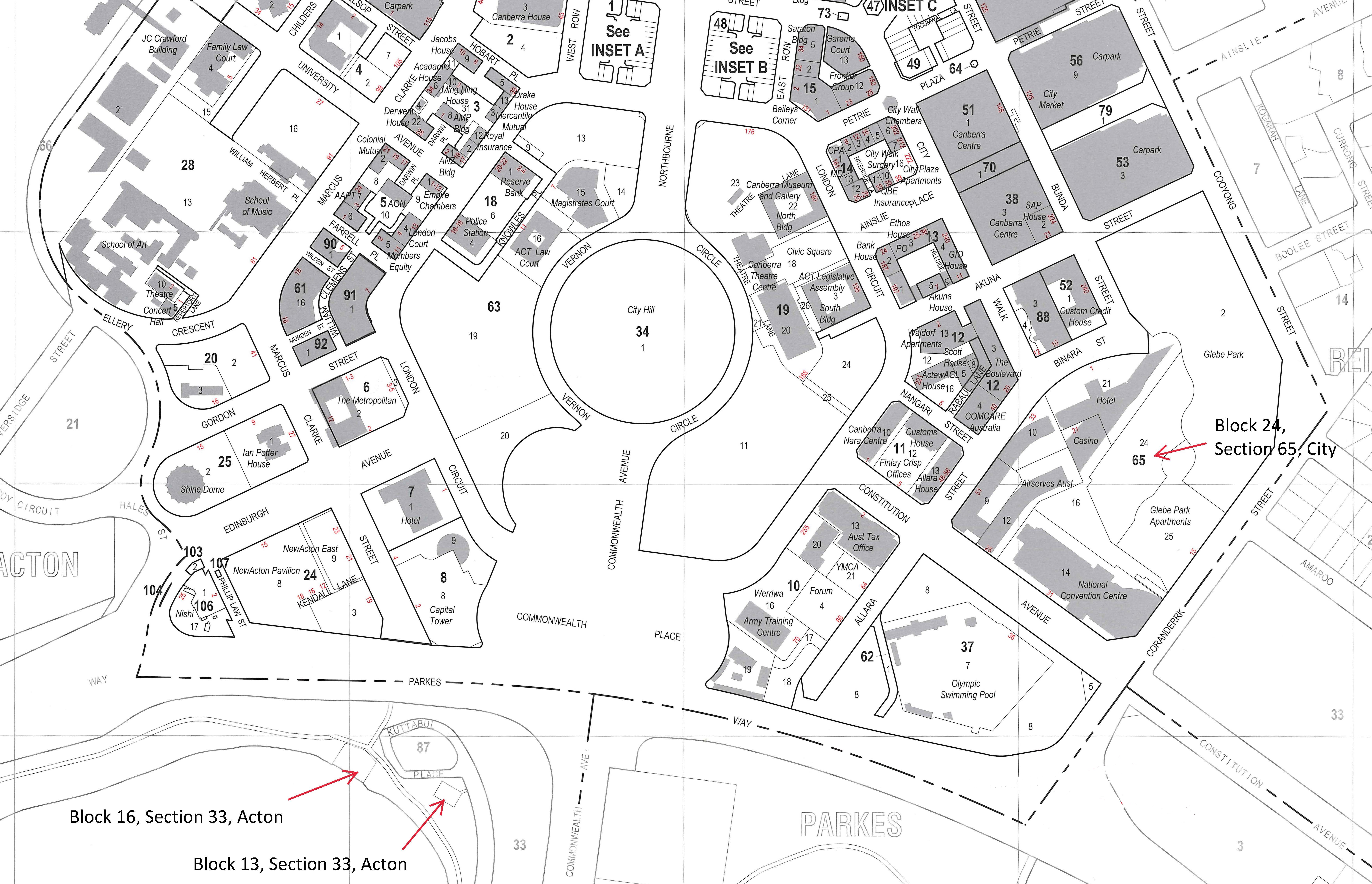
1. Does triple bottom line assessment of the proposed purchase indicate that the Territory may be exposed to economic, social, or environmental risks, and if so, can these risks be appropriately managed?
2. Does the proposed purchase expose the Territory to any other type of risk (including, but not limited to, legal or reputational risks) and, if so, can these risks be appropriately managed?
3. Are there any barriers to achieving the intended outcome for the site (including, but not limited to, regulatory, engineering, or other technical barriers) and, if so, can these risks be reasonably overcome?

*Test 8: The proposed acquisition will not expose the Territory to risks that are not able to be appropriately managed.*

*Test 9: The intended outcome for the proposed acquisition is reasonably achievable.*

Map of acquisitions

Taken from: ACT Government, *Maps of Canberra by Suburbs and ACT Districts*, ‘City’, 2013.



Ethics matter

Introduction

In hearings of 26 July 2017 Mr Alistair Coe MLA, a member of the Committee at the time, made a statement regarding an ethics matter.[[748]](#footnote-748)

Statement by Mr Alistair Coe MLA

In his statement, Mr Coe told the Committee that he had ‘sought advice from the Ethics and Integrity Adviser’ about his ‘participation in these hearings’. He told the Committee he was stating this ‘in order to maintain the openness and honesty which is essential to my work as a member of the Assembly and to our work as a committee of the Assembly’.[[749]](#footnote-749)

Mr Coe told the Committee that to date it had ‘not been made public’ that he was ‘involved in the instigation of the Auditor-General’s inquiry’, as he had ‘made representations to the Auditor-General in 2015 about this issue’. He said that the Legislative Assembly’s Ethics and Integrity Adviser had confirmed that he did not have a conflict of interest ‘about this or several other issues’, but had ‘made suggestions’ about how he could deal with the situation, and he was ‘adhering to all his suggestions’.[[750]](#footnote-750) He told the Committee that before the Committee embarked on its inquiry, which gave him ‘a role in scrutinising the issues raised by the Auditor-General’s report’, he wanted to ‘take every possible step to ensure transparency and accountability’.[[751]](#footnote-751) In his view, without his ‘referral of these deals to the Auditor-General in the first place, they would never have been investigated’ and ‘would not be being further investigated by an Assembly committee’.[[752]](#footnote-752)

Mr Coe went on to refer to written advice provided to him by the Ethics and Integrity Adviser, in which the Adviser had advised him of matters that warranted consideration in this instance:

The first matter relates to your provision to the Auditor-General of information that eventually led to the conduct of the performance audit to which the Report relates.

The second matter that warrants attention is the matter of family-based relationships with the principal of Colliers International. The principal has various commercial and friendship relationships with members of your wife’s family, and as a result was invited to attend your wedding.

The third matter that warrants consideration arises from the fact that Colliers International, through an employee who is your brother-in-law, purchased some hampers from your wife’s hamper business as presents for clients of Colliers International.

The fourth matter arises from your advice that the principal of Colliers has facilitated fundraising dinners for the Liberal Party and, you understand, for the Labor Party.

The fifth matter relates to your referral to the police of the alteration of a document that was the subject of a freedom of information request made by you to the Land Development Agency.[[753]](#footnote-753)

The Adviser stated, in relation to the above matters:

In these circumstances it is appropriate to consider whether your connection to the matters to which the Report relates gives rise to any actual or perceived conflict of interest and, if so, what action you should take to manage or avoid that actual or perceived conflict as required by the Members’ Code of Conduct.[[754]](#footnote-754)

The Adviser wrote:

I do not consider that it is necessary for you to excuse yourself from the Committee or from its inquiry into the Report, provided that you make early disclosure to the committee (perhaps through, but not just to, the Chair) of the various relationships between Colliers International and/or its principal and your wife’s family’s and your wife’s business.

By doing so, I consider that you would manage the potential for a perception of conflict of interest in a manner that is consistent with the Members’ Code of Conduct.

In making that disclosure and in the absence of any legal compulsion to do so, I do not consider that it would be necessary for you to disclose to the Committee the identity of those who may have provided to you the information that you conveyed to the Auditor-General.

If the principal of Colliers International appears before the Committee, it would be appropriate that he be made aware of the relevant disclosures that you have made to the Committee.

If a person who was one of your informants appears before the Committee as a witness, I do not consider that it would be necessary for you to disclose that fact to the Committee. However, if that witness were to give evidence to the Committee inconsistent with their previous advice to you, I suggest that you seek additional advice as a matter of urgency.[[755]](#footnote-755)

Further, the Ethics and Integrity Adviser wrote that:

In my view, having regard to the circumstances set out above, it would not be appropriate to conclude that you had any actual conflict of interest that would preclude you from participating in the work of the Committee when considering the Report.

There is nothing of which I am aware that would suggest that you would gain any personal advantage from the Report, the Committee’s inquiry into it or any subsequent Assembly or government decisions in relation to matters involved.

While your wife’s business, and thereby you indirectly, may have benefited from a sale of goods to Colliers International, you have advised me that this was a one-off transaction and there is no ongoing commercial relationship or any expectation of the same.[[756]](#footnote-756)

At this point Mr Coe stated that in light of this disclosure, ‘which is consistent with the advice of the Ethics and Integrity Adviser’, he ‘thought it appropriate that the Auditor-General and future witnesses and the public at large be aware of that declaration’.[[757]](#footnote-757)

Response by the Auditor-General

In hearings of 26 July 2017 the Auditor-General sought leave of the Chair of the Committee to make a statement in response to Mr Coe’s disclosure.[[758]](#footnote-758) She told the Committee that ‘for the public record, when we close a PID we have no further communication on our audit work with the entities making the PID’. This ‘often causes anxiety’ but ‘we cease it because we are independent’.[[759]](#footnote-759)

The Auditor-General told the Committee that it was best not to ‘assume that the matters would never have been investigated’ if Mr Coe had not brought his concerns to the Audit Office, or that this was ‘the only person or persons who have come forward over this issue’, which was important ‘for the interest of confidentiality’. If the Audit Office ‘knew of details of any conflict of interest’, it ‘would have brought that out’. [[760]](#footnote-760)

1. Legislative Assembly for the ACT, *Minutes of Proceedings No. 2*, 13 December 2016, p.13, available at: <https://www.parliament.act.gov.au/__data/assets/pdf_file/0008/1017980/MoP002F1.pdf> [↑](#footnote-ref-1)
2. Legislative Assembly for the ACT, *Minutes of Proceedings* *No. 37*, 26 October 2017, p.489, available at: <https://www.parliament.act.gov.au/__data/assets/pdf_file/0003/1122285/MOP037F.pdf> [↑](#footnote-ref-2)
3. Legislative Assembly for the ACT, *Debates*, 13 December 2016, p.40, available at: <http://www.hansard.act.gov.au/hansard/2017/pdfs/20161213a.pdf> [↑](#footnote-ref-3)
4. Section 9 of the *Seat of Government (Administration) Act 1910* (Cth) provides that ‘No Crown lands in the Territory shall be sold or disposed of for any estate of freehold … ’, viewed 15 October 2018, available at: <https://www.legislation.gov.au/Details/C2017C00093> The effect of this is that land that would be in other jurisdictions acquired under freehold are in the ACT acquired under a ‘Crown lease’ of a nominal term of 99 years. See Environment, Planning and Sustainable Development Directorate – Planning, ‘Leasehold’, viewed 15 October 2018, available at: <https://www.planning.act.gov.au/topics/buying,_selling_and_leasing_property/leases-and-licenses/leasehold> See also Leo Foley, ‘The Road to Leasehold – the original of the Canberra leasehold system’, viewed 15 October 2018, available at: <http://leofoley.com/PDF/Canberra-leasehold-system.pdf> [↑](#footnote-ref-4)
5. See ACT Auditor-General’s report: *Certain Land Development Agency acquisitions*, Report No. 7/2016, available at: <http://www.audit.act.gov.au/auditreports/reports2016/Report%20No.%207%20of%202016%20Certain%20Land%20Development%20Agency%20Acquisitions.pdf> [↑](#footnote-ref-5)
6. See *Certain Land Development Agency acquisitions*, e.g. pp.32 and 17. See also ACT Government, ‘City to the Lake’, ‘The City Plan’, viewed 26 April 2018, available at: <https://www.cityplan.act.gov.au/city-to-the-lake> and ACT Government, ‘City to the Lake: Strategic Urban Design Framework, August 2015’, viewed 26 April 2018, available at: <https://suburbanland.act.gov.au/uploads/ckfinder/files/pdf/3_Business/city_to_the_lake/Strategic%20Urban%20Design%20Framework.pdf> . The agency currently responsible for the City to the Lake project is now the City Renewal Authority: see ‘City Renewal Authority’, viewed 26 September 2018, available at: <https://www.act.gov.au/cityrenewal/home> [↑](#footnote-ref-6)
7. See Legislative Assembly for the ACT, *Minutes of Proceedings*, 31 October 2016, p.4, viewed 6 March 2018, available at: <https://www.parliament.act.gov.au/__data/assets/pdf_file/0008/1000241/MoP001F2.pdf> [↑](#footnote-ref-7)
8. *Transcript of Evidence*, 26 July 2017, p.1. [↑](#footnote-ref-8)
9. Dr Maxine Cooper, *Transcript of Evidence*, 26 July 2017, p.1. [↑](#footnote-ref-9)
10. Dr Maxine Cooper, *Transcript of Evidence*, 26 July 2017, p.1. [↑](#footnote-ref-10)
11. Dr Maxine Cooper, *Transcript of Evidence*, 26 July 2017, p.1. [↑](#footnote-ref-11)
12. Legislative Assembly for the ACT, *Minutes of Proceedings*, 28 March 2017, p.127, viewed 26 April 2018, available at: <https://www.parliament.act.gov.au/__data/assets/pdf_file/0016/1046302/MoP011F.pdf> [↑](#footnote-ref-12)
13. There is no longer a Minister for Economic Development in the ACT. See Administrative Arrangements 2018 (No 1) Notifiable instrument NI2018-482, viewed 26 September 2018, available at: <https://www.legislation.act.gov.au/View/ni/2018-482/current/PDF/2018-482.PDF> [↑](#footnote-ref-13)
14. See Legislative Assembly for the ACT, Minutes of Proceedings, 11 May 2017, pp.193-200, viewed 4 September 2018, available at: <https://www.parliament.act.gov.au/__data/assets/pdf_file/0004/1061176/MoP016F1.pdf> , and see *City Renewal Authority and Suburban Land Agency Act 2017* (ACT), viewed 4 September 2018, available at: <http://www.legislation.act.gov.au/a/2017-12/default.asp> [↑](#footnote-ref-14)
15. Land Development Agency, *Annual Report 2016-17*, p.15, viewed 6 March 2018, available from: <http://suburbanland.act.gov.au/uploads/ckfinder/files/pdf/1_About/Publications_and_Reports/Annual_Reports/171009_LDA_AnnualReport-2016-17_WEB.pdf> The City Renewal Authority and the Suburban Land Agency were created by the *City Renewal Authority and Suburban Land Agency Act 2017* (ACT), effective 1 July 2017, available at: <http://www.legislation.act.gov.au/a/2017-12/default.asp> [↑](#footnote-ref-15)
16. An aerial image with Block 24 Section 65, City, identified is provided in Auditor-General’s Report No 7 of 2016: *Certain Land Development Agency acquisitions*, p.28, viewed 5 September 2018, available at: <http://www.audit.act.gov.au/__data/assets/pdf_file/0009/1179945/Report-No.-7-of-2016-Certain-Land-Development-Agency-Acquisitions.pdf> [↑](#footnote-ref-16)
17. Mr Simon Corbell MLA, speaking in Legislative Assembly for the ACT, *Debates*, 22 June 2011, p.2259, viewed 26 September 2018, available at: <http://www.hansard.act.gov.au/hansard/2011/pdfs/20110622.pdf> [↑](#footnote-ref-17)
18. Coranderrk Pond is situated at the intersection of Coranderrk Street and Parkes Way, Canberra City. [↑](#footnote-ref-18)
19. Mr Brett Stanton, *Transcript of Evidence*, 26 July 2017, pp.4-5. [↑](#footnote-ref-19)
20. Mr Brett Stanton, *Transcript of Evidence*, 26 July 2017, p.5. [↑](#footnote-ref-20)
21. Mr Brett Stanton, *Transcript of Evidence*, 26 July 2017, p.5. [↑](#footnote-ref-21)
22. Mr Brett Stanton, *Transcript of Evidence*, 26 July 2017, p.5. [↑](#footnote-ref-22)
23. Mr Brett Stanton, *Transcript of Evidence*, 26 July 2017, p.4. [↑](#footnote-ref-23)
24. Mr Brett Stanton, *Transcript of Evidence*, 26 July 2017, p.5. [↑](#footnote-ref-24)
25. Mr Brett Stanton, *Transcript of Evidence*, 26 July 2017, p.5. [↑](#footnote-ref-25)
26. Mr Brett Stanton, *Transcript of Evidence*, 26 July 2017, p.5. [↑](#footnote-ref-26)
27. Mr Brett Stanton, *Transcript of Evidence*, 26 July 2017, p.6. [↑](#footnote-ref-27)
28. Mr Brett Stanton, Dr Maxine Cooper, *Transcript of Evidence*, 26 July 2017, p.7. [↑](#footnote-ref-28)
29. Aquis Entertainment, *A Bold Vision for Canberra, Casino Canberra Redevelopment Proposal: Aquis Canberra’s Integrated Entertainment Precinct, August 2015*. The unsolicited bid stated on p.4 that it was to be ‘formally lodged on 27 August 2015’. The first print media report was Megan Doherty, ‘Plan for new $330m resort-style casino’, *Canberra Times*, 16 September 2015, p.6. [↑](#footnote-ref-29)
30. *Certain LDA acquisitions*, p.48. [↑](#footnote-ref-30)
31. Mr Barry Morris, *Transcript of Evidence*, 27 September 2017, p.127. [↑](#footnote-ref-31)
32. *Transcript of Evidence*, 27 September 2017, p.126. The *Oxford English Dictionary Online* defines ‘bare trust’ as ‘a trust that imposes no active duties on the trustee, other than that of conveying the property to the beneficiary when required; a naked, simple, or passive trust (opposed to active trust)’. See “bare, adj., adv., and n.” OED Online, March 2018, Oxford University Press. Viewed 26 April 2018, available from: <http://www.oed.com/view/Entry/15500?redirectedFrom=bare+trust> [↑](#footnote-ref-32)
33. Mr Brett Stanton, *Transcript of Evidence*, 26 July 2017, p.4. Coranderrk Pond is situated at the intersection of Coranderrk Street and Parkes Way, Canberra City. [↑](#footnote-ref-33)
34. Mr Brett Stanton, *Transcript of Evidence*, 26 July 2017, p.4. [↑](#footnote-ref-34)
35. Mr Brett Stanton, *Transcript of Evidence*, 26 July 2017, pp.4-5. [↑](#footnote-ref-35)
36. Mr Brett Stanton, *Transcript of Evidence*, 26 July 2017, p.5. [↑](#footnote-ref-36)
37. Mr Brett Stanton, *Transcript of Evidence*, 26 July 2017, p.5. [↑](#footnote-ref-37)
38. Mr Brett Stanton, *Transcript of Evidence*, 26 July 2017, p.4. [↑](#footnote-ref-38)
39. Mr Brett Stanton, *Transcript of Evidence*, 26 July 2017, p.5. [↑](#footnote-ref-39)
40. Mr David Dawes, *Transcript of Evidence*, 27 September 2017, p.61. [↑](#footnote-ref-40)
41. Mr David Dawes, *Transcript of Evidence*, 27 September 2017, p.61. [↑](#footnote-ref-41)
42. Mr David Dawes, *Transcript of Evidence*, 27 September 2017, p.61. [↑](#footnote-ref-42)
43. Mr David Dawes, *Transcript of Evidence*, 27 September 2017, p.72. [↑](#footnote-ref-43)
44. Mr David Dawes, *Transcript of Evidence*, 27 September 2017, p.72. [↑](#footnote-ref-44)
45. Mr David Dawes, *Transcript of Evidence*, 27 September 2017, p.61. [↑](#footnote-ref-45)
46. Mr David Dawes, *Transcript of Evidence*, 27 September 2017, p.62. [↑](#footnote-ref-46)
47. Mr Dan Stewart, *Transcript of Evidence*, 27 September 2017, p.92. Casino Canberra owns Block 16, Section 65, City, which is mostly occupied by a pedestrian pathway which connects Corranderrk Street and Allara Street, City. [↑](#footnote-ref-47)
48. Mr Paul Powderly, *Transcript of Evidence*, 27 September 2017, p.156. [↑](#footnote-ref-48)
49. Mr Paul Powderly, *Transcript of Evidence*, 27 September 2017, p.156. [↑](#footnote-ref-49)
50. Mr Barry Morris, *Transcript of Evidence*, 27 September 2017, p.128. The CEO was identified in hearings as Mr Phil O'Brien. The Director was Identified in hearings as Mr Graham Potts. [↑](#footnote-ref-50)
51. Mr Graham Potts, *Transcript of Evidence*, 13 October 2017, p.158. [↑](#footnote-ref-51)
52. Mr Barry Morris, *Transcript of Evidence*, 27 September 2017, p.128. [↑](#footnote-ref-52)
53. Mr Barry Morris, *Transcript of Evidence*, 27 September 2017, p.128. [↑](#footnote-ref-53)
54. Mr Barry Morris, *Transcript of Evidence*, 27 September 2017, p.128. [↑](#footnote-ref-54)
55. Mr Barry Morris, *Transcript of Evidence*, 27 September 2017, p.128. [↑](#footnote-ref-55)
56. *Certain LDA acquisitions*, p.47. [↑](#footnote-ref-56)
57. See *Certain LDA acquisitions*, pp.39, 49-52. [↑](#footnote-ref-57)
58. See *Certain LDA acquisitions*, pp.49-52 and the *Lands Acquisition Act 1994*, viewed 26 April 2018, available at: <http://www.legislation.act.gov.au/a/1994-42/current/pdf/1994-42.pdf> [↑](#footnote-ref-58)
59. Dr Maxine Cooper, *Transcript of Evidence*, 26 July 2017, p.27. [↑](#footnote-ref-59)
60. Dr Maxine Cooper, *Transcript of Evidence*, 26 July 2017, p.27. [↑](#footnote-ref-60)
61. Mr Brett Stanton, *Transcript of Evidence*, 26 July 2017, p.28. [↑](#footnote-ref-61)
62. Mr Brett Stanton, *Transcript of Evidence*, 26 July 2017, p.28. [↑](#footnote-ref-62)
63. Mr Brett Stanton, *Transcript of Evidence*, 26 July 2017, p.28, quoting *Certain LDA acquisitions*, p.52. [↑](#footnote-ref-63)
64. *Transcript of Evidence*, 26 July 2017, p.28. [↑](#footnote-ref-64)
65. Dr Maxine Cooper, *Transcript of Evidence*, 26 July 2017, p.28. [↑](#footnote-ref-65)
66. Mr Brett Stanton, *Transcript of Evidence*, 26 July 2017, p.29, quoting *Certain LDA acquisitions*, p.51. [↑](#footnote-ref-66)
67. Mr Brett Stanton, *Transcript of Evidence*, 26 July 2017, p.29. [↑](#footnote-ref-67)
68. Mr Tim Xirakis, *Transcript of Evidence*, 27 September 2017, p.105. [↑](#footnote-ref-68)
69. Mr Tim Xirakis, *Transcript of Evidence*, 27 September July 2017, p.105. [↑](#footnote-ref-69)
70. Mr Tim Xirakis, *Transcript of Evidence*, 27 September 2017, p.105. [↑](#footnote-ref-70)
71. Mr David Dawes, *Transcript of Evidence*, 27 September 2017, p.72. [↑](#footnote-ref-71)
72. Mr David Dawes, *Transcript of Evidence*, 27 September 2017, pp.72-73. [↑](#footnote-ref-72)
73. Mr Peter Garrisson, *Transcript of Evidence*, 22 November 2017, p.285. [↑](#footnote-ref-73)
74. Mr Peter Garrisson, *Transcript of Evidence*, 22 November 2017, p.289. [↑](#footnote-ref-74)
75. Mr Peter Garrisson, *Transcript of Evidence*, 22 November 2017, p.290. [↑](#footnote-ref-75)
76. Mr Peter Garrisson, *Transcript of Evidence*, 22 November 2017, p.290. The Oxford English Dictionary defines ‘private treaty’ as ‘a form of property sale effected by a private agreement between the seller and a bidder, rather than by auction, public tender, etc.’, see "private treaty, n.”, *OED Online*, Oxford University Press, March 2018, viewed 11 May 2018. [↑](#footnote-ref-76)
77. *Transcript of Evidence*, 22 November 2017, p.285. [↑](#footnote-ref-77)
78. Mr Peter Garrisson, *Transcript of Evidence*, 22 November 2017, p.285. [↑](#footnote-ref-78)
79. Mr Peter Garrisson, *Transcript of Evidence*, 22 November 2017, p.285. [↑](#footnote-ref-79)
80. Mr Paul Powderly, *Transcript of Evidence*, 27 September 2017, p.147. [↑](#footnote-ref-80)
81. Mr Paul Powderly, *Transcript of Evidence*, 27 September 2017, pp.156-157. [↑](#footnote-ref-81)
82. Mr Paul Powderly, *Transcript of Evidence*, 27 September 2017, p.157. [↑](#footnote-ref-82)
83. Mr Paul Powderly, *Transcript of Evidence*, 27 September 2017, p.138. [↑](#footnote-ref-83)
84. Mr Paul Powderly, *Transcript of Evidence*, 27 September 2017, p.139. [↑](#footnote-ref-84)
85. *Transcript of Evidence*, 27 September 2017, p.68. [↑](#footnote-ref-85)
86. Mr Tim Xirakis, *Transcript of Evidence*, 27 September 2017, p.104. [↑](#footnote-ref-86)
87. Mr Tim Xirakis, *Transcript of Evidence*, 27 September 2017, p.104. [↑](#footnote-ref-87)
88. Mr Tim Xirakis, *Transcript of Evidence*, 27 September 2017, p.104. [↑](#footnote-ref-88)
89. Mr David Dawes, *Transcript of Evidence*, 27 September 2017, p.69. [↑](#footnote-ref-89)
90. Mr Barry Morris, *Transcript of Evidence*, 27 September 2017, p.127. [↑](#footnote-ref-90)
91. Mr Dan Stewart, *Transcript of Evidence*, 27 September 2017, p.86. [↑](#footnote-ref-91)
92. Mr Dan Stewart, *Transcript of Evidence*, 27 September 2017, p.86. [↑](#footnote-ref-92)
93. Mr Dan Stewart, *Transcript of Evidence*, 27 September 2017, pp.86-87. [↑](#footnote-ref-93)
94. *Transcript of Evidence*, 27 September 2017, p.106. See Legislative Assembly for the ACT, Debates, 22 June 2011, pp.2258-2260. [↑](#footnote-ref-94)
95. Mr Tim Xirakis, *Transcript of Evidence*, 27 September 2017, p.106 [↑](#footnote-ref-95)
96. Mr Graham Potts, *Transcript of Evidence*, 13 October 2017, p.161. [↑](#footnote-ref-96)
97. Mr Graham Potts, *Transcript of Evidence*, 13 October 2017, p.161. [↑](#footnote-ref-97)
98. Mr Graham Potts, *Transcript of Evidence*, 13 October 2017, p.168. [↑](#footnote-ref-98)
99. Mr Graham Potts, *Transcript of Evidence*, 13 October 2017, p.162. [↑](#footnote-ref-99)
100. Mr Graham Potts, *Transcript of Evidence*, 13 October 2017, p.166. [↑](#footnote-ref-100)
101. See *Certain LDA acquisitions*, p.37. [↑](#footnote-ref-101)
102. *Certain LDA acquisitions*, p.1. [↑](#footnote-ref-102)
103. *Certain LDA acquisitions*, p.38. [↑](#footnote-ref-103)
104. *Certain LDA acquisitions*, p.36. [↑](#footnote-ref-104)
105. Ms Narelle Byrne, *Transcript of Evidence*, 13 October 2017, p.200. [↑](#footnote-ref-105)
106. Ms Narelle Byrne, *Transcript of Evidence*, 13 October 2017, p.200. [↑](#footnote-ref-106)
107. Ms Narelle Byrne, *Transcript of Evidence*, 13 October 2017, p.201. [↑](#footnote-ref-107)
108. Ms Narelle Byrne, *Transcript of Evidence*, 13 October 2017, p.204. [↑](#footnote-ref-108)
109. *Transcript of Evidence*, 13 October 2017, p.202 *ff*. [↑](#footnote-ref-109)
110. Ms Narelle Byrne, *Transcript of Evidence*, 13 October 2017, p.202. Legislation referenced is the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW), viewed 5 October 2018, available at: <https://www.legislation.nsw.gov.au/#/view/act/1991/22> [↑](#footnote-ref-110)
111. Ms Narelle Byrne, *Transcript of Evidence*, 13 October 2017, p.202. [↑](#footnote-ref-111)
112. *Transcript of Evidence*, 13 October 2017, p.201. [↑](#footnote-ref-112)
113. Ms Narelle Byrne, *Transcript of Evidence*, 13 October 2017, p.201. [↑](#footnote-ref-113)
114. Ms Narelle Byrne, *Transcript of Evidence*, 13 October 2017, p.202. [↑](#footnote-ref-114)
115. Ms Narelle Byrne, *Transcript of Evidence*, 13 October 2017, p.202. [↑](#footnote-ref-115)
116. *Transcript of Evidence*, 13 October 2017, p.206. [↑](#footnote-ref-116)
117. Ms Narelle Byrne, *Transcript of Evidence*, 13 October 2017, pp.206-207, citing Australian Property Institute, *Australia and New Zealand Valuation and Property Standards 2012*, para 4.3, ‘IVSC Definitions’, p.10.1.5., viewed 15 October 2018, available at: <https://www.api.org.au/sites/default/files/uploaded-content/website-content/2012-anzvps_8.pdf> [↑](#footnote-ref-117)
118. Ms Narelle Byrne, *Transcript of Evidence*, 13 October 2017, p.207. [↑](#footnote-ref-118)
119. Ms Narelle Byrne, *Transcript of Evidence*, 13 October 2017, p.205. [↑](#footnote-ref-119)
120. Ms Narelle Byrne, *Transcript of Evidence*, 13 October 2017, p.206. [↑](#footnote-ref-120)
121. Mr Richard Swinbourne, *Transcript of Evidence*, 13 October 2017, p.189. [↑](#footnote-ref-121)
122. Mr Richard Swinbourne, *Transcript of Evidence*, 13 October 2017, pp.189-190. [↑](#footnote-ref-122)
123. Mr Richard Swinbourne, *Transcript of Evidence*, 13 October 2017, p.190. [↑](#footnote-ref-123)
124. Mr Richard Swinbourne, *Transcript of Evidence*, 13 October 2017, p.192. [↑](#footnote-ref-124)
125. Mr Richard Swinbourne, *Transcript of Evidence*, 13 October 2017, p.192. [↑](#footnote-ref-125)
126. Mr Graham Potts, *Transcript of Evidence*, 13 October 2017, pp.158-159. [↑](#footnote-ref-126)
127. Mr Barry Morris, *Transcript of Evidence*, 27 September 2017, p.128. [↑](#footnote-ref-127)
128. Mr Barry Morris, *Transcript of Evidence*, 27 September 2017, p.128. The General Manager was identified as Mr Phil O’Brien. [↑](#footnote-ref-128)
129. Mr Barry Morris, *Transcript of Evidence*, 27 September 2017, p.129. [↑](#footnote-ref-129)
130. Mr Brett Stanton, *Transcript of Evidence*, 26 July 2017, p.5. [↑](#footnote-ref-130)
131. Mr Brett Stanton, *Transcript of Evidence*, 26 July 2017, p.5. [↑](#footnote-ref-131)
132. Mr Brett Stanton, *Transcript of Evidence*, 26 July 2017, p.6. [↑](#footnote-ref-132)
133. Mr Brett Stanton, Dr Maxine Cooper, *Transcript of Evidence*, 26 July 2017, p.7. [↑](#footnote-ref-133)
134. *Certain LDA acquisitions*, p.48. [↑](#footnote-ref-134)
135. Mr David Dawes, *Transcript of Evidence*, 27 September 2017, p.62. [↑](#footnote-ref-135)
136. Mr Dan Stewart, *Transcript of Evidence*, 27 September 2017, p.84. [↑](#footnote-ref-136)
137. Mr Dan Stewart, *Transcript of Evidence*, 27 September 2017, p.84. [↑](#footnote-ref-137)
138. Mr Dan Stewart, *Transcript of Evidence*, 27 September 2017, p.91. [↑](#footnote-ref-138)
139. Mr Dan Stewart, *Transcript of Evidence*, 27 September 2017, p.85. [↑](#footnote-ref-139)
140. Mr Dan Stewart, *Transcript of Evidence*, 27 September 2017, p.98. [↑](#footnote-ref-140)
141. Mr Dan Stewart, *Transcript of Evidence*, 27 September 2017, p.98. [↑](#footnote-ref-141)
142. Mr Dan Stewart, *Transcript of Evidence*, 27 September 2017, p.91. [↑](#footnote-ref-142)
143. Mr Dan Stewart, *Transcript of Evidence*, 27 September 2017, p.99. [↑](#footnote-ref-143)
144. Mr Dan Stewart, *Transcript of Evidence*, 27 September 2017, p.99. [↑](#footnote-ref-144)
145. Mr Dan Stewart, *Transcript of Evidence*, 27 September 2017, p.100. [↑](#footnote-ref-145)
146. *Certain LDA acquisitions*, p.41. [↑](#footnote-ref-146)
147. *Certain LDA acquisitions*, p.42. [↑](#footnote-ref-147)
148. *Certain LDA acquisitions*, p.42. [↑](#footnote-ref-148)
149. *Certain LDA acquisitions*, p.42. [↑](#footnote-ref-149)
150. *Certain LDA acquisitions*, p.42. [↑](#footnote-ref-150)
151. Mr Paul Powderly, *Transcript of Evidence*, 27 September 2017, p.143. [↑](#footnote-ref-151)
152. Mr Paul Powderly, *Transcript of Evidence*, 27 September 2017, p.143. [↑](#footnote-ref-152)
153. Mr Paul Powderly, *Transcript of Evidence*, 27 September 2017, p.142. [↑](#footnote-ref-153)
154. Mr Paul Powderly, *Transcript of Evidence*, 27 September 2017, p.142. [↑](#footnote-ref-154)
155. For definitions of Commercial Zone codes in ACT planning, see Territory Plan, NI2008-27, viewed 1 May 2018, available at: <http://www.legislation.act.gov.au/ni/2008-27/current/default.asp> [↑](#footnote-ref-155)
156. Mr Paul Powderly, *Transcript of Evidence*, 27 September 2017, p.151. [↑](#footnote-ref-156)
157. *Transcript of Evidence*, 27 September 2017, p.151. [↑](#footnote-ref-157)
158. Mr Paul Powderly, *Transcript of Evidence*, 27 September 2017, pp.151-152. [↑](#footnote-ref-158)
159. Mr Paul Powderly, *Transcript of Evidence*, 27 September 2017, p.152. [↑](#footnote-ref-159)
160. *Transcript of Evidence*, 27 September 2017, p.149. [↑](#footnote-ref-160)
161. Mr Paul Powderly, *Transcript of Evidence*, 27 September 2017, p.149. [↑](#footnote-ref-161)
162. International Organization for Standardization, ISO 9004:2018, *Quality management — Quality of an organization — Guidance to achieve sustained success*, viewed 8 October 2018, available at: <https://www.iso.org/obp/ui/#iso:std:iso:9004:en> ; International Organization for Standardization, ISO 9001:2015, *Quality management systems, Requirements*, viewed 8 October 2018, available at: <https://www.iso.org/iso-9001-quality-management.html> [↑](#footnote-ref-162)
163. Mr Paul Powderly, *Transcript of Evidence*, 27 September 2017, p.150. [↑](#footnote-ref-163)
164. Mr Paul Powderly, *Transcript of Evidence*, 27 September 2017, p.150. [↑](#footnote-ref-164)
165. Mr Paul Powderly, *Transcript of Evidence*, 27 September 2017, p.150. [↑](#footnote-ref-165)
166. Mr Paul Powderly, *Transcript of Evidence*, 27 September 2017, p.150. [↑](#footnote-ref-166)
167. *Transcript of Evidence*, 27 September 2017, p.146. [↑](#footnote-ref-167)
168. *Transcript of Evidence*, 27 September 2017, p.147. [↑](#footnote-ref-168)
169. Mr Paul Powderly, *Transcript of Evidence*, 27 September 2017, p.147. [↑](#footnote-ref-169)
170. Mr Paul Powderly, *Transcript of Evidence*, 27 September 2017, pp.147-148. [↑](#footnote-ref-170)
171. *Transcript of Evidence*, 27 September 2017, p.150. [↑](#footnote-ref-171)
172. Mr Paul Powderly, *Transcript of Evidence*, 27 September 2017, p.150. In the Audit report the former Chief Executive Officer’s view of the LDA’s relationship with Colliers was described as follows: ‘The Chief Executive Officer of the Land Development Agency has advised that they recommended Colliers International for advice as the principal of Colliers International is the President of the Australian Property Institute and that Colliers International was considered preferable as the site was an unusual block, which was key to a larger proposal. The Chief Executive Officer of the Land Development Agency has also advised that they were aware that Colliers International was on a procurement panel for valuation services.’ See *Certain Land Development Agency Acquisitions*, p.41. [↑](#footnote-ref-172)
173. *Transcript of Evidence*, 27 September 2017, p.154. ‘Conflict of interest’ refers to ‘a set of circumstances that creates a risk, or perceived risk, that judgement or actions regarding a primary interest will be unduly influenced by a secondary interest’, or ‘when an individual or corporation has competing interests in a single transaction or relationship’. Chris Spanos, ‘Representing both sides: Conflicts of interest in real estate’, Real Estate Institute of New South Wales (REINSW), 9 July 2015, viewed 7 May 2019, available at: <https://www.reinsw.com.au/Web/Posts/Latest_News/201507/Representing_both_side_Conflicts_of_interest_in_real_estate.aspx> [↑](#footnote-ref-173)
174. Mr Paul Powderly, *Transcript of Evidence*, 27 September 2017, pp.154-155. [↑](#footnote-ref-174)
175. Mr Paul Powderly, *Transcript of Evidence*, 27 September 2017, p.155. [↑](#footnote-ref-175)
176. Mr Paul Powderly, *Transcript of Evidence*, 27 September 2017, p.155. [↑](#footnote-ref-176)
177. Mr Paul Powderly, *Transcript of Evidence*, 27 September 2017, p.155. [↑](#footnote-ref-177)
178. Mr Paul Powderly, *Transcript of Evidence*, 27 September 2017, p.155. [↑](#footnote-ref-178)
179. *Transcript of Evidence*, 27 September 2017, p.153. [↑](#footnote-ref-179)
180. Mr Paul Powderly, *Transcript of Evidence*, 27 September 2017, p.153. [↑](#footnote-ref-180)
181. Mr Paul Powderly, *Transcript of Evidence*, 27 September 2017, p.153. [↑](#footnote-ref-181)
182. *Certain LDA acquisitions*, pp.42-43. [↑](#footnote-ref-182)
183. *Certain LDA acquisitions*, p.44. [↑](#footnote-ref-183)
184. *Certain LDA acquisitions*, p.43. [↑](#footnote-ref-184)
185. *Certain LDA acquisitions*, p.130. [↑](#footnote-ref-185)
186. *Certain LDA acquisitions*, p.41. [↑](#footnote-ref-186)
187. *Transcript of Evidence*, 27 September 2017, p.135 *ff.* [↑](#footnote-ref-187)
188. Mr Paul Powderly, *Transcript of Evidence*, 27 September 2017, p.135. [↑](#footnote-ref-188)
189. Mr Paul Powderly, *Transcript of Evidence*, 27 September 2017, p.136. [↑](#footnote-ref-189)
190. Mr Paul Powderly, *Transcript of Evidence*, 27 September 2017, p.136. [↑](#footnote-ref-190)
191. Mr Paul Powderly, *Transcript of Evidence*, 27 September 2017, pp.136-137. [↑](#footnote-ref-191)
192. Mr Paul Powderly, *Transcript of Evidence*, 27 September 2017, p.137. [↑](#footnote-ref-192)
193. Mr Paul Powderly, *Transcript of Evidence*, 27 September 2017, p.137. [↑](#footnote-ref-193)
194. Mr Paul Powderly, *Transcript of Evidence*, 27 September 2017, p.138. [↑](#footnote-ref-194)
195. Mr Paul Powderly, *Transcript of Evidence*, 27 September 2017, p.138. [↑](#footnote-ref-195)
196. *Transcript of Evidence*, 27 September 2017, p.139. [↑](#footnote-ref-196)
197. Mr Paul Powderly, *Transcript of Evidence*, 27 September 2017, p.139. [↑](#footnote-ref-197)
198. Mr Paul Powderly, *Transcript of Evidence*, 27 September 2017, p.140, and see also Mr Paul Powderly, *Transcript of Evidence*, 22 November 2017, p.304. [↑](#footnote-ref-198)
199. Mr Paul Powderly, *Transcript of Evidence*, 22 November 2017, p.306-307. [↑](#footnote-ref-199)
200. Mr Paul Powderly, *Transcript of Evidence*, 22 November 2017, p.307. [↑](#footnote-ref-200)
201. Mr Paul Powderly, *Transcript of Evidence*, 22 November 2017, p.305. [↑](#footnote-ref-201)
202. *Transcript of Evidence*, 22 November 2017, p.304. [↑](#footnote-ref-202)
203. Mr Paul Powderly, *Transcript of Evidence*, 22 November 2017, pp.304-305. [↑](#footnote-ref-203)
204. Mr Paul Powderly, *Transcript of Evidence*, 22 November 2017, p.305. [↑](#footnote-ref-204)
205. *Certain LDA acquisitions*, pp.2, 3 & 6. [↑](#footnote-ref-205)
206. Mr Richard Swinbourne, *Transcript of Evidence*, 13 October 2017, p.189. [↑](#footnote-ref-206)
207. Mr Richard Swinbourne, *Transcript of Evidence*, 13 October 2017, p.189. [↑](#footnote-ref-207)
208. Mr Richard Swinbourne, *Transcript of Evidence*, 13 October 2017, p.191. [↑](#footnote-ref-208)
209. Mr Richard Swinbourne, *Transcript of Evidence*, 13 October 2017, p.191. [↑](#footnote-ref-209)
210. Mr Richard Swinbourne, *Transcript of Evidence*, 13 October 2017, p.191. [↑](#footnote-ref-210)
211. Mr Richard Swinbourne, *Transcript of Evidence*, 13 October 2017, p.190. [↑](#footnote-ref-211)
212. *Transcript of Evidence*, 27 September 2017, p.94 *ff*. [↑](#footnote-ref-212)
213. Mr Dan Stewart, *Transcript of Evidence*, 27 September 2017, p.94. [↑](#footnote-ref-213)
214. Mr Dan Stewart, *Transcript of Evidence*, 27 September 2017, p.94. [↑](#footnote-ref-214)
215. Mr Dan Stewart, *Transcript of Evidence*, 27 September 2017, p.95. [↑](#footnote-ref-215)
216. Mr Dan Stewart, *Transcript of Evidence*, 27 September 2017, p.96. [↑](#footnote-ref-216)
217. *Transcript of Evidence*, 13 October 2017, p.159. [↑](#footnote-ref-217)
218. Mr Graham Potts, *Transcript of Evidence*, 13 October 2017, p.159. [↑](#footnote-ref-218)
219. Mr Graham Potts, *Transcript of Evidence*, 13 October 2017, p.159. [↑](#footnote-ref-219)
220. Mr Graham Potts, *Transcript of Evidence*, 13 October 2017, p.159. [↑](#footnote-ref-220)
221. Mr Graham Potts, *Transcript of Evidence*, 13 October 2017, pp.159-160. [↑](#footnote-ref-221)
222. Mr Graham Potts, *Transcript of Evidence*, 13 October 2017, p.160. [↑](#footnote-ref-222)
223. Mr Tim Xirakis, *Transcript of Evidence*, 27 September 2017, p.120. [↑](#footnote-ref-223)
224. Mr Tim Xirakis, *Transcript of Evidence*, 27 September 2017, p.120. [↑](#footnote-ref-224)
225. Mr Tim Xirakis, *Transcript of Evidence*, 27 September 2017, pp.120-121. [↑](#footnote-ref-225)
226. Mr Tim Xirakis, *Transcript of Evidence*, 27 September 2017, p.121. [↑](#footnote-ref-226)
227. Mr Tim Xirakis, *Transcript of Evidence*, 27 September 2017, p.122. [↑](#footnote-ref-227)
228. Mr Tim Xirakis, *Transcript of Evidence*, 27 September 2017, p.122. [↑](#footnote-ref-228)
229. Mr Tim Xirakis, *Transcript of Evidence*, 27 September 2017, p.122. [↑](#footnote-ref-229)
230. Mr Tim Xirakis, *Transcript of Evidence*, 27 September 2017, p.122. [↑](#footnote-ref-230)
231. Mr Tim Xirakis, *Transcript of Evidence*, 27 September 2017, p.122. [↑](#footnote-ref-231)
232. Mr Tim Xirakis, *Transcript of Evidence*, 27 September 2017, p.123. [↑](#footnote-ref-232)
233. Mr Tim Xirakis, *Transcript of Evidence*, 27 September 2017, p.123. [↑](#footnote-ref-233)
234. *Transcript of Evidence*, 27 September 2017, p.117. [↑](#footnote-ref-234)
235. Mr Tim Xirakis, *Transcript of Evidence*, 27 September 2017, p.117. [↑](#footnote-ref-235)
236. Mr Tim Xirakis, *Transcript of Evidence*, 27 September 2017, p.117. [↑](#footnote-ref-236)
237. Mr Tim Xirakis, *Transcript of Evidence*, 27 September 2017, p.117. [↑](#footnote-ref-237)
238. Mr Tim Xirakis, *Transcript of Evidence*, 27 September 2017, p.117. [↑](#footnote-ref-238)
239. Mr Tim Xirakis, *Transcript of Evidence*, 27 September 2017, p.118. [↑](#footnote-ref-239)
240. *Transcript of Evidence*, 27 September 2017, p.118. [↑](#footnote-ref-240)
241. Mr Tim Xirakis, *Transcript of Evidence*, 27 September 2017, p.118. [↑](#footnote-ref-241)
242. Mr Tim Xirakis, *Transcript of Evidence*, 27 September 2017, p.118. [↑](#footnote-ref-242)
243. Mr Tim Xirakis, *Transcript of Evidence*, 27 September 2017, p.118. [↑](#footnote-ref-243)
244. Mr Tim Xirakis, *Transcript of Evidence*, 27 September 2017, p.118. [↑](#footnote-ref-244)
245. Mr Tim Xirakis, *Transcript of Evidence*, 27 September 2017, p.118. [↑](#footnote-ref-245)
246. Mr Tim Xirakis, *Transcript of Evidence*, 27 September 2017, p.119. [↑](#footnote-ref-246)
247. Mr Tim Xirakis, *Transcript of Evidence*, 27 September 2017, pp.118-119. [↑](#footnote-ref-247)
248. Re-hiring of employees on contract and a response to a Freedom of Information request are considered in Chapter 10 of this report. [↑](#footnote-ref-248)
249. See Auditor-General’s Report No 8 of 2018, Assembly of rural land west of Canberra, p.51, para 2.24, viewed 7 September 2018, available at: <http://www.audit.act.gov.au/__data/assets/pdf_file/0010/1215829/Report-No.-8-of-2018-Assembly-of-rural-land-west-of-Canberra.pdf> [↑](#footnote-ref-249)
250. See Mr David Dawes, *Transcript of Evidence*, 27 September 2017, p.61; Mr Dan Stewart, *Transcript of Evidence*, 27 September 2017, pp.91-92; Mr Tim Xirakis, *Transcript of Evidence*, 27 September 2017, p.106; Mr Barry Morris, *Transcript of Evidence*, 27 September 2017, p.128; Mr Graham Potts, *Transcript of Evidence*, 13 October 2017, p.161; Mr Paul Powderly, *Transcript of Evidence*, 27 September 2017, p.156; Mr Andrew Barr MLA, *Transcript of Evidence*, 27 September 2017, pp.45-46. [↑](#footnote-ref-250)
251. Mr David Dawes, *Transcript of Evidence*, 27 September 2017, p.61. [↑](#footnote-ref-251)
252. Mr Dan Stewart, *Transcript of Evidence*, 27 September 2017, pp.91-92. [↑](#footnote-ref-252)
253. Mr Tim Xirakis, *Transcript of Evidence*, 27 September 2017, p.106. [↑](#footnote-ref-253)
254. Mr Paul Powderly, *Transcript of Evidence*, 27 September 2017, p.156. [↑](#footnote-ref-254)
255. Mr Andrew Barr MLA, *Transcript of Evidence*, 27 September 2017, pp.45-46. [↑](#footnote-ref-255)
256. Mr Andrew Barr MLA, *Transcript of Evidence*, 27 September 2017, p.51. [↑](#footnote-ref-256)
257. The Committee considered Aquis’ development proposal commercial-in-confidence and received but did not publish the proposal. It published a copy of the ministerial brief at: <https://www.parliament.act.gov.au/__data/assets/pdf_file/0004/1201756/Exhibit-1-Signed-Brief-Aquis-Entertainment-Investment-Proposal.pdf> [↑](#footnote-ref-257)
258. The documents are available from: <https://www.parliament.act.gov.au/in-committees/standing-committees-current-assembly/standing-committee-on-public-accounts/review-of-auditor-general-report-no.-7-of-2916-certain-land-development-agency-acquisitions#tab-1052249-3> [↑](#footnote-ref-258)
259. Letter of 10 October 2018 from the Chair, Standing Committee on Public Accounts, to Mr Shane Maundrell, Compliance Manager and In-house Legal Counsel, Casino Canberra, p.1. [↑](#footnote-ref-259)
260. Letter of 26 October 2018 from Mr Shane Maundrell of Casino Canberra to the Chair, Standing Committee on Public Accounts, pp.1-2. [↑](#footnote-ref-260)
261. Email of 3 March 2015 from Ms Jessica Mellor, Executive Director, Strategy & Project Development, Aquis Developments, to Mr Dan Stewart, Deputy CEO of the LDA, cited in letter of 26 October 2018 from Mr Shane Maundrell of Casino Canberra to Standing Committee on Public Accounts, p.2. [↑](#footnote-ref-261)
262. Email of 3 March 2015 from Mr Dan Stewart, Deputy CEO of the LDA, to Ms Jessica Mellor, Executive Director, Strategy & Project Development, Aquis Developments, cited in letter of 26 October 2018 from Mr Shane Maundrell of Casino Canberra to Standing Committee on Public Accounts, p.2. [↑](#footnote-ref-262)
263. Letter of 26 October 2018 from Mr Shane Maundrell of Casino Canberra to the Chair, Standing Committee on Public Accounts, p.3. [↑](#footnote-ref-263)
264. Letter of 10 October 2018 from the Chair, Standing Committee on Public Accounts, to Mr Shane Maundrell, Compliance Manager and In-house Legal Counsel, Casino Canberra, p.1. [↑](#footnote-ref-264)
265. ACT government, *Investment Proposal Guidelines for Investors,* cited in letter of 26 October 2018 from Mr Shane Maundrell of Casino Canberra to the Chair, Standing Committee on Public Accounts, p.4. [↑](#footnote-ref-265)
266. Letter of 26 October 2018 from Mr Shane Maundrell of Casino Canberra to the Chair, Standing Committee on Public Accounts, p.5. [↑](#footnote-ref-266)
267. Letter of 10 October 2018 from the Chair, Standing Committee on Public Accounts, to Mr Shane Maundrell, Compliance Manager and In-house Legal Counsel, Casino Canberra, pp.1-2, citing Aquis Entertainment, *A Bold Vision for Canberra-Casino Canberra Redevelopment Proposal: Aquis Canberra’s Integrated Entertainment Precinct*, August 2015, p.[14]. [↑](#footnote-ref-267)
268. Letter of 26 October 2018 from Mr Shane Maundrell, Compliance Manager and In-house Legal Counsel, Casino Canberra to the Chair, Standing Committee on Public Accounts, p.5. [↑](#footnote-ref-268)
269. Memo of 18 December 2014 from Mr Rob Purdon of Purdon Planning to Mr Mark Burow and Mr Ian Smith, p.[2], provided as an attachment to letter of 26 October 2018 from Mr Shane Maundrell, Compliance Manager and In-house Legal Counsel, Casino Canberra to the Chair, Standing Committee on Public Accounts, p.6. [↑](#footnote-ref-269)
270. Letter of 26 October 2018 from Mr Shane Maundrell, Compliance Manager and In-house Legal Counsel, Casino Canberra to the Chair, Standing Committee on Public Accounts, p.5. [↑](#footnote-ref-270)
271. Letter of 26 October 2018 from Mr Shane Maundrell, Compliance Manager and In-house Legal Counsel, Casino Canberra to the Chair, Standing Committee on Public Accounts, p.5. [↑](#footnote-ref-271)
272. Letter of 10 October 2018 from the Chair, Standing Committee on Public Accounts, to Mr Shane Maundrell, Compliance Manager and In-house Legal Counsel, Casino Canberra, p.2. [↑](#footnote-ref-272)
273. Letter of 26 October 2018 from Mr Shane Maundrell, Compliance Manager and In-house Legal Counsel, Casino Canberra to the Chair, Standing Committee on Public Accounts, p.6. [↑](#footnote-ref-273)
274. Letter of 26 October 2018 from Mr Shane Maundrell, Compliance Manager and In-house Legal Counsel, Casino Canberra to the Chair, Standing Committee on Public Accounts, p.6. [↑](#footnote-ref-274)
275. Letter of 26 October 2018 from Mr Shane Maundrell, Compliance Manager and In-house Legal Counsel, Casino Canberra to the Chair, Standing Committee on Public Accounts, p.7, citing Aquis Entertainment, *A Bold Vision for Canberra-Casino Canberra Redevelopment Proposal: Aquis Canberra’s Integrated Entertainment Precinct*, August 2015, p.[14]. [↑](#footnote-ref-275)
276. Letter of 10 October 2018 from the Chair, Standing Committee on Public Accounts, to Mr Shane Maundrell, Compliance Manager and In-house Legal Counsel, Casino Canberra, p.2. [↑](#footnote-ref-276)
277. Letter of 26 October 2018 from Mr Shane Maundrell, Compliance Manager and In-house Legal Counsel, Casino Canberra to the Chair, Standing Committee on Public Accounts, p.7, citing Aquis Entertainment, *A Bold Vision for Canberra-Casino Canberra Redevelopment Proposal: Aquis Canberra’s Integrated Entertainment Precinct*, August 2015, p.[14]. [↑](#footnote-ref-277)
278. Letter of 26 October 2018 from Mr Shane Maundrell, Compliance Manager and In-house Legal Counsel, Casino Canberra to the Chair, Standing Committee on Public Accounts, p.7. [↑](#footnote-ref-278)
279. Letter of 10 October 2018 from the Chair, Standing Committee on Public Accounts, to Mr Shane Maundrell, Compliance Manager and In-house Legal Counsel, Casino Canberra, p.2. [↑](#footnote-ref-279)
280. Letter of 26 October 2018 from Mr Shane Maundrell, Compliance Manager and In-house Legal Counsel, Casino Canberra to the Chair, Standing Committee on Public Accounts, p.7. [↑](#footnote-ref-280)
281. Mr Brett Stanton, *Transcript of Evidence*, 26 July 2017, p.20. [↑](#footnote-ref-281)
282. Mr Brett Stanton, *Transcript of Evidence*, 26 July 2017, pp.20-21. [↑](#footnote-ref-282)
283. Mr Brett Stanton, *Transcript of Evidence*, 26 July 2017, p.21. [↑](#footnote-ref-283)
284. Dr Maxine Cooper, *Transcript of Evidence*, 26 July 2017, p.26. [↑](#footnote-ref-284)
285. *Certain LDA acquisitions*, p.1. [↑](#footnote-ref-285)
286. Dr Maxine Cooper, *Transcript of Evidence*, 26 July 2017, p.27. An audit report regarding rural land was subsequently published as Auditor-General’s Report No 8 of 2018, *Assembly of rural land west of Canberra*, viewed 27 September 2018, available at: <http://www.audit.act.gov.au/__data/assets/pdf_file/0010/1215829/Report-No.-8-of-2018-Assembly-of-rural-land-west-of-Canberra.pdf> [↑](#footnote-ref-286)
287. See ‘Statement of the former owners of Mr Spokes Bike Hire’, *Certain LDA acquisitions*, p.66. [↑](#footnote-ref-287)
288. Dr Maxine Cooper, *Transcript of Evidence*, 26 July 2017, pp.29-30. [↑](#footnote-ref-288)
289. *Transcript of Evidence*, 20 October 2017, p.221. [↑](#footnote-ref-289)
290. Ms Jillian Edwards, *Transcript of Evidence*, 20 October 2017, p.221. [↑](#footnote-ref-290)
291. Ms Jillian Edwards, *Transcript of Evidence*, 20 October 2017, p.221. [↑](#footnote-ref-291)
292. Ms Jillian Edwards, *Transcript of Evidence*, 20 October 2017, pp.231-232. [↑](#footnote-ref-292)
293. Ms Jillian Edwards, *Transcript of Evidence*, 20 October 2017, p.232. [↑](#footnote-ref-293)
294. Ms Jillian Edwards, *Transcript of Evidence*, 20 October 2017, p.221. [↑](#footnote-ref-294)
295. Ms Jillian Edwards, *Transcript of Evidence*, 20 October 2017, p.221. [↑](#footnote-ref-295)
296. Ms Jillian Edwards, *Transcript of Evidence*, 20 October 2017, p.222. [↑](#footnote-ref-296)
297. Ms Jillian Edwards, *Transcript of Evidence*, 20 October 2017, p.222. [↑](#footnote-ref-297)
298. Ms Jillian Edwards, *Transcript of Evidence*, 20 October 2017, p.222. [↑](#footnote-ref-298)
299. Ms Jillian Edwards, *Transcript of Evidence*, 20 October 2017, p.225. [↑](#footnote-ref-299)
300. Ms Jillian Edwards, *Transcript of Evidence*, 20 October 2017, pp.225-226. [↑](#footnote-ref-300)
301. Ms Jillian Edwards, *Transcript of Evidence*, 20 October 2017, p.226. [↑](#footnote-ref-301)
302. Ms Jillian Edwards, *Transcript of Evidence*, 20 October 2017, p.230. [↑](#footnote-ref-302)
303. Ms Jillian Edwards, *Transcript of Evidence*, 20 October 2017, p.230. The date of the interview was identified as 17 August 2015: see *Transcript of Evidence*, 20 October 2017, p.241 [↑](#footnote-ref-303)
304. Ms Jillian Edwards, *Transcript of Evidence*, 20 October 2017, p.238. See also *Certain LDA acquisitions*, p.64. [↑](#footnote-ref-304)
305. Ms Jillian Edwards, *Transcript of Evidence*, 20 October 2017, p.222. The officer was identified as Mr Lincoln Hawkins. [↑](#footnote-ref-305)
306. Ms Jillian Edwards, *Transcript of Evidence*, 20 October 2017, p.222. [↑](#footnote-ref-306)
307. Ms Jillian Edwards, *Transcript of Evidence*, 20 October 2017, p.222. [↑](#footnote-ref-307)
308. Ms Jillian Edwards, *Transcript of Evidence*, 20 October 2017, p.222. Please see Canberra Convention Bureau, ‘Australia Forum’, viewed 27 September 2018, available at: <http://www.canberraconvention.com.au/australia-forum/> [↑](#footnote-ref-308)
309. Mr Tim Xirakis, *Transcript of Evidence*, 27 September 2017, p.111. [↑](#footnote-ref-309)
310. Mr Tim Xirakis, *Transcript of Evidence*, 27 September 2017, pp.115-116. [↑](#footnote-ref-310)
311. Ms Jillian Edwards, *Transcript of Evidence*, 20 October 2017, p.222. The consultant was identified as Ms Tania Parks. [↑](#footnote-ref-311)
312. Ms Jillian Edwards, *Transcript of Evidence*, 20 October 2017, pp.222-223. [↑](#footnote-ref-312)
313. Ms Jillian Edwards, *Transcript of Evidence*, 20 October 2017, p.223. The officers were identified as Mr Tom Gordon and Mr Ian Wood-Bradley. [↑](#footnote-ref-313)
314. Ms Jillian Edwards, *Transcript of Evidence*, 20 October 2017, p.223. [↑](#footnote-ref-314)
315. Ms Jillian Edwards, *Transcript of Evidence*, 20 October 2017, p.223. Ms Edwards stated that this offer was withdrawn on 13 June 2014. [↑](#footnote-ref-315)
316. Ms Jillian Edwards, *Transcript of Evidence*, 20 October 2017, p.225. [↑](#footnote-ref-316)
317. Ms Jillian Edwards, *Transcript of Evidence*, 20 October 2017, p.225. [↑](#footnote-ref-317)
318. Ms Jillian Edwards, *Transcript of Evidence*, 20 October 2017, p.225. [↑](#footnote-ref-318)
319. Ms Jillian Edwards, *Transcript of Evidence*, 20 October 2017, p.225. [↑](#footnote-ref-319)
320. Ms Jillian Edwards, *Transcript of Evidence*, 20 October 2017, pp.225-226. [↑](#footnote-ref-320)
321. Ms Jillian Edwards, *Transcript of Evidence*, 20 October 2017, p.226. [↑](#footnote-ref-321)
322. Ms Jillian Edwards, *Transcript of Evidence*, 20 October 2017, p.226. [↑](#footnote-ref-322)
323. Ms Jillian Edwards, *Transcript of Evidence*, 20 October 2017, p.226. [↑](#footnote-ref-323)
324. Ms Jillian Edwards, *Transcript of Evidence*, 20 October 2017, p.226. [↑](#footnote-ref-324)
325. Ms Jillian Edwards, *Transcript of Evidence*, 20 October 2017, p.226. [↑](#footnote-ref-325)
326. Ms Jillian Edwards, *Transcript of Evidence*, 20 October 2017, p.226. [↑](#footnote-ref-326)
327. Ms Jillian Edwards, *Transcript of Evidence*, 20 October 2017, p.227. The author of the letters was identified as Mr Brendan Ding. [↑](#footnote-ref-327)
328. Ms Jillian Edwards, *Transcript of Evidence*, 20 October 2017, p.227. [↑](#footnote-ref-328)
329. Ms Jillian Edwards, *Transcript of Evidence*, 20 October 2017, pp.227-228. [↑](#footnote-ref-329)
330. Ms Jillian Edwards, *Transcript of Evidence*, 20 October 2017, p.228. [↑](#footnote-ref-330)
331. Ms Jillian Edwards, *Transcript of Evidence*, 20 October 2017, p.228. [↑](#footnote-ref-331)
332. Ms Jillian Edwards, *Transcript of Evidence*, 20 October 2017, p.228. [↑](#footnote-ref-332)
333. Ms Jillian Edwards, *Transcript of Evidence*, 20 October 2017, p.228. The adviser was identified as Mr Tony Hodges. [↑](#footnote-ref-333)
334. Ms Jillian Edwards, *Transcript of Evidence*, 20 October 2017, pp.228-229. [↑](#footnote-ref-334)
335. Ms Jillian Edwards, *Transcript of Evidence*, 20 October 2017, p.229. [↑](#footnote-ref-335)
336. Ms Jillian Edwards, *Transcript of Evidence*, 20 October 2017, p.229. [↑](#footnote-ref-336)
337. Ms Jillian Edwards, *Transcript of Evidence*, 20 October 2017, pp.229-230. [↑](#footnote-ref-337)
338. Ms Jillian Edwards, *Transcript of Evidence*, 20 October 2017, p.230. [↑](#footnote-ref-338)
339. Ms Jillian Edwards, *Transcript of Evidence*, 20 October 2017, p.230. [↑](#footnote-ref-339)
340. Ms Jillian Edwards, *Transcript of Evidence*, 20 October 2017, p.230. [↑](#footnote-ref-340)
341. Ms Jillian Edwards, *Transcript of Evidence*, 20 October 2017, pp.230-231. [↑](#footnote-ref-341)
342. Ms Jillian Edwards, *Transcript of Evidence*, 20 October 2017, p.230. [↑](#footnote-ref-342)
343. Mr Eugene Kalenjuk, *Transcript of Evidence*, 20 October 2017, p.271. [↑](#footnote-ref-343)
344. Mr Eugene Kalenjuk, *Transcript of Evidence*, 20 October 2017, p.271. [↑](#footnote-ref-344)
345. Mr Eugene Kalenjuk, *Transcript of Evidence*, 20 October 2017, p.272. [↑](#footnote-ref-345)
346. *Transcript of Evidence*, 20 October 2017, p.272. [↑](#footnote-ref-346)
347. Mr Eugene Kalenjuk, *Transcript of Evidence*, 20 October 2017, p.272. [↑](#footnote-ref-347)
348. Mr Eugene Kalenjuk, *Transcript of Evidence*, 20 October 2017, p.272. [↑](#footnote-ref-348)
349. Mr Eugene Kalenjuk, *Transcript of Evidence*, 20 October 2017, pp.272-273. [↑](#footnote-ref-349)
350. Mr Eugene Kalenjuk, *Transcript of Evidence*, 20 October 2017, p.273. [↑](#footnote-ref-350)
351. Mr Eugene Kalenjuk, *Transcript of Evidence*, 20 October 2017, p.273. [↑](#footnote-ref-351)
352. Mr Eugene Kalenjuk, *Transcript of Evidence*, 20 October 2017, p.274. [↑](#footnote-ref-352)
353. Mr Eugene Kalenjuk, *Transcript of Evidence*, 20 October 2017, pp.274-275. [↑](#footnote-ref-353)
354. Mr Eugene Kalenjuk, *Transcript of Evidence*, 20 October 2017, p.275. [↑](#footnote-ref-354)
355. Mr Eugene Kalenjuk, *Transcript of Evidence*, 20 October 2017, pp.275-276. [↑](#footnote-ref-355)
356. Mr Eugene Kalenjuk, *Transcript of Evidence*, 20 October 2017, p.275. [↑](#footnote-ref-356)
357. Mr Eugene Kalenjuk, *Transcript of Evidence*, 20 October 2017, p.275. [↑](#footnote-ref-357)
358. *Transcript of Evidence*, 20 October 2017, p.278 *ff.* [↑](#footnote-ref-358)
359. Mr David James, *Transcript of Evidence*, 20 October 2017, p.278. [↑](#footnote-ref-359)
360. Mr David James, *Transcript of Evidence*, 20 October 2017, pp.278-279. [↑](#footnote-ref-360)
361. Mr David James, *Transcript of Evidence*, 20 October 2017, p.279. [↑](#footnote-ref-361)
362. Mr David James, *Transcript of Evidence*, 20 October 2017, p.279. [↑](#footnote-ref-362)
363. Mr David James, *Transcript of Evidence*, 20 October 2017, p.279. [↑](#footnote-ref-363)
364. Mr David James, *Transcript of Evidence*, 20 October 2017, p.279. [↑](#footnote-ref-364)
365. Mr David James, *Transcript of Evidence*, 20 October 2017, pp.279-280. [↑](#footnote-ref-365)
366. Mr David James, *Transcript of Evidence*, 20 October 2017, p.280. [↑](#footnote-ref-366)
367. *Transcript of Evidence*, 20 October 2017, p.280. [↑](#footnote-ref-367)
368. Mr David James, *Transcript of Evidence*, 20 October 2017, p.280. [↑](#footnote-ref-368)
369. Mr David James, *Transcript of Evidence*, 20 October 2017, p.280. [↑](#footnote-ref-369)
370. Mr David James, *Transcript of Evidence*, 20 October 2017, p.281. [↑](#footnote-ref-370)
371. Mr David James, *Transcript of Evidence*, 20 October 2017, p.283. [↑](#footnote-ref-371)
372. Mr David James, *Transcript of Evidence*, 20 October 2017, p.284. [↑](#footnote-ref-372)
373. Ms Jillian Edwards, *Transcript of Evidence*, 20 October 2017, p.230. [↑](#footnote-ref-373)
374. Ms Jillian Edwards, *Transcript of Evidence*, 20 October 2017, p.230. The date of the interview was identified as 17 August 2015: see *Transcript of Evidence*, 20 October 2017, p.241 [↑](#footnote-ref-374)
375. Ms Jillian Edwards, *Transcript of Evidence*, 20 October 2017, p.230. [↑](#footnote-ref-375)
376. Ms Jillian Edwards, *Transcript of Evidence*, 20 October 2017, p.231. [↑](#footnote-ref-376)
377. Ms Jillian Edwards, *Transcript of Evidence*, 20 October 2017, p.231. [↑](#footnote-ref-377)
378. Ms Jillian Edwards, *Transcript of Evidence*, 20 October 2017, p.231. [↑](#footnote-ref-378)
379. Ms Jillian Edwards, *Transcript of Evidence*, 20 October 2017, p.232. [↑](#footnote-ref-379)
380. Ms Jillian Edwards, *Transcript of Evidence*, 20 October 2017, p.232. [↑](#footnote-ref-380)
381. Ms Jillian Edwards, *Transcript of Evidence*, 20 October 2017, p.233. [↑](#footnote-ref-381)
382. Ms Jillian Edwards, *Transcript of Evidence*, 20 October 2017, p.233. [↑](#footnote-ref-382)
383. Ms Jillian Edwards, *Transcript of Evidence*, 20 October 2017, p.233. [↑](#footnote-ref-383)
384. Ms Jillian Edwards, *Transcript of Evidence*, 20 October 2017, p.234. [↑](#footnote-ref-384)
385. Ms Jillian Edwards, *Transcript of Evidence*, 20 October 2017, p.234. [↑](#footnote-ref-385)
386. Ms Jillian Edwards, *Transcript of Evidence*, 20 October 2017, pp.234, 238. [↑](#footnote-ref-386)
387. Mr David Dawes, *Transcript of Evidence*, 27 September 2017, p.57. [↑](#footnote-ref-387)
388. Mr David Dawes, *Transcript of Evidence*, 27 September 2017, p.65. [↑](#footnote-ref-388)
389. Mr Ben Parsons, *Transcript of Evidence*, 20 October 2017, p.240. [↑](#footnote-ref-389)
390. Mr Ben Parsons, *Transcript of Evidence*, 20 October 2017, p.240. [↑](#footnote-ref-390)
391. Mr Ben Parsons, *Transcript of Evidence*, 20 October 2017, p.241. [↑](#footnote-ref-391)
392. Mr Ben Parsons, *Transcript of Evidence*, 20 October 2017, p.241. [↑](#footnote-ref-392)
393. Mr Ben Parsons, *Transcript of Evidence*, 20 October 2017, p.242. [↑](#footnote-ref-393)
394. Mr Ben Parsons, *Transcript of Evidence*, 20 October 2017, p.243. [↑](#footnote-ref-394)
395. Mr Ben Parsons, *Transcript of Evidence*, 20 October 2017, p.243. [↑](#footnote-ref-395)
396. Mr Ben Parsons, *Transcript of Evidence*, 20 October 2017, pp.243-244. [↑](#footnote-ref-396)
397. Mr Ben Parsons, *Transcript of Evidence*, 20 October 2017, p.244. [↑](#footnote-ref-397)
398. Mr Ben Parsons, *Transcript of Evidence*, 20 October 2017, p.244. [↑](#footnote-ref-398)
399. Mr Ben Parsons, *Transcript of Evidence*, 20 October 2017, p.245. [↑](#footnote-ref-399)
400. Mr Ben Parsons, *Transcript of Evidence*, 20 October 2017, p.245. [↑](#footnote-ref-400)
401. Mr Ben Parsons, *Transcript of Evidence*, 20 October 2017, p.245. [↑](#footnote-ref-401)
402. Mr Ben Parsons, *Transcript of Evidence*, 20 October 2017, p.245. [↑](#footnote-ref-402)
403. Mr Ben Parsons, *Transcript of Evidence*, 20 October 2017, p.246. This valuation was approximately $3 million, as indicated in the Audit Report, but Mr Parsons told the owners that he did not see this as a supportable figure. Vandenberg had been the owners’ legal representative until the owners decided to represent themselves. The email was sent to the owners of Mr Spokes on 23 October 2015 at 9.52 pm. [↑](#footnote-ref-403)
404. Mr Ben Parsons, *Transcript of Evidence*, 20 October 2017, p.246. The owners of Mr Spokes Bike Hire had previously run a cafe and sold gelato, which had been a profitable part of the business, but had stopped when one of their parents became ill. [↑](#footnote-ref-404)
405. Mr Ben Parsons, *Transcript of Evidence*, 20 October 2017, pp.245-246. [↑](#footnote-ref-405)
406. Mr Ben Parsons, *Transcript of Evidence*, 20 October 2017, p.247. [↑](#footnote-ref-406)
407. Mr Ben Parsons, *Transcript of Evidence*, 20 October 2017, p.247. [↑](#footnote-ref-407)
408. Mr Ben Parsons, *Transcript of Evidence*, 20 October 2017, p.248. [↑](#footnote-ref-408)
409. Mr Ben Parsons, *Transcript of Evidence*, 20 October 2017, pp.248-249. Mr Parsons indicated that in this case valuers had used different multipliers. [↑](#footnote-ref-409)
410. Mr Ben Parsons, *Transcript of Evidence*, 20 October 2017, p.249. [↑](#footnote-ref-410)
411. Mr Ben Parsons, *Transcript of Evidence*, 20 October 2017, p.250. [↑](#footnote-ref-411)
412. Mr Ben Parsons, *Transcript of Evidence*, 20 October 2017, p.250. [↑](#footnote-ref-412)
413. Mr Ben Parsons, *Transcript of Evidence*, 20 October 2017, p.250. [↑](#footnote-ref-413)
414. Mr Ben Parsons, *Transcript of Evidence*, 20 October 2017, p.250. [↑](#footnote-ref-414)
415. Mr Ben Parsons, *Transcript of Evidence*, 20 October 2017, pp.251-252. The email was sent to Mr Dawes on 30 November 2015 at 2.32 pm. [↑](#footnote-ref-415)
416. Mr Ben Parsons, *Transcript of Evidence*, 20 October 2017, p.252. [↑](#footnote-ref-416)
417. Mr Ben Parsons, *Transcript of Evidence*, 20 October 2017, p.252. [↑](#footnote-ref-417)
418. Mr Ben Parsons, *Transcript of Evidence*, 20 October 2017, p.252. [↑](#footnote-ref-418)
419. Mr Ben Parsons, *Transcript of Evidence*, 20 October 2017, p.252. [↑](#footnote-ref-419)
420. Mr Ben Parsons, *Transcript of Evidence*, 20 October 2017, p.253. [↑](#footnote-ref-420)
421. Mr Ben Parsons, *Transcript of Evidence*, 20 October 2017, pp.253-254. [↑](#footnote-ref-421)
422. Mr Ben Parsons, *Transcript of Evidence*, 20 October 2017, p.254. [↑](#footnote-ref-422)
423. Mr Ben Parsons, *Transcript of Evidence*, 20 October 2017, p.254. [↑](#footnote-ref-423)
424. Mr Ben Parsons, *Transcript of Evidence*, 20 October 2017, pp.254-255. [↑](#footnote-ref-424)
425. Mr Ben Parsons, *Transcript of Evidence*, 20 October 2017, p.256. [↑](#footnote-ref-425)
426. Ms Jillian Edwards, *Transcript of Evidence*, 20 October 2017, p.235, and see Katie Burgess, ‘Canberra's Westside Container Village to relocate to Stromlo Forest Park’, *Canberra Times,* 8 June 2017, viewed 16 October 2018, available at: <https://www.canberratimes.com.au/national/act/westside-container-villages-new-home-20170607-gwmhj3.html> [↑](#footnote-ref-426)
427. Ms Jillian Edwards, *Transcript of Evidence*, 20 October 2017, p.235. [↑](#footnote-ref-427)
428. Ms Jillian Edwards, *Transcript of Evidence*, 20 October 2017, pp.235-236. [↑](#footnote-ref-428)
429. Ms Jillian Edwards, *Transcript of Evidence*, 20 October 2017, p.236. [↑](#footnote-ref-429)
430. Ms Jillian Edwards, *Transcript of Evidence*, 20 October 2017, p.238. [↑](#footnote-ref-430)
431. Ms Jillian Edwards, *Transcript of Evidence*, 20 October 2017, p.238. [↑](#footnote-ref-431)
432. Ms Jillian Edwards, *Transcript of Evidence*, 20 October 2017, p.239. [↑](#footnote-ref-432)
433. Law Officer (Model Litigant) Guidelines 2010 (No 1), Notifiable instrument NI2010–88, viewed 4 September 2018, available from: <https://www.legislation.act.gov.au/View/ni/2010-88/current/PDF/2010-88.PDF> [↑](#footnote-ref-433)
434. Law Officer (Model Litigant) Guidelines 2010 (No 1), Clause 3.1. [↑](#footnote-ref-434)
435. *Certain LDA acquisitions*, p.56. The Audit Report states that the LDA ‘negotiated the Territory’s acquisition of the Crown Lessee’s interest in the land’, however statements by valuers show that the Crown Lessee was in fact the Territory in this instance, and Dobel Boat Hire was renting the lease rather than holding a Crown lease in its own right. See for example evidence from Mr David James presented in *Transcript of Evidence*, 20 October 2017, p.281, cited below. [↑](#footnote-ref-435)
436. *Certain LDA acquisitions*, p.68. [↑](#footnote-ref-436)
437. Capital Valuers quoted in *Certain LDA acquisitions*, pp.72-73. [↑](#footnote-ref-437)
438. Mr Tim Xirakis, *Transcript of Evidence*, 27 September 2017, pp.112-113. [↑](#footnote-ref-438)
439. Mr Tim Xirakis, *Transcript of Evidence*, 27 September 2017, p.113. [↑](#footnote-ref-439)
440. Mr Tim Xirakis, *Transcript of Evidence*, 27 September 2017, p.113. [↑](#footnote-ref-440)
441. *Transcript of Evidence*, 20 October 2017, p.258. [↑](#footnote-ref-441)
442. Mr Pat Seears, *Transcript of Evidence*, 20 October 2017, p.258. [↑](#footnote-ref-442)
443. Mr Pat Seears, *Transcript of Evidence*, 20 October 2017, pp.258-259. [↑](#footnote-ref-443)
444. *Certain LDA acquisitions*, p.68. [↑](#footnote-ref-444)
445. *Certain LDA acquisitions*, p.68. [↑](#footnote-ref-445)
446. *Certain LDA acquisitions*, p.68. [↑](#footnote-ref-446)
447. *Certain LDA acquisitions*, p.70. [↑](#footnote-ref-447)
448. *Certain LDA acquisitions*, p.70. [↑](#footnote-ref-448)
449. *Certain LDA acquisitions*, p.71. [↑](#footnote-ref-449)
450. *Certain LDA acquisitions*, p.70. [↑](#footnote-ref-450)
451. *Certain LDA acquisitions*, p.71. [↑](#footnote-ref-451)
452. *Certain LDA acquisitions*, p.71. [↑](#footnote-ref-452)
453. *Certain LDA acquisitions*, p.68. [↑](#footnote-ref-453)
454. *Certain LDA acquisitions*, p.76. [↑](#footnote-ref-454)
455. *Certain LDA acquisitions*, p.76. [↑](#footnote-ref-455)
456. *Certain LDA acquisitions*, p.76. [↑](#footnote-ref-456)
457. *Transcript of Evidence*, 20 October 2017, p.259. [↑](#footnote-ref-457)
458. Mr Pat Seears, *Transcript of Evidence*, 20 October 2017, p.260. [↑](#footnote-ref-458)
459. The same representative who dealt with the sale of Mr Spokes (see Chapter 4). [↑](#footnote-ref-459)
460. Mr Pat Seears, *Transcript of Evidence*, 20 October 2017, p.260. [↑](#footnote-ref-460)
461. Mr Pat Seears, *Transcript of Evidence*, 20 October 2017, p.260. [↑](#footnote-ref-461)
462. Mr Pat Seears, *Transcript of Evidence*, 20 October 2017, p.262. [↑](#footnote-ref-462)
463. Mr Pat Seears, *Transcript of Evidence*, 20 October 2017, pp.262-263. [↑](#footnote-ref-463)
464. Mr Pat Seears, *Transcript of Evidence*, 20 October 2017, p.260. [↑](#footnote-ref-464)
465. Mr Pat Seears, *Transcript of Evidence*, 20 October 2017, p.261. [↑](#footnote-ref-465)
466. Mr Brett Stanton, *Transcript of Evidence*, 26 July 2017, p.21. [↑](#footnote-ref-466)
467. Mr Brett Stanton, *Transcript of Evidence*, 26 July 2017, p.21, quoting Certain LDA acquisitions, p.73. [↑](#footnote-ref-467)
468. Mr Brett Stanton, *Transcript of Evidence*, 26 July 2017, p.22. [↑](#footnote-ref-468)
469. Dr Maxine Cooper, *Transcript of Evidence*, 26 July 2017, p.22. [↑](#footnote-ref-469)
470. Dr Maxine Cooper, *Transcript of Evidence*, 26 July 2017, p.22. [↑](#footnote-ref-470)
471. Mr Tim Xirakis, *Transcript of Evidence*, 27 September 2017, p.113. [↑](#footnote-ref-471)
472. Mr Tim Xirakis, *Transcript of Evidence*, 27 September 2017, p.114. [↑](#footnote-ref-472)
473. Mr Tim Xirakis, *Transcript of Evidence*, 27 September 2017, p.114. [↑](#footnote-ref-473)
474. *Transcript of Evidence*, 27 September 2017, p.116. [↑](#footnote-ref-474)
475. *Transcript of Evidence*, 20 October 2017, p.278 *ff.* [↑](#footnote-ref-475)
476. Mr David James, *Transcript of Evidence*, 20 October 2017, p.281. [↑](#footnote-ref-476)
477. Mr David James, *Transcript of Evidence*, 20 October 2017, pp.282-283. [↑](#footnote-ref-477)
478. Mr David James, *Transcript of Evidence*, 20 October 2017, p.283. [↑](#footnote-ref-478)
479. *Transcript of Evidence*, 13 October 2017, p.209. [↑](#footnote-ref-479)
480. Mr Tim Heaton, *Transcript of Evidence*, 13 October 2017, p.210. [↑](#footnote-ref-480)
481. Mr Tim Heaton, *Transcript of Evidence*, 13 October 2017, p.210. [↑](#footnote-ref-481)
482. Mr Tim Heaton, *Transcript of Evidence*, 13 October 2017, p.211. [↑](#footnote-ref-482)
483. Mr Tim Heaton, *Transcript of Evidence*, 13 October 2017, p.212. [↑](#footnote-ref-483)
484. Mr Tim Heaton, *Transcript of Evidence*, 13 October 2017, p.213. [↑](#footnote-ref-484)
485. *Certain LDA acquisitions*, p.3. [↑](#footnote-ref-485)
486. Capital Valuers quoted in *Certain LDA acquisitions*, p.73. [↑](#footnote-ref-486)
487. Mr Paul Powderly, *Transcript of Evidence*, 22 November 2017, p.297. [↑](#footnote-ref-487)
488. Mr Paul Powderly, *Transcript of Evidence*, 22 November 2017, p.298. [↑](#footnote-ref-488)
489. Mr Paul Powderly, *Transcript of Evidence*, 22 November 2017, p.298. [↑](#footnote-ref-489)
490. Mr Paul Powderly, *Transcript of Evidence*, 22 November 2017, p.298. [↑](#footnote-ref-490)
491. Mr Paul Powderly, *Transcript of Evidence*, 22 November 2017, pp.298-299. [↑](#footnote-ref-491)
492. Mr Paul Powderly, *Transcript of Evidence*, 22 November 2017, p.299. [↑](#footnote-ref-492)
493. Mr Paul Powderly, *Transcript of Evidence*, 22 November 2017, p.299. The valuer was identified as Mr Robert Rixon. [↑](#footnote-ref-493)
494. Mr Paul Powderly, *Transcript of Evidence*, 22 November 2017, p.299. [↑](#footnote-ref-494)
495. *Transcript of Evidence*, 22 November 2017, p.299. [↑](#footnote-ref-495)
496. Mr Paul Powderly, *Transcript of Evidence*, 22 November 2017, pp.299-300. [↑](#footnote-ref-496)
497. Mr Paul Powderly, *Transcript of Evidence*, 22 November 2017, p.300. [↑](#footnote-ref-497)
498. Mr Paul Powderly, *Transcript of Evidence*, 22 November 2017, p.300. This other property was not identified. [↑](#footnote-ref-498)
499. Mr Paul Powderly, *Transcript of Evidence*, 22 November 2017, pp.300-301. [↑](#footnote-ref-499)
500. *Transcript of Evidence*, 22 November 2017, p.301, citing Certain LDA acquisitions, p.73. [↑](#footnote-ref-500)
501. Mr Paul Powderly, *Transcript of Evidence*, 22 November 2017, p.301. The reviewer’s comments were about the form of the valuation report, rather the figures. Please see *Certain LDA acquisitions*, p.73. [↑](#footnote-ref-501)
502. *Transcript of Evidence*, 22 November 2017, p.301, and see Certain LDA acquisitions, p.74. [↑](#footnote-ref-502)
503. Mr Paul Powderly, *Transcript of Evidence*, 22 November 2017, p.301. [↑](#footnote-ref-503)
504. *Transcript of Evidence*, 22 November 2017, p.302. [↑](#footnote-ref-504)
505. Mr Paul Powderly, *Transcript of Evidence*, 22 November 2017, p.302. [↑](#footnote-ref-505)
506. Mr Paul Powderly, *Transcript of Evidence*, 22 November 2017, p.303. [↑](#footnote-ref-506)
507. Mr Paul Powderly, *Transcript of Evidence*, 22 November 2017, p.302. [↑](#footnote-ref-507)
508. Capital Valuers, quoted in *Certain LDA acquisitions*, p.73. [↑](#footnote-ref-508)
509. *Transcript of Evidence*, 27 September 2017, p.66, citing Certain LDA acquisitions, pp.73, 80. [↑](#footnote-ref-509)
510. *Transcript of Evidence*, 27 September 2017, p.66. [↑](#footnote-ref-510)
511. Mr David Dawes, *Transcript of Evidence*, 27 September 2017, p.66. [↑](#footnote-ref-511)
512. Mr David Dawes, *Transcript of Evidence*, 27 September 2017, p.66. [↑](#footnote-ref-512)
513. Mr David Dawes, *Transcript of Evidence*, 27 September 2017, p.66. [↑](#footnote-ref-513)
514. Mr David Dawes, *Transcript of Evidence*, 27 September 2017, p.73. See however Certain LDA acquisitions, p.79: ‘The owners made a significant and problematic offer of $1.7 million to sell the business to the Land Development Agency’. [↑](#footnote-ref-514)
515. *Certain LDA acquisitions*, p.56. This information was also provided in hearings: see Mr Brett Stanton, *Transcript of Evidence*, 26 July 2017, p.21. [↑](#footnote-ref-515)
516. *Transcript of Evidence*, 13 October 2017, p.174 *ff.* [↑](#footnote-ref-516)
517. Mr Jim Seears, *Transcript of Evidence*, 13 October 2017, pp.174-175. [↑](#footnote-ref-517)
518. Mr Jim Seears, *Transcript of Evidence*, 13 October 2017, p.175. [↑](#footnote-ref-518)
519. *Certain LDA acquisitions*, p.77. [↑](#footnote-ref-519)
520. *Certain LDA acquisitions*, p.77. [↑](#footnote-ref-520)
521. *Certain LDA acquisitions*, p.77. [↑](#footnote-ref-521)
522. *Certain LDA acquisitions*, p.78. [↑](#footnote-ref-522)
523. *Certain LDA acquisitions*, p.79. [↑](#footnote-ref-523)
524. *Certain LDA acquisitions*, p.79. [↑](#footnote-ref-524)
525. *Certain LDA acquisitions*, p.79. [↑](#footnote-ref-525)
526. *Certain LDA acquisitions*, p.79. [↑](#footnote-ref-526)
527. *Certain LDA acquisitions*, p.77. [↑](#footnote-ref-527)
528. Mr Jim Seears, *Transcript of Evidence*, 13 October 2017, p.177. LDA representatives were identified as Mr Tim Xirakis and Ms Pam Roncon. [↑](#footnote-ref-528)
529. Mr Jim Seears, *Transcript of Evidence*, 13 October 2017, pp.178-179. [↑](#footnote-ref-529)
530. Mr Jim Seears, *Transcript of Evidence*, 13 October 2017, pp.179. [↑](#footnote-ref-530)
531. Mr Jim Seears, *Transcript of Evidence*, 13 October 2017, pp.183. [↑](#footnote-ref-531)
532. Mr Jim Seears, *Transcript of Evidence*, 13 October 2017, p.185. [↑](#footnote-ref-532)
533. Dr Maxine Cooper, *Transcript of Evidence*, 26 July 2017, p.22. [↑](#footnote-ref-533)
534. Mr Brett Stanton, *Transcript of Evidence*, 26 July 2017, p.23. [↑](#footnote-ref-534)
535. Dr Maxine Cooper, *Transcript of Evidence*, 26 July 2017, p.23. [↑](#footnote-ref-535)
536. Dr Maxine Cooper and Mr Brett Stanton, *Transcript of Evidence*, 26 July 2017, p.24. [↑](#footnote-ref-536)
537. *Transcript of Evidence*, 20 October 2017, p.278 *ff.* [↑](#footnote-ref-537)
538. Mr David James, *Transcript of Evidence*, 20 October 2017, p.281. [↑](#footnote-ref-538)
539. *Transcript of Evidence*, 20 October 2017, p.282. [↑](#footnote-ref-539)
540. Mr David James, *Transcript of Evidence*, 20 October 2017, p.282. [↑](#footnote-ref-540)
541. Mr David James, *Transcript of Evidence*, 20 October 2017, p.282. [↑](#footnote-ref-541)
542. Mr David James, *Transcript of Evidence*, 20 October 2017, p.283. [↑](#footnote-ref-542)
543. Mr David James, *Transcript of Evidence*, 20 October 2017, p.283. [↑](#footnote-ref-543)
544. Mr David James, *Transcript of Evidence*, 20 October 2017, p.283. [↑](#footnote-ref-544)
545. Mr Tim Heaton, *Transcript of Evidence*, 13 October 2017, p.212. [↑](#footnote-ref-545)
546. *Transcript of Evidence*, 27 September 2017, p.41 *ff.* There is no longer a Minister for Economic Development in the ACT. See Administrative Arrangements 2018 (No 1), NI2018-482, viewed 28 September 2018, available from: <https://www.legislation.act.gov.au/ni/2018-482/> [↑](#footnote-ref-546)
547. *Transcript of Evidence*, 27 September 2017, p.44. [↑](#footnote-ref-547)
548. Mr Andrew Barr MLA, *Transcript of Evidence*, 27 September 2017, p.44. [↑](#footnote-ref-548)
549. Mr Andrew Barr MLA, *Transcript of Evidence*, 27 September 2017, p.45. [↑](#footnote-ref-549)
550. Mr Andrew Barr MLA, *Transcript of Evidence*, 27 September 2017, p.45. [↑](#footnote-ref-550)
551. Mr Andrew Barr MLA, *Transcript of Evidence*, 27 September 2017, p.46. [↑](#footnote-ref-551)
552. Mr Andrew Barr MLA, *Transcript of Evidence*, 27 September 2017, p.46. [↑](#footnote-ref-552)
553. Mr Andrew Barr MLA, *Transcript of Evidence*, 27 September 2017, p.46. [↑](#footnote-ref-553)
554. Mr Andrew Barr MLA, *Transcript of Evidence*, 27 September 2017, p.46. [↑](#footnote-ref-554)
555. Mr Andrew Barr MLA, *Transcript of Evidence*, 27 September 2017, p.47. [↑](#footnote-ref-555)
556. Mr Andrew Barr MLA, *Transcript of Evidence*, 27 September 2017, p.47. [↑](#footnote-ref-556)
557. Mr Andrew Barr MLA, *Transcript of Evidence*, 27 September 2017, pp.47-48. [↑](#footnote-ref-557)
558. Mr Andrew Barr MLA, *Transcript of Evidence*, 27 September 2017, p.48. [↑](#footnote-ref-558)
559. Mr Andrew Barr MLA, *Transcript of Evidence*, 27 September 2017, p.48. [↑](#footnote-ref-559)
560. Mr Andrew Barr MLA, *Transcript of Evidence*, 27 September 2017, p.48. [↑](#footnote-ref-560)
561. Mr Andrew Barr MLA, *Transcript of Evidence*, 27 September 2017, p.48. [↑](#footnote-ref-561)
562. Mr Andrew Barr MLA, *Transcript of Evidence*, 27 September 2017, p.50. [↑](#footnote-ref-562)
563. *Transcript of Evidence*, 27 September 2017, p.50. [↑](#footnote-ref-563)
564. *Transcript of Evidence*, 27 September 2017, p.50. [↑](#footnote-ref-564)
565. Mr Andrew Barr MLA, *Transcript of Evidence*, 27 September 2017, p.50. [↑](#footnote-ref-565)
566. *Transcript of Evidence*, 27 September 2017, p.50. [↑](#footnote-ref-566)
567. Mr Andrew Barr MLA, *Transcript of Evidence*, 27 September 2017, p.51. [↑](#footnote-ref-567)
568. Mr Andrew Barr MLA, *Transcript of Evidence*, 27 September 2017, p.51. [↑](#footnote-ref-568)
569. Mr Andrew Barr MLA, *Transcript of Evidence*, 27 September 2017, p.51. [↑](#footnote-ref-569)
570. *Transcript of Evidence*, 27 September 2017, p.52, referring to *Certain LDA acquisitions*, p.47. [↑](#footnote-ref-570)
571. Mr Andrew Barr MLA, *Transcript of Evidence*, 27 September 2017, p.52. [↑](#footnote-ref-571)
572. Mr Andrew Barr MLA, *Transcript of Evidence*, 27 September 2017, p.52. [↑](#footnote-ref-572)
573. Mr Andrew Barr MLA, *Transcript of Evidence*, 27 September 2017, p.52. [↑](#footnote-ref-573)
574. Mr Andrew Barr MLA, *Transcript of Evidence*, 27 September 2017, p.41 *ff*. [↑](#footnote-ref-574)
575. Mr Andrew Barr MLA, *Transcript of Evidence*, 27 September 2017, p.41. [↑](#footnote-ref-575)
576. Mr Andrew Barr MLA, *Transcript of Evidence*, 27 September 2017, p.42. [↑](#footnote-ref-576)
577. Mr Andrew Barr MLA, *Transcript of Evidence*, 27 September 2017, p.42. [↑](#footnote-ref-577)
578. Mr Andrew Barr MLA, *Transcript of Evidence*, 27 September 2017, pp.48-49. [↑](#footnote-ref-578)
579. Mr Andrew Barr MLA, *Transcript of Evidence*, 27 September 2017, p.49. [↑](#footnote-ref-579)
580. Mr Andrew Barr MLA, *Transcript of Evidence*, 27 September 2017, p.49. [↑](#footnote-ref-580)
581. *Transcript of Evidence*, 27 September 2017, pp.109, 119-120. [↑](#footnote-ref-581)
582. Mr Tim Xirakis, *Transcript of Evidence*, 27 September 2017, p.109. [↑](#footnote-ref-582)
583. Mr Tim Xirakis, *Transcript of Evidence*, 27 September 2017, p.119. [↑](#footnote-ref-583)
584. Mr Tim Xirakis, *Transcript of Evidence*, 27 September 2017, p.119. [↑](#footnote-ref-584)
585. Mr Tim Xirakis, *Transcript of Evidence*, 27 September 2017, pp.119-120. [↑](#footnote-ref-585)
586. Mr Tim Xirakis, *Transcript of Evidence*, 27 September 2017, p.120. [↑](#footnote-ref-586)
587. Mr Tim Xirakis, *Transcript of Evidence*, 27 September 2017, p.114. [↑](#footnote-ref-587)
588. *Transcript of Evidence*, 27 September 2017, pp.56, 65-66. [↑](#footnote-ref-588)
589. *Transcript of Evidence*, 27 September 2017, p.56. [↑](#footnote-ref-589)
590. Mr David Dawes, *Transcript of Evidence*, 27 September 2017, p.56. [↑](#footnote-ref-590)
591. Mr David Dawes, *Transcript of Evidence*, 27 September 2017, p.56, and see Mr Dan Stewart, *Transcript of Evidence*, 27 September 2017, p.82. [↑](#footnote-ref-591)
592. Mr David Dawes, *Transcript of Evidence*, 27 September 2017, p.57. The Audit Report states that on 9 September 2015, the lease for Block 24 Section 65, City, ‘was surrendered to the ACT Government for $4.18 million including GST’, and that the ‘contract for the sale was signed on behalf of the ACT Government by the Chief Executive Officer of the Land Development Agency’. See *Certain LDA acquisitions*, p.48. [↑](#footnote-ref-592)
593. The same officer referred to previously. [↑](#footnote-ref-593)
594. Mr David Dawes, *Transcript of Evidence*, 27 September 2017, p.65. [↑](#footnote-ref-594)
595. Mr David Dawes, *Transcript of Evidence*, 27 September 2017, pp.65-66. [↑](#footnote-ref-595)
596. See Certain LDA acquisitions, pp.47, 53. [↑](#footnote-ref-596)
597. Mr David Dawes, *Transcript of Evidence*, 27 September 2017, p.67. [↑](#footnote-ref-597)
598. Mr David Dawes, *Transcript of Evidence*, 27 September 2017, p.67. [↑](#footnote-ref-598)
599. Mr David Dawes, *Transcript of Evidence*, 27 September 2017, p.58. [↑](#footnote-ref-599)
600. Mr David Dawes, *Transcript of Evidence*, 27 September 2017, p.67. [↑](#footnote-ref-600)
601. *Transcript of Evidence*, 22 November 2017, p.285 *ff.* [↑](#footnote-ref-601)
602. *Transcript of Evidence*, 22 November 2017, p.285. [↑](#footnote-ref-602)
603. Mr Peter Garrisson, *Transcript of Evidence*, 22 November 2017, p.285. [↑](#footnote-ref-603)
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617. Certain LDA acquisitions, para 3.15, p.58. [↑](#footnote-ref-617)
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623. Mr Peter Garrisson, *Transcript of Evidence*, 22 November 2017, p.294. [↑](#footnote-ref-623)
624. *Certain LDA acquisitions*, p.94. As noted in the Audit Report, the *Lands Acquisition Policy* *Framework* was a Notifiable Instrument made under the *Planning and Development Act 2007*, subsection 37(1). [↑](#footnote-ref-624)
625. See *Certain LDA acquisitions*, pp.89-91. [↑](#footnote-ref-625)
626. *Certain LDA acquisitions*, p.87. [↑](#footnote-ref-626)
627. *Certain LDA acquisitions*, p.87, referring to the *Planning and Development (Land Acquisition Policy Framework) Direction 2014 (No 1)*, NI2014‐264, made under Planning and Development Act 2007, s 37, viewed 26 September 2018, available at: <https://www.legislation.act.gov.au/ni/2014-264/default.asp> The Framework came into effect on 20 June 2014. [↑](#footnote-ref-627)
628. See Planning and Development (Land Acquisition Policy Framework) Direction 2014 (No 1)(Repealed), viewed 26 September 2018, available at: <https://www.legislation.act.gov.au/ni/2014-264/default.asp> [↑](#footnote-ref-628)
629. *Planning and Development (Land Acquisition Policy Framework) Direction 2014 (No 1)*, Schedule, s 2.1. [↑](#footnote-ref-629)
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657. See *Lands Acquisition Act 1994* (ACT), s 32 ‘Acquisition by agreement’ and s 33 ‘Acquisition by compulsory process’. [↑](#footnote-ref-657)
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659. *Lands Acquisition Act 1994*, ss 19m, 32 and Dictionary, viewed 4 September 2018, available at: <https://www.legislation.act.gov.au/View/a/1994-42/current/PDF/1994-42.PDF> [↑](#footnote-ref-659)
660. See ‘Regulations and instruments’, *Lands Acquisition Act 1994*, viewed 17 September 2018, available at: <https://www.legislation.act.gov.au/a/1994-42/> [↑](#footnote-ref-660)
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666. Swan Yacht Club Inc -V- Town Of East Fremantle [2005] WASCA 99 [25]. [↑](#footnote-ref-666)
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