Tender for the sale of Block 30 Dickson

Standing Committee on Public Accounts

May 2020

Report 11

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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

Auditor-General’s Report No. 3 of 2018: *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson* was presented to the Speaker of the Legislative Assembly for the ACT on 21 February 2018, and tabled in the Assembly on 22 February 2018.[[3]](#footnote-3)

Under the Resolution of Appointment for Committee, the Audit report stood referred to the Committee for its consideration. On 28 February 2018, the Committee was briefed on the audit report by the Auditor-General. On that day it agreed to inquire further into the report and advised the Assembly on 20 March 2018.[[4]](#footnote-4)

Under the Committee’s Resolution of Appointment, effective terms of reference for the inquiry are to examine the Audit report and report to the Legislative Assembly.

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Acronyms

|  |  |
| --- | --- |
| *Acronym* | *Expanded form* |
| ACAT | ACT Civil and Administrative Appeals Tribunal |
| ACTGS | ACT Government Solicitor |
| ACTPLA | ACT Planning and Lands Authority |
| CEO | Chief Executive Officer |
| CFMEU | Construction, Forestry, Mining and Energy Union (since March 2018, as a result of a merger, officially known as the CFMMEU, the Construction, Forestry, Maritime, Mining and Energy Union) |
| CFO | Chief Financial Officer |
| EDD | Economic Development Directorate |
| EPSDD | Environment, Planning and Sustainable Development Directorate |
| FOI | Freedom of Information |
| GFA | Gross Floor Area |
| GST | Goods and services tax |
| ILRP | Indicative Land Release Program |
| LDA | Land Development Agency |
| PDA | Project delivery Agreement |
| RFT | Request for Tender |

Executive summary

Between 2012 and 2014, the Economic Development Directorate (the EDD), acting on behalf of the ACT Government, was responsible for the sale of Block 30, Section 34, Dickson. The conduct of the sale departed from good practice in a number of ways. Notably:

* the EDD advertised the Request for Tender (RFT) before it was authorised by Cabinet to do so;
* the EDD negotiated terms with the successful tenderer—the Canberra Tradesmen’s Union Club (the Tradies)—that were significantly different to those it had offered at the time of the RFT
* the EDD effectively offered different terms to the Tradies and the other interested party, Fabcot Pty Ltd;
* the sale in effect became a direct sale;
* the way the process was handled may have had significant effects on the block’s value;
* there is a question around the legal validity of the outcome; and
* record-keeping was consistently poor throughout the entire process.

The EDD transacted a land swap which, although supported by some areas in government, had been specifically ruled out at Cabinet level. This land swap resulted in the ACT Government paying for land surrendered by the Tradies while the Tradies have yet to settle on the sale of Block 30, Section 34, Dickson.

The sale has highlighted gaps in ACT legislation regarding the conduct of tenders and the disposal of land held by the ACT Government. In this example, this lack of guidance led to EDD freely negotiating and entering into contracts as if it were a private entity. This had an effect on the openness, transparency and accountability of the transaction.

Some members of the Committee have made a number of recommendations to address their concerns. Because there are matters beyond the Committee’s capacity to adjudicate, the Committee recommends that the ACT Integrity Commission inquire into the sale of Block 30.[[5]](#footnote-5)

A distinctive feature of the inquiry was the receipt by the Committee of a complaint from a person involved in the sale of Block 30, expressing a grievance about the Auditor-General’s conduct of the performance audit. The Committee’s report on a *Complaint regarding Auditor-General Report No 3 of 2018* addresses this complaint.

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## Recommendations

[Recommendation 1](#_Toc40878036)

[2.73 Some members of the Committee recommend that the ACT Government advise the Assembly how it advertises nationally when it puts significant tenders to market.](#_Toc40878037)

[Recommendation 2](#_Toc40878038)

[2.74 Some members of the Committee recommend that the ACT Government review the role of Probity Advisers in tender evaluations.](#_Toc40878039)

[Recommendation 3](#_Toc40878040)

[4.42 The Committee recommends that the ACT government inform the Assembly, by the last day of sittings in August 2020, as to how it will ensure compliance with its development objectives for Block 30 in the absence of a project delivery agreement.](#_Toc40878041)

[Recommendation 4](#_Toc40878042)

[4.50 The Committee recommends that the ACT Government Solicitor (ACTGS) review and improve the process of providing Probity Advisers to ACT government agencies to ensure a uniform approach.](#_Toc40878043)

[Recommendation 5](#_Toc40878044)

[5.119 The Committee recommends that all staff from the former Economic Development Directorate still employed by the ACT Government be given further training in record-keeping.](#_Toc40878045)

[Recommendation 6](#_Toc40878046)

[7.36 Some members of the Committee recommend that the Legislative Assembly for the ACT seek an independent legal opinion from a suitably qualified lawyer about the status and validity of the sale by the ACT Government of Block 30, Section 34 Dickson to the Canberra Tradesmen’s Union Club (the Tradies) and that the opinion be tabled in the Legislative Assembly by the last sitting day of July 2020.](#_Toc40878047)

[Recommendation 7](#_Toc40878048)

[7.51 The Committee recommends that the ACT Government propose amendments to legislation which, if passed by the Assembly, would provide comprehensive legislative provision and guidance on acceptable practice for the acquisition or disposal of land.](#_Toc40878049)

[Recommendation 8](#_Toc40878050)

[7.52 The Committee recommends that the ACT Government propose amendments to legislation which, if passed by the Assembly, would provide comprehensive legislative guidance on the procurement and disposal of public assets, as in the *Commonwealth Procurement Rules*.](#_Toc40878051)

[Recommendation 9](#_Toc40878052)

[7.53 The Committee recommends that the ACT Government propose amendments to legislation which, if passed by the Assembly, would provide comprehensive legislative guidance on the conduct of tenders by government.](#_Toc40878053)

[Recommendation 10](#_Toc40878054)

[8.8 Some members of the Committee recommend that the ACT Integrity Commission investigate the ACT Government’s sale of Block 30, Section 34 Dickson to the Canberra Tradesman’s Union Club (the Tradies).](#_Toc40878055)

## Findings

[Finding 1](#_Toc40878056)

[5.118 The Committee finds that the Economic Development Directorate’s record-keeping for the sale of Block 30 Section 34 Dickson to the Canberra Tradesman’s Union Club (the Tradies) was poor and called into question the integrity of the entire transaction.](#_Toc40878057)

[Finding 2](#_Toc40878058)

[5.128 Some members of the Committee find that the loss of car parking, the leaseback arrangement on Block 6 Section 72 Downer, the waiving of the security deposit and, potentially, waiving the requirement for easement originally stipulated in the Request for Tender, resulted in the Territory not receiving value for money for the sale of Block 30 Section 34 Dickson.](#_Toc40878059)

[Finding 3](#_Toc40878060)

[7.35 Some members of the Committee find that it is unresolved whether the ACT Government’s sale of Block 30 Section 34 Dickson to the Canberra Tradesmen’s Union Club (the Tradies) departed sufficiently from the original request for tender so that it no longer met the requirements set out in Section 240 of the *Planning and Development Act 2007*.](#_Toc40878061)

[Finding 4](#_Toc40878062)

[7.38 Some members of the Committee find that it is unresolved whether the ACT Government met its legal obligation to deal fairly with tenders when it offered terms to the Canberra Tradesmen’s Union Club (the Tradies) that were significantly different to those offered to Fabcot Pty Ltd as the other party responding to the Request for Tender for the sale of Block 30 Section 34 Dickson.](#_Toc40878063)

[Finding 5](#_Toc40878064)

[7.44 Some members of the Committee find that the Economic Development Directorate, acting on behalf of the ACT Government, did not meet the stated objective that the tender for the sale of Block 30 Section 34 Dickson would be ‘open to all interested parties and fully transparent’.](#_Toc40878065)

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## The inquiry

### Background

* 1. On 21 February 2018, the Auditor-General provided a Performance Audit report entitled *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson* to the Speaker of the Legislative Assembly of the ACT, for tabling in the Assembly.[[6]](#footnote-6)
  2. According to the Audit report, in May 2017 the Audit Office received information regarding the management by the former Economic Development Directorate (EDD) of a transaction comprising the sale of Block 30 Section 34 Dickson (from this point referred to as ‘Block 30’)[[7]](#footnote-7) to Canberra Tradesmen’s Union Club Ltd (the Tradies) and the purchase of Block 6 and Block 25 Section 72, Dickson from the Tradies. After an initial review, the Auditor-General determined that she would conduct a performance audit.[[8]](#footnote-8)
  3. In 2010 the Tradies had made three attempts to acquire Block 30 from the ACT government by direct sale. The ACT government had refused, finally deciding in September 2012 to put the block to market via a Request for Tender (RFT) process. The EDD advertised the RFT in the *Canberra Times.* Two tenders were received: one from the Tradies offering $2.2 million and one from Fabcot Pty Ltd, a subsidiary of Woolworths Limited, offering $1.6 million.[[9]](#footnote-9)
  4. After an evaluation process, in December 2012 the Tradies was identified as the preferred tenderer. ‘Protracted negotiations’ took place over the next two years. The outcome was a land swap in which the Tradies agreed to pay the Territory $3.18 million for Block 30,[[10]](#footnote-10) and the Territory agreed to pay the Tradies $3.55 million and $45,000 for their Block 6 and Block 25 Section 72. [[11]](#footnote-11)
  5. Under this arrangement, the Territory paid the Tradies $414,000, which was ‘the difference in value arising from the land exchange’.[[12]](#footnote-12) The settlement had yet to take place when the Audit report was released. Under the terms agreed this could only take place within 30 days after a certificate of occupancy had been issued for works on the nearby car park at Block 21 Section 30, Dickson.[[13]](#footnote-13)
  6. The Audit report found that the EDD did not achieve the ACT government’s sale objective of pursuing ‘an open, contestable and transparent market process’. It also found that there were indications that the EDD did not achieve value for money,[[14]](#footnote-14) due to ‘significant’ weakness in the Directorate’s management of the tender. There was a ‘high risk’ that the EDD had ‘relinquished considerable financial value’ to the Tradies and that it sold Block 30 in breach of relevant provisions of the *Planning and Development Act 2007*.[[15]](#footnote-15)

### Conduct of the Committee’s inquiry

* 1. On 28 February 2018, the Committee was briefed by the Auditor-General and agreed to inquire further into the report. It advised the Assembly to this effect on 20 March 2018.[[16]](#footnote-16)
  2. In the course of the inquiry, the Committee held seven public hearings. It held one *in-camera* hearing regarding a complaint about the conduct of the Audit, and received one submission which it determined to receive but not publish. Hearings are listed in Appendix A of this report.
  3. During the Committee’s inquiry, a person within the scope of the Auditor-General’s report made a complaint to the Speaker of the Assembly regarding the conduct of the Audit. The Speaker referred the matter to the Committee for its consideration, and the Committee decided to consider the complaint as part of the inquiry. The complaint is dealt with in the Committee’s report entitled *Complaint regarding Auditor-General Report No 3 of 2018*.

### Structure of this report

* 1. This report consists of:
* Chapter 1, the present chapter, which provides background on the Audit report and the inquiry;
* Chapter 2, which considers the RFT for the sale of Block 30, Section 34, Dickson;
* Chapter 3, which considers the first period of negotiations on the terms of the sale which took place after the EDD awarded the tender to the Dickson Tradies Club (The Tradies) up to December 2013;
* Chapter 4, which considers the second period of negotiations from December 2013 to December 2014;
* Chapter 5, which considers the outcome of negotiations, including departures from the terms of the RFT, and documentation, due process and value for money;
* Chapter 6, which considers roles and responsibilities for the sale of Block 30;
* Chapter 7, which considers legal aspects of the tender and sale process and the current state of legislative provision for the sale of land by the ACT Government; and
* Chapter 8, which is the Committee’s conclusion to the report.
  1. Appendices to the report provide:
* In Appendix A, a map showing Block 30 Section 34 Dickson;
* In Appendix B, documents showing how and why the original Block 20 Section 34 Dickson became Block 30 Section 34 Dickson;
* In Appendix C, listing witnesses who appeared against dates for each of the Committee’s hearings;
* In Appendix D, copies of emails from an answer to a Question Taken on Notice, transcribed and placed in chronological order.

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## Request for Tender

### Background

* 1. This chapter considers matters leading up to and including the RFT process, including:
* applications by the Tradies to acquire Block 30 by direct sale;
* a valuation which became the basis for a reserve price;
* time constraints on development;
* whether the sale was an ordinary part of the Indicative Land Release Program (ILRP);
* whether it retained a real estate agent to support the sale;
* the timing of the RFT;
* the advertising of the RFT; and
* the evaluation of tenders.

### Tradies’ applications for direct sale

#### Statutory provision

* 1. Under ACT statute, there are three ways to acquire land from the ACT Government by direct sale. First, the Government may approve a direct sale subject to criteria set out in the *Planning and Development Act 2007.[[17]](#footnote-17)*  Second, under the Act, the Government may consider that a direct sale is more likely to meet the Act’s criteria than other means.[[18]](#footnote-18) Third, the Government may offer land for direct sale where the land has been offered for sale by tender but not sold. Direct sale is permitted where the new lease ‘includes conditions materially similar to the conditions of the lease offered by tender’.[[19]](#footnote-19)

#### Audit report

* 1. The Tradies made three applications to acquire Block 30 Dickson (then known as Block 20)[[20]](#footnote-20) by direct sale, in January, August, and November 2010. In each case, it proposed different terms and conditions. The last application included a proposal for a land swap involving Block 25 Section 72 Downer. This element later became a feature of the final agreement for the sale of Block 30.[[21]](#footnote-21)
  2. For these applications, the former Department of Land and Property found that the first two applications failed to meet requirements for direct sale under relevant legislation, or posed problems concerning the ‘proximity of senior citizens to gambling facilities’.[[22]](#footnote-22)
  3. Cabinet considered the third application on 24 October 2011. An EDD brief to Cabinet argued against adopting a competitive process:

While Treasury has proposed a competitive process, this would more than likely jeopardise a number of key benefits and opportunities which are features of the Dickson Centre Master Plan. Additionally, the acquisition of the former Downer Club site as part of the proposal provides considerable opportunity for affordable housing and delivery of improved social outcomes for the community.

Any perceived financial advantage from the suggested competitive process would need to be balanced by the potential for delay or constraints to implementing the Dickson Master Plan, in particular should the Dickson Tradies not be the successful bidder.[[23]](#footnote-23)

* 1. According to the Audit report, Cabinet rejected the application on 24 October 2011, when it agreed that Block 30 should be brought to market and auctioned in the 2011-12 financial year.[[24]](#footnote-24) On 11 September 2012, a submission went to Cabinet providing further information on proposals for development and lease conditions, and seeking approval for the sale by tender, to which Cabinet agreed. The stated objective for the tender was that it would be ‘open to all interested parties and fully transparent’.[[25]](#footnote-25)

#### Former Chief Financial Officer, Tradies

* 1. Hearings touched on these matters when Mr Stephan Brennan, the former Chief Financial Officer (CFO) of the Tradies, who conducted negotiations on the Tradies’ behalf, appeared before the Committee.
  2. He told the Committee that the Tradies owned all contiguous parcels of land around Block 30, including the site occupied by the Tradies club, a garden centre, and a gymnasium, and agreed that there was ‘substantial advantage’ to the Tradies in consolidating its holdings by acquiring the car park area.[[26]](#footnote-26) Acquisition of the land had been identified as an important initial task when he had commenced his role with the Tradies in 2009. The Tradies had been operating on the site for 50 years, but it ran the risk of development on the site by another party ‘destroying [the] business’ if it were unsuitable. Moreover, the boundaries were ‘difficult’ because the club building was positioned ‘right on the boundary’, without setbacks, and this increased concerns about the implications of developments by other parties.[[27]](#footnote-27)
  3. Mr Brennan told the Committee that the Tradies considered acquiring the car park critical for its future:

The Tradies club is an old club; it has been there 50 years. Obviously we have done lots of patch work and bits and pieces and whatever, and the hotel is getting old as well. So ultimately we would like to develop that whole site. So the car park is critical to future plans. It is not critical to going on in terms of what we do today and what we continue to do. But to give us a blueprint for going forward it is an important piece of the puzzle.[[28]](#footnote-28)

* 1. He believed that ACT clubs were entitled to a direct grant for their car parks but, he told the Committee when the Tradies applied it was ‘not considered appropriate’, and the land was offered for sale by tender.[[29]](#footnote-29)

#### Chief Minister

* 1. In hearings, the Chief Minister told the Committee that there was no ‘automatic entitlement’ to direct sale for clubs wishing to buy contiguous land. Cabinet ‘regularly’ received applications for the purchase of land by direct sale, but in this instance decided that there would be ‘an open process’ and that the sale would go to market.[[30]](#footnote-30)

### Initial valuation

#### Audit report

* 1. According to the Audit report, the EDD engaged MMJ Real Estate to provide a valuation of Block 30, which was provided on 5 November 2012. It set a value of $3.18 million and was used by the Directorate as the reserve price.[[31]](#footnote-31) Assumptions for the valuation included:
* ‘a hypothetical “mixed use” development of retail, restaurants and bars on the ground floor and 108 residential units on the upper floors’; and
* ‘the provision of a total of 445 car spaces in underground car parking structures, comprising:

- 154 replacement car parks for those to be ‘lost’ from the existing public car parking site; and

- 291 additional car parks to be generated from the development (139 attributable to the ground floor and 152 attributable to the residential units)’.[[32]](#footnote-32)

* 1. According to the Audit report, the two tenderers were later evaluated against a requirement of 139 replacement car parks, rather than 154. It found that while having fewer replacement carparks increased the value of the land, the figure for the valuation and reserve price was not changed to reflect this.[[33]](#footnote-33)

### Time constraints on development

* 1. In hearings, Mr David Dawes, the former Director-General, Economic Development, told the Committee about additional time constraints on the development: that is, that Block 30 could not be developed until the development of the Coles car park (that is, Block 21) was complete because the ACT Government was concerned that there would be a shortage of car parks during the development of two new supermarkets planned for Dickson, and that this would affect local traders. As a result, the Government wished to ensure that the two developments would take place one after another rather than at the same time.[[34]](#footnote-34) However, development for Block 21 has been quite drawn-out: while a project is now approved, at the time of writing work has not commenced.

### Timing of the RFT

#### Background

* 1. In hearings, the Committee referred to an email chain beginning with an email of 25 July 2012, obtained under Freedom of Information (FOI) legislation.[[35]](#footnote-35) An email of 26 July 2012 from Mr Richard Drummond, the Project Manager, advised that the responsible minister had called ‘a halt to this process’ until further site investigations were complete and that it was ‘unlikely’ the site would come to market in the 2012 calendar year.[[36]](#footnote-36)

#### Former Director, Sustainable Land Strategy

* 1. In light of this, the Committee asked Mr Ellis what made the ACT Government reverse this decision and put the sale of Block 30 to tender, three days before the commencement of the caretaker period for the 2012 ACT election.[[37]](#footnote-37)
  2. He told the Committee that he believed that there was a desire for the RFT to be advertised prior to the 2012 election.[[38]](#footnote-38)
  3. He told the Committee that under this short time-line it was ‘virtually impossible’ to do everything needed to get the block to market in a normal way. He and the Project Manager had ‘a great number of discussions’ with the relevant Deed Manager in ACTPLA, because Deed Managers were responsible for ensuring compliance with the *Planning and Development Act*’ and so were ‘critical’ to land sales and Expression of Interest processes.[[39]](#footnote-39)
  4. Mr Ellis told the Committee his only explanation for this change of direction was that the Deed Manager had found a way for the sale to be done by a ‘private sector mechanism’. It contrasted with the ‘normal government way’ in which agencies did ‘all these different studies … and de-risk a site entirely’. He remembered this as ‘a key change’ in the attitude of the Deed Manager and ACTPLA more generally.[[40]](#footnote-40) He told the Committee:

We understood the process had to be one thing. We could never have achieved it in a certain time. Discussions with the deed manager subsequently would have shown that it was achievable. Then we said to the minister’s office, “We can actually get it done if we do it this way.” [[41]](#footnote-41)

### Advertising of the RFT

#### Audit report

* 1. According to the Audit report, the EDD advertised the RFT in the *Canberra Times* on 8 September 2012, before Cabinet had authorised the sale as there had been a breakdown in communication amongst directorate staff regarding the advertisement. There was also ‘early placement’ of the advertisement due to a belief that Cabinet would have approved the RFT by the time it was published.[[42]](#footnote-42) While there was a plan to advertise the RFT in the *Australian Financial Review* (AFR), it was not.[[43]](#footnote-43) This ‘potentially limited the competitiveness of the sale process’, and raised questions as to whether ‘the relevant markets were properly informed and tested’.[[44]](#footnote-44)
  2. The Audit report also noted that the former Director‐General of the Economic Development Directorate, the Director, Sustainable Land Strategy and the Chief Executive Officer of the Tradies ‘indicated confidence that that there was sufficient opportunity for information on the sale to be disseminated more broadly due to business networks that operate to disseminate such information’.[[45]](#footnote-45)

#### Timeline

* 1. Mr John Dietz, the Chief Executive Officer of the Suburban Land Authority, provided a timeline for the advertising of the RFT as follows:
* ‘13 July 2012 — Mr Drummond supplied wording to be used to draft an advertisement for Block 20, Section 34 Dickson.’
* ‘22 August 2012 — Mr Drummond advised that press should commence 8 September 2012 in with *Canberra Times* advertisements and in the *Australian Financial Review* (*AFR*) the following Thursday.’
* ‘3:58 pm Friday 7 September 2012 — Mr Drummond advised that first press should be 15 September 2012. (The advertisement was unable to be stopped as the property section of the Saturday *Canberra Times* is printed on Thursday).’
* ‘10 September 2012 — Mr Drummond was advised that the advertisement was run and forward media bookings had been made for the *Canberra Times* on 8 and 22 September 2012, 6 and 10 October 2012 and the *AFR* on Thursday 13 September 2012.’
* ‘5:13 pm 11 September 2012 — Mr Ellis requested that future advertising be stopped.’
* ‘5:36 pm 11 September 2012 — Mr Ellis advised that Government had agreed to the process so the advertisement could proceed.’
* ‘5:47 pm 11 September 2012 — Mr Peters [advised] that the *AFR* advertisement had already been cancelled, however the *Canberra Times* ones could run as originally scheduled, as per Mr Ellis’ advice.’
* ‘7:02 pm 11 September 2012 —The LDA’s appointed creative agency advised the *Canberra Times* advertisements had been rebooked and would run as per the original schedule.’ [[46]](#footnote-46)

#### Former Director, Sustainable Land Strategy

* 1. The Committee asked Mr Ellis why the advertisement for the RFT appeared before Cabinet approved it. He told the Committee that the Cabinet Decision on the matter was anticipated earlier; that they had attempted to cancel the advertisement but had not succeeded. Mr Ellis said that he had not known that the advertisement had run until he went to work on the following Monday.[[47]](#footnote-47)
  2. He told the Committee that ‘because of the tensions around this issue and the stuff-up … we were embarrassed’, but there was not ‘a great deal of fallout’: the Government ‘seemed to regard it as just an unfortunate glitch’.[[48]](#footnote-48)Mr Ellis told the Committee that they anticipated that an advertisement would run in the AFR shortly after the Cabinet Decision but after discussion they decided not to run any further advertising.[[49]](#footnote-49)
  3. He told the Committee that there seemed to be ‘a rather old-fashioned view about the significance of newspaper advertising in commercial real estate’, they had moved beyond relying on print advertising to more sophisticated networks.[[50]](#footnote-50)

#### Former Director-General, EDD

* 1. Mr Dawes also spoke about the advertising of the RFT. He told the Committee that ‘there were about 20 people who picked up the documentation’, including ‘[a] lot of real estate agents that have got a national and an international presence’. In his view, constraints on the development of the site, including the obligation to build a pocket park and hand it back to the Territory, resulted in a low number of tenders, rather than a failure to advertise widely.[[51]](#footnote-51)

#### Former Director, Sales, Land Development Agency

* 1. When asked whether the sales and marketing team of the LDA, for which he was responsible, had done the advertising for the RFT, the former Director, Sales, Land Development Agency, Mr Clint Peters, told the Committee that it had. He told the Committee that there was a checklist for advertisements of this nature and the team should ‘expedite getting them advertised’, but they were ‘a bit nervous about doing it, because those things [sign-offs] were not in place’.[[52]](#footnote-52)
  2. A further factor, he told the Committee, was that one of the advertisements went ahead and they ‘could not stop it’ because:

When you book a space in the Canberra Times, that space is booked and the Canberra Times are not going to pull an ad and have a big white gap in the middle of their advertising page. So unfortunately that went through; we simply could not stop it.[[53]](#footnote-53)

* 1. The advertisements were placed on behalf of a team under the direction of Mr Ellis. When the sales and marketing team asked this other team whether they were ready to advertise they advised that they were but, he told the Committee, ‘unfortunately, they were not quite ready’.[[54]](#footnote-54)
  2. In these circumstances, he told the Committee, his team was able to stop one advertisement—in the *Australian Financial Review—*from going ahead, due to good relationships they had with agents and marketing agents, and making ‘some phone calls fairly quickly to get that stopped’, but ‘[unfortunately], with the way the Canberra Times print media works and the timing of it, once it was locked it was locked and we could not stop it’.[[55]](#footnote-55)
  3. When asked for a chronology of events, Mr Peters told the Committee:

there was a period of about a week from the instructions coming forward to us asking the questions, to being instructed that it was fine to go, to booking and placing the ads, and then being told that it was not okay and to pull the ads. It was kind of that chronological set within about five to seven working days.[[56]](#footnote-56)

* 1. When asked, Mr Peters confirmed that he had advised Mr Ellis that it was not possible to stop the advertisement from appearing in the *Canberra Times* ‘when the instructions came through to pull it’.[[57]](#footnote-57)
  2. The Committee noted that this account diverged from that of Mr Ellis, in which he had told the Committee that he had been surprised to find on a Monday that the advertisement in the *Canberra Times* had run on the previous Saturday.[[58]](#footnote-58)
  3. Regarding these events, Mr Peters told the Committee:

When you look at the project in totality and all the moving parts that are happening there, I can completely understand where Greg was at. If he had instructions to get it advertised, he had his instructions. He probably did not have the opportunity to say to me and my team, “Are we ready to advertise?” If that conversation had been had, the pressures to get that advertisement underway would have been better managed.[[59]](#footnote-59)

#### Former Deputy Director-General, EDD

* 1. When asked how he had felt when he found that the RFT had been advertised without Cabinet approval, Mr Stewart told the Committee that he had felt ‘embarrassed’. He told the Committee:

The challenge with getting the timing of the ads right was that you had to give the Canberra Times 48 or 72 hours notice. The ad would have been notified to the paper, say, midweek. I cannot recall the cabinet timetable. I do not know when the meeting would have been, but the ad would have been put to the Canberra Times based on an assumption about the cabinet agenda. That cabinet agenda changed. The ad was not pulled. And I was embarrassed …[[60]](#footnote-60)

* 1. When asked whether in his view the lack of an advertisement in a national publication had affected the tender process, Mr Stewart told the Committee:

No, I do not. Mr Dawes pointed out, either in his testimony or in his report on this issue, that the same number of inquiries were received for that site as for the supermarket site, where the national ad had been placed. Whether or not the Financial Review, on reflection, is the appropriate place to put a for sale sign for a block of land in the territory is questionable today. But the fact remains that the intention at the time was to place that ad. The ad was not placed. I cannot recall why, but I personally do not believe it had an impact on the final outcome.[[61]](#footnote-61)

### Evaluation of tenders

#### Audit report

* 1. According to the Audit report, two tenders were received by the ‘extended’ closing date for the RFT of 26 November 2012.[[62]](#footnote-62)
  2. The tender by the Tradies offered $2.2 million, proposed a six-storey mixed-use development, including ‘five storeys of residential apartments and ground floor commercial space’. It proposed to integrate the site into ‘the Tradies’ precinct and create an integrated master plan for the southern part of the Dickson Centre’.[[63]](#footnote-63) The tender by Fabcot Pty Ltd, a subsidiary of Woolworths, offered $1.6 million and proposed to build a Dan Murphy's liquor store and other street-level shops.[[64]](#footnote-64)
  3. According to the Audit report, the EDD established a four-person panel to evaluate the tenders, comprising Mr Drummond, the former Project Manager, who was the Chair, and representatives from the former EDD, the Environment and Sustainable Development Directorate (EPSDD) and Treasury. The ACT Government Solicitor (ACTGS) provided a Probity Officer. The Panel worked to a Tender Evaluation Plan, outlining the Panel’s roles and responsibilities, administrative processes for tender evaluation, and the assessment of tenders, including evaluation criteria.[[65]](#footnote-65)
  4. The Plan stated:
* ‘All compliant Tenders will be evaluated against the assessment criteria.’
* ‘Tenders will be reviewed … against each criterion. The Evaluation Team will then agree on a consensus score out of 10 for each Tender against each criterion in accordance with the scoring regime. Any Proposal that is rated as marginal or less against any of the Evaluation Criteria may be excluded from further consideration.’
* ‘The agreed Evaluation Team score will then be multiplied by the criteria weighting to obtain a weighted score for each criterion for each offer. The individual weighted scores for each criterion will then be summed to obtain a total weighted score for each Tender.’
* ‘The preferred Tenderer with the highest weighted score, offering best value for money having regard to all relevant factors, might not necessarily be the lowest priced Tender. In cases where the scores do not clearly differentiate between the leading tenderers (within one point), they shall be evaluated comparatively against two highly weighted criteria Technical Skills and Methodology.’
* ‘The Evaluation Team will recommend to the delegate that the Tender with the highest overall weighted score, having regard to all relevant factors, be declared the preferred tenderer’; and
* ‘Post tender negotiations will take place solely with the preferred tenderer until such time as: (i) a contract is agreed, (ii) the preferred tenderer withdraws their tender (iii) the capacity to negotiate is exhausted or (iv) the LDA decides to accept no tenders and elects to recall tenders’.[[66]](#footnote-66)
  1. The Plan also set ‘Mandatory Assessment Criteria’:
* a ‘schematic development plan’ (weighted 20% in the final assessment);
* estimated timeframes for redevelopment (weighted 10%);
* compliance with the proposed Dickson master plan (weighted 10%);
* details of the proposed purchase price (weighted 40%);
* ability to demonstrate financial capacity to undertake the development (weighted 20%);[[67]](#footnote-67) and
* a scoring mechanism, with scores awarded from 10 for ‘Excellent’ down to zero for ‘Non-compliant’.[[68]](#footnote-68)
  1. The Tender Evaluation Report which followed indicated that the Tradies and Fabcot had both lodged ‘fully conforming responses to the RFT’,[[69]](#footnote-69) and scored the tenders against the assessment criteria as follows:[[70]](#footnote-70)

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Assessment criteria** | | **Weighting (per cent)** | **Woolworths (score)[[71]](#footnote-71)** | **Tradies (score)** |
| C1 | Tenderers shall provide details of proposed purchase price for the site | 40 | 25 | 35 |
| C2 | Tenderers shall demonstrate their financial capacity to undertake the development. | 20 | 18 | 15 |
| C3 | Tenderers should provide a schematic development plan for the site showing the floor plans, elevations and proposed uses within the development. | 20 | 15 | 18 |
| C4 | Tenderers shall demonstrate the compliance of their proposed development with the Dickson Centre Master Plan. | 10 | 6 | 8 |
| C5 | Tenderers shall provide estimated timeframes for redevelopment of the site. | 10 | 7 | 7 |
| Total |  | 100 | 71 | 83 |

##### Price criterion

* 1. According to the Evaluation Report, Fabcot offered $1,600,000 with settlement in 2015, ‘consistent with the terms of the sale contract’. Fabcot’s plan only proposed to provide 100 replacement car spaces, but it did not condition the offer. If selected Fabcot would have been ‘bound to provide the full replacement car parking’. The Report assessed the value of the shortfall in car parking at $350,000. The Tradies offered $2,200,000 with settlement 30 days after an exchange of contracts and conditioned its offer on a proposal to provide 84 car parks.[[72]](#footnote-72)
  2. Both offers were below the reserve price for the land of $3.180 million, which assumed settlement in 2015 with 139 replacement car parks.[[73]](#footnote-73) If the successful tenderer were required to replace only 84 car park spaces, then the effective value of the land would increase due to lower building costs. Assuming 84 replacement car parks, a revision of the MMJ valuation of the land would result in the higher value of ‘$3.65 to $3.7 million’.[[74]](#footnote-74)
  3. The Evaluation Report stated that MMJ Real Estate had provided a mechanism for compensating for the difference in settlement dates. The Panel had evaluated Fabcot’s reduction to 100 replacement car parks at $350,000 and the Tradies reduction to 84 car parks at $500,000. Taking both into account allowed the Panel to provide standardised versions of the offers as a basis for comparison. In these terms, Fabcot’s effective offer was calculated at $1,101,247 ex GST compared with a Tradies effective offer of $1,700,000 ex GST.[[75]](#footnote-75)

##### Financial capacity criterion

* 1. Regarding financial capacity, the Evaluation Report stated that while the Panel rated Fabcot ‘slightly superior’ because it was a bigger concern, the Tradies had sufficient capacity to raise finance for the development, and Tradies financial statements showed ‘$49 million in equity, significant cash reserves and strong operating cash flows’.[[76]](#footnote-76)

##### Schematic development plan criterion

* 1. Both tenderers had submitted schematic plans as required under the RFT. Fabcot’s proposal showed ‘a single storey retail development comprising mainly of a Dan Murphy liquor store and two levels of basement car parking. The Tradies proposal was for a six-storey building with ‘retail uses on the ground floor and residential units on the upper floor’.[[77]](#footnote-77) The Evaluation Report found the Tradies’ proposal ‘superior in terms of [the] overall solution’ for the site.[[78]](#footnote-78) The Audit report found that there was no other analysis as to why the Evaluation Report rated the Tradies ahead of Fabcot for this criterion.[[79]](#footnote-79)

##### Compliance with the Dickson Master Plan criterion

* 1. Regarding compliance with the Dickson Master Plan, the Evaluation Report stated that both tenderers had ‘addressed the merits of their proposal against the Dickson Masterplan’.[[80]](#footnote-80)
  2. However, the Audit report again found that the Evaluation Report provided no further analysis for rating the Tradies ahead of Fabcot for this criterion.[[81]](#footnote-81)

##### Timeframe criterion

* 1. Regarding timeframes for the development, the Evaluation Report stated that both tenders agreed not to begin development until the car parking was available on the redeveloped Block 21 Section 30. Fabcot had estimated that it would take ‘10 to 12 months to construct its scheme from the time a contractor took possession of the site for construction’.
  2. Again, the Audit report stated that the Evaluation Report provided no further analysis as to its consideration of this criterion, and in particular that there was:

nothing on the potential implications for the timing of redevelopment to be impacted by the Tradies’ intention to combine the redevelopment of Block 30 into a broader redevelopment of its Dickson land holdings.[[82]](#footnote-82)

##### Result of the evaluation

* 1. According to the Audit report, the Tender Evaluation Panel finalised its report on 11 December 2012.[[83]](#footnote-83) The Panel’s report noted that ‘both offers were below the reserve price’ and recommended that:
* the Tradies be the preferred tenderer;
* there be an updated valuation of Block 30 to reflect the Tradies’ terms providing for settlement 30 days after exchange and only 84 car spaces replaced; and that
* the EDD be authorised to negotiate with the Tradies to achieve ‘a sales price consistent with the updated valuations’.[[84]](#footnote-84)
  1. It noted that Mr Dawes, the Director-General, EDD, approved the Panel’s report on 20 December 2012 and provided a brief to the Minister advising of the preferred tenderer on the following day, 21 December 2012.[[85]](#footnote-85)
  2. The Audit report commented on this process, saying that the Tender Evaluation Report had not adequately documented how the Panel had applied the criteria and assessed the tenders.[[86]](#footnote-86) There was also inadequate guidance in the Tender Evaluation Plan on how to interpret and score against criteria. Consequently, there was no way to substantiate the Panel’s decision to select the Tradies as the preferred tenderer. The Audit report noted that while it would be inappropriate to assume that the Tradies tender was not the better one, the lack of documentation associated with the evaluation of tender responses highlighted the difficulty in demonstrating the merits of one tenderer’s responses over another.[[87]](#footnote-87)

#### Former Director-General, Economic Development

* 1. The former Director-General, EDD, Mr Dawes, had advised the Auditor-General that the tender criteria were ‘deliberately broad to encourage innovation in development outcomes’, and that applying a more specific interpretation ‘could have the effect of stifling creativity’. He told the Auditor-General that the members of the Tender Evaluation Team were ‘highly experienced and abundantly capable of assessing proposals against the criteria’ without ‘additional guidance or interpretation’.[[88]](#footnote-88)

#### Project Manager

* 1. In hearings, Mr Drummond, the former Project Manager, rejected the Auditor-General’s findings that there was inadequate guidance on the interpretation of criteria or documentation on how the Panel had assessed the tenders. He had not selected the Panel, but he had made suggestions that it should include members from in and outside of EDD for the sake of impartiality. He had ensured that a probity officer was engaged before the Panel considered the tenders and that the Panel was ‘addressed and fully briefed’ by the Probity Officer.[[89]](#footnote-89)
  2. He believed that the Panel had prepared for their ‘roles, duties and responsibilities’, and ‘all of the probity issues’, before ‘convening and making a decision’,[[90]](#footnote-90) and noted that the Probity Officer had been present for the entire meeting where the Panel had selected the Tradies as the preferred tenderer.[[91]](#footnote-91)

### Committee comment

* 1. Key topics considered in this chapter are:
* the degree to which the sale of Block 30 was a routine or ordinary sale;
* whether the EDD advertised the RFT effectively; and
* the degree to which the Panel managed, effectively, selection of a successful tenderer.

#### Was it an ordinary sale?

* 1. The fact that the RFT was not dealt with by the ordinary team, that the advertising was booked in anticipation of a cabinet decision, and that there was a decision not to engage a real estate agent to market the sale call into question claims that this was an ordinary sale.
  2. Witnesses expressed a range of views. Some described the sale of Block 30 as a part of the Indicative Land Release Program (ILRP) and thus a routine part of LDA business. On the other hand, three pieces of information work against the view that the sale was part of an ordinary process. First, the EDD put Mr Ellis in charge of the sale because the area managing the ILRP was too busy, and it was beyond their expertise.[[92]](#footnote-92) Second, the EDD departed from its normal practice for the ILRP by not engaging a real estate agent to promote the sale.[[93]](#footnote-93) Third, Block 30 (then Block 20) was not listed in the ILRPs for 2009-10 to 2013-14, 2010-2011 to 2013-14, or 2011-2012 to 2014-15, although the Committee notes that its release was a ‘key action’ as part of implementing the Dickson Master Plan and notes witness evidence that the release of the site was part of the Master Plan.
  3. Other factors work against a view of the sale as normal business because they call into question the impartiality of the process. One example is that certain elements of the ACT public service appeared to support the Tradies’ attempts to acquire Block 30 by arguing against a competitive process in the Cabinet Brief which accompanied the Tradies’ third application for acquisition of Block 30 by direct sale in 2011.[[94]](#footnote-94) It appears that the agencies who argued for direct sale were also involved in tender negotiations in 2012-13.
  4. Another example hinges on the question of why the RFT was released shortly before the start of the caretaker period in the lead up to the 2012 election.[[95]](#footnote-95) Mr Ellis told the Committee that he believed that there was a desire for it to be released before the election.[[96]](#footnote-96) He was the only witness to say this and confirmed no one ever expressed this to him: it was his opinion. Mr Stewart said he did not recall experiencing any greater than normal pressure, political or otherwise, to deliver the site to market.[[97]](#footnote-97) Some members of the Committee questioned why this was among the last acts of the Government before the beginning of the caretaker period.[[98]](#footnote-98)
  5. Links between the Tradies, the CFMEU and the ACT Labor Party are relevant to this question. The primary financial purpose of the Tradies is to support the CFMEU.[[99]](#footnote-99) The CFMEU provides political donations to,[[100]](#footnote-100) and is affiliated with,[[101]](#footnote-101) the Australian Labor Party. The fact that these relationships exist further discourages a view of the sale of Block 30 as a normal commercial transaction.
  6. Also, some members consider it relevant that there appears to be inconsistencies in evidence about the extent to which Mr Barr, at that time Minister for Economic Development and now Chief Minister and Treasurer, was involved in decision-making.[[102]](#footnote-102) Mr Barr told the Committee that he was aware only that negotiations were underway and that there were ‘outstanding matters’, but that he was not aware of any of the ‘fine detail’.[[103]](#footnote-103) This, however, is at odds with an email considered in this chapter stating that Mr Barr, as the responsible minister, had ‘called a halt to this process until further site investigations have been completed’.[[104]](#footnote-104) [[105]](#footnote-105)

#### Advertising of the RFT

* 1. The EDD advertised the RFT based on an assumption rather than a direction.[[106]](#footnote-106) The confusion around advertising as result of this is unfortunate. While the Audit report reflects on the lack of national advertising, the Committee notes that witnesses have expressed a view that there was sufficient interest from existing business networks. It is not clear what effect the lack of national advertising had on parties expressing interests in the tender, but it is unfortunate.

#### Tender evaluation

* 1. Criteria and guidance for scoring tenders were not specific and rigorous as they should have been. One example is the criterion ‘Tenderers shall provide details of proposed purchase price for the site’. The Panel was to award points for ‘providing details’, but there was no direction to take amounts offered into account.[[107]](#footnote-107) Phrasing the criteria in this way left much to the discretion of the Tender Evaluation Panel. Together with inadequate documentation of decision-making, this increased the risk that the Panel would select a tenderer on subjective and un-stated criteria. The lack of documentation highlights the difficulty in demonstrating the merits of one tenderer’s responses over another. It weakened the extent to which the Panel’s decision-making could be considered transparent and accountable.[[108]](#footnote-108)
  2. Those responsible for managing the sale have sought to rely on the presence of probity officers at this and subsequent steps in the sale of Block 30. The evidence noted elsewhere in this report shows that the role of probity officers was to provide advice on request, rather than to be directly responsible for the EDD’s business probity. The mere presence of probity officers does not assure probity.[[109]](#footnote-109)

#### Summation

* 1. Cabinet decided there should not be a direct sale of Block 30 to the Tradies and put the sale out to tender. Ultimately, however, there were notable gaps:
* there was a lack of due authorisation for advertising the RFT until after it was advertised;
* the EDD did not advertise the RFT widely in traditional media as was done at the time, potentially contributing to the small number of tenders received and thus reducing competition;
* criteria for ranking the tenders were not sufficiently specific and left too much to the discretion of the Panel, and
* there was a lack of clarity regarding replacement car parking spaces which has persisted to the present.
  1. The purpose of the tender process is to obtain the best price, asset or service for the party asking for tenders, free from other imperatives or forms of influence. However, it is not possible to say with any confidence that the sale of Block 30 served such a purpose. This is underscored by the fact that when two offers were received in response to the RFT, both below the reserve price, the EDD could have stopped the sale process on grounds that a basic requirement of the RFT had not been met. This would have been a sensible alternative to the negotiations which subsequently took place.
  2. As Seddon suggests in *Government Contracts: Federal, State and Local,* in contracting different obligations fall on governments than on private entities.[[110]](#footnote-110) Governments are ‘under a responsibility to use public money in the best possible way’, and this involves ‘not only securing the best deal through open and effective competition’ but also ‘the protection of the public purse from collusion, fraud and extravagance’. According to Seddon, it is important that ‘the integrity of the whole process is maintained’ and that potential contractors can reasonably expect ‘to be treated fairly’. If not, the reduced competition will contradict the rationale for putting government business out to tender.[[111]](#footnote-111)
  3. If the ACT falls short of these principles and standards, it can expect to see a lessening of competition in tender processes. If so, there would be less efficient public procurement, and a reduction in confidence that the government is effectively protecting public assets from ‘collusion, fraud and extravagance’.[[112]](#footnote-112)
  4. The Committee notes that while the means of advertising widely may have changed significantly since 2012, EDD did not meet the standard set at the time. The Committee recognises that since 2012 the rules for advertising have evolved.

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| Recommendation 1  Some members of the Committee recommend that the ACT Government advise the Assembly how it advertises nationally when it puts significant tenders to market.[[113]](#footnote-113) |

|  |
| --- |
| Recommendation 2  Some members of the Committee recommend that the ACT Government review the role of Probity Advisers in tender evaluations.[[114]](#footnote-114) |

## The first period of negotiation

### Background

* 1. According to the Audit report, because the Tradies’ offer was below the reserve price for the land, negotiations took place with the object of bringing the Tradies’ offer up to the reserve price. Negotiations began after the Panel identified the Tradies as the preferred tenderer in December 2012—most likely in early 2013[[115]](#footnote-115)—and ended when settlement occurred on 19 February 2016.[[116]](#footnote-116)
  2. Over this time, the Report stated, the Territory ‘relinquished’ several conditions of the RFT, including requirements for a Project delivery Agreement, payment of a security bond of $1 million, and other ‘key restrictions’ on the Crown Lease. The negotiations resulted in an agreement in which the Tradies agreed to meet the reserve price of $3.18 million excluding GST ‘in return for the sale of some of its existing landholdings to the Territory’.[[117]](#footnote-117) The final result of this process was that the Territory would pay the Tradies $414,000, that being the difference in value arising from the exchange of land and money.[[118]](#footnote-118)
  3. It is useful to distinguish between two periods of negotiation. The first was conducted on behalf of the ACT Government by Mr Ellis as the former Director, Sustainable Land Strategy, and Mr Drummond as the former Project Manager, starting early in 2013 and ending with the ‘financial terms of the negotiated settlement’ approved on 17 December 2013 by Mr Dawes as the former Director-General of the EDD. Lawyers conducted the second: the ACTGS on behalf of the ACT Government and Clayton Utz on behalf of the Tradies, with Mr Dawes playing a key role as a final decision-maker. This chapter considers the first period of negotiation.

### Meetings

#### Audit report

* 1. According to the Audit report, the former Chief Financial Officer (CFO) of the Tradies (Mr Brennan) advised that he met Territory officials more than 40 times in the course of negotiations, ‘either in person or by telephone’. Despite this, the Audit had not been able to find any records for the meetings.[[119]](#footnote-119) In hearings, the Auditor-General told the Committee that she had expected to see more extensive documentation.[[120]](#footnote-120)

#### Chief Executive Officer, Tradies Group

* 1. Mr Docker told the Committee that he was aware of negotiations in a broad sense but was not directly involved and did not know how many meetings or telephone calls had taken place.[[121]](#footnote-121)
  2. According to Mr Docker, negotiations took place over a prolonged period. There was frustration on the part of the Tradies because it was difficult to get responses to proposals in a timely way. It became ‘a convoluted negotiation process’, and the extended nature of negotiations was to the Tradies detriment.[[122]](#footnote-122)

#### Former Chief Financial Officer, Tradies Group

* 1. Mr Brennan told the Committee that when the Tradies became the preferred tenderer, government negotiators asked it to increase its offer by $1 million to reach the reserve price of $ 3.18 million. The Tradies viewed this as a ‘significant’ overvaluation of the land because it did not take into account the conditions imposed by the Government, particularly for car parking. He told the Committee that the view of the market, ‘as evidenced by the two tender responses’, was that the value of the land was ‘significantly less’ than the MMJ valuation. The fact that both responses were from parties who owned land adjacent to Block 30, and that these were offers for $1.6 million and $2.2 million, further indicated the ‘narrow market’ for the land, and in ‘any normal environment’ those bids ‘would be considered evidence of market value’.[[123]](#footnote-123)
  2. Mr Brennan told the Committee that he sometimes felt that negotiations were going nowhere because ‘we never had a meeting where there was a positive outcome’. Government negotiators were obliged to consult others outside of meetings before responding to proposals, and this slowed the process down considerably.[[124]](#footnote-124) Mr Ellis and Mr Drummond represented the government, and after Mr Ellis left the EDD it was Mr Drummond alone.[[125]](#footnote-125) Other people present for ‘key’ meetings included valuers for the Tradies and the ACT Government, and Mr Stewart, as former Deputy Director-General, EDD, who was present at one meeting. Lawyers only became involved ‘once we had got to a commercial arrangement’.[[126]](#footnote-126)

#### Former Project Manager

* 1. Mr Drummond told the Committee that he had met Mr Brennan on ‘two or three’ occasions in the course of negotiations and that there were not ‘multiple meetings’. These face-to-face meetings took place in the first 12 months after the award of the tender, and they also exchanged emails and phone calls.[[127]](#footnote-127) He and Mr Ellis had represented the ACT Government at those meetings.[[128]](#footnote-128) He ‘certainly did not’ take notes on behalf of the ACT Government, and could not recall if another person had.[[129]](#footnote-129)
  2. Mr Drummond told the Committee that in those meetings there was ‘always an issue about car parking’, and that this was a ‘contentious’ issue regarding valuations. The ACT Government commissioned two valuations before the EDD advertised the RFT—one for less than a million dollars and another for more than $3 million—and had decided ‘to take the highest valuation and set that as the bar that any successful tenderer had to achieve’.[[130]](#footnote-130)
  3. He told the Committee:

Subsequently …there was discussion, and this question was raised: “As part of the tender, you’re asking us to build you a park and you are also counting the car parks on which that park is to be developed. Why should we pay twice? Why should we acquire a block of land that we have to build a park on and also replace those car parks?” Similarly, there were issues to do with the roads within it. So there was argument about what the fair number was.[[131]](#footnote-131)

* 1. Also, he told the Committee, the two valuations requested by government ‘took a different approach as to the value of those carparks’.[[132]](#footnote-132)
  2. According to Mr Drummond, as part of these discussions, the Tradies had suggested that the parties should consider a land swap. This proposal brought with it the question of ‘how the relevant pieces of land were [to be] valued’,[[133]](#footnote-133) and they discussed this proposal in the first or second meeting in the first quarter of 2013.[[134]](#footnote-134) Mr Ellis was present at the meeting and spoke to Mr Dawes about the proposal. There was interest because the EDD was at the time considering how to consolidate government-held land close to the Dickson group centre, extending north from the edge of the Dickson pool site and including the site of the former Downer observatory.[[135]](#footnote-135)

#### Former Director, Sustainable Land Strategy

* 1. Mr Ellis told the Committee that as far as he was concerned meetings with the Tradies in 2013 were simple in the sense that ‘the position that [he] could adopt was pretty inflexible’:

As a public servant, I could not vary: we could not have an agreement unless the Tradies met the requirement to pay $3.18 million and replace all of the car spaces. That meant that almost from day one, for most of the year, there was no movement[[136]](#footnote-136)

* 1. He told the Committee when they met the two parties were ‘a million miles apart’.[[137]](#footnote-137)He thought the only way there was going to be any ‘movement’ was through a review of the valuation. As a result, he told the Committee, Mr Dawes had instructed Colliers to conduct a review of the initial valuation to see ‘if there was some way that we could make a recommendation to the [Government] that there should be more flexibility’.[[138]](#footnote-138)

### Review of valuation

#### Audit report

* 1. According to the Audit report, in April 2013 the EDD engaged Colliers International to review the MMJ valuation of November 2012 and provide an opinion of value. In its advice, Colliers stated that this involved reviewing the requirements of the RFT, including settlement timing, commence and completion clauses, reinstatement of car parking, construction and hand-back of the ‘pocket park’, and development rights and site constraints.[[139]](#footnote-139)
  2. Colliers’ view was that MMJ’s valuation accorded ‘with normal valuation practice’. Colliers did not ‘materially disagree’ with the valuation except regarding the ‘degree to which the site [was] impacted upon by the significant amount of car parking, park and part of the road costs’.[[140]](#footnote-140) It valued the land at $2.75 million but advised that if the developer did not have to pay for a road between Dickson Place and Badham Street, the value of the land would increase to $3,150,000.[[141]](#footnote-141)
  3. The Audit report noted that Colliers’ advice made ‘similar assumptions’ to those of the MMJ valuation report, including the belief that the developer would replace 154 surface car parking spaces on-site.[[142]](#footnote-142) The State Chief Executive of Colliers (Mr Powderly) had told the Auditor-General that Colliers received no instructions in March or April 2013 to reflect a requirement for 84 replacement car parks only.[[143]](#footnote-143) According to the Report, it was not clear why the EDD asked Colliers to value the land on the assumption that a developer would provide 154 replacement car parking spaces. At the time, negotiations were taking place on the assumption that only 84 spaces were required.[[144]](#footnote-144)

#### Former Director, Sustainable Land Strategy

* 1. Mr Ellis told the Committee that he knew that the price set for Block 30 based on the MMJ valuation was ‘high’. Under Treasury instructions, it was a requirement to obtain two valuations. While one valuation was ‘much lower’, the instructions required officers to ‘always take the higher valuation’. He was not concerned about this. All he could do, as a public servant, was to say ‘[t]his is what it’s worth and you have to meet my figure’.[[145]](#footnote-145)
  2. He regarded the price as high. The valuation’s assumptions ‘did not make allowances’ for requirements that would have ‘cost the potential bidders quite a bit of money’. The MMJ valuation said ‘quite explicitly’ that it did not take into account roadworks, which Colliers estimated were worth ‘a minimum of $430,000 in 2013 dollars’, or restrictions on delays on development, which were ‘a very significant factor’ for developers.[[146]](#footnote-146)
  3. These conditions, he told the Committee, had direct implications for the amounts that would-be purchasers would pay for the land, particularly because the RFT delayed building ‘for at least four years’. In light of the ‘time value of money’ and the delay to return on investment, this amounted to a substantial cost, which would lead interested parties to lower their bids.[[147]](#footnote-147)
  4. Mr Ellis did not think that the tender should have been re-started as a result of the difference between the figure established by the MMJ valuation as the reserve price and what, in his view, the market had established as a reasonable figure. Restarting the process would have brought new risks, including that the market knew that ‘only two people were interested and that the highest bid was $2.2 million’. This bid was ‘much below’ the $3.18 million figure quoted in the MMJ valuation.[[148]](#footnote-148) The state of the market was ‘pretty dire’ at the time, and it was unlikely that the Government would be able to achieve the asking price. There were significant ‘sunk costs’ arising from the sale process, and this also made re-starting the process less attractive.[[149]](#footnote-149)
  5. As to how the market came to know about the bids, Mr Ellis told the Committee that it was ‘like any small community; there are always whispers’.[[150]](#footnote-150) Moreover, he told the Committee, it was important to acknowledge that despite there being 18 groups who expressed interest, ‘there were only two conforming bidders’, and this showed that the terms offered in the RFT ’just did not stack up for most people’.[[151]](#footnote-151)

### Section 72 valuations

#### Former Project Manager

* 1. The Committee asked Mr Drummond about valuations of Blocks 6 and 25, Section 72, Dickson, which was the land the Tradies had proposed for a land swap. He told the Committee he had advised that as well as arranging for valuations he had recommended that they obtain a contamination report. A building had burnt down on Block 72, and there was a possibility of asbestos contamination. It was normal in a commercial negotiation to make sure that the Territory was buying something that was ‘fit and proper for use’. He made reckonings of capital and net present value and provided instructions for valuations the properties. Negotiations were undertaken on whether there should be a short- or long-term lease for tenancy by the CFMEU. Colliers International provided valuation advice.[[152]](#footnote-152)

### Replacement car parking

#### Audit report

* 1. According to the Audit report, the RFT reserve price of $3.18 million relied on a valuation which assumed that the purchaser would provide 154 replacement car parks on Block 30.[[153]](#footnote-153)
  2. Traffic studies commissioned by the EDD and included in the RFT documentation led to a changed requirement for 133 replacement car parks during the tender period, later amended to 139. The Tender Evaluation Panel used this last figure for ‘standardising and evaluating’ the tenders.[[154]](#footnote-154)
  3. The Tradies’ tender assumed, and was conditioned on, an obligation to provide 84 rather than 154 car parking spaces.[[155]](#footnote-155) The subject matter expert retained by the Audit Office observed that ‘such a reduction of 70 spaces would result in a benefit to the land purchaser’ and ‘increase the value of the land as a development site’.[[156]](#footnote-156)
  4. According to the Audit report, Mr Ellis, the former Director, Sustainable Land Strategy, had advised that the Tradies intended to convert existing private spaces they owned into public spaces, thus fulfilling the original requirement for 154 replacement car parks. He said that the Planning Authority had approved this arrangement. He thought that the ‘private car spaces’ the Tradies were offering were ‘at least equivalent in value’ to newly-built car parking spaces, ‘probably higher’, given that ‘most of them were underground spaces’.[[157]](#footnote-157)
  5. A 13 December 2013 minute from Mr Ellis to Mr Dawes, advised that an EPSDD officer had confirmed that ‘additional parking provided by the Tradies in their existing basement’ could be counted as replacement car parks to help the Tradies meet requirements.[[158]](#footnote-158) However, the Audit report found ‘no evidence’ to support the assertion that the EPSDD or one of its officers had approved the arrangement. The Auditor-General’s subject matter expert estimated that the financial benefit to the Tradies of providing 84 rather than 154 replacement public car parks amounted to $1,570,000.[[159]](#footnote-159)
  6. According to the Audit report, regarding effects on value from reduced requirements for the easement and replacement of parking spaces, its subject matter expert had advised the Auditor-General of an estimated ‘adjusted value range’ for Block 30 of between $4,750,000 and $5,000,000. This valuation was $1.57 million to $1.82 million more than that of November 2012 by MMJ Real Estate of $3.18 million, which was later the reserve price and the final figure agreed between the EDD and the Tradies.[[160]](#footnote-160) The Audit report further made the point that if 154 replacement car parking spaces, rather than the 84 offered in the Tradies’ tender, were to be provided it would ‘ameliorate the loss in value to the Territory’, but this was an ‘uncertainty’.[[161]](#footnote-161)
  7. According to the Audit report, the former Director, Sustainable Land Strategy disagreed with the analysis of the reduction of replacement car parks from 154 to 139.[[162]](#footnote-162) Using the valuation estimated by Capital Valuers—70 spaces at $1.57 million—he advised that this assumed ‘a figure of a bit under $22,500 per space’ and that on this basis 15 spaces would amount to $337,500. The former Director thought that this estimate of the value of Dickson car spaces in 2012-13 was ‘highly inflated’. In his view, it did not equate with ‘anything like the value of surface spaces in 2012-13’ was closer to $8000-$9000 per space, and 15 spaces at $9,000 each would amount to $135,000.[[163]](#footnote-163)
  8. He stated that he should have asked MMJ to update their valuation to reflect this, but he ‘must have reasoned at the time’ that the value of the reduction in car parking ($135,000) would compensate for the fact that the valuation was too high because it did not take the easement into account.[[164]](#footnote-164) The former Director advised:

… the Tradies had originally sought to have the car spaces reduced because the Planning Authority’s requirement for a public ‘pocket park’ on the Badham street/Dickson Place corner of the block, reduced the area available on Block 30 for car spaces by some 36 surface spaces; the Tradies further claimed that trying to provide car spaces under a park with tree roots was highly problematic and probably not safe.[[165]](#footnote-165)

* 1. Based on advice from ACTPLA, however, he had advised the Tradies that the pocket park would not have deep-rooted trees, that it was possible to build car spaces underneath the park, and that the requirement for 139 spaces was ‘mandatory’ under RFT.[[166]](#footnote-166)
  2. Nevertheless, the Tradies remained concerned about excavating beneath the park and, as a result, proposed converting 55 of their existing underground spaces into public spaces and ‘reducing the total accordingly’.[[167]](#footnote-167) He did not recall ever having waived a requirement for 139 spaces. It was possible to criticise the fact the valuation did not reflect a reduced requirement for car parking spaces but, in his view, the proposal to make up the difference with 55 private spaces ‘did not lose the Territory any value’. If any value had been given away in this respect, he could see ‘no evidence that it happened during [his] tenure in the negotiation’.[[168]](#footnote-168)
  3. The Audit report stated that the original MMJ valuation assumed that parking for the site, including replacement parking, would be located in a ‘basement structure’ beneath Block 30.[[169]](#footnote-169) A reduced requirement to replace only 84 car parks first emerged in the EDD’s response to prospective tenderers during the RFT process, which advised that:

The minimum number of publicly–accessible car parking spaces on block 20 section 34 Dickson would have to comply with the Territory Plan. As the consultation report and recommendation for the [Government] on DV311 are still being prepared by ESDD, all queries on DV311 and the code would be best directed to ACTPLA. EDD would support that a minimum of 84 spaces be available for public use.[[170]](#footnote-170)

* 1. Subsequently, the Audit report noted, the Tradies advised that its tender was predicated on the ‘provision of 84 public parking spaces in the development as replacement parking as per the RFT’. It found no documentary evidence to support the contention by the former Director, Sustainable Land Strategy that replacement car parking would be provided by the Tradies on the adjacent block to make up the difference.[[171]](#footnote-171)

#### Former Director, Sustainable Land Strategy

* 1. In hearings, Mr Ellis returned to questions over the value of the 70 car parks forgone in the process of negotiations: that is, 84 rather than the original 154. As noted above, in material quoted in the Audit report he had questioned the valuation relied upon by the Auditor-General.[[172]](#footnote-172) He suggested that ‘once you realise that the Auditor-General is incorrect about public car spaces’, ‘$1.57 million has to come off her alleged loss of $2.65 million’.[[173]](#footnote-173)
  2. He told the Committee that the requirement for a specific number of car parking spaces ‘was never in our gift’. ACTPLA was at that time considering Draft Variation 311—the Dickson master plan. It was reviewing parking requirements and had not yet made a decision.[[174]](#footnote-174) When they advertised the RFT, there was ‘no certainty’ on replacement car spaces. Normally all would have to be replaced, but ACTPLA had changed the situation by deciding to ‘cut this block by 54 per cent’ by adding requirements for a pocket park and pedestrian easement.[[175]](#footnote-175)
  3. He told the Committee that in June 2013 it became clear that ACTPLA was maintaining its position, and the Tradies was questioning whether it could afford to meet these requirements. The Tradies was hoping that ACTPLA would change its position and agree to 84 replacement spaces because it had insisted on the park and easement. He said that this ‘was what we all assumed’ would happen.[[176]](#footnote-176)
  4. Mr Ellis told the Committee that when asked, he and other staff supporting the RFT would say that they thought 84 was a ‘reasonable number’ in circumstances where things were unresolved. The figure of 84 spaces was ‘something that you could plan on’, although ACTPLA would make the final decision, and that any development would have to conform to its requirements

#### Former Chief Financial Officer, Tradies

* 1. The Committee also asked Mr Brennan about replacement car parks. He told the Committee that valuers and town planners had advised him that the 154 replacement car parks ‘were not treated appropriately’ in the MMJ valuation; that the 6,000 Gross Floor Area (GFA) offered in the RFT was ‘unlikely to be used because of all the setbacks and the easements’; and that when these were combined, ‘the value just was not there’.[[177]](#footnote-177)
  2. During the RFT process, he told the Committee, there were ‘a lot of questions’ about car parks, setbacks, easements, the pocket park, whether it was possible to build under the pocket park. In one response the EDD had advised those expressing interest that they could work on the assumption that 84 replacement car parks would be required, and negotiations proceeded on that basis.[[178]](#footnote-178)

#### Minister for Planning

* 1. Seeking further clarification on the number of replacement car parks agreed to in the final contract of sale for Block 30, on 11 July 2019 the Committee wrote to Mr Mick Gentleman MLA, Minister for Planning and Land Management, seeking copies of the contract of sale. Mr Gentleman replied on 25 July 2019 and provided a copy of the contract. The Committee expected that the contract would stipulate the number of replacement car parks to which the ACT Government and the Tradies had agreed, however, the clause relating to car parking in the Specimen Lease attached to the contract, Clause (g), set no requirement as to the number of replacement car parks. It stated:

That the Lessee shall provide and maintain an approved drained and sealed car parking area on the land to a standard acceptable to the Authority in accordance with plans and specifications prepared by the Lessee and previously submitted to and approved in writing by the Authority.[[179]](#footnote-179)

* 1. As a result, seeking to establish the number of replacement car parks required under the Contract of Sale, on 8 August 2019 the Committee again wrote to Mr Gentleman, requesting ‘a copy of the “plans and specifications prepared by the Lessee and previously submitted to and approved in writing by the Authority” [that is, ACTPLA] as per Clause 3(a) of the Contract of Sale for Block 30 Dickson’.[[180]](#footnote-180)
  2. Mr Gentleman responded on 13 August 2019. In his letter he told the Committee:

I am unable to provide a copy of the “plans and specifications prepared by the Lessee and previously submitted to and approved in writing by the Authority as per clause 3(a) of the contract for sale for Block 30 Dickson.”

I note that this clause 3(a) is in the specimen Crown lease attached to the contract for sale. Clause 3(a) provides that “the Lessee shall within 48 months from the date of the commencement of the lease ... complete the erection of an approved development on the land in accordance with plans and specifications prepared by the Lessee and previously submitted to and approved in writing by the Authority ... “.

As the contract for sale is yet to settle, the Crown lease has not been created and clause 3(a) is not in force. Further, a development application has not been lodged for Block 30 Dickson, so the Authority does not hold any plans or specifications for this site.[[181]](#footnote-181)

* 1. As a result, the Committee was not able to ascertain the number of replacement car parks the Tradies is required to provide in redeveloping Block 30, Dickson.[[182]](#footnote-182)
  2. At the time of completing this report the ACT Government and the Tradies have not settled on Block 30 Section 34 Dickson.

### Land swap

#### Audit report

* 1. According to the Audit report, the RFT ‘did not request or envisage’ that the sale of Block 30 would involve a land swap. The proposal for the Tradies to provide Blocks 6 and 25 Section 72 ‘in part-payment’ for Block 30 emerged after the Tradies became the preferred tenderer and during subsequent negotiations.[[183]](#footnote-183) According to the Audit report, this created an imperative for the EDD ‘to carefully assess the related whole of life risks, costs and benefits’, particularly of ‘the proposed acquisition by the Territory of Blocks 6 and 25 Section 72’.[[184]](#footnote-184)
  2. In April 2013 the EDD had engaged Colliers International to provide a market valuation of Blocks 6 and 25 Section 72 ‘to guide its negotiations’ regarding the proposed land swap.[[185]](#footnote-185) Colliers valued Block 6 Section 72 at $3,550,000 for vacant possession and $3,250,000 under an arrangement in which the property would be leased back to the Tradies for an 18 months net rent-free period.[[186]](#footnote-186) It valued Block 25 Section 72 at $45,000 (GST exclusive) because this block was held under a concessional lease, using a method provided under Section 263(1) of the *Planning and Development Act 2007* to calculate ‘the amount payable to discharge a concessional lease’. This calculation involved identifying a market value of $636,680 and ‘a cost to pay out the concessional amount of the lease’ of $594,535, resulting in a ‘current market value’ of the difference between the two of $42,265, which was rounded-up to $45,000 in the valuation report.[[187]](#footnote-187)
  3. However, the Audit report noted, the final agreement between the ACT Government and the Tradies did not provide for an 18-month rent-free period for the Tradies’ tenancy of Block 6 Section 72. Rather, it provided for a 42 months rent-free period with an immediate cash payment by the Territory to the Tradies.[[188]](#footnote-188)
  4. Audit asked its subject matter expert to value Block 6 Section 72, factoring-in the 42-months rent-free period contained in the final agreement. The subject matter expert noted that Colliers International had assessed the property’s value with an 18-month rent-free at $3,250,000’. Re-working these figures to reflect a 42-month rent-free period resulted in a value for Block 6 Section 72 of $2,420,000.[[189]](#footnote-189) According to the Audit report, this was $830,000 less than what the Territory agreed to pay the Tradies.[[190]](#footnote-190)
  5. The Audit report identified significant anomalies:

A key document that formed the basis for decision-making on 17 December 2013 was a 13 December 2013 minute to the Director-General of the Economic Development Directorate from the Director, Sustainable Land Strategy. The minute misrepresented the value of Block 6 Section 72 by advising of a value of $3,550,000 and implying that this value included ‘a 40 month rent free component to the Tradies’. This was not the case, as the value of $3,550,000 was on the basis of vacant possession.[[191]](#footnote-191)

* 1. Reflecting on this, the Audit report commented that the ‘merits of the Territory’s agreement to the final settlement terms for the blocks [were] not evident’, and that in particular, the ‘final terms for Block 6 Section 72’ appeared ‘to provide significant benefits to the Tradies … for no evident additional value to the Territory’.[[192]](#footnote-192)
  2. According to the Audit report, the former Director-General of the EDD (Mr Dawes) ‘could not recall…why it was considered necessary at the time of the negotiations to enter into the arrangement’, but indicated that ‘the imperatives of reaching a final transaction with the Tradies were significant motivating factors’.[[193]](#footnote-193) The former Director, Sustainable Land Strategy, (Mr Ellis) told Audit that he saw the rent-free period as the ‘only way forward‘ after negotiations came to a halt.[[194]](#footnote-194)

#### Audit Office

* 1. In hearings, the Committee asked further questions of the Auditor-General and her officers regarding the land swap, including on when this became a part of negotiations between the Territory and the Tradies. The Director, Performance Audits, told the Committee that while this had occurred between December 2012 and December 2013, the Audit had not been able to establish an exact date due to a lack of documentation.[[195]](#footnote-195)
  2. The Committee asked how they determined loss of value to the Territory. The Director told the Committee that in April 2013 a professional services firm provided a valuation report for Block 6 Section 72 which considered two scenarios: leaseback with an 18 month, rent-free period, and vacant possession. Valuations were $3.25 million and $3.55 million respectively.[[196]](#footnote-196)
  3. He told the Committee that the Audit Office ‘did not have any basis on which to question that valuation’ and subject matter expert had advised that they were ‘sound’.[[197]](#footnote-197) In practice, however, ‘neither of those scenarios’ represented what the parties agreed to which was in fact a 42 month rent-free leaseback which reduced the value to $2.42 million.[[198]](#footnote-198).
  4. This, he told the Committee, resulted in a loss of value to the Territory of at least $830,000, equal to the difference between the lower valuation of the two valuations for the land—$3.25 million—and the value calculated by the subject matter expert including 42 months’ lease-back, rent-free, of $2.42 million.[[199]](#footnote-199)

#### Chief Executive Officer, Tradies

* 1. Regarding the land swap, Mr Docker told the Committee that after EDD selected the Tradies as preferred tenderer, negotiations ‘resulted in the Tradies increasing its offer by almost $1 million in return for some concessions from the [Government]’, and that the Tradies was ‘able to offer an additional benefit to the [Government] by negotiating the sale to include land that the [Government] was interested in acquiring’.[[200]](#footnote-200)
  2. He had ‘no definitive answer’ to the question of which party had initiated the proposal for a land swap, but ‘in the course of the transaction’ it became clear that the Government ‘had an interest in those blocks of land’. From this point, he told the Committee, ‘it was in the interests of both the [Government] and the Tradies to work along those lines’.[[201]](#footnote-201)
  3. When asked when the proposal became part of negotiations between the Tradies and the ACT government, Mr Docker told the Committee that he understood, anecdotally, that as negotiations progressed it became clear that ‘valuation issues’ had become a matter for ‘great conjecture’ by both parties, and that it was at this point that the Government’s acquisition of Rosevear Place ‘came to bear in the negotiations more broadly’. He was unable to say exactly when this had occurred.[[202]](#footnote-202)

#### Former Director, Sustainable Land Strategy

* 1. Mr Ellis told the Committee that Mr Dawes, as Director-General, EDD, had proposed the land swap just before the Colliers valuation review in April 2013.[[203]](#footnote-203)
  2. He told the Committee that he was not aware of any other instances where dealings with a preferred tenderer included a land swap. As far as he was concerned, it made no difference whether they paid in cash or in-kind, as long as the land proposed for the swap ‘had a value that we could justify in cash terms’. Mr Dawes had told him that ‘this was going to be the way’ that payment took place. He—Mr Ellis—knew that Mr Dawes wanted the land because ‘he had other objectives in mind’ which involved the redevelopment of the area ‘for social housing and the like’.[[204]](#footnote-204)

#### Other witnesses

* 1. Mr Brennan could not recall when the land swap had become part of negotiations, or who had proposed it, but confirmed that it was part of negotiations by the end of 2013.[[205]](#footnote-205) Mr Dawes was also not able to recall when the land swap had become part of negotiations, or who had proposed it.[[206]](#footnote-206) Mr Graham Mundy, the former Project Director, Urban Projects, EPSDD, told the Committee that he arranged for a contractor to conduct a site assessment for contamination in soil at Block 25 Section 72 and that he had been directed to do this in March 2014 because by this stage the land was part of the land swap deal for Block 30.[[207]](#footnote-207)

### Terms of lease back

#### Audit

* 1. The Audit report stated that the 13 December 2013 minute provided by Mr Ellis to Mr Dawes ‘misrepresented’ the value of Block 6 Section 72. It imputed value of $3,550,000 to Block 6 and implied that this valuation assumed a 40- month rent-free tenancy by the Tradies. This was incorrect because the $3,550,000 valuation assumed vacant possession.[[208]](#footnote-208)
  2. In hearings, when asked specifically about why the Territory would pay for vacant possession of Block 6 Section 72 and then accept a 40-month rent-free period, the Auditor-General told the Committee that the Audit Office did not have information on hand which shed any light on this.[[209]](#footnote-209)
  3. The Director, Performance Audits, told the Committee that in December 2013 advice came from EDD executives regarding the terms of the deal to the Director-General and was agreed to in December 2013. At this point, the Director-General had ‘endorsed the financial terms of the negotiated land swap’, and then the ‘so-called details were sorted out over the next 12 months’.[[210]](#footnote-210)

#### Former Director, Sustainable Land Strategy

* 1. When asked how it came to be that the Tradies obtained a waiver of rent for Block 6 Section 72 of 40 months, with the ACT Government paying $3.5 million, when it had offered this figure for vacant possession, Mr Ellis told the Committee:

Essentially, the reason for that [was] that the Tradies’ position had hardened. Once they realised that they had to meet our conditions for the extra million dollars in cash and all 154 spaces, they felt they wanted more. That was their offer, in other words. That was their offer just prior to me writing that minute. I said, “If you want it to go ahead, I think it can be justified given the advantages that there are in the deal for the [Government].” [[211]](#footnote-211)

* 1. He told the Committee that in his view that although this position on the part of the Tradies was ‘harder than the one that they have had’, it was ‘a deal that could be justified’, ‘given that they are willing to pay what we want, and we get block 6 and block 25—block 25 in particular’, and that this was his recommendation.[[212]](#footnote-212)

#### Chief Executive Officer, Tradies

* 1. When asked whether the Tradies had sub-leased Block 6 Section 72 to the CFMEU for the 40 months’ rent-free period agreed to under the terms agreed to in December 2013, Mr Docker told the Committee:

The commercial relationship between the Tradies and the CFMEU, given the purpose of what the constitution very clearly says, is that we provide the necessary financial and other support to our core objects. And how we manage those finances and that support is an internal matter for the Canberra Tradesmen’s Union Club and the CFMEU. If you are asking whether I raised an invoice for the CFMEU to pay the Tradies with regard to the occupation, the answer is no.[[213]](#footnote-213)

* 1. When asked whether this resulted in the CFMEU occupying an ACT Government property rent-free, Mr Docker told the Committee:

We were the lessee. What we chose to do with regard to that lease, and who was to occupy that, was clearly the business of the Canberra Tradesmen’s Union Club. Now, it just so happens that we have a number of organisations who conduct their business out of Rosevear Place, be it the Stockade, be it CSI—Creative Safety Initiatives—be it Construction Charitable Works or be it the CFMEU. That is neither here nor there. The relationship with regard to this deal was not through the CFMEU; it was between the Canberra Tradesmen’s Union Club and the ACT [Government].[[214]](#footnote-214)

* 1. When asked whether the Tradies had fulfilled its obligation, as lessee, to notify the ACT Government, as the landlord, of the sub-leasing arrangement, he told the Committee that the arrangement was ‘transparent’:

It was clearly understood that it was going to be business as per usual, given that the occupants of Rosevear Place prior to the transaction, prior to the sale, were the CFMEU, CSI, Construction Charitable Works and Stockade, and that we were going to continue in situ until the complete transaction of the car park was completed. The anticipation was that everything would be completed within a 42-month period.[[215]](#footnote-215)

#### Former Chief Financial Officer, Tradies

* 1. When asked whether he considered rent at a dollar per year for occupancy of Block 6 Section 72 advantageous to the Tradies, Mr Brennan told the Committee that, in his view ‘it was a benefit to the [Government] because they got the opportunity then to plan for the site’, and that it was in the Government’s best interest to have ‘people occupying the site’.[[216]](#footnote-216)

### Agreed terms December 2013

#### Audit report

* 1. According to the Audit report:

A key document that formed the basis for decision‐making on 17 December 2013 was a 13 December 2013 minute to the Director‐General of the Economic Development Directorate from the Director, Sustainable Land Strategy.[[217]](#footnote-217)

* 1. In signing-off on the minute, the report stated Mr Dawes ‘endorsed the financial reconciliation of the negotiated outcome’ of the sale on 17 December 2013. This date was ‘almost one year’ after the EDD selected the Tradies as preferred tenderer and one year before the EDD and the Tradies finalised negotiations on the terms of the sale. In so doing the Mr Dawes agreed to the sale price for Block 30 of $3.18 million excluding GST, and to purchase Blocks 6 for $3.55 million excluding GST and Block 25 for $45,000 excluding GST.[[218]](#footnote-218)
     + 1. Former Director, Sustainable Land Strategy
  2. Mr Ellis was asked to summarise the terms of sale agreed to in December 2013. He told the Committee:

Basically we had a situation where the Tradies had agreed to pay the $3.18 million. They had agreed to increase their cash bid by $980,000 to meet the MMJ headline figure. They had agreed to replace all 154 car spaces, which was 70 car spaces more than their winning bid and they were in payment of this. We had agreed that we would purchase two of their blocks in the Rosevear precinct. They are the basic outlines of what was agreed.[[219]](#footnote-219)

### Committee comment

* 1. Evidence provided to the Committee suggests there was considerable disagreement about the value of Block 30. Terms set out in the RFT which were significant for the value of the land were altered in the course of negotiations, including obligations to provide a certain number of car parking spaces, a pedestrian easement and a security bond of $1 million.[[220]](#footnote-220)
  2. The Audit report put the view that these changes led to an increase in value for Block 30 so that its ‘adjusted value range’ was assessed at $4,750,000 to $5,000,000. This figure was significantly higher than the original valuation, which became the reserve and final agreed price.[[221]](#footnote-221) As a result, the Auditor-General considered that there was a ‘high risk’ the EDD had ‘relinquished value up to an estimated $2.4 million to $2.65 million to the Tradies’, due to ‘significant inadequacies‘ in the management of the negotiations and tender process.[[222]](#footnote-222)
  3. There is a further key question regarding the number of replacement car parking spaces the Tradies is required to provide when it redevelops the land. The Committee learned from Mr Gentleman’s letter of 13 August 2019 that the ACT Government and the Tradies agreed to a contract of sale without the specifying the number of car parking spaces that would be required.[[223]](#footnote-223)
  4. It is unusual for either a buyer or a seller to be satisfied with a transaction where they don’t know what they have bought or sold. It is particularly so due to the significance of car parking spaces for the value of the land. The fact that the parties agreed without a confirmed number of replacement car parks works against any view that the transaction was an ‘ordinary commercial transaction’.[[224]](#footnote-224)
  5. The land swap, under which the Tradies provided Blocks 6 and 25 Section 72 Downer to the ACT Government in payment for Block 30, was not envisaged at the time the Tradies became the preferred tenderer. In fact, as noted earlier, Cabinet had specifically ruled out a land swap despite the support from EDD. It was very clear from the evidence that EDD, and Mr Dawes in particular, was very keen to acquire the Downer blocks for strategic purposes. During the hearings the Committee could not establish who raised the question of land swaps and when. It became clear that the idea was introduced before April 2013. When the Committee sought to establish when it was proposed and by whom, it was also not able to, as evidence was contradictory, inconsistent, and incomplete.[[225]](#footnote-225) That the facts about this part of the sale were not able to be established in the course of this inquiry is a matter of concern.
  6. Another factor in considering the value-for-money achieved by the Government through the sale is the extended rent-free period afforded the Tradies for the CFMEU’s tenancy of Block 6 Section 72. As noted, there was a significant discrepancy between the representation of this in Mr Ellis’ minute of 13 December 2013, which allowed for a greater than agreed rent-free period, and the valuation of Block 6 Section 72 which the EDD relied upon, which assumed vacant possession.
  7. Other matters which attract significant concern include:
* a lack of documentation for the apparent 40 meetings or contacts between the ACT Government and the Tradies which took place;
* a strong focus, on the part of Mr Ellis, on achieving the headline price of $3.18 million without taking into account the effects of other factors on value;
* disparities in figures quoted for key elements of the transaction, such as the number of replacement car parks required, which ranged between 154, 139 and 133 replacement spaces, and tenancy conditions assumed by a valuation for Block 6 Section 72;
* seeking to compensate, by way of negotiation, for a valuation that was considered not to reflect actual conditions, rather than obtaining a new valuation as a valid baseline for the transaction;
* evidence of the EDD placing insufficient weight on transparency and accountability, placing greater importance on being able to complete the transaction, an example of which is the decision to agree to a land swap without seeking the view of Cabinet; and
* significant inconsistencies between the positions of different government agencies, that is between the Land Development Agency, its parent agency the EDD, and ACTPLA, including different views on the park, pedestrian easement, and the number of replacement car parks required for a redeveloped Block 30.
  1. Many of these elements arguably provided a material advantage to the Tradies and risked the value-for-money the ACT Government is obliged to achieve when disposing of a public asset.

## The second period of negotiation

### Background

* 1. As noted, the second period of negotiation between the EDD and the Tradies took place between December 2013 and December 2014. In these negotiations, the ACTGS acted on behalf of the ACT government, and Clayton Utz acted on behalf of the Tradies.
  2. As for the first period of negotiation, there is a shortage of recorded Government information available to the Committee about matters that were discussed and agreed. The Committee, however, requested an email chain that was referred to in the Audit report, which has provided additional information.

### Project Delivery Agreement

#### Audit report

* 1. According to the Audit, the RFT included ‘special conditions’, which were that:
* ‘Block 30 be developed in accordance with the 2011 Dickson Master Plan and that it include pedestrian access, open space parkland, and public car parking access - especially while the nearby carpark on Block 21 Section 30 was being redeveloped’;
* ‘settlement on Block 30 would not occur until after the adjacent car park on Block 21 Section 30 was complete to ensure availability of public car parking during its redevelopment’; and that
* ‘the successful tenderer had to agree to enter into a Project Delivery Agreement … with the Territory.[[226]](#footnote-226)
  1. The Project delivery Agreement required the successful tenderer to:
* ‘obtain endorsement from the LDA, prior to lodging a development application with ACTPLA in respect of Block 30, that it [complied] with the Project delivery Agreement and approved tender’;
* ‘establish a publicly accessible park on the north-west corner of Block 30 in accordance with terms set out in the Project delivery Agreement’;
* ‘establish a pedestrian access way from Badham Street to Dickson Place in accordance with terms set out in the Project delivery Agreement’; and
* ‘provide a bond or guarantee in the sum of $1 million as security for performance of its obligations under the Project delivery Agreement’.[[227]](#footnote-227)
  1. According to the Audit report on 30 May 2014 the Director‐General, EDD, (Mr Dawes) agreed to forego the requirement for the Tradies to enter into a Project delivery Agreement and provide a $1 million security bond. This arrangement departed from the original conditions advertised for the RFT,[[228]](#footnote-228) and this had implications for the Territory’s ‘leverage and capacity to enforce compliance’. There were concerns about probity, ‘specifically with respect to Fabcot Pty Ltd’ because different terms were offered to the two tenderers.[[229]](#footnote-229) It appeared that Mr Dawes agreed to remove the Agreement after the EDD selected the Tradies as the preferred tenderer and during negotiations because:
* ‘the Tradies did not see the value of the Project delivery Agreement and raised concerns about the financial burden associated with paying the $1 million bond’; and
* ‘the parties initially agreed to amend the Crown lease for Block 30 and related Precinct Code to include conditions that incorporated some elements of the Project delivery Agreement’.[[230]](#footnote-230)
  1. According to the Audit report, in April 2014 the ACTGS identified risks arising from the removal of the Project delivery Agreement:

These matters were originally in the [Project delivery Agreement], however, they are now set out in the Precinct Code and the [Project delivery Agreement] has been set aside.

This seems reasonable, however, there are a couple of issues:

• There is no security for what are essentially off-site works (the [Project delivery Agreement] contained a $1million [unconditional] guarantee);

• There is no surveyed line setting out where the Park and Access route will be.

These matters could, in theory be left to the DA process, however, if they are not undertaken properly and to a standard satisfactory to the Territory, there will be substantial problems attempting to enforce compliance.[[231]](#footnote-231)

* 1. The report also noted an email of 2 May 2014 from an EDD officer, which stated, among other things, that there was ‘an unresolved question of the exact requirements of the park and access way’:

The draft PDA contained fairly detailed specifications, some of these have been incorporated into the Precinct Code, which contains a requirement to provide a pedestrian plaza (park) of 1,300 and rules about access ways including in Section 34.

As discussed at the meeting, in our view, the Precinct Code is necessary but not sufficient to achieve the requirement of the project and the PDA needs to remain part of the sales suite.[[232]](#footnote-232)

* 1. According to the Audit report, on 6 May 2014 the ACTGS provided further advice on ‘alternative options for securing the developer’s obligations’. It noted ‘practical challenges with implementing the alternatives’ and stated that although the Project delivery Agreement and bond were ‘expensive for the buyer’, they ‘offered protection for the Territory’.[[233]](#footnote-233)

### Easement

* + - 1. Audit report
  1. According to the Audit report, the RFT specimen Crown Lease provided for an easement ‘designed to ensure pedestrian access over and along the ground floor’ of any development on Block 30.[[234]](#footnote-234) However, during negotiations the Tradies ‘sought and received’ a concession from the EDD to ‘insert a special condition’ in the contract permitting it to ‘apply to ACTPLA to remove the easement by amending its deposited plan without objection from the Territory’. According to the report, this ‘materially reduced the obligations of the Tradies on the degree of pedestrian access along the ground floor’. Removal of the Project delivery Agreement and bond increased the effect of this change.[[235]](#footnote-235)
  2. Capital Valuers, the subject matter expert retained by the Auditor-General, described the effect of these concessions:

Subject to Town Planning/Architectural advice, the opportunity contained in the Contract for Sale for the buyer to request that the easement for access be removed prior to settlement is seen as a significant benefit to most purchasers, but particularly to the Tradies.

Removal of the easement before issuing the final Crown Lease and before settlement avoids the requirement to lodge a Development Application after settlement for a Lease Variation which would require approval and the payment of a Lease Variation Change. Furthermore, without the easement in place it is likely that the developable area of the site is increased and development costs reduced.

From the ACT Government’s online mapping the depicted easement from (but excluding) the access drive to the Tradies car park to Badham Street totals approximately 240 square metres. Additional areas might become available for development if verge works to this land were not required.[[236]](#footnote-236)

* 1. Capital Valuers considered that as a result of these changes, subject to ‘Town Planning advice on the utilisation of this land’, the value of the site ‘might be enhanced by $200,000 to $300,000 and possibly more’.[[237]](#footnote-237)
  2. The Audit report noted a statement about this by this the former Director, Sustainable Land Strategy (Mr Ellis):

Because the Planning Authority planned to put a road between the Tradies existing site and block 30, this put a severe limit on the building envelope. However, the MMJ valuation did not factor in this limitation. Hence, the valuation was always inflated. In other words, the land was never worth what the MMJ valuation said it was worth.[[238]](#footnote-238)

* 1. In response, the Audit report stated that $3.18 million continued to be the price sought by the EDD in negotiations with the Tradies. If the Director, Sustainable Land Strategy had reservations associated with the MMJ Real Estate valuation ‘it was incumbent on the former Director to seek clarification and amendment from MMJ Real Estate on the valuation as necessary’, but there was ‘no evidence that this occurred’.[[239]](#footnote-239)

### Negotiations between Solicitor General and legal representatives for the Tradies

* 1. The Solicitor-General appeared before the Committee on 6 December 2018. In answer to a Question Taken on Notice he outlined his Office’s involvement in ongoing negotiations during 2014.[[240]](#footnote-240)
  2. Emails provided in the answer show exchanges between officers within the ACTGS; a senior Clayton Utz lawyer acting on behalf of the Tradies; and officers in the EDD and the EPSDD. The Solicitor-General asked that identities of lawyers involved be held in confidence, and for that reason the Committee has referred below to Officers A, B and C of the ACTGS and a ‘Senior Clayton Utz lawyer’.[[241]](#footnote-241)
  3. The emails are transcribed and presented in chronological order in Appendix E of this report.

#### Early questions about divergences from the RFT

* 1. The first email, of 12:36 pm, 15 April 2014, was sent by Officer A, of the ACTGS to Officer B of the ACTGS, asking Officer B to confirm for the record a discussion earlier that day in which the senior lawyer had advised that there was no heightened probity risk as a result of the removal of the Project delivery Agreement from the contract of sale.[[242]](#footnote-242)
  2. Officer B responded (1:40 pm, 15 April 2014), that she had ‘no probity concerns’.[[243]](#footnote-243) This email, referenced in the Auditor-General’s report, was notable in that it asserted that there had only ever been one tenderer in response to the RFT, when in fact there had been two.[[244]](#footnote-244)
  3. Importantly, the email advised that:

Had there been other tenderers we would have needed to analyse more closely to what extent what is proposed differs in substance from what was set out in the RFT, and to consider those other tenderers’ expectations to be invited to tender again on the basis of substantively revised provisions.[[245]](#footnote-245)

#### Difference in expectations

* 1. Other emails show that the Tradies’ expectations regarding permitted uses and lease conditions, based on the first phase of negotiations, were very different from those of the ACTGS. While the first phase had employed various iterations of a ‘discussion paper’ as a basis for, and product of, negotiations, it appears that the EDD did not provide this to the ACTGS.
  2. The third email of 9.30 am, 19 September 2014 was from Officer C of the ACTGS, to the senior lawyer at Clayton Utz.[[246]](#footnote-246) These two lawyers appear to have been primary points of contact between the Tradies and the ACT government in the second phase of negotiation.[[247]](#footnote-247)
  3. The email contained a copy of eight concerns on the part of the Tradies, put in an earlier email by the senior lawyer at Clayton Utz, followed by responses from the LDA. The first five concerned permitted uses for Block 30, in which the senior lawyer put the view, on behalf of the Tradies, that:
* permitted uses should provide a capacity to operate a car park ‘independently of other uses’, not only as ancillary to others, such as parking associated with residential use;
* ‘commercial accommodation’ should not be limited to a hotel;
* ‘community use’ should not be limited to ‘community activity centre’;
* previous understandings were that the maximum area for office space as a permitted use was 4,000 sqm and was limited to ‘first floor and above’, not to first floor alone; and
* previous understandings were that permitted uses for shops had no limitation for ‘supermarkets or shops selling food’, which were now limited to 300 sqm.[[248]](#footnote-248)
  1. In response, Officer C put the view that the RFT specified terms for the first three items and they could not be changed. The fourth item had been changed and was now consistent with the Dickson Precinct Code. The Code provided that for blocks in Section 34, the floor area limit for office uses was 4000 sqm per lease and 1500 sqm at ‘ground floor level’.[[249]](#footnote-249)
  2. Another point raised by the senior lawyer at Clayton Utz was that under the previous phase of negotiations the permitted use for a shop ‘had no limitation on areas for supermarkets or shops selling food’, but was now limited to 300 sqm.[[250]](#footnote-250) In response, Officer C quoted the Commercial Development Code to show that GFA for a supermarket was limited to 300 sqm,[[251]](#footnote-251) which was also the limit for ‘shops selling food’ including restaurants under DV 312.[[252]](#footnote-252)
  3. This email showed that the Tradies’ expectations were very different from the ACTGS. There was further evidence of these differences in the fourth email of 21 October 2014 11:15 AM from Officer C to the senior lawyer at Clayton Utz. The email took the form of a copy of an email sent by the senior lawyer at 10:35 am on 19 September 2014, with notations by Officer C.[[253]](#footnote-253)
  4. Initially, the senior lawyer at Clayton Utz questioned the relevance of the terms of the RFT because the transaction was ‘effectively a land swap’.[[254]](#footnote-254) He went on to quote from a discussion paper which arose from discussions between Mr Ellis and the Tradies between December 2012 and December 2013 on the terms of the contract. Specifically, he quoted a clause on permitted uses in a specimen Crown lease negotiated at the time. It was his understanding that his clients had relied on valuations which assumed these uses were permitted.[[255]](#footnote-255)
  5. Officer C responded by saying that the ACTGS was ‘not aware of any such discussions’ and had ‘not seen the extract from the Crown lease’ quoted by the senior lawyer.[[256]](#footnote-256)
  6. In a fifth email, of 21 October 2014, 11:42 AM the senior lawyer at Clayton Utz wrote to Officer C saying that the lease under discussion did not ‘reflect what was previously agreed’, in that it did not include ‘some of the uses that were on the original discussion paper’.[[257]](#footnote-257) As in previous emails, the senior lawyer asked why the lease did not permit car parking as a stand-alone use.[[258]](#footnote-258)
  7. The sixth email, of 12:31 pm, 22 October 2014, sent by Officer C to the senior lawyer at Clayton Utz, noted that:
* the ACTGS / LDA was ‘not aware of discussions following the release of the RFT that permits car parking as an independent use’;
* ‘all uses permitted in the specimen Crown lease are what was provided in the RFT’;
* the ACTGS / LDA was ‘not aware of any … “discussion paper” which allowed uses outside of what is in the specimen Crown lease’; and that
* the ACTGS / LDA ‘agreed to amending 3(d) to limit the pedestrian plaza to the ground floor’.[[259]](#footnote-259)
  1. The email also stated that the LDA did ‘not believe that it has limited uses without cause’, as all uses ‘permitted under the Crown lease [were] what was contained in the RFT or agreed to in consequent discussions’.[[260]](#footnote-260)
  2. In the seventh email, of 1:10 pm, 22 October 2014, the senior lawyer to Officer C stated that his understanding was that:

the agreed value was based on a presumed purpose clause based on what I set out in my email. I understood the use and value were discussed between our [clients’] respective valuers. It may be that there has been a communication problem. The discussion paper was the paper which outlined the commercial terms of the ‘land swap’ noting that this transaction involves more than the sale of 30/34 Dickson.[[261]](#footnote-261)

* 1. The eighth email of 9.39 am 24 October 2014, from the senior lawyer to Officer C, advised that the ‘valuers’ had ‘met and discussed this morning’ and that the Tradies had instructed him to seek:
* changes to purpose clauses to add a car park as a permitted stand-alone use;
* the removal of ‘the limitation in relation to commercial accommodation use i.e. delete "LIMITED TO hotel“; and
* for ‘shop’, delete the words “or shop selling food”.[[262]](#footnote-262)
  1. The email acknowledged and accepted limitations on a maximum area ‘used or intended to be used as a supermarket’, and that this was a ‘mandatory requirement’ under the Territory Plan.[[263]](#footnote-263)
  2. At this point, the senior lawyer at Clayton Utz believed that negotiations were close to being at an end. He asked Officer C to confirm that the ACTGS had ‘execution copies’ of contracts for Block 26 Section 72 and Block 6 Section 72. The Tradies was to provide these to the ACT government as part payment for Block 30 Section 34.[[264]](#footnote-264)
  3. In the ninth email of 11:05 am, 24 October 2014, Officer C wrote to Mr Mundy expressing concern about the picture of the transaction portrayed by the senior lawyer:

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

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

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

Any further concessions at this stage may contaminate the RFT process to the point that there may be … significant probity issues in selling the Land on that basis. If you wish for further advice on this matter, please instruct us accordingly.[[265]](#footnote-265)

* 1. In the tenth email, of 2:36 pm, 27 October 2014, from Mr Peters to Officer C, Mr Peters wrote:
* asking for the ACTGS senior lawyer’s view on the implications of the changes requested by the Tradies;
* advising that the Director was ‘very reluctant to negotiate a new price or terminate this arrangement and start the negotiation process again’; and
* seeking advice as a basis on which to discuss ‘options’ with Mr Stewart, the Deputy Director-General of the EDD.[[266]](#footnote-266)
  1. In the eleventh email, of 11:49 am, 8 October 2014, Officer C wrote to Mr Peters regarding differences in the position of the Tradies and the ACT government on the terms of the sale of Block 30.[[267]](#footnote-267) Officer C wrote:

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

- car park be included as an independent use in the Crown lease. Currently, it is only an ancillary use to any other use permitted on the land;

- a commercial accommodation not be limited to hotel and community use not be limited to community activity centre:

- the current limitation of 300m2 on shops selling food be removed; and

- the removal of the clause which relates to any building which straddle both Blocks 28 and 30 Section 34 Dickson with frontage to that proposed access way.’ [[268]](#footnote-268)

* 1. Officer C went on to consider the implications of these differences:

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

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

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

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

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

Please advise us of your position and we will respond appropriately to [the Senior lawyer at Clayton Utz] .

We look forward to [your] instructions [[269]](#footnote-269)

### Committee comment

* 1. The second period of negotiation over the sale of Block 30 saw the EDD waive significant requirements attached to the sale of Block 30, resulting in:
* there no longer being an obligation to enter into a Project delivery Agreement and the associated $1 million bond;
* an undertaking that the ACT government would not oppose an application by the Tradies to apply to waive an obligation for the pedestrian easement set out in the RFT;
* uncertainty about the exact size and form of the ‘pocket park’ specified in the RFT.
  1. These changes were significant for the value of Block 30. They add to questions on whether the ACT government achieved appropriate value for money. However, they also raise other questions. There were links between the items waived and the Dickson Master Plan, and this poses questions over the fate of the Plan. These matters still hang in the balance because work has not yet begun on the redevelopment of Block 30.
  2. As noted in the Audit report, the changes negotiated in the second period limited the ACT Government’s capacity to ensure compliance with its objectives for the site. This obliges the government to devote further attention to achieving an acceptable outcome from the sale and redevelopment of Block 30, and for the Dickson Master Plan more generally.

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| Recommendation 3  The Committee recommends that the ACT government inform the Assembly, by the last day of sittings in August 2020, as to how it will ensure compliance with its development objectives for Block 30 in the absence of a project delivery agreement. |

* + - * 1. ACTGS not informed of terms concluded in the first phase of negotiation
  1. The Tradies’ position in early 2014 reflected what it had agreed to in the first phase of negotiations. The ACTGS had not seen the discussion paper arising from the negotiations, conducted on the government’s behalf by Mr Ellis. As a result, the ACTGS responded to queries from Clayton Utz regarding permitted uses with reference only to the specimen lease issued with the RFT.
  2. It appears that no officer of the EDD had provided the discussion paper to the ACTGS. A more conventional scenario would have seen those negotiating on behalf of the ACT Government advise other parts of the ACT government, including ACTGS, of the agreement negotiated. For the ACT government’s legal representation to be unaware of the details of the first phase of negotiation is unusual. It also raises questions on the extent to which the first phase of negotiations can be considered open and transparent.
  3. Emails later in the sequence consider the implications of terms under negotiation for the value of the land, and even whether the process should stop. This shows that the differences between the discussion paper and the specimen lease were significant. The Audit report shows that the sale process was only able to be completed when Mr Dawes agreed to the Tradies’ requests. [[270]](#footnote-270) The answer to the Question Taken on Notice shows that these requests, for the most part, reflected terms agreed to in the first phase of negotiation.[[271]](#footnote-271)
  4. Since matters affecting the value of Block 30 were still under negotiation, ultimately with terms more favourable to the Tradies agreed to, this indicates more completely the extent of the departure from the terms offered to the unsuccessful tenderer, Fabcot Pty Ltd, underscoring questions on whether the handling of the tender and sale was fair and impartial. More favourable terms for one tenderer also opens the door on questions of whether, if faced with more favourable terms, Fabcot Pty Ltd would have been in a position to make a higher bid, with a greater chance of success, and so it goes to the heart of the tender process.
  5. It is not possible to see the first and second phases of negotiation as sequential, with the second phase building on the first. The outcome of the first phase was not visible to other parts of government and was only discovered by the Government’s legal representation when raised in emails from Clayton Utz. The approval of those terms *post hoc* by the Director-General, EDD, does not significantly improve the picture and adds to questions over the validity of the sale.
  6. It is a most unusual turn of events. The ACTGS should have been made aware of the outcome of the first phase of negotiations. Two officers, in particular, bear responsibility. It is reasonable to expect that Mr Ellis would have sought advice and shared details of terms under consideration with the ACTGS during negotiations. It is also reasonable to expect that Mr Dawes would have informed the ACTGS of terms agreed to in December 2013, as documented in the ‘discussion paper’. The fact that neither of these officers informed the ACTGS negates statements made, particularly by Mr Dawes, that the presence of ACTGS probity officers assured probity. It also negates claims by both of those officers that they followed due process in the conduct of the sale.
  7. Rather than providing assurance, it appears that the EDD may have used Probity Officers as ’insurance’ for their conduct. These events call into question the usefulness of ACTGS officers being ‘outplaced’ as Probity Officers. It would be clearer and more accountable for ACTGS officers to stay within their agency and respond to requests for advice from outside. If this were so, it would provide ACT Government officers with a clearer sense of the burden of responsibility for ensuring good practice in a legal sense. It would bring the additional benefit in making it more likely that requests for advice came in written form.

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| Recommendation 4  The Committee recommends that the ACT Government Solicitor (ACTGS) review and improve the process of providing Probity Advisers to ACT government agencies to ensure a uniform approach. |

## Outcome of negotiations

### Background

* 1. This chapter considers:
* the extent to which the terms of sale departed from those of the RFT;
* documentation and due process; and
* whether the EDD achieved value for money from the sale.

### Departures from the terms of the RFT

* 1. A key issue identified in the Audit report was the degree to which terms of the contract of sale for Block 30 diverged from terms set out in the RFT.

#### Audit report

##### Outcome

* 1. According to the Audit report, the final negotiated outcome of negotiations included:
* ‘sale of Block 30, Dickson to the Tradies for $3.18 million excluding GST. Contracts were exchanged on 15 December 2014 with settlement delayed until after the redevelopment of the adjacent car park which is yet to occur’;
* ‘purchase of Block 6 Section 72, Dickson by the Territory for $3.55 million excluding GST, with a 42-month lease back to the Tradies at nominal rent ($0 has been paid to- date). Settlement occurred on 19 December 2014 - four days after contracts were signed’; and
* ‘purchase of Block 25 Section 72, Dickson by the Territory for $45,000 excluding GST, this being the rounded up difference in the estimated market value of the block ($636,800) and payout of the concessional lease status of the Block (calculated at $594,535)’.[[272]](#footnote-272)
  1. It stated that settlement for Blocks 25 Section 72 occurred on 19 February 2016 ‘after the site, which was the location of the former Downer Club, was remediated by the Tradies’.[[273]](#footnote-273)

##### Extent of changes

* 1. The Audit Report stated, regarding the contractual changes made after the selection of the preferred tender:

Following the selection of the Tradies as the preferred tenderer in December 2012, protracted negotiations for the sale of Block 30 ensued over the following two years. The two-year negotiations with the Tradies resulted in numerous changes to the sale conditions that were originally advertised in the RFT. The changes to the sale conditions that the EDD agreed to during negotiations fundamentally and materially altered the sale conditions from those advertised with the RFT. [[274]](#footnote-274)

* 1. According to the Audit Report, had these ‘been agreed and communicated to prospective tenderers at the commencement of the tender process’ it may have led to:
* greater interest and thus increased competition;
* different proposals from those submitted based on the more restrictive clause; and
* a different outcome from the tender process.[[275]](#footnote-275)
  1. According to the Audit Report:

In advice to the ACT Audit Office, the Australian Government Solicitor advised that changes to the sale terms and conditions that were subsequently negotiated with the Tradies represented significant departures from the RFT and ‘based on these departures from the RFT, it would be reasonable to conclude that the eventual sale to Tradies departed so far from the provisions of the RFT as advertised that it could reasonably be regarded as a direct sale rather than the outcome of the RFT. This poses a significant risk to the validity of the negotiated transaction as only the government has authority under section 240 of the *Planning and Development Act 2007* to approve a direct sale in these circumstances’. Such approval was not secured.[[276]](#footnote-276)

* 1. The Report summarised ‘Material departures from sale conditions in the RFT’ in Table 2-5, reproduced below.[[277]](#footnote-277)

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| **Item: Project Delivery Agreement** | |
| **Description** | **Implications of departure from RFT** |
| The Project Delivery Agreement required the successful tenderer to:   * obtain endorsement from the Land Development Agency, prior to lodging a development application with ACT Planning and Land Authority in respect of Block 30, Section 34 that it complies with the Project Delivery Agreement and approved tender; * establish a publicly accessible park on the north‐west corner of Block 30, Section 34 in accordance with terms set out in the Project Delivery Agreement; * establish a pedestrian access way from Badham street to Dickson place in accordance with terms set out in the PDA   The RFT also required tenderers to agree to providing a bond or guarantee in the sum of $1 million as security for performance of their obligations under the Project Delivery Agreement should they be selected as the ‘buyer’. | The agreement to relinquish the Project Delivery Agreement was a significant departure from the advertised RFT.  The Project Delivery Agreement and security bond provided the Territory with control and influence over the development of Block 30 and capacity to enforce compliance by tenderers with the RFT, their related submission and applicable precinct codes.  Whilst the removal of the Project Delivery Agreement and bond results in a significant departure from the advertised RFT, it materially weakens the Territory’s capacity to enforce compliance and remedial actions by the tenderer. |
| **Item: Special conditions** | |
| **Description** | **Implications of departure from RFT** |
| The special conditions advertised with the RFT in November 2012 were materially changed from those attached to the final contract for sale with the Tradies in December 2014.  Material changes / deletions from those attached to the RFT are:   * Sale deposit:   + The RFT stated that interest on the deposit would be paid to the party who becomes entitled to the deposit, but this was deleted in the final contract for sale. | These changes, both individually and especially in combination, constituted material departures from the RFT as they fundamentally altered the obligations on both parties.  Implications of these changes are as follows:   * Sale deposit:   + The removal of sale deposit clause means the Territory is no longer explicitly entitled to the interest under the new   conditions. |
| **Item: Project Delivery Agreement** | |
| **Description** | **Implications of departure from RFT** |
| The Project Delivery Agreement required the successful tenderer to:   * obtain endorsement from the Land Development Agency, prior to lodging a development application with ACT Planning and Land Authority in respect of Block 30, Section 34 that it complies with the Project Delivery Agreement and approved tender; * establish a publicly accessible park on the north‐west corner of Block 30, Section 34 in accordance with terms set out in the Project Delivery Agreement; * establish a pedestrian access way from Badham street to Dickson place in accordance with terms set out in the PDA   The RFT also required tenderers to agree to providing a bond or guarantee in the sum of $1 million as security for performance of their obligations under the Project Delivery Agreement should they be selected as the ‘buyer’. | The agreement to relinquish the Project Delivery Agreement was a significant departure from the advertised RFT.  The Project Delivery Agreement and security bond provided the Territory with control and influence over the development of Block 30 and capacity to enforce compliance by tenderers with the RFT, their related submission and applicable precinct codes.  Whilst the removal of the Project Delivery Agreement and bond results in a significant departure from the advertised RFT, it materially weakens the Territory’s capacity to enforce compliance and remedial actions by the tenderer. |
| **Item: Special conditions** | |
| **Description** | **Implications of departure from RFT** |
| The special conditions advertised with the RFT in November 2012 were materially changed from those attached to the final contract for sale with the Tradies in December 2014.  Material changes / deletions from those attached to the RFT are:   * Sale deposit:   + The RFT stated that interest on the deposit would be paid to the party who becomes entitled to the deposit, but this was deleted in the final contract for sale. | These changes, both individually and especially in combination, constituted material departures from the RFT as they fundamentally altered the obligations on both parties.  Implications of these changes are as follows:   * Sale deposit:   + The removal of sale deposit clause means the Territory is no longer explicitly entitled to the interest under the new   conditions. |
| * The RFT required tenderers to submit a 10 per cent deposit with their tender. Revised conditions changed this by allowing the buyer to submit a deposit by instalment being (a) 5 per cent on date of contract; and   (b) the balance of the 10 per cent paid on settlement.   * Date for completion of contract:   + The RFT stated this was 21 days from later of either a Certificate of Occupancy being issued on Block 21, or two years from date of contract. It also allowed the buyer and seller to terminate the contract if a Certificate of Occupancy was not issued within 4 years of the contract. The termination clause was deleted in the new contract for sale.   + The completion (or settlement) date was changed to ‘within 30 days of the seller serving the Crown Lease on the buyer’. * Associated works:   + The RFT special conditions allowed the buyer and seller to terminate the contract if the agreed ‘associated works’ differed from those prescribed by the specimen lease. This clause and associated reference in the specimen crown lease with the final transaction were removed (see below).   + The RFT required the tenderer to sign a Deed of Unconditional Undertaking committing to supply funds for the ‘associated works’ when requested by the Territory, but this was removed in the new conditions. * Easement:   + A new provision was added to the revised special conditions (at the request of the Tradies) permitting it to apply to ACTPLA to remove an easement designed to ensure pedestrian ‘access over and along the ground floor’ of any development on Block 30 and to amend their Deposited plan without objection from the Territory. | * Changing the conditions associated with the 10 percent deposit is contrary to the advertised RFT and results in a more favourable arrangement for the Tradies than was offered to prospective tenderers. * Date for completion of the contract:   + The deletion of the termination clause means the Territory can no longer terminate the agreement if the adjacent carpark remains unfinished after four years.   + Changing the completion (or settlement) date to ‘within 30 days of the seller serving the Crown Lease on the buyer’ has the effect of further de‐coupling the development of Block 30 from Block 21. * Associated works:   + Removing the opportunity for the parties to the contract to terminate the contract if the agreed ‘associated works’ differed from those prescribed by the specimen lease, weakens the ability of the parties to enforce compliance with the contract. * Easement   + The additional provision associated with the easement for pedestrian access could, in effect, materially reduce the obligations of the buyer on the degree of pedestrian access along the ground floor required by the development. |
| **Item: Completion Covenant** | |
| **Description** | **Implications of departure from RFT** |
| The RFT required the development to be completed within 36 months from the later of either a Certificate of Occupancy being issued on Block 21 Section 72 or commencement of the Crown lease on Block 30. | The Tradies were given an extra 12 months to complete the development than what was offered to all other prospective tenderers. |
| The revised special conditions extended the term to 48 months and absorbed it into the commencement covenant. |  |
| **Item: Associated works** | |
| **Description** | **Implications of departure from RFT** |
| The Specimen Crown Lease issued with the RFT made reference to:   * prescribed associated works that had to be completed by the Lessee within 36 months from the later of the date of Lease or issue of a Certificate of Occupancy on Block 21. These works covered water supply, sewerage stormwater, driveways footpaths and other ancillary works; * the lessee indemnifying the Territory for all actions, claims, suits etc arising from the associated works.   This clause was removed in the ‘final’ special conditions. | Removal of this explicit obligation and associated indemnity:   * reduces certainty regarding the lessee’s obligations for delivering these works * exposes the Territory to potential future costs associated with any failure by the lessee to deliver the associated works as originally required. |
| **Item: Restrictions on commercial accommodation** | |
| **Description** | **Implications of departure from RFT** |
| The Specimen Crown Lease issued with the RFT restricted the commercial accommodation to “hotel” use only.  The Tradies sought and received a concession to eliminate this restriction. | This changed the permitted commercial uses of the land from that advertised in the RFT. |
| **Item: Restrictions on community use** | |
| **Description** | **Implications of departure from RFT** |
| The Specimen Crown Lease issued with the RFT restricted community uses to “Community activity centre” use only.  The Tradies sought and received a concession to eliminate this restriction. | This changed the permitted community uses of the land from that advertised in the RFT. |
| **Item: Restrictions on the size of shops selling food** | |
| **Description** | **Implications of departure from RFT** |
| The specimen Crown Lease issued with the RFT restricted the gross area of any supermarket or shop selling food to less than 300 square metres.  The Tradies sought and received a concession to eliminate this restriction during negotiations, thereby facilitating agreement between parties on the mutual understanding that shops of size greater than 300 square metres would be permitted to sell food.  ACTPLA did not enact this change when amending the Crown lease as it was inconsistent with the Commercial Development Zone. | The agreement to concede this change altered the tenderer’s understanding of shop uses permitted on the land.  This was a change that the Economic Development Directorate agreed to accept prior to concluding the tender.  ACTPLA decided not to enact this change, but the Economic Development Directorate’s agreement to this concession during negotiations nevertheless altered the course of tender deliberations and underpinned the final agreement between the parties. |
| The revised special conditions extended the term to 48 months and absorbed it into the commencement covenant. |  |
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* 1. The table shows significant departures from the terms set out in RFT, including the:
* waiving of the Project delivery Agreement;[[278]](#footnote-278)
* waiving of an obligation for the purchaser to pay a 10 per cent deposit;
* removal of a provision allowing for the contract to be terminated if agreed ‘associated works’ differed from those prescribed by the specimen lease;
* extension by 12 months more than was offered to other prospective tenderers of the requirement for the development to be completed 36 months from ‘a Certificate of Occupancy being issued on Block 21 Section 72 or commencement of the Crown lease on Block 30’; and the
* relaxation of constraints on ‘commercial accommodation’, ‘community use’, the size of ‘shops selling food’, and a clause ‘restricting use of the ground floor’.[[279]](#footnote-279)
  + - 1. Audit
  1. In hearings, when asked whether these departures from the terms of the RFT were significant, the Auditor-General told the Committee that they were:

We had auditors look at this. We had AGS independent from the ACT system advice, and then I and the director also looked at this and said, given the departures—and that is always a judgement—there were not just one or two, there were so many that we felt that it was a significant departure.[[280]](#footnote-280)

* 1. The Auditor-General agreed that responsibility for changes to the terms lay with the agency selling the land, which was obliged to exercise ‘due diligence and probity of highest regard’. The purchaser, on the other hand, could ask for changes without any inherent breach of probity.[[281]](#footnote-281) In this instance, she told the Committee:

We have carefully said there is a high risk based on what we have got and our judgement is that the RFT process was breached to the degree that it was a direct sale [and that if] it is a direct sale … it then requires the government or the minister to give approval rather than the agency being able to execute that transaction.[[282]](#footnote-282)

#### Former Director, Sustainable Land Strategy

* 1. Speaking about departures from the terms of the RFT in negotiations with the Tradies, Mr Ellis made a distinction between negotiations by him ending in December 2013 and those which took place after he left the Directorate in April 2014.[[283]](#footnote-283)
  2. Regarding changes in terms that occurred while he was involved in negotiations, Mr Ellis told the Committee that negotiations were “fitful” and that there was a feeling they were going nowhere.[[284]](#footnote-284) He thought they would not reach a resolution. Car parking became a critical issue and there was an impasse until the Tradies suggested substituting car spaces from their existing building.[[285]](#footnote-285) Eventually, ACTPLA agreed to the changes in the car parking which, Mr Ellis said, allowed the Tradies and the Territory to reach agreement in December 2013. This agreement required the construction of 154 car spaces and a payment of $3.18 million. [[286]](#footnote-286)
  3. When asked whether negotiations included discussion of Blocks 6 and 25 Section 72 at this point, Mr Ellis said that they had and that this had emerged early in 2013.[[287]](#footnote-287)
  4. He told the Committee that David Dawes saw a lot of potential in the blocks:[[288]](#footnote-288)and that negotiations were proceeding on the basis that:
* the Tradies, as preferred tenderer, would provide some of the car parking from car parks they already in their premises, so it would not be required to build these car parks from scratch; and
* Blocks 6 and 25 Section 72 would be part-payment for Block 30.
  1. Mr Ellis told the Committee that following the agreement in December 2013, no one anticipated that it would take so long to resolve further matters. At the time the EDD had assumed that the Tradies would pay a million-dollar deposit in December 2013.[[289]](#footnote-289) He acknowledged that the EDD later waived this requirement, but said that this had nothing to do with him or the agreement he described in his minute to Mr Dawes of December 2013.[[290]](#footnote-290) He told the Committee that at this point there was still a caveat. If there was agreement within four years, ‘either party could terminate the agreement’. He believed there was an assurance for the Territory in that the Tradies would pay a deposit and ‘if the government wanted out within four years, it could take that option’.[[291]](#footnote-291)
  2. These things, Mr Ellis told the Committee, were changed after he left the EDD in April 2014.[[292]](#footnote-292) He told the Committee that opinions provided by the ACT Government Solicitor had shown that the process in which he had taken part had not gone outside the terms of the RFT.[[293]](#footnote-293)

### Documentation and due process

#### Audit report

* 1. The Audit report identified as a key issue the extent to which the EDD properly documented decisions and actions.
  2. The Audit report found that the EDD did not:
* ‘effectively identify or manage the probity risks arising from the sale as it did not:
* recognise and seek approval for material departures it permitted from the RFT process the government approved;
* give all prospective tenderers the same opportunity to bid on the materially different sale terms that were conceded to the Tradies during tender negotiations; and
* satisfactorily document its actions and decisions relating to the tender; and
* achieve transparency and open competition, including maintaining adequate records of the negotiations and the basis of related decisions’.[[294]](#footnote-294)
  1. The Audit had identified ‘a series of inadequate administrative practices for the tender for the sale of Block 30 Dickson and the subsequent negotiations for the land swap for Blocks 6 and 25 Section 72’, which included poor:
* ‘articulation of evaluation criteria and guidance for the RFT for Block 30’;
* ‘documentation of the Tender Evaluation Panel’s evaluation of tender responses for the RFT for Block 30’;
* ‘recognition and consideration of risks associated with proceeding with the land swap transaction, in light of legal and probity risks being identified by the ACT Government Solicitor’s Office’; and
* ‘documentation and record-keeping associated with the negotiation with the Tradies, including documentation of the merits of the transaction and value for money for the Territory’.[[295]](#footnote-295)
  1. There was a risk that a ‘strong and ongoing focus on achieving a result with the Tradies post-selection of the Tradies as the preferred tenderer occurred to the detriment of appropriate administrative processes’.[[296]](#footnote-296) One element of this was an absence of documentation of value for money:

‘There is no evidence that the economic benefits to the Territory of the proposed land swap and related commercial terms were ever assessed. There was no documented assessment or reporting to executive management and the government on the:

* social, economic and environmental benefits of the proposed land swap arrangement resulting from the negotiations;
* risks and financial implications arising from the land swap arrangement, including any potential loss in car parking revenue to the Territory arising from the final transaction; or
* the merits, risks and probity issues arising from departures from the RFT’.[[297]](#footnote-297)
  1. The Committee considered this when the Auditor-General and officers appeared in hearings. When asked about the availability of documentation on the sale of Block 30 and associated matters; whether documentation was entirely lacking; and whether this was in breach of the *Territory Records Act*, the Auditor-General told the Committee:

That is a question for the agency if it absolutely exists. We will say that we looked ourselves. We went to emails. When somebody said, “That really exists,” and they gave us some specific time, we would go back. We actually asked the current agency to go and see if they could find it because it is in audit’s interests to get as much as we can. And we simply could not find some of the material people are saying exists. If it is in a box somewhere, that is really an issue for the agency in terms of what has happened to it.[[298]](#footnote-298)

* 1. The Director, Performance Audits, told the Committee that Audit had sought documentation regarding the RFT and processes in late 2012; asked for electronic records (TRIM) and shared drive documentation, analysed this and contemporaneous emails between ‘key offices’; and asked the Directorate whether there was anything more in the way of documentation.[[299]](#footnote-299)
  2. According to the Auditor-General, Audit had had ‘real problems’ in finding a copy of the signed contract and had ‘even sourced legal material to try and put the sequence of events together’.[[300]](#footnote-300) The Auditor-General commented on the lack of documentation ‘which was ‘a fundamental issue’ for ‘governance arrangements and integrity of … process’.[[301]](#footnote-301)
  3. She told the Committee that Audit ‘certainly’ knew that activity took place over the period, but there was ‘very little documentation’ as to the ‘the basis of those negotiations, how it unfolded, why this was being considered and discussed’.[[302]](#footnote-302) When asked whether there were parallels between matters considered in this audit and Auditor-General’s Report No 7 of 2016: *Certain Land Development Agency Acquisitions*, the Auditor-General noted that at ‘the executive level the same person was in charge of the organisation over both audits’.[[303]](#footnote-303) She told the Committee that:

governing agencies’ responsibilities include the basic obligation to demonstrate—and I underline the word “demonstrate”—prudent use of public resources, in the former case and in this case, to adequately document their processes, the analysis, the range of considerations and the rationale for their decision and actions. And in both cases that was missing, that clear documentation.[[304]](#footnote-304)

#### Former Deputy Director-General, EDD

* 1. When asked to reflect on record-keeping culture in the EDD, Mr Stewart told the Committee:

I think it is fair to say that through your various investigations in recent years the filing practices of the previous organisation [the Land Development Agency] have drawn justifiable criticism.[[305]](#footnote-305)

* 1. However, he told the Committee, all of the electronic records, including ‘documentation through TRIM’ and ‘the movement of board papers through the LDA board’, would be ‘sitting on the electronic archive’, as would all of his emails in all of the files and folders that he had created in his time at the agency.[[306]](#footnote-306)He told the Committee that it was ‘clear that there were some lax practices in note-taking and filing of notes from meetings’. However, master documents, cabinet submissions, briefs to the LDA Board and ministerial briefs were all managed in purely electronic form at the time. All papers to Cabinet and the LDA Board were delivered electronically to iPads, and so ‘they should all be there’ in electronic records.[[307]](#footnote-307)

#### Former Project Manager

* 1. The Committee also asked Mr Drummond whether there was anything unusual about the tender evaluation. He told the Committee that it was ‘the same as was applied to the other car park in Dickson and to the land in the Belconnen area’. It involved preparation of an expression of interest, ‘appropriate due diligence’ in terms of establishing that the land was fit for sale, and obtaining valuations before it went to market.[[308]](#footnote-308)When asked whether he thought documentation was deficient, particularly for deliberations, Mr Drummond told the Committee it was not and that all the materials were compiled for filing[[309]](#footnote-309)by a ‘relatively junior’ officer.[[310]](#footnote-310)
  2. The Committee also asked what briefings had gone to EDD management and ministers regarding changes to terms after the award of the tender. He told the Committee that senior officers of the EDD and the LDA exchanged minutes and memos. There was also exchanges of ‘back-up material’, including about valuations. He was not aware whether there were briefings to ministers,[[311]](#footnote-311) although he recalled one briefing note that was prepared and ‘sent up the line’ when the Tradies was first selected.[[312]](#footnote-312)

#### Director-General, EPSDD

* 1. The Committee asked Mr Ben Ponton, the current Director-General of the EPSDD, questions about record-keeping practices. He told the Committee that he commenced in the position of Director-General EPSDD from 1 July 2017 and thus did not hold that position in the period covered by the Audit report.[[313]](#footnote-313) He appeared before the Committee because the matters considered by the audit, at that time under the responsibility of the EDD and the LDA, had been inherited by the Suburban Land Authority, and this was now part of the EPSDD. He was also for a short time Deputy Director-General of EDD and Deputy CEO of the LDA toward the end of its existence.[[314]](#footnote-314)
  2. When asked about differences between what was required and what actual practice, Mr Ponton told the Committee record keeping could be improved.[[315]](#footnote-315)In particular, he told the Committee, he would have welcomed better support for an ‘understanding of the history of projects’. For him, coming into the organisation and ‘wanting to understand what I was responsible for’, he would have expected more information on file about the ‘history’ of the project. His first recollection of expressing concern over the quality of record-keeping concerned an acquisition at Glebe Park, primarily because he ‘was wanting to understand the broader project’, ‘review the history’ and ‘understand what had happened’.[[316]](#footnote-316)
  3. The Committee asked whether the EDD and LDA used Electronic Document Management Systems. Mr Ponton told the Committee that they used TRIM and paper files.[[317]](#footnote-317) TRIM was ‘used primarily for tracking ministerial correspondence’, but they ‘relied heavily on paper files for other things’.[[318]](#footnote-318) For paper files, if an officer was working on a project, then the file might be kept on the officers’ desk, but then it would go back to Central Registry. The EDD kept physical records in a cardboard file, colour-coded to indicate to which project it belonged.[[319]](#footnote-319)
  4. Regarding differences between the records management practice of the EDD and broader ACT government standards, Mr Ponton told the Committee the LDA had its own culture. [[320]](#footnote-320) He also outlined reviews to record keeping. [[321]](#footnote-321)
  5. He told the Committee that Mr Dawes had ‘certainly listened to what I was saying’. The former Commonwealth Auditor-General, Mr Ian McPhee, was brought in to review governance and record-keeping from the top-down. Another group had worked from the bottom-up, and together these processes had formed the basis for the governance program of the Suburban Land Agency.
  6. When asked about minute-taking, including evidence provided by another witness that the most junior officer in a meeting would take minutes, Mr Ponton told the Committee that he would expect the project officer to ensure that minutes were kept and filed. [[322]](#footnote-322) He went on to outline the current practice in EPSDD. [[323]](#footnote-323)
  7. The Committee asked Mr Ponton whether all material relevant to the Audit had been provided to the Auditor-General. He confirmed that all of the records held by the LDA were transferred to the EPSDD and made available to the Auditor-General. He thought it was clear that this was not a case of ‘missing records’: rather, it was ‘non-existent records’ about which the Auditor-General was concerned.[[324]](#footnote-324)

##### Briefing of ministers

* 1. The Committee asked whether it was routine for someone involved in a project to have regular contact with staff in the relevant minister’s office to provide updates on progress. Mr Ponton told the Committee:

It depends on the project. Certainly from my perspective—and keeping in mind that I have both policy and a more regulatory perspective—rarely, unless there is a matter that we think we would need to brief the minister on, keeping in mind that from a regulatory perspective I have an independent statutory role. Therefore we do need to be incredibly mindful about what conversations or briefs are provided. If we do provide a brief to the minister on a regulatory matter it would be for information only, to make sure that the minister is abreast of current issues. In relation to policy, that is reasonably more common to brief the minister, have discussions during regular meetings, all of which, of course, are minuted.[[325]](#footnote-325)

* 1. When asked whether it was common for someone from a minister’s office to get in contact and ask about progress on a project, Mr Ponton told the Committee:

Ordinarily, in my experience, that would occur if there were a reason to prompt that. If we had provided a brief that had earlier identified a program and the program were not being achieved, there might be an inquiry, although ordinarily it is done by email.[[326]](#footnote-326)

* 1. He told the Committee:

There might be a telephone call that will then prompt a caveat brief of some kind but our communications back to ministers’ officers are ordinarily either via a short email, a caveat brief, which is, I am sure you understand, a shorter brief that is not necessarily cleared by the director-general or … or a more comprehensive brief. But from time to time, yes, of course I get phone calls. But it may be because there has been something in the newspaper. We might get a phone call. One of my deputies might get a phone call, “Just read this article. What is the background behind that?”[[327]](#footnote-327)

* 1. When asked whether it was usual for him to have a regular or weekly meeting with the minister to discuss matters to hand; whether this had an agenda and other meeting notes; and whether this was usual practice both in his present role and in other areas he had worked in, Mr Ponton confirmed that this was so.[[328]](#footnote-328)

#### Former Director, Sustainable Land Strategy

* 1. The Committee asked Mr Ellis about record-keeping practice while he had responsibility for the sale of Block 30. He told the Committee that his team consisting of ‘10 or 11 staff’ were all public servants, except for Mr Drummond, and followed normal public service protocols. The team maintained records as registry files and were ‘diligent’ in sending email reports.[[329]](#footnote-329)
  2. At this point, the discussion turned to the question of whether there were missing files. Mr Ellis told the Committee:

The Auditor-General said that there were a lot of records missing. During my testimony I said that, as far as I was aware, there was a box of records which I understood had been transferred to the LDA after I had gone. I knew that because [the Project Manager, Mr Drummond] had told me that. From what we have subsequently learned, it did not seem to take [Project Director, Urban Projects, Mr Munday] too much time to locate these records. Yet, unfortunately, this became a really large public issue. The inference from it was that somehow these records were not there and that they had not been created, when it seems that they were there, they were created, and they were not that difficult to find when people went looking for them.[[330]](#footnote-330)

* 1. He told the Committee that filing documents was something he would have got the junior staff member to do, but that it sounded as though once he was gone this arrangement ‘broke down’. While record-keeping was ‘not ideal’, he insisted that the records had been created. In his view, it was ‘unfortunate’ that ‘so much was made of the fact that the records supposedly were not there’ when ‘they were there all the time’.[[331]](#footnote-331)

##### Minutes and records of negotiations

* 1. As part of broader questions about record keeping, the Committee considered to what extent records had been kept of negotiations between the ACT government and the Tradies after the Tradies became the preferred tenderer.
  2. The Audit report stated:

The former Chief Financial Officer of the Tradies [Mr Brennan] advised the Audit Office under oath or affirmation that he estimates he met with Territory officials during negotiations, either in person or by telephone, in excess of 40 times. However, the Audit Office’s inquiries and examination of available documents did not identify any records of the protracted negotiations conducted between Economic Development Directorate officers and the Tradies.[[332]](#footnote-332)

* 1. In hearings, the Auditor-General told the Committee that the Audit Office expected to see documentation about the negotiations conducted at those meetings.[[333]](#footnote-333)
  2. Mr Ellis took issue with this description of the negotiations. He told the Committee:

the Auditor-General asserted that 40 face-to-face meetings took place, and it was even reported in the newspaper at one point, although it was retracted, that this all took place in 2013. This would have meant there would have been a face-to-face meeting every nine days. In those circumstances I think anyone would expect lots of minutes of meetings, but that is simply not what happened. If we go back to Mr Brennan’s testimony, there were 40 meetings and/or phone calls.[[334]](#footnote-334)

* 1. He told the Committee that there were, however, many phone calls, including calls between Mr Brennan and Mr Drummond on ‘questions of detail’. [[335]](#footnote-335) His view was that there were no more than three meetings with the Tradies which he—Mr Ellis—attended. Of these, one took place before tenders closed ‘to outline the parameters of the RFT’; one ‘some time’ before April 2013, and another later in 2013 ‘as we were working through the final issues’. There were also phone calls, mostly to Mr Drummond on matters of detail, and ‘a couple of phone calls to me’.[[336]](#footnote-336)
  2. The Committee asked who, during his period of responsibility for the sale of Block 30, took minutes at meetings. Mr Ellis told the Committee:

We always followed a protocol that whoever was the junior officer in the room was the one who took the minutes. If I attended a meeting where David Dawes and Dan Stewart were in the room with me I would take the minutes, and that applied all the way down. If I had a junior officer with me it would be up to them to take the minutes. Yes, that would be the protocol normally taken.[[337]](#footnote-337)

* 1. When asked whether someone would then clear the minutes, Mr Ellis told the Committee:

I would get them in most of these circumstances and there would be a few notes to make. As I say, we always put everything in emails. That was already standard practice. That is how we got things up the line, that is how we kept people informed. When people go looking for records of minutes, I am surprised if they cannot find my record of a meeting in an email to my superiors. That is how I operated all the time.[[338]](#footnote-338)

#### Former Project Director, Urban Projects

* 1. The Committee asked Mr Mundy whether in his time at the LDA, and working with the EDD, he ever had cause to question their record-keeping. He told the Committee that he had ‘assisted the Auditor-General in finding the records and the information for the audit inquiry’. When he did that he questioned their record-keeping ‘big time’.[[339]](#footnote-339)
  2. When asked to describe the search he conducted to find records and documents regarding the sale of Block 30, Mr Mundy told the Committee:

Basically, I got our IT area to do a search on all LDA drives, which were a common drive, to see what they could find. Also, like I said, because we could not find anything, we then did a search of Mr Drummond’s [hard drive]. They found a whole lot of documents, electronic documents. I did a registry search to see if any files had gone back. A few files came back to me. Like I said, they had very few papers on them. I also did a search of Mr Drummond’s workspace, because he was no longer there.[[340]](#footnote-340)

* 1. He told the Committee that interrogation of the EDD shared drives had found that they also contained no files relevant to the sale.[[341]](#footnote-341) Record-keeping was ‘very poor’. He would have expected electronic files in order, not in hard-copy or on an individual computer hard drive. The EDD kept mainly hard-copy files at that stage. Generally, there were hard-copy files for any project but, in this case, there were ‘a lot of loose papers in a box’.[[342]](#footnote-342) He had found two boxes of documents in the area used by Mr Drummond after he had left the agency. The boxes contained papers on the project and other projects in which he was involved, which were loose papers, not sorted into files or manila folders.[[343]](#footnote-343)
  2. He discovered electronic files relating to the sale of Block 30 on the local drive of the computer used by Mr Drummond. When asked whether this was standard practice, Mr Mundy told the Committee that it was not. The practice of the time was for staff to save electronic files to a common drive. TRIM was in use, but for only for ministerial briefs and similar material. Best practice record-keeping in that environment, at the time, was that:

all emails and all information would have been printed off and kept, as I said, on a hard-copy project file, which is a registry file which anyone can call back from registry and have access to. The electronic files would have been on the common drive … under the actual project name itself and then ordered.[[344]](#footnote-344)

* 1. Mr Mundy told the Committee that registry files for the sale of Block 30 contained only to a few pages. It had been necessary to print all of the electronic files that were available and add them to the hard-copy documents discovered in the two boxes to create the file he had provided to the Auditor-General.[[345]](#footnote-345)
  2. He told the Committee that the resulting file was comprehensive as regards to the overall history of the tender, but that there were no minutes of meetings. He would have expected to see minutes and records of decisions arising from meetings, and evidence that minutes had been circulated to participants of meetings, ‘highlighting any directions’, but this was not the case. There was no schedule showing the number and dates of meetings,[[346]](#footnote-346) and no paperwork concerning specific decisions.[[347]](#footnote-347)

### Value for money

#### Audit

* 1. The Audit report identified value for money as a key issue for the sale of Block 30 and the land swap involving Blocks 6 and 25 Section 72. It stated that its subject matter expert, Capital Valuers, had advised that the two factors which had the greatest impact on the value of Block 30 were:
* ‘the Tradies proposal to include a special condition in the contract for sale permitting them to remove an easement on the land designed to ensure pedestrian access over and along the ground floor for no commensurate cost’; and
* ‘the Tradies offer to only provide 84 replacement car parks – i.e. 55 less than the 139 assumed by the Tender Evaluation Panel to underpin the reserve price’.[[348]](#footnote-348)
  1. A third factor was the extended rent-free period afforded the Tradies for its tenancy of Block 6 Section 72 after the Tradies surrendered the land to the ACT Government as part of the land swap arrangement for Block 30.[[349]](#footnote-349)
  2. Regarding the easement, the Audit report advised that during negotiations:

the Tradies sought and received a concession from the Economic Development Directorate to insert a special condition within the contract permitting it to apply to ACTPLA to remove the easement by amending its deposited plan without objection from the Territory.[[350]](#footnote-350)

* 1. This change, the report stated, ‘materially reduced the obligations of the Tradies on the degree of pedestrian access along the ground floor required by its development’. The risk from this change was ‘further heightened’ by ‘the removal of the Project delivery Agreement and $1 million bond, also conceded during the negotiations’.[[351]](#footnote-351)
  2. Capital Valuers described the effect of this concession as follows:

Subject to Town Planning/Architectural advice, the opportunity contained in the Contract for Sale for the buyer to request that the easement for access be removed prior to settlement is significant benefit to most purchasers, but particularly to the Tradies.

Removal of the easement before issuing the final Crown Lease and before settlement avoids the requirement to lodge a Development Application after settlement for a Lease Variation which would require approval and the payment of a Lease Variation Change. Furthermore, without the easement in place it is likely that the developable area of the site is increased and development costs reduced.[[352]](#footnote-352)

* 1. Capital Valuers also advised that ‘the depicted easement from (but excluding) the access drive to the Tradies car park to Badham Street totals approximately 240 square metres’, and that additional land could become available for development if verge works ‘were not required’. If this were the case, subject to planning advice on permitted uses, the value of the site might be ‘enhanced by $200,000 to $300,000’ and ‘possibly more’.[[353]](#footnote-353)
  2. Regarding replacement car parks, the Audit report noted changes in requirements during the tender process:

the RFT reserve price of $3.18 million for Block 30 established by the November 2012 MMJ Real Estate valuation was determined in part on the requirement for the purchaser to replace the number of car parks on site. MMJ Real Estate adopted a figure of 154 replacement public car parks in determining the valuation. Subsequent traffic studies commissioned by the Economic Development Directorate and included with the RFT documentation show that this figure was initially revised to 133 replacement car parks during the tender period, and later to 139 replacement car parks, being the benchmark used by the Tender Evaluation Panel for the purposes of standardising and evaluating submitted tenders.[[354]](#footnote-354)

* 1. According to the Audit report, the EDD did not keep ‘adequate records to explain the changes in benchmarks used’, and did not seek an updated valuation from MMJ Valuers to reflect a reduced requirement for 139 rather than 154 replacement car parks, which would be a ‘less-costly option’ for the buyer of Block 30. The report noted that while both the Tradies and Fabcot Pty Ltd had submitted tenders which included proposals for replacement car parking beneath the pocket park, and the Tradies’ tender was conditioned on providing only 84 replacement car parking spaces.[[355]](#footnote-355)
  2. Regarding this, Capital Valuers advised that:

Based on the assumption that all car parking (including replacement spaces) would be provided on site then such a reduction of 70 spaces would result in a benefit to the land purchaser and accordingly increase the value of the land as a development site.[[356]](#footnote-356)

* 1. Capital Valuers advised that the estimated value of such a change was approximately $1,570,000.[[357]](#footnote-357)
  2. According to the Audit report, the extension of a rent-free period for Block 6 Section 72, from the original 18 months to the 42 months finally agreed, had significant implications for value for money.[[358]](#footnote-358) Capital Valuers’ advised that:

by adopting the method outlined in the Colliers International April 2013 valuation of the block, a discount to the assessed value for a 42 month rent-free period would result in an estimated value of $2,420,000 for the site, which is approximately $830,000 less than what the Territory agreed to pay the Tradies.[[359]](#footnote-359)

* 1. Taking the implications for these matters for value for money into account, the Audit report stated that the ‘merits of the Territory’s agreement to the final settlement terms for the blocks [was] not evident’ and, in particular, ‘the final terms for Block 6 Section 72, on balance, [appeared] to provide significant benefits to the Tradies (e.g. 42 months rent-free and immediate cash payment) for no evident additional value to the Territory’.[[360]](#footnote-360) Overall, the transaction did not represent value for money for the Territory:

The Territory sold Block 30 on favourable terms to the Tradies (estimated to be in the range of up to $1.57 million to $1.82 million less than the potential value of the block) and acquired Block 6 Section 72 from the Tradies for an estimated $830,000 more than its potential worth.[[361]](#footnote-361)

* 1. These figures were the basis for the audit finding that there was ‘a high risk that the Directorate [had] relinquished value up to an estimated $2.4 million to $2.65 million to the Tradies’.[[362]](#footnote-362)
  2. In hearings, the Auditor-General and the Director, Performance Audits, answered questions about value for money. The Director, Performance Audits, told the Committee that the audit found that there was ‘potentially up to $2.4 million to $2.65 million in value being relinquished’:

Up to $1.57 million or so relates to car parking for block 30. $200,000 to $300,000 relates to an easement on block 30 that is no longer required. And $830,000 relates to changed circumstances for block 6. It was valued on the basis of an 18-month rent-free period. It has ended up as a 42-month rent-free period.[[363]](#footnote-363)

* 1. When asked whether $45,000 to acquire the lease for Block 25 Section 72 represented value for money for the Territory, the Auditor-General told the Committee that the Tradies held Block 25 Section 72 on a concessional lease. The low figure to acquire the lease was simply a function of the Tradies’ obligation to pay-out the concessional lease.[[364]](#footnote-364)
  2. Speaking more broadly about value for money, the Auditor-General told the Committee that in this instance the Territory had had ‘total control over what they could achieve or could not achieve’ in negotiations. With the contractual agreement concluded, car parking was ‘the one area’ on which the Territory could focus to assure value for money.[[365]](#footnote-365)
  3. The Director, Performance Audits, told the Committee:

The negotiations with the Tradies unfolded on the basis of the Tradies offering 84 replacement car parks. For the site itself the initial RFT indicated that the existing public car spaces needed to be replaced in addition to any car spaces that needed to be put in relating to the development.[[366]](#footnote-366)

* 1. He told the Committee:

If you put in a mixed use development for residential units going up five levels, ground floor retail, that is supposed to come with a certain amount of car parking. And there is a formula in the codes and the like, planning codes, as to what that needs to be. They needed to provide those car spaces relating to the development and the RFT identified that they needed to put in replacement car parking for what was lost with the existing surface car parks.[[367]](#footnote-367)

* 1. He told the Committee that the EDD had released an addendum before it concluded the RFT process, in which it stated that it would ‘support a figure of 84’ replacement car parks. Subsequently, the Tradies’ conditioned its offer on providing only that number of replacement car parks.[[368]](#footnote-368)
  2. In light of this, he told the Committee, if the Tradies provided 84 replacement car parks then that represented $1.57 million of value relinquished. If the Tradies offered more than 84 replacement car parks, this had the potential to ‘ameliorate or reduce’ that loss.[[369]](#footnote-369)
  3. When asked about factors which led to relinquishing value, the Auditor-General told the Committee it appeared that there had been ‘a strong imperative to try and get closure on the deal’. Instead of ‘taking a deep breath’ and asking whether the sale of Block 30 should be re-tendered, there was a determination to ‘try and finish this’. She thought it would have been better to re-tender, but the ‘momentum seemed to be great to finish the arrangement’, although ultimately ‘it took them years’ to complete the sale.[[370]](#footnote-370)
  4. The Director, Performance Audits, told the Committee that this reflected the ‘strong and ongoing focus’ on achieving an outcome with the Tradies identified in the Audit report,[[371]](#footnote-371) which the Auditor-General described this as a ‘collective momentum’ to continue and conclude the deal.[[372]](#footnote-372)

#### Former Director, Sustainable Land Strategy

* 1. Regarding replacement car parks, the former Director, Sustainable Land Strategy (Mr Ellis) told Auditor-General that the Tradies had undertaken, in the course of his negotiations with them, to provide 55 replacement car parking spaces from already-existing spaces in its club building; that this accounted for the disparity between the 84 spaces which were the basis of the Tradies’ successful bid and the 139 car parking spaces quoted in the RFT; and that ACTPLA had approved this arrangement.[[373]](#footnote-373)
  2. According to the Audit report, however, no evidence had come to light which supported the view that ACTPLA, or the EPSDD, had approved this arrangement.[[374]](#footnote-374)
  3. The former Director also disputed the valuation placed on replacement car parks, saying that valuations by Capital Valuers amounted to a figure of approximately $22,500 per car parking space, while his in view $8,000 to $9,000 was a more appropriate figure. Also, ACTPLA’s requirement for a pocket park reduced the area available for parking by ‘some 36 surface spaces’, and that this had implications for what was achievable in the transaction. He told the Committee that if there were 55 replacement car parks relinquished, he could see ‘no evidence’ that it happened while he was the lead negotiator.[[375]](#footnote-375)
  4. The former Director told Audit that the requirement for a road between the Tradies site and Block 30 placed a ‘severe limit on the building envelope’ for Block 30. The original MMJ valuation had not taken this into account. As a result, in his view, ‘the valuation was always inflated’, and this placed further constraints on the terms he could negotiate for Block 30.[[376]](#footnote-376) Audit put the view that if the Director was concerned about the valuation, it was his responsibility to seek ‘clarification and amendment’ from MMJ Real Estate. There was no evidence that he had.[[377]](#footnote-377)
  5. More broadly, the former Director argued that the transaction with the Tradies (in the words of the Audit report) represented ‘an appropriate outcome for the Territory’. In his view, concessions made to the Tradies in the course of negotiations—on car parking, the easement and the period of rent-free tenancy for Block 6 Section 72—were the only way to bridge the gap between the Tradies’ bid of $2.2 million and the reserve price of $3.2 million. It was particularly so because the original MMJ valuation did not take into account certain key factors and as a result was too high.[[378]](#footnote-378)
  6. The Audit report was critical of these comments, saying that they did not take into account the fact that ‘a discount to the assessed value for a 42 month rent-free period’ would result in an estimated value of $2,420,000 for Block 6, Section 72, which was ‘$830,000 less than what the Territory agreed to pay the Tradies’, or the fact that the Tradies were in the end obliged to provide only 84 of the original requirement for 155 replacement car parking spaces.[[379]](#footnote-379)
  7. The former Director defended the overall outcome, saying that he believed that these outcomes were ‘justifiable’ because they were ‘less than what we were getting in return from the Tradies (i.e. the additional $1 million)’; were ‘better value for the Territory than the [original] process’; and were ‘as such, not contrary to proper administrative process’.[[380]](#footnote-380) He also asserted that there were risks in deciding not to continue with negotiations with the Tradies and re-start the process, because:
* ‘the market price offered for the block was likely to drag down the price in any future tender’;
* ‘changed market conditions … had deteriorated which meant the unlikelihood of achieving a higher price’;
* there was a potential for ‘reputational damage to the Territory from restarting the process’; and
* there were considerable ‘sunk costs’ as a result of a process which had been going for more than two years.[[381]](#footnote-381)
  1. According to the former Director, the most significant of these were ‘the implications of the price received’:

It was almost certain to be the case that if we had sought a new valuation it would have been lower and potentially significantly so – because of the process we had just gone through, and the depressed commercial conditions which were being felt in Canberra at the time. Whatever else, the fact that the highest price received was only $2.2 million would have meant that a new valuation would have made this a central determining factor in assessing the value.[[382]](#footnote-382)

* 1. As a result, he stated, there was ‘no justification or indeed sensible rationale, for seeking a new valuation’ which ‘more closely resembled the Tradies offer’. While ‘getting another valuation would certainly have been in the Tradies’ interests it would not have been in the Territory’s [interests]’.[[383]](#footnote-383)
  2. In hearings, Mr Ellis told the Committee that he disagreed with the Auditor-General’s finding that the EDD had ‘relinquished value up to an estimated $2.4 million to $2.65 million to the Tradies’ as a result of the land swap.[[384]](#footnote-384) The former Director agreed that there was an error in the brief he sent to the former Director-General which underestimated the value of rental concessions. But, he told the Committee, his ‘underestimate’ of $300,000 did not ‘alter the fundamental advantage to the territory’, given that final settlement represented an increase in the Tradies’ bid of ‘between $1.4 million and $2 million’. In his view, the brief did ‘no more than overestimate those advantage figures’.[[385]](#footnote-385)
  3. He told the Committee that findings made in the Audit report regarding the loss of car parking spaces and pedestrian easement were incorrect. These should be set aside from the analysis of the transaction. If the sum the Tradies agreed to pay was ‘tallied against the agreement to grant the Tradies free rent on block 6, section 72’, then ‘far from losing $2.65 million’, the agreement ‘extracted an additional $1.385 million from the Tradies above their winning bid of $2.2 million’.[[386]](#footnote-386)
  4. In his view, this meant that the Audit report’s findings of relinquished value represented ‘a baseline error of just over $4 million’, although ‘a more complete analysis of the deal’ would show that the error was ‘probably closer to $5 million’ due to a failure ‘to take account of the costs embedded in the RFT, the uplift in value on block 25, section 72’, and consistently to apply discounted cash flow analysis.[[387]](#footnote-387) He told the Committee that the Audit report also was ‘entirely wrong’ when it stated that the final agreement represented ‘a loss of value of $1.57 million’ due to a lower number of replacement car spaces. In his view, it was ‘never in the gift’ of the EDD to reduce the number of public car spaces, as this lay within ‘the prerogative’ of ACTPLA.[[388]](#footnote-388)

#### Former Director-General, EDD

* 1. The former Director-General, EDD, (Mr Dawes) also took issue with the Audit report’s assessment on value for money. In his view, the ‘true value of any property [could] only be established by the market’:

Although valuations are a critical tool on determining negotiation parameters, the property is only ultimately worth what someone is willing to pay. In the case of the land in question, the two tenders received were substantially below the valuation, indicating that the market value was lower than the valuation. This [was] further reinforced given the two tenderers owned blocks adjacent to the land and would be expected to gain the highest value from development of the block.[[389]](#footnote-389)

* 1. In his view, although it was reasonable to attribute value to car park replacement, it was ‘overly simplistic’ to separate this from other elements of the outcome.[[390]](#footnote-390) Overall, figures of $2.7m to $2.95m for lost value appeared to have been estimated by the Audit Office ‘based on adding separate elements of the final negotiated outcome’. In his view, this should be reviewed by ‘a valuer with expertise in complex commercial negotiations’.[[391]](#footnote-391)
  2. The former Director-General stated that the extension of the Tradie’s rent-free tenancy of Block 6 Section 72 (from 18 to 42 months) was ‘considered necessary’. After ‘a protracted period of no movement in the negotiations’, ‘agreeing to consider the rent-free option was the only way forward’.[[392]](#footnote-392) He told Audit that the land at Section 72 was ‘attractive to us’. It was ‘quite a developable area’, and there was interest in using it to develop ‘affordable aged accommodation for older women in the inner north’, which was ‘a government…commitment at the time’.[[393]](#footnote-393)
  3. In his view the agreement with the Tradies would deliver ‘significant financial and social outcomes for the Territory’ as, in addition to ‘the cohesive development’ of Block 30 Dickson, the transaction would enable development of ‘a significant part’ of Section 72 Dickson for ‘much needed community facilities, public housing and supportive housing’.[[394]](#footnote-394) The Audit report commented that there was no evidence that the Economic Development Directorate had documented, analysed, or valued these benefits for the final land swap arrangement.[[395]](#footnote-395)
  4. In hearings, Mr Dawes told the Committee that it was important to ‘look at the transaction as a whole, not individual bits’, and that in the transaction as a whole the Territory had done ‘quite well’.[[396]](#footnote-396) At the same time as the land swap was under consideration, there was ‘another transaction which the Tradies was not aware of’, the purpose of which was to acquire the Salvation Army / Mancare site between the Downer Club, CFMEU headquarters and group training scheme headquarters. As a result, he told the Committee ‘all of a sudden we were looking at … getting 2.2 hectares’ in total. This was another reason why the three blocks, together, were considered ‘quite valuable’, as the Territory could sell the land at ‘highest and best use’ for ‘somewhere between $22 million and $25 million’.[[397]](#footnote-397)
  5. The Committee asked Mr Dawes about the relationship between this and proposals for affordable housing on the land at Section 72. He told the Committee that ‘highest and best use’ would yield $22 to 25 million on the open market, but if the Government decided it would be a mixed-use site, ‘there could be some community uses’:

One of the other drivers, if you recall, was that we were doing some work with Community Housing Canberra at Downer. This is what I was saying; there were so many moving parts at the time on the old Downer school site. One of the things that we were encouraging there was providing affordable accommodation for older women in the inner north. That was also one of the objectives that we were looking at doing in section 72; so there were a whole range of things.[[398]](#footnote-398)

* 1. He told the Committee:

The government had already made some announcements … on potentially what they might do on that site for affordable housing and some community housing there, which I think is a wonderful thing. But it also would be mixed use. It would also have some highest and best use value, because you would want to make sure that you actually had genuine mixed use on that particular site, which was obviously close to Dickson and very close to, or within walking distance of, the light rail project.[[399]](#footnote-399)

* 1. When asked further about why he believed the Territory had achieved value for money in the transaction, Mr Dawes told the Committee that the Tradies:
* had paid an additional $1 million for Block 30, and could not develop it ‘until the Coles development [was] completed’;
* would be obliged to pay a Leave Variation Charge (LVC) in connection with ‘the consolidation of their blocks and whatever developments they do’;
* were obliged to comply with the Dickson master–plan, including ‘the rules on the day, with EPSDD, around parking, setbacks and all of those requirements’;
* were obliged to deliver a ‘pocket park ‘, which would be ‘handed back to the department as an asset’; and
* had undertaken to provide public car parking in the Tradies car park while the development was underway.[[400]](#footnote-400)
  1. Mr Dawes also told the Committee that the Territory was, at time of hearings, still ‘getting the parking revenue from that particular site’, and had not foregone any of that income.[[401]](#footnote-401)

#### Former CFO, Tradies

* 1. Mr Brennan told the Committee that he thought the deal was ‘very good value for the government’ because:

They got those two blocks at Rosevear Place and Hawdon Place, combined them with the Salvation Army site and, with the stroke of a pen…they increased the value significantly. They have had the opportunity in that period to plan for that site. They have just released the urban renewal on section 72. To me, that is a good win for the territory. In terms of dollar value that property would be increased significantly.[[402]](#footnote-402)

* 1. The Committee asked why the Tradies had increased its offer for Block 30 by $1 million, and what additional value it anticipated which warranted that offer. Mr Brennan told the Committee that the Tradies was ‘keen, obviously, to get the car park, because it is adjacent to our block’, but did not ‘see the value in the money that we eventually paid’.[[403]](#footnote-403) Rather, he told the Committee, ‘Rosevear Place, the Hawdon block and our acquiring the car park were a whole transaction’, and that the Tradies saw benefit in the transaction as a whole.[[404]](#footnote-404)

#### CEO, Tradies

* 1. In his opening statement, Mr Docker commented on questions of value for money, stating that:
* the ‘valuation relied on by the Auditor-General [was] inherently flawed’; [[405]](#footnote-405)
* the ‘market is the best indication of the value of the property and the views of the market are reflected in the only two tenders submitted for the block—that is, the true value of the property was, at best, between $1.6 million and $2.22 million’; [[406]](#footnote-406)
* ‘the best value for money outcome was for the Tradies to be selected as the preferred tenderer’; [[407]](#footnote-407)
* the negotiations resulted in ‘the Tradies increasing its offer by almost $1 million in return for some concessions from the government’;[[408]](#footnote-408) and that
* the Tradies was ‘able to offer an additional benefit to the government by negotiating the sale to include land that the government was interested in acquiring’. [[409]](#footnote-409)
  1. He also told the Committee that:
* ‘absolutely no-one was willing to pay any more’ than the Tradies; [[410]](#footnote-410)
* it was incorrect to argue that ‘the transaction did not yield a positive result for the government’ as the Tradies was ‘prepared to pay substantially more for the block than the value as determined by the market’;[[411]](#footnote-411)
* the ‘transaction was not a direct sale’ since ‘the government refused our application for direct sale in favour of a public tender process’;[[412]](#footnote-412) and that
* it was ‘difficult to understand how it can be said that there was any impropriety in the tender process when the statutory framework for procurement in the territory did not apply to the transaction’.[[413]](#footnote-413)
  1. In the course of the hearing, the Committee asked Mr Docker, regarding Block 6 Section 72, how the Tradies was able to negotiate vacant possession but was then given a lease for $1 a year for 42 months. He told the Committee that ‘in any negotiation process there is going to be give and take’ and that:

the market told you the valuation was between $1.6 million and $2.2 million. A government reserve, based on valuations which we disagreed with, was struck at $3.2 million. During the negotiations what did the Tradies do? We increased our price which we were paying for the block to $3.2 million. In that negotiation process there is always going to be give and take. The exact specifics of the concessions made during the negotiation process to do with vacant possession and, as you said, the 42 months, that was all part of the negotiation process. A value was quite clearly placed on those concessions and then in the wash the deal became the deal that it was.[[414]](#footnote-414)

* 1. When asked as to the value of the 42-month rent-free period which was afforded the Tradies for its tenancy of Block 6 Section 72, Mr Docker told the Committee:

it was about 15 grand a month. If you multiply 15 grand out, my mathematics tells me that it is about $180,000 a year. The expectation was that we would not get the car park settled for 42 months, which is the best part of 3½ years. You multiply $180,000 by 3½ and, if I am doing my mathematics right, that is about $630,000.[[415]](#footnote-415)

#### Former Project Manager

* 1. When asked his view on whether the outcome of the transaction represented value for money, Mr Drummond told the Committee:

the idea of doing a land swap where the government got land that it in turn could rezone, redevelop and sell, be it as affordable housing or other sorts of medium density housing close to a group centre, was an eminently smart transaction to do.[[416]](#footnote-416)

* 1. He told the Committee:

In terms of the value out of the car parking lost, I would have to look at what the final thing was, but certainly the trade union club had surplus car parking capacity in their building, and they could use that to trade off not having to build as much car parking under the footprint of the car park that they acquired. The community would have still had access to as many car parks as was anticipated. The government got a number close to the highest valuation.[[417]](#footnote-417)

* 1. He told the Committee that there was a ‘wide disparity between the two valuations’ available to the ACT government in the first instance. The selected valuation did not ‘closely analyse the cost of the replacement car parking’. In his view, the decision to choose the highest of the two valuations was made only to ensure that ‘whoever bought [it] paid the best price’.[[418]](#footnote-418)

### Committee comment

#### Departures from the terms of the RFT

* 1. The departures from the terms originally provided in the RFT were significant and resulted in the doubling of the dollar value of the transaction. As noted elsewhere in this report, this change in value supports advice given to the Auditor-General that the terms of the transaction were sufficiently different, compared with those of the RFT, as to make it in effect a direct sale. The departures are clearly and obviously set out in the table compiled by the Auditor-General in the report and duplicated in Chapter 5 of this report.[[419]](#footnote-419)
  2. This advice from the Australian Government Solicitor follows the logic of the *Planning and Development Regulation 2008.* Section 130 which provides that when a Crown lease goes to auction but is not sold and the ‘new lease includes conditions materially similar’ to those originally offered. Under such conditions, ministerial approval is not required for a direct sale.[[420]](#footnote-420) Where this condition this is not the case, the minister’s approval is required. The fact that the Minister did not approve the sale raises questions about the validity of the sale.[[421]](#footnote-421)
  3. It is clear to some members of the Committee that there was a significant deviation from the original Request for Tender. It would have been prudent for officials to consider implications more closely, including whether it was legally permissible to continue with the tender.[[422]](#footnote-422)

#### Documentation and due process

* 1. Evidence provided to the Committee, including by way of the Audit report, shows that there was inadequate record-keeping for the sale of Block 30.
  2. Mr Ellis took issue with the Auditor-General’s proposition that there had been 40 meetings between the ACT government and the Tradies. In his view, the Auditor-General’s criticism about an absence of minutes was not valid because many of these contacts had taken place by phone or email.
  3. Whether or not these contacts had been meetings, phone calls or emails, officers responsible for the conduct of the sale were obliged to record all decisions about the sale but did not.
  4. As the senior operational officer, the responsibility to ensure the correct recording of actions and decisions fell to Mr Ellis. It appears that he did not meet his obligations in this area, and this is likely to have increased risk to the Territory in its dealings on Block 30.
  5. The absence of records for the sale process makes it more difficult for the Committee to ascertain the degree to which ministers, or ministerial staff, were a party to the sale process. It appears that normal practice, in general in the ACT public service, is for Directors General to hold regular meetings with their ministers. In this instance there is no evidence, available to the Committee at this point, to establish whether such meetings did or did not occur. However the Committee notes the timeline of formal briefs provided by Mr Ponton and the Chief Minister’s statements to the Committee that he was not aware of departures from probity until the release of the Audit report.[[423]](#footnote-423)
  6. While record-keeping is not the only factor in assuring integrity for government transactions, it is important. In this transaction, there were considerations regarding conflict of interest, based on relationships between proponents in the sale. Such conditions increased the importance of due process, including appropriate record keeping. The fact that the EDD did not follow due process means that the public cannot be entirely satisfied, beyond doubt, that probity was appropriately protected.

|  |
| --- |
| Finding 1  The Committee finds that the Economic Development Directorate’s record-keeping for the sale of Block 30 Section 34 Dickson to the Canberra Tradesman’s Union Club (the Tradies) was poor and called into question the integrity of the entire transaction. |

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| Recommendation 5  The Committee recommends that all staff from the former Economic Development Directorate still employed by the ACT Government be given further training in record-keeping. |

#### Value for money

* 1. Factors identified in the Audit report as relevant for considerations of value for money included:
* replacement for car parking spaces lost as a result of the redevelopment of Block 30, which is currently a car park;
* agreement to waive a Project delivery Agreement which obliged the winning tenderer to provide a $1 million security deposit, a pedestrian easement and a pocket park;
* the extension of a rent-free period for tenancy of Block 6 Section 72 from 18 months to 42 months.
  1. Witnesses sought to defend the conduct of the land swap transaction on the basis that:
* the number of replacement car parks required was set by ACTPLA rather than the Economic Development Directorate;
* the valuation of car parking spaces used in the Audit report was not correct;
* the Tradies had agreed to cover the difference between the 84 replacement car parks included in its winning tender and the 139 replacement parks, indicated as the requirement at another stage, by providing 55 public car parking spaces in its club building; and
* the transaction, seen as a whole, provided financial and social benefits to the Territory which outweighed any apparent losses on the transaction involving Block 30 and Blocks 6 and 25 Section 72.
  1. The Committee notes that witnesses did not seek to defend the waiving of the Project delivery Agreement, including the requirement for a $1 million security deposit and pedestrian easement. Arguments defending the conduct of the transaction concentrated on replacement car parking spaces, and the benefits asserted from the transaction as a whole. Yet the bond of $1 million represented a significant proportion of the reserve price for Block 30. Had it been paid, it would have provided the government with more control over risk: waiving the bond was not a trivial matter.
  2. It is also notable that Government witnesses asked to defend the decision to extend the rent-free period for the Tradies’ tenancy of Block 6 Section 72 from 18 to 42 months stated only that this was a way out of an impasse. They did not defend the financial aspects of the arrangement, and this also does not pass muster, either in terms of value for money or probity.
  3. It is difficult to see why no single figure was quoted for replacement car parks, or why there was no calculation of value on money for an extended rent-free period for Block 6 Section 72. If the benefits of the land swap were to the Territory in a larger perspective, there remained a responsibility to calculate and defend those outcomes. Mr Dawes provided his view to the Committee that the consolidated land was worth $22 to 25 million.[[424]](#footnote-424) While this is useful, how this has been arrived at is not apparent and not in any of the documentation available to the Committee.
  4. At present, the Committee has no independent evidence showing that the Tradies provided a contractual undertaking to provide a further 55 public car parking spaces from within existing stock in its club building. Further information is needed to ascertain the extent of valuation relinquished, or otherwise, in this regard.
  5. Certain claims made by witnesses in defence of the land swap transaction are questionable. One assertion was that the Territory bought Block 25 Section 72 on favourable terms when it paid $45,000. The Audit report shows that this was a reasonable figure subject to the process for converting concessional to full Crown lease set out in Section 263 of the *Planning and Development Act 2007.*
  6. A second assertion was that the Territory fared well in the land swap transaction in that it continued to receive fees from public car parking on Block 30 after the parties agreed.

Finding 2

Some members of the Committee find that the loss of car parking, the leaseback arrangement on Block 6 Section 72 Downer, the waiving of the security deposit and, potentially, waiving the requirement for easement originally stipulated in the Request for Tender, resulted in the Territory not receiving value for money for the sale of Block 30 Section 34 Dickson.[[425]](#footnote-425)

#### Other objects

* 1. The matter of greatest concern, however, is the evidence presented in this chapter showing that the EDD had objects for the transaction, other than what the RFT indicated. These included the defence of value for money from the transaction on due to the commercial attractiveness of the land at Section 72, prospects of assembling a continuous parcel of land at Section 72, and the apparent interest in building affordable housing at Section 72. These were not specified in the RFT and not reflected in the assessment of the two tenders received.
  2. The fact that the land swap and affordable housing had been proposed in the Tradies’ third application to acquire Block 30 by direct sale of November 2010, and evident enthusiasm by the EDD for this proposal—before the release of the RFT—makes these concerns more pressing, because they point to factors that were evident at the time, but were not included in documentation for the RFT.[[426]](#footnote-426)
  3. If it had been a direct sale, the ACT Government and the Tradies would have been free to negotiate without prompting these concerns. Because more than one tender was accepted, however, there were obligations on the Government to act in good faith toward all tenderers. Giving weight to matters not stipulated in the RFT raises questions over whether the officers acting for the Government discharged the obligation. In a sense, the obligations of an entity putting projects out to tender are simple: to say what it will do, and then do it. It is not possible to say that the officers acting for the Government satisfied this test.
  4. Witnesses who were involved in and responsible for the transaction on behalf of the ACT government continued to defend the deal on grounds not included in the RFT. This shows that there is a general lack of awareness, in the ACT government, about the obligations which fall to public entities which put projects out to tender.

## Roles and responsibilities

### Background

* 1. According to the Audit report:

The sale process, including the RFT and subsequent negotiations, was coordinated by the Chief Minister, Treasury and Economic Development Directorate through its Economic Development stream headed by the Director-General, Economic Development (the Director-General).[[427]](#footnote-427)

* 1. It stated that the EDD ‘developed the RFT documents, managed the tender process and led the subsequent negotiations with the Tradies, resulting in the final exchange of contracts in December 2014’. Responsibility for ‘the residual elements’ of the sale was passed on to the Environment, Planning and Sustainable Development Directorate (EPSDD) in 2017. The EDD had overall responsibility for the tender, but some aspects of the sale were ‘operationally supported’ by the LDA. The LDA had a role in performing ‘due diligence on the resulting land acquisitions and disposal’, mainly for site investigations and geotechnical studies.[[428]](#footnote-428)
  2. However, according to the Audit report:

No codified roles and responsibilities were established for the sale of Block 30 including the roles of executive management, Cabinet and the minister in decision-making and negotiation with the Tradies. The lack of codified roles and responsibilities has contributed to a lack of accountability in the ensuing negotiations with the Tradies.[[429]](#footnote-429)

### Chief Minister

* 1. Mr Barr was, as Minister for Economic Development, the minister responsible for the sale of Block 30. Mr Barr explained his and cabinet’s decision-making role related solely to determining a process for procurement, and that cabinet had determined a request for tender process.[[430]](#footnote-430) Following the Tradies being selected as the preferred tenderer, he received a brief for noting that this was the result of the process.[[431]](#footnote-431) He told the Committee that it was not the practice of ministers and Cabinet to be directly involved in transactions.[[432]](#footnote-432) He received briefings on the EDD ‘between weekly and fortnightly’ during this period, [[433]](#footnote-433) and attended an LDA Board meeting once a year, which included discussion of indicative four-year Land Release Program.[[434]](#footnote-434) However, the sale was not ‘a topic of any frequency’ in his office, and he only received progress updates of a general nature, to the effect that negotiations were ongoing; it was not a regular standing item and there was no ‘weekly update’.[[435]](#footnote-435) He told the Committee he was not aware of departures from the terms of the RFT or risks to probity until the release of the Audit report.[[436]](#footnote-436) As there is so little documentation relating to this transaction the Committee is unable to find independent confirmation of these statements.

### Cabinet

* 1. According to the Audit report, while the terms of the sale ‘arguably exceeded the parameters of the negotiation authority’ given to the EDD, there was ‘no evidence of authorisation’ for EDD officers to depart from the terms of the RFT, or to enter into ‘a complicated transaction…that was analogous to a direct sale previously rejected by Cabinet’.[[437]](#footnote-437) Cabinet had authorised the RFT and the Minister for Economic Development had noted an early brief, but there was ‘no evidence that they were advised by executive management of the departures from the process Cabinet approved’, or that they were ‘asked to review and approve the final outcome’.[[438]](#footnote-438)

### Former Director-General, EDD

* 1. In relation to his role in the sale of Block 30, Mr Dawes told the Committee that the negotiating team kept him informed, and from time to time he issued instructions, but he was not involved in day-to-day negotiations and did not give them ‘any major direction of “this is what has to happen” or anything of that nature’.[[439]](#footnote-439)
  2. When asked whether he had gone back to Cabinet to seek approval for changes from the original terms offered in the RFT, Mr Dawes said that he had not, but had ‘kept government informed of what the negotiations were’. He did this direct to the responsible minister, the Minister for Economic Development, Mr Barr, who was thus ‘apprised’ of the negotiations. However, Mr Dawes told the Committee, the Minister ‘was not involved in any way, shape or form in the transactions’, and ‘did not give us any direction at all about the way we proceeded’.[[440]](#footnote-440)
  3. The Committee asked Mr Dawes why the EDD rather than the LDA managed the sale. He told the Committee that the sale was ‘done as part of [the] major projects unit within Economic Development’.[[441]](#footnote-441) At another point, however, he told the Committee that it was part of the Land Release Program, which was administered by the LDA.[[442]](#footnote-442)
  4. The Committee asked Mr Dawes why the land was put up for sale at that time, given constraints on the commencement date for development. He told the Committee that it was part of the ‘strategy of trying to renew Dickson at the time’. The Directorate ‘knew there were potentially a couple of buyers in the market at that particular time that were interested’, and on that basis decided to ‘take it to the market at that particular time’.[[443]](#footnote-443)

##### Awareness of probity risk

* 1. The Committee asked Mr Dawes about his awareness of probity risk arising from the divergence in negotiations from the terms offered in the RFT. He told the Committee that he relied on very ‘competent officers [who] were involved in these negotiations’, whom he ‘trusted explicitly’. He was also relying on the probity officer to advise him ‘if at any point we were stepping away from any of those issues’, but the probity office did not raise concerns with him at the time. He told the Committee that the Government Solicitor ‘at no time spoke to me about us getting way off track or anything of that nature’. If the Solicitor-General or his deputy at the ACTGS had contacted him asking to meet, he would have met them and ‘complied with their thoughts’, but there was no indication at all that there was increased probity risk.[[444]](#footnote-444)
  2. Later the Committee noted that the Audit report provided a different account:

The former Land Development Agency Director of Sales , and Deputy Director-General, Economic Development Directorate were provided with advice by the ACT Government Solicitor’s Office in October 2014 that indicated accepting the Tradies’ requested concessions posed a risk as it could result in the transaction being so divergent from the RFT that it was a direct sale rather than the outcome of the tender process. Representatives from the ACT Government Solicitor’s Office and the Land Development Agency met with the Director-General on 19 November … to discuss the Tradies’ requested concessions and how to proceed.[[445]](#footnote-445)

* 1. The Committee asked Mr Dawes whether he held to earlier statements that he had not been advised that departures from the terms of the RFT were a risk to probity. He told the Committee that the first time he saw that email was when the Auditor-General had interviewed him. He had not been copied-in: it had gone to other officers in the agency, but not to him.[[446]](#footnote-446)
  2. He told the Committee that in a subsequent meeting his second-in-charge, Mr Stewart, told him that the ACTGS had ‘raised a potential issue’. As a result, he (Mr Dawes) had organised a meeting on 19 November 2014.[[447]](#footnote-447) However, at no time did the ACTGS officers say, ‘We have moved too far away from the RFT. We should go back to square one.’ Following the meeting, he decided to proceed with the sale and ‘contracts were drawn up’.[[448]](#footnote-448) Mr Dawes told the Committee that, if there had been a genuine concern, someone from the ACTGS would have contacted him, but they had not. The fact that when the deal concluded, the ACTGS had finalised the contract and the parties settled, in his view confirmed that the conduct of the process was valid.[[449]](#footnote-449)
  3. The Committee sought to clarify the evidence, asking whether the ACTGS officers had raised these concerns in an email, but not with him face-to-face in the meeting. Mr Dawes agreed, telling the Committee:

Exactly. We had a conversation. There would have been records kept from the [ACTGS] side—it would be interesting to see what they wrote—and records would have been kept from my side. I did not take the notes. Again I was relying upon people at the meeting to do that.[[450]](#footnote-450)

* 1. When asked whether it was reasonable to assume that if the ACTGS had considered that there was a problem, it would not have settled the deal, Mr Dawes told the Committee:

Correct. That is my assumption. Perhaps I am a bit naïve, but that is what I would have assumed. I had a very good working relationship with the [ACTGS] and we were in contact quite regularly. I would have expected a phone call … [[451]](#footnote-451)

### Former Deputy Director-General, EDD

* 1. Mr Stewart told the Committee that he had first moved to the EDD in August 2011 as an Acting Executive Director. He was appointed Deputy Director-General of the Economic Development Directorate and Deputy CEO of the LDA, concurrently, in late 2012 and was then seconded to Treasury and was Acting Under Treasurer for five months. He returned to the EDD and LDA in April 2013 and worked in those agencies until August 2015, when he left the ACT Public Service to work as a consultant.[[452]](#footnote-452)
  2. He told the Committee that he did not ‘recall experiencing any greater than normal pressure, political or otherwise, to deliver this site to market, beyond that which [he] experienced for any other site in the land release program’, and did not ‘recall ever being advised of excessive interest by staff or colleagues’.[[453]](#footnote-453)
  3. Mr Stewart told the Committee:

To the best of my recollection, the sum total of my involvement in this matter is as follows: I attended a meeting with [the former Director, Sustainable Land Strategy] and [the former Director, Sales, Land Development Agency] where it was agreed that [the former Director, Sustainable Land Strategy] and members of his direct sales team would handle the RFT process, due to resource constraints in the LDA sales team. This seemed reasonable at the time as it built on the work of the same team in the release of the supermarket car park site on Antill Street. I attended a meeting with [the former CFO of the Tradies], [the former Director, Sustainable Land Strategy] and a representative of the Government Solicitor’s Office who was also present at this meeting. The only matter I recall discussing at this meeting was the desire of the Tradies to acquire by direct sale the subterranean development rights under the proposed pocket park for additional parking. I do not recall the outcome of the meeting, and I am not aware of whether this matter was resolved.[[454]](#footnote-454)

* 1. He also told the Committee that he had taken part in selecting Mr Ellis to lead the sale process.[[455]](#footnote-455)
  2. The Committee noted other evidence that the team led by Mr Ellis conducted the RFT process because the EDD had more experience with tenders. The LDA had more experience in sales by auction. He told the Committee that in his recollection the decision hinged on ‘resource constraints’ within the LDA team and was not a question of experience. There were two sales areas: one within the EDD and one within the LDA. The latter had said that it was not able to ‘release that parcel of land’ at the time. The ‘direct sales team’ in the EDD had just conducted a tender process for a supermarket site on Antill Street, and as they had ‘recent and relevant experience’, it seemed like a good decision for them to manage the process for the sale of Block 30.[[456]](#footnote-456)

##### Involvement in the RFT and subsequent negotiations

* 1. The Committee sought to establish the extent of Mr Stewart’s involvement with the RFT process and subsequent negotiations.
  2. The Committee asked Mr Stewart whether he was involved in preparing the cabinet submission for the sale of Block 30 and whether the submission would have come from the EDD or the LDA. He told the Committee that the EDD would have prepared the submission as the LDA did not write cabinet submissions. In his role, he would have reviewed the submission before Mr Dawes cleared it.[[457]](#footnote-457)
  3. When asked when he had become aware of a proposal for a land swap as part of the sale, Mr Stewart initially told the Committee that he became aware of this after April 2013, when he returned from ACT Treasury to the EDD. However, he told the Committee, he was not directly involved in discussions about the sale. He said that this was ‘part of the confusion for some of my former colleagues’:

It may be that there is an expectation in their mind that, because there was a structure in place that had directors, executive directors, deputy directors-general and directors-general, those people were there at all times and all material flowed through to those people. In the period that you are talking about where these early conversations were being had and decisions were being taken, I was Acting Under Treasurer. I was not privy to any of these discussions.[[458]](#footnote-458)

* 1. When asked again as to when he became aware that the land swap was part of the deal, he told the Committee:

I do not recall and I was not part of the conversations with regard to the financial arrangements and the transaction. I can only assume, on reflection, that, having set the process in motion in my absence, the reporting lines had been established between the negotiating team, for want of a better term, and the director-general, and that those lines were retained throughout the process, which is why, as I rack my brain for the recollections of the various issues and processes, I have only limited recollection of certain events.[[459]](#footnote-459)

* 1. The Committee noted other evidence provided to it which suggested that Mr Stewart had taken over responsibility for finalising negotiations after Mr Ellis had left the ACT Public Service in April 2013.[[460]](#footnote-460) He told the Committee that this was incorrect: Mr Drummond and Mr Ellis had represented the ACT government in negotiations, and after Mr Ellis left the ACT Public Service, Mr Drummond had completed them. He did not know whether Mr Drummond was at the time ‘reporting through his director’ or was reporting directly to Mr Dawes.[[461]](#footnote-461) He told the Committee that he had only one meeting with the Tradies regarding the sale of Block 30, concerning ‘subterranean development rights’ under the proposed pocket park.[[462]](#footnote-462)
  2. At this point, the Committee asked Mr Stewart to confirm his testimony that he had only three meetings in total regarding the sale of Block 30. He agreed, telling the Committee that he was present only at:
* a meeting to give the area headed by Mr Ellis responsibility for the handling of the request for tender;[[463]](#footnote-463)
* a conversation about the RFT was advertised, regarding the fact that the advertisement appeared before Cabinet approved the sale;[[464]](#footnote-464) and
* a meeting with Mr Brennan after he returned from Treasury in April 2013, the only subject of which was subterranean development rights under the pocket park.[[465]](#footnote-465)
  1. He had no recollection of any other meetings or involvement with the sale of Block 30.[[466]](#footnote-466) When asked whether it was unusual for the second-in-charge of an agency to be excluded from the chain of communication for a project in such a way, Mr Stewart told the Committee:

There may have been briefing notes that crossed my desk; I cannot recall. But it is equally plausible that there were conversations. As I said, if I was away for the first five months of the process and a line of communication had been established directly between the negotiating team and the director-general, it would make sense for that to continue through to December. I do not know why they would need to loop me into a process that was already 50 per cent complete on a time basis. If you are saying that it was the end of 2012 to the end of 2013, I was absent for half of that period, so why would they then start looping me back in the conversation? [[467]](#footnote-467)

* 1. When asked to explain this, Mr Stewart told the Committee:

if a senior executive was reporting directly to the director-general on a matter, there would be no reason for me to be aware, because the director-general was my superior. If my director-general was fully across the issues in question, he was dealing with the Government Solicitor and seeking advice or meeting with the Government Solicitor. If there were concerns about whether the transaction was stepping outside the boundaries of the original tender, again there would be no reason for me to necessarily be involved, given that this is one small part of a much, much larger land release program that the LDA were responsible for delivering and all of the other work that was going on on the EDD side of the organisation.[[468]](#footnote-468)

* 1. Mr Stewart told the Committee that it was ‘entirely plausible that the matters in relation to this transaction were being dealt with directly by the director-general’.[[469]](#footnote-469) He did not recall seeing or signing-off on briefings that went to either Mr Dawes as the former Director-General, or the Government, about the sale of Block 30.[[470]](#footnote-470)
  2. The Committee asked Mr Stewart about the usual process for handling briefs to Cabinet. He told the Committee that a brief would ‘go through the org chart’ and that this brief may have come to him for ‘noting or for clearance’.[[471]](#footnote-471) As to whether there were circumstances in which this protocol was not have followed, Mr Stewart told the Committee that this could occur where ‘somebody was working directly to somebody above me in the hierarchy’. It occurred ‘from time to time’: there were ‘instances where people in the LDA were providing advice directly to [Mr Dawes and] this was not unusual’.[[472]](#footnote-472)
  3. When asked whether this occurred in other organisations, Mr Stewart told the Committee:

It would happen in every organisation. If there is an assumption that every single thing has to go through every layer of a bureaucracy on every single occasion, I do not know that that is practical. I think there would always be situations where there are conversations between a CEO, a director-general or a secretary, and other staff below their deputies, perhaps without the full knowledge of the deputy or if the deputy is not around at the time.[[473]](#footnote-473)

* 1. He told the Committee:

For the purposes of moving issues forward, seeking advice and making decisions, it is not always practical to have those steps of clearance. Ultimately, with respect to the delegate, the final line in the sand for that advice is the director-general or the CEO. As long as that signature is on that piece of paper as either the approving entity or as the final signature before it goes to the minister’s office, I think that is appropriate.[[474]](#footnote-474)

##### Meeting with former Director-General and Solicitor-General

* 1. The Committee asked how Mr Stewart came to organise a meeting at which Mr Dawes and the Solicitor-General, Mr Peter Garrisson, were present. Discussion in this meeting was about the probity in light of departures from the terms of the RFT. He told the Committee that he had arranged the meeting because an officer from the ACTGS had contacted him ‘flagging some concerns’. He could not recall whom it was that contacted him, whether this was the first time the ACTGS had contacted him about this, or whether he had had a view about why the person had contacted him.[[475]](#footnote-475)
  2. When asked whether he thought this advice significant, sufficient to prompt him to organise a meeting between Mr Dawes and Mr Garrisson, Mr Stewart told the Committee:

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

I respond immediately. The fact that, all of a sudden, I have been contacted by the [ACTGS] saying, “Dan, we have concerns about the process that is being undertaken here,” means that I will organise a meeting straightaway, which I did.[[476]](#footnote-476)

* 1. When asked as to his role in the meeting, Mr Stewart told the Committee that he was ‘an observer’.[[477]](#footnote-477) When asked whether he took notes, he said that he did not. When conducting negotiations, he had relied on an ACTGS probity adviser who had a reputation for ‘outstanding records’. In other situations, he expected his subordinates to take notes. [[478]](#footnote-478) When asked whether he recalled who else was present at the meeting, Mr Stewart told the Committee that he did not.[[479]](#footnote-479)
  2. In the meeting, Mr Stewart said that Mr Dawes and Mr Garrisson had discussed the ‘process to date’, and Mr Garrisson had advised that, in terms of probity and ‘process’, the EDD ‘had not stepped outside the boundaries of what would be considered reasonable’.[[480]](#footnote-480)

### Former Director, Sustainable Land Strategy

* 1. The Committee first asked Mr Ellis when he began working at the EDD, and how he became the Director, Sustainable Land Strategy.[[481]](#footnote-481)
  2. He told the Committee that he was with the EDD ‘from the beginning’. He was originally a senior policy officer in the Chief Minister’s department, working in the areas of land development and land strategy. The area he worked in was then ‘hived off’ to become the Department of Land and Property Services, which was later amalgamated with the LDA to form the EDD.[[482]](#footnote-482) In the course of his transitions from one agency to another, he had, for the most part ‘the same responsibilities’, which were to deal with ‘direct sales, land release issues and the like’.[[483]](#footnote-483) He never worked for the LDA. While he had contributed, at times, to information papers for the LDA Board, he never had to report or answer to it. He did most of his work for the minister. He was in regular contact with ministerial staff and would ‘often speak directly to the minister’s office’.[[484]](#footnote-484)
  3. He told the Committee that he specialised in direct sales. LDA land sales were mostly ‘over-the-counter block sales’, which were ‘a lot more straightforward’. In contrast, his roles involved trying to get outcomes to match government policy. Because of this it ‘naturally fell to [him] to do some of the more complex things’ under former Chief Minister Stanhope’s supermarket policy.[[485]](#footnote-485) Negotiating with the Tradies ‘was seen very much as being like that’. It was the ‘kind of complex, policy-rich land sale and land negotiation’ he had been doing for several years, and this was why he became the Government negotiator for the sale of Block 30.[[486]](#footnote-486)
  4. Mr Ellis told the Committee that this role stemmed from a meeting in Mr Stewart’s office in January 2012 with the LDA sales team. The sales team took the view that the sale of Block 30 ‘fell outside … their skills set’ and that ‘they had enough on their plate’ managing the Land Release Program. In light of this, he offered to take it over, and Mr Stewart gave him responsibility for the project.[[487]](#footnote-487)
  5. Thus, he told the Committee, he became responsible for the sale of Block 30 as a result of ‘a deliberate decision that LDA sales would not handle it’, and he ‘had it from that time on’. It was his initial responsibility to prepare to advertise the RFT. He had no direct role in the evaluation of tenders. His role was to ‘make sure it was managed properly’ and to conduct negotiations until the parties reached an agreement in December 2013.[[488]](#footnote-488)
  6. In January 2014 he was advised that he would ‘not have a position’ following a re-structure of the EDD. Coincidentally, he broke his foot around that time. He was on extended leave, then returned briefly to the Directorate in April 2014, ‘said my goodbyes, and that was it’.[[489]](#footnote-489) Summarising this, he told the Committee:

My involvement was finished in that sort of staggered way. December 2013 was really it. In January I was notified I did not have a job, went on sick leave, came back briefly and was gone. Really from late January 2014 I was no longer involved.[[490]](#footnote-490)

* 1. He told the Committee that he had ‘had main carriage of this whole thing, almost, since day one, day one being October 2011’, and then ‘suddenly in December 2013, January 2014, I played no role and people who had played only minimal roles, or lesser roles, had to take over’.[[491]](#footnote-491)
  2. When asked what other staff were involved in the project, Mr Ellis told the Committee that, for the most part, it was just himself and Mr Drummond. A junior staff member assisted Mr Drummond with record keeping and filing. The division of labour between himself and Mr Drummond was that he (Mr Ellis) made decisions and Mr Drummond attended ‘to the details’. He told the Committee that this was one of ‘literally dozens of projects’ for which he was responsible at the time. One was the ‘very significant’ project involving Block 21 Section 34 at Dickson, which was ‘pivotal’ in that it was necessary to complete this project before development on Block 30 could begin.[[492]](#footnote-492)
  3. Mr Ellis told the Committee that Mr Drummond did ‘a lot of the work with the LDA engineers and a lot of work the LDA sales team directly’. He—Mr Ellis—‘only intervened when it became necessary to do so or … was made aware of strategic issues’, but took the lead on negotiations with the Tradies.[[493]](#footnote-493)
  4. The Committee asked about political sensitivities because of links between the Tradies and the ACT Labor Party, and whether negotiations were conducted by phone with the specific purpose of supporting the Tradies. Mr Ellis told the Committee:

The fact is that a great deal of work was discussed on the phone with ministers’ offices. I would not possibly want to deny that. We were under a lot of pressure and that was simply the way that a lot of communications took place.[[494]](#footnote-494)

* 1. When asked whether there was political pressure regarding the sale of Block 30, Mr Ellis told the Committee that he believed that there was a ‘desire to have the matter advertised prior to the 2012 election’. He said he thought the government wanted ‘to give the opportunity to its political ally to bid in a competitive auction’. In his view, the Tradies was concerned that if the government lost the election ‘the opportunity to even have a chance of getting the block in a competitive auction would be lost to them’.[[495]](#footnote-495)
  2. In response to further questions, Mr Ellis told the Committee that there was no doubt in his mind that the government wanted the RFT put out in this time frame because of the election. He was ‘in regular contact with the minister’s office’ and was asked regularly ‘how it was going and whether it was going to be done’. He was not asked these questions about other projects.[[496]](#footnote-496) He told the Committee that Mr Stewart asked him in late 2011 or January 2012 whether he could find out what was going on. At that time the sale was ‘in the hands of the LDA sales team’. He told the Committee that he believed that Mr Stewart was ‘getting political pressure’ and wanted to know ‘how it was going’, ‘even at that stage’.[[497]](#footnote-497) This was not verified by Mr Stewart.[[498]](#footnote-498)
  3. He told the Committee that the Government had decided in October 2011 that it would sell Block 30 by the end of the 2011-12 financial year.[[499]](#footnote-499) He had no direct part in the process, but gave an undertaking to Mr Stewart to ‘go and find out where it was up to with the LDA sales team’. The sales team told him that the sale of Block 30 ‘was not high in their priorities’, that it was ‘outside their skill set’, and that they ‘had too much work to do in terms of the land release program’. When he reported back, Mr Stewart ‘needed to get it done more quickly than that to meet the government’s agenda’. This was followed by the meeting at which Mr Stewart gave him responsibility for the project.[[500]](#footnote-500)
  4. By this time, there was ‘much less time available’ to him than if he had been given the job in October 2011:

To get it done, we bent all our efforts towards trying to get it done by modifying different processes and the like, because that pressure was on. We failed; we did not get it done by 30 June. But that did not seem to be the major issue. The major issue was that we had to get it done by the caretaker period. I am just putting two and two together. No-one ever said to us, “You failed to get it done by 30 June; therefore that’s that.”[[501]](#footnote-501)

* 1. Later the Committee quoted from a copy of an email it had obtained, addressed by a ministerial staffer to Mr Peters, as the Director, Sales and Marketing at the LDA, dated 25 July 2012, saying that the sale of Block 30 was ‘still on’ but ‘the urgency has gone out of it’ because the ‘minister wanted some of the uncertainty resolved before proceeding’.[[502]](#footnote-502) The Committee also quoted from a copy of an email from Mr Drummond of the following day, 26 July 2012, which stated:

Re block 20, section 34, the minister has called a halt to this process until further site investigations have been completed. It is unlikely this site will come to market any time calendar 2012. Please cancel any ads booked for this site.[[503]](#footnote-503)

* 1. In light of this, the Committee noted Mr Barr’s apparent involvement in decision-making about the release of Block 30. It asked Mr Ellis what led to the change, from being advised that Mr Barr had ‘called a halt’ to preparations for the sale to suddenly being advised that the sale should be advertised before the start of the caretaker period for the ACT elections later that year.[[504]](#footnote-504)
  2. Mr Ellis told the Committee that they had had ‘a great number of discussions’ with the relevant Deed Manager in ACTPLA. Deed managers were ‘critical’ to the expressions of interest process and sales, and governed ‘the way that these things operate’, making sure that arrangements were consistent with the *Planning and Development Act*.[[505]](#footnote-505) Initially, he told the Committee, they had been ‘throwing our hands up in the air and saying, “[w]e simply cannot achieve it”’. Then the Deed Manager said that it could be done by ‘a different mechanism, by loading up all the risks onto the purchaser’. Was different from the ‘normal government way where we do all these different studies that we normally do and de-risk a site entirely’. He saw this as ‘a key change’ in the attitude of ACTPLA, or at least of the Deed Manager ‘who was in control of these things’. He told the Committee:

We understood the process had to be one thing. We could never have achieved it in a certain time. Discussions with the deed manager subsequently would have shown that it was achievable. Then we said to the minister’s office, “We can actually get it done if we do it this way.” And that would have been the reason why we proceeded. But that would have been explained to the minister’s office.[[506]](#footnote-506)

##### Material departures from the terms of the RFT

* 1. The Committee noted that the Auditor-General had found that the terms of sale of Block 30 Section departed so far from the those of the RFT that it became a direct sale rather than a sale by tender. It asked whether there was a link between this and political pressure applied regarding the sale.[[507]](#footnote-507)
  2. Mr Ellis told the Committee that the Australian Government Solicitor’s advice referenced in the Audit report indicated that ‘the departure from the RFT such that it became a direct sale was only something threatened by changes made in 2014, not by the parameters of the deal in 2013’. He argued that only changes that were made later in 2014 had the potential to ‘contaminate’ the RFT, rather than those that arose during which the time he was responsible for negotiations.[[508]](#footnote-508)

### Successor to Director, Sustainable Land Strategy

* 1. The Committee sought to establish who took the lead for the sale process after the departure of Mr Ellis, who led negotiations between December 2012 and December 2013 before leaving his position in April 2014.[[509]](#footnote-509) It asked Mr Ponton this question, noting conflicting testimony on this point: Mr Drummond had told the Committee that Mr Stewart had taken over, while Mr Stewart said that he had not.[[510]](#footnote-510)
  2. Mr Ponton told the Committee that briefs prepared for consideration by the director-general or CEO of the time would show the names of the officers who prepared and signed-off on the brief, and this would indicate who had carriage of the sale.[[511]](#footnote-511) In light of this, he took the question on notice. However, when Mr Ponton answered the question, he advised the Committee that it was ‘unclear’ from the files reviewed by his Directorate which officer was project lead after Mr Ellis’ departure. ‘Ultimate responsibility’ for the sale of Block 30, the answer advised, lay with ‘the financial delegate’: that is Mr Dawes.[[512]](#footnote-512)

### Former Project Manager

* 1. The Committee asked Mr Drummond how he came to be involved with the sale of Block 30. He told the Committee that followed earlier tasks he had performed for the EDD, including managing an Expression of Interest process under the ACT government’s supermarket competition policy. He told the Committee that the EDD and the LDA ‘did not feel as though they had the capability of running an expression of interest process’. They were more comfortable with ‘running auction processes for the sale of land’.[[513]](#footnote-513)
  2. He told the Committee that selling ‘a block of land for a supermarket [was] not necessarily something that you just put straight to auction’: the expression of interest process was ‘typically a two-stage process’, first identifying ‘what and where the demand is coming from’, and then, second, providing an opportunity for offers to be modified to give the government a better outcome.[[514]](#footnote-514) The EDD and the LDA were looking for someone with previous experience in tender processes. As a result of the business at EPIC, they viewed him as someone who had ‘runs on the board’.[[515]](#footnote-515)
  3. When asked whether he was involved in the sale of Block 30 until its conclusion, Mr Drummond told the Committee that he was not. Soon after Mr Ellis left the EDD the project came under the management of Mr Stewart. He—Mr Drummond—had ‘little or nothing to do with it from that time’.[[516]](#footnote-516)
  4. When asked whether he had been ‘moved off’ the project, Mr Drummond told the Committee he did not believe so. It was simply the case that the EDD had selected a successful tenderer, and that the work at this stage was ‘about trying to finalise [the] transaction’.[[517]](#footnote-517)
  5. He left the role of Project Manager at about the same time as Mr Ellis left the ACT public service. After this he was ‘asked questions from time to time’, but ‘any active role’ on his part had finished with the departure of Mr Ellis. After this, he told the Committee, he ‘repositioned’ from the EDD to the LDA, where he continued to work under contract.[[518]](#footnote-518)

### ACT Government Solicitor

#### Audit report

* 1. According to the Audit report, in September 2014 and October 2014, negotiations for the land swap arrangement were underway between legal representatives for the Territory and the Tradies. On ‘at least two occasions’ the ACTGS had warned that accepting the Tradies’ concessions could result in diverging from the RFT so much that it was ‘a direct sale rather than the outcome of the RFT process’.[[519]](#footnote-519)
  2. The ACTGS sent an email to the EDD on 28 October 2014:

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

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

Whether the terms to the Tradies are “conditions materially similar to the conditions of the lease offered by tender” are a matter of degree and judgement, however, we have concerns that making any of the requested concessions may move the terms offered beyond what is “materially similar” to the original tender.[[520]](#footnote-520)

* 1. According to the Audit report, in October 2014 the former LDA Director of Sales (Mr Peters), and Deputy Director-General, EDD, (Mr Stewart) were provided with advice by the ACTGS indicating that ‘accepting the Tradies’ requested concessions posed a risk as it could result in the transaction being so divergent from the RFT that it was a direct sale rather than the outcome of the tender process’.[[521]](#footnote-521) On 19 November 2014, representatives from the ACTGS and LDA met with the Director-General, EDD, (Mr Dawes) to ‘discuss the Tradies’ requested concessions and how to proceed’. The Director-General then ‘agreed to the Tradies’ requested concessions’, but there was no documentary evidence of how ‘the risk of non-compliance with the *Planning and Development Act 2007* was reviewed by the Director-General and mitigated by the Economic Development Directorate at the time’.[[522]](#footnote-522)
  2. Despite this evidence, there was some difference of opinion, amongst people involved in the sale, as to whether the ACTGS had duly warned the former Director-General and the former Director, Sustainable Land Strategy (Mr Ellis). The former Director-General, EDD, told Audit that he did not recall ‘any of [his] staff putting to me that concerns identified by the [ACTGS] rose to the level of there being “significant risk” in relation to the negotiations or the validity of the tender process’. He advised that ‘no officer in the [ACTGS] ever contacted me directly with concerns regarding the negotiations: if they had, he ‘would have carefully considered them’.[[523]](#footnote-523)
  3. The former Director-General, EDD, noted:

documentary evidence referred to elsewhere in the report which indicates that the [ACTGS] provided significant advice to some officers of the EDD on the progress of negotiations in October 2014, as well as my own recollection that representatives of the [ACTGS] were present at critical junctures of the tender process. While the Probity Officer may not have been involved at all times, the [ACTGS] had oversight of the tender process in its dual role of probity and legal adviser.[[524]](#footnote-524)

* 1. Similarly, the former Director, Sustainable Land Strategy, advised Audit that:

… while there may have only been very limited involvement of the Probity Advisor … the involvement of staff of the [ACTGS] was routine and ongoing.

Indeed, officers of the [ACTGS] were actually embedded within EDD/LDA to facilitate easy access to their legal advice and guidance. Yet at no time did any of these legal advisers find that the process was conducted other than in the appropriate manner. Had they done so they would have alerted the Probity Advisor. This did not happen when I was managing the tender and the negotiation. Had they … ever made such a finding or recommended alternative actions to the ones that were proposed, I would have followed their advice without hesitation.[[525]](#footnote-525)

* 1. The ACTGS advice to Audit was quite different:

[ACTGS records] disclose that the involvement of the Probity Officer was limited and confined to responding to specific requests for discrete advice from representatives of the client. From our records, and as disclosed in the Schedule of Documents, there was no involvement of the Probity Adviser during the tender evaluation phase, and only very limited involvement in the tenderer negotiation phase.[[526]](#footnote-526)

* 1. While it was true, the ACTGS said, that ‘an outposted retainer arrangement [had] existed with the LDA at various times’, those officers ‘were there to assist in relation to specific matters upon which they received requests [or] instructions’. This arrangement ‘may have created an impression in the mind of some LDA officers that [the ACTGS] had oversight of all matters’, but this was not the case.[[527]](#footnote-527) The tender process was properly the responsibility of the individual Directorate, and the ACTGS could not be held responsible for guiding ‘the every action of officers’.[[528]](#footnote-528) Records showed ‘that the role of the [ACTGS] officers who were engaged as legal advisers was predominantly limited to the preparation and drafting of the applicable sale and purchase contracts, and other consequential legal documents’. Confirming this, a review of ACTGS records had demonstrated ‘only limited involvement by our office in the time period between the Request for Tender closing and instructions being received to prepare the relevant documentation for negotiation’.[[529]](#footnote-529)

#### Solicitor-General

* 1. In hearings, the Solicitor-General, Mr Garrisson, was asked further questions on the degree to which his office was involved with the sale of Block 30.
  2. He told the Committee that he regarded the sale as a ‘relatively straightforward transaction’, albeit with ‘a range of consequences which could flow from the size, the time frame that is required [and] its interaction with other government projects’.[[530]](#footnote-530) He told the Committee that he had ‘virtually no visibility on the day-to-day conduct’ of the sale: he was aware when instructions came in, and he received occasional updates from lawyers in his office.[[531]](#footnote-531) When asked with whom the ACTGS had dealt with at the EDD, Mr Garrisson indicated that ‘early in the piece’ it had dealt with Mr Ellis ‘and two or three others of [his] staff’, but was unable to recall whom the ACTGS had dealt with after Mr Ellis left the EDD.[[532]](#footnote-532)
  3. Mr Garrisson told the Committee that from November 2012 until the middle of 2013 his office had ‘no involvement whatsoever while the negotiations occurred’, and this was ‘quite normal’. In May and June 2013 there were ‘a couple of discrete issues’ on which advice the EDD sought advice.[[533]](#footnote-533) His office was next engaged when it received instructions at the end of December 2013 and early January 2014 advising that the sale was to proceed, terms had been agreed, and there was a need to negotiate the terms of the contract of sale. From this point, he told the Committee, his office was ‘quite vigorously engaged with the solicitors for the successful tenderer over the next 12 months in resolving those terms’.[[534]](#footnote-534)

##### Probity advisors and probity advice

* 1. Mr Garrisson told the Committee that one of the ACTGS’s functions was to provide ‘probity advice’. While there was a general perception that ‘somehow a probity adviser should be present at all meetings, present at every step of the process’, this was not the basis on which the ACTGS provided advice. Rather, this was an ‘on-demand service’, and the usual arrangement was to make a probity adviser ‘available for a particular transaction to respond to questions that are raised during the process’.[[535]](#footnote-535)
  2. The ACTGS provided ‘extensive training’ on probity. He told the Committee that the underlying view, also held in NSW and the Commonwealth, that a probity adviser was not ‘some form of insurance policy’. The essence of probity was ‘acting in good faith and complying with your legal obligations’. It depended on the officers of an agency ‘exercising their functions as they should’, rather than relying solely on probity advisors.[[536]](#footnote-536)
  3. In general, he told the Committee, the level of engagement of his office, and whether it provided probity advisers, depended on the level of complexity and risk attached to a project. By way of example, he told the Committee that:

we have had several major projects where we have considered that it is appropriate for there to be an external probity adviser engaged, which has been done in relation to projects at the moment. We have done it probably three or four times in the last couple of years, just where you think, “It has got a lot of documentation; it has got a number of moving parts,” and whilst, in essence, it might not necessarily be an inherently complex transaction, because of the number of moving parts it is best that you have someone external have a look …[[537]](#footnote-537)

* 1. He went on to say that the ACTGS ‘did not, do not and would not have a function of just generally overviewing the business of [an] agency’, which was the agency’s responsibility.[[538]](#footnote-538) The ACTGS provided ‘legal advice based on instructions’, and ‘the lawyers who were outposted to the LDA did exactly that’:

They would deal with a quick request, saying, “We’ve got this problem. What do we do?” They would also provide the conduit for more detailed instructions to be provided to our office in relation to a particular transaction. They keep a record of what they are asked and what they give, which is part of our record keeping. That is the way we work across the whole of government now.[[539]](#footnote-539)

* 1. At the time of the hearing, Mr Garrisson told the Committee, the ACTGS still had lawyers placed with government agencies, including procurement, providing ‘day-to-day legal advice or assisting in providing further instructions back to our office’. At the time this amounted to ‘about 10 lawyers outposted now across various agencies’, the purpose of which was to assist ‘the agencies with efficiencies’ and ‘to assist my office in reducing the volume of requests for legal advice that come in that could be deal with in a summary fashion’.[[540]](#footnote-540)
  2. When asked whether the ACTGS had lawyers embedded with the EDD or the LDA at the time of the sale of Block 30, Mr Garrisson told the Committee:

At that point we had, and indeed now we have, lawyers outposted to a number of agencies to assist them in dealing with requests for advice that they have. The precise role that they perform varies according to the agency. For example, the lawyers that we have in Access Canberra and in the Revenue Office have a different focus to the lawyers that we have in other parts of government. We did have lawyers that would regularly attend at the LDA. It was part of a regular routine.[[541]](#footnote-541)

##### Probity support for the sale of Block 30

* 1. When asked about probity support for the sale of Block 30, Mr Garrisson told the Committee that in practice it was ‘a bit hard to divorce that from legal advice because probity advice is really just a variety of that’, and that probity advice and support would ‘often be built into a range of things that you are doing’.[[542]](#footnote-542) Regarding Block 30, he told the Committee:

when we first got instructions in relation to the matter, which was in the middle of 2012, we took instructions, we settled the RFT and we drafted contracts and other documents for the tender process. That will have, as part of it, almost built in—particularly when you are settling the documents—benchmarks, mechanisms and processes which of themselves should support what one might term a framework of probity.[[543]](#footnote-543)

* 1. After the tender went out, his office provided probity advice, including by way of the probity adviser, including advice on ‘an addendum’, and ‘some questions and clarifications that had been sought’.[[544]](#footnote-544) However, he told the Committee, his office ‘did not give any advice during the evaluation process’: no advice was sought and, as was normal practice, no officer from his office attended meetings of the Tender Evaluation Panel.[[545]](#footnote-545)
  2. When asked whether the lawyers were not always physically present, Mr Garrisson told the Committee:

They were lawyers who were physically there for varying periods of time. It might have been a couple of days a week. I cannot recall exactly what our arrangements were at that point in time. But they were there to deal with specific requests for legal advice … [[546]](#footnote-546)

* 1. Mr Garrisson told the Committee that ACTGS lawyers were not ‘outposted there full time’. Rather, they would ‘only be there for two days a week and then they would come back to the office’, as they still had other work to attend to, including ‘some of the instructions that they got from the LDA when they were out there’.[[547]](#footnote-547) He went on to say that it was not correct to say that ACTGS lawyers were ‘embedded’, which implied that they ‘formed part of the business’: rather, they were present at the agency to ‘provide legal advice on call’.[[548]](#footnote-548)
  2. As noted above, Mr Garrisson told the Committee that his office was not much involved with the sale of Block 30 until late 2013 and early 2014, from which point it was instructed to negotiate the terms of contract for the sale and was then ‘quite vigorously engaged with the solicitors for the successful tenderer over the course of the next 12 months in resolving those terms’.[[549]](#footnote-549)
  3. Mr Garrisson told the Committee that:

When the commercial deal was crystallised at the end of December 2013 and the Tradies and EDD had decided, no, we have reached our deal, each of them then instructed their lawyers. My office was instructed by EDD, and Clayton Utz were instructed by the Tradies.[[550]](#footnote-550)

* 1. He commented that, in general, from this such a point in transactions ‘the finalisation of the terms of the documentation will proceed between the lawyers’. Consistent with this, at this stage negotiations were being conducted between the ACTGS writing and Clayton Utz, on behalf of their clients: the ACT government and the Tradies respectively.[[551]](#footnote-551) Lawyers representing the Tradies had written to the ACTGS asking for changes to the terms of contract. The ACTGS relayed these to Government, advising at the same time ‘you’ve got to be careful about how far you go’. It had ‘volunteered’ this advice, and would ‘always identify risks that may arise from particular courses of action and provide that advice’.[[552]](#footnote-552)

##### ACTGS advice on whether terms had departed from those of the RFT

* 1. In hearings, the Committee noted a paragraph in the Audit report which stated that the ACTGS had advised in October 2014 that accepting the Tradies’ requested concessions ‘posed a risk as it could result in the transaction being so divergent from the RFT that it was a direct sale’.[[553]](#footnote-553)
  2. Mr Garrisson told the Committee that in the course of negotiations, parties would often change their positions and that the ACTGS would provide advice on the changes. In mid-October 2014 consideration was given to ‘a series of changes that had been put forward by the successful tenderer’. There was capacity within the tender process to vary terms, although changes in terms brought a degree of risk. The ACTGS provided advice about this in an email saying, in effect, ‘Here are the changes they want. But in considering them, you’ve got to be careful that you don’t transgress’. He told the Committee that the advice was ‘put no higher than that’.[[554]](#footnote-554)
  3. If his office ‘had formed the view that there was such a departure from the original proposal as to create a legal risk for the territory’, it ‘would have taken steps to address that with the client’.[[555]](#footnote-555) The fact that the ACTGS did not advise to this effect showed that no substantive problem, regarding probity, had emerged as a result of the negotiations.[[556]](#footnote-556)

### The Tradies

* 1. In hearings, Mr Docker told the Committee that the ‘transaction was not a direct sale’ since ‘the government refused our application for direct sale in favour of a public tender process’.[[557]](#footnote-557) The valuation relied on by the Auditor-General was ‘inherently flawed’ and represented ‘a significant overvaluation of the block’.[[558]](#footnote-558) The market provided the best indication of value, reflected in the two tenders submitted, indicating that ‘the true value’ of the property was between $1.6 million and $2.22 million, and as a result the Auditor-General’s findings on value for money were incorrect.[[559]](#footnote-559)
  2. Mr Docker told the Committee that negotiations with the Government took place under ‘a normal post-tender process’ and that this was ‘an entirely ordinary commercial transaction’. Negotiations resulted in the Tradies increasing its offer ‘by almost $1 million in return for some concessions from the government’ and the Tradies provided ‘additional benefit’ to the government by including ‘land that the government was interested in acquiring’ in the transaction. As a result, the ‘best value for money outcome was for the Tradies to be selected as the preferred tenderer’.[[560]](#footnote-560)
  3. He told the Committee that ‘absolutely no-one’ was willing to pay more for Block 30 than the Tradies, and that it was incorrect to argue that the transaction was not a positive result for the government as the Tradies was ‘prepared to pay substantially more for the block than the value as determined by the market’. In addition, the Tradies had been disadvantaged in that it had not been able to settle on block 30 due to ‘the government’s determination to remain in total control of when settlement [was] to occur’.[[561]](#footnote-561)

##### Payment to CFMEU and other matters[[562]](#footnote-562)

* 1. The Committee asked Mr Docker to confirm and explain reports that soon after settlement on the contract of sale for Block 30 the Tradies transferred $3.8 million to the CFMEU.[[563]](#footnote-563) Mr Docker confirmed this and told the Committee that the only comment he could make about why it took place was that it ‘was part of the final negotiated position’.[[564]](#footnote-564)
  2. When asked why the Tradies had transferred $3.9 million to the CFMEU, Mr Docker told the Committee that this ‘had no relationship whatsoever to the land deal’:

The purpose of our organisation is very clearly articulated in the constitution of the Canberra Tradies club and our object is very clear: it is to provide the necessary support to our core object, which is the CFMEU. That is why we exist. The fact that money is transferred from time to time to the CFMEU—we do it on a regular basis—has no bearing whatsoever with regard to this transaction.[[565]](#footnote-565)

* 1. When the Committee noted that the payment ‘closely approximated’ the amount of money the Tradies received for the land swap, Mr Docker again told the Committee that this was ‘totally and absolutely coincidental’:

We transfer money and have for a long period of time, as we rightly can, with regard to donations and so forth. That has happened over the 10-year period since I have been the CEO. That was quite clearly coincidental and had absolutely nothing to do with the land deal that was done.[[566]](#footnote-566)

* 1. The Committee asked why the deal on Block 6 Section 72 took place so quickly: the parties signed the contract on 15 December and settlement took place four days later. Mr Docker told the Committee that this was due to the Tradies being ‘good at negotiating ordinary commercial transactions’.[[567]](#footnote-567)
  2. When the Committee suggested that this was not a usual period in which a settlement would occur, Mr Docker told the Committee:

it is not unusual that something is settled quickly after a negotiation process, depending on what sort of transaction it is. Quite clearly we had been through a convoluted process with government in negotiating this deal, and it reached a point where we were steadfast in progressing it. We made that, if you like, demand in our negotiation process. And clearly with advice, which I trust the government took from the Government Solicitor and so forth, it was considered to be quite an acceptable thing to do.[[568]](#footnote-568)

* 1. The Committee asked whether a transaction between the Tradies and the ACT Government could be considered arm’s-length when both had links to the CFMEU.[[569]](#footnote-569) Mr Docker told the Committee that it could:

My clear understanding of the way we approached it was exactly that. I believe the sensationalism and all the media reports about this transaction have been driven for reasons other than looking at purely the transaction itself. Again I repeat—and the Auditor-General has made this very, very clear—there was no impropriety in the way the Tradies conducted its business with the ACT government. What has happened, unfortunately, is that over the course of time, as the media has picked up these stories and run with clearly very one-sided views, it is almost like fiction becoming fact.[[570]](#footnote-570)

* 1. Asked if the Tradies or the CFMEU had special access to the ACT government, Mr Docker told the Committee:

In my time I personally have had no special access to government on any issues. I have been in this town for a long time, as you well know. From time to time I meet a lot of people, from the Chief Minister downwards. But I can further add that if the suggestion is that this was raised with government informally and privately, the answer is categorically no.[[571]](#footnote-571)

* 1. Mr Docker told the Committee that ‘the Tradies has no special access to any side of government and, certainly on my watch, never has’, and that ‘how the CFMEU operate with regard to their activities and what relationships they might or might not have back into the Labor Party is their business’.[[572]](#footnote-572)

### Committee comment

* 1. The evidence before the Committee showed that witness accounts were at odds regarding management responsibility for the sale of Block 30. Inconsistencies included:
* evidence provided by the Chief Minister stating that he had an arm’s length relationship with the sale of Block 30,[[573]](#footnote-573) which was at odds with evidence provided by Mr Dawes;[[574]](#footnote-574) Mr Ellis;[[575]](#footnote-575) and an e-mail chain made available to the Committee;[[576]](#footnote-576) [[577]](#footnote-577)
* evidence provided by the former Mr Stewart stating that he had very little to do with the sale of Block 30,[[578]](#footnote-578) which was at odds with evidence provided by Mr Drummond,[[579]](#footnote-579) and Mr Ellis;[[580]](#footnote-580)
* evidence provided by Mr Peters and Ms Forner, formerly of the LDA, stating that they had little to do with the sale of Block 30,[[581]](#footnote-581) which was at odds with evidence provided by the former Project Director, Urban Projects;[[582]](#footnote-582) and copies of emails provided in the Solicitor-General’s Answer to a Question Taken on Notice;[[583]](#footnote-583) and
* evidence provided by Mr Ellis stating that the Audit report had found that material departures from the terms of the RFT only occurred after he had been responsible for negotiations, which was at odds with findings of the Audit report which did not limit material departures from the original terms to that period.[[584]](#footnote-584)
  1. Some members of the Committee consider that these are significant contradictions. Contradictions between the Chief Minister’s evidence and that of other witnesses is important because it goes to the question of whether, and if so to what degree, political influence was applied, and the degree to which a minister of government was responsible for decisions which appear, in the account provided by the Auditor-General, to be questionable.[[585]](#footnote-585) [[586]](#footnote-586)
  2. Contradictions between the evidence of the former Deputy Director-General and that of other witnesses are important because he, in the absence of other information, may have been the officer with carriage of the sale of Block 30 in the second period of negotiation, from December 2013 to December 2014. During this time, there were significant departures from the terms of the RFT, such as the decision not to require the Project delivery Agreement and an associated bond of $1 million.
  3. The Committee notes that the former Deputy Director-General was reluctant to appear before the Committee. The Committee found it necessary to summons him to appear: a most unusual occurrence in the Legislative Assembly. When he did appear before the Committee, frequent statements to the effect that he could not recall relevant events reduced the value of his testimony.
  4. Contradictions in the evidence of witnesses, including the former Director, Sales and Marketing and the Senior Manager of Sales at the LDA, are important. They create doubt about the responsibilities of, and formal relationships between, actors involved in the sale of Block 30. There is still scope to consider what was the case.
  5. Contradictions between the evidence of the former Director, Sustainable Land Strategy and the account provided in the Audit report are important because the former Director’s account is not an accurate reflection of the legal advice quoted in the Audit report. An accurate understanding of that legal advice is critical to the question of whether, and to what degree, the terms of the sale of Block 30 departed from the terms of the RFT. An accurate understanding of the account provided in the Audit report is necessary to establish who was responsible for matters not conducted according to due process.
  6. These statements by the former Director, Sustainable Land Strategy appear designed to reduce perceptions that he may have been responsible for—at least some of—material departures from the terms of the RFT, and to attribute such departures to persons who had carriage of the sale process after he left the EDD in 2014.
  7. They are tempered, however, by the fact that the introduction of the land swap was in itself a material departure from the terms of the RFT. It was particularly so because it subsequently had significant implications for value for money achieved by the ACT government. The effect was to create a significant difference between terms offered at the time of the RFT to both parties who lodged tenders and the terms offered to the successful tenderer sometime after the close of the RFT process. In legal terms, this is contrary to the obligation which falls to entities putting projects out to tender that they conduct the tender process in good faith.
  8. These contradictions show that further investigation into the sale of Block 30 is warranted. While contradictions could also arise from time elapsed and poor record-keeping, some witnesses were not as forthcoming as the Committee expected.

## Legal aspects

### Background

* 1. Conduct of the tender for the sale of Block 30 followed a conventional pattern, involving:
* the release of a Request for Tender (RFT);
* responses on the part of the government to questions from potential tenderers;
* receipt of tenders by a nominated closing date;
* assessment of tenders lodged;
* awarding of the tender to the successful tenderer; and
* the ACT government and the successful tenderer concluding a contract of sale.
  1. A more contentious aspect of the conduct of the tender process was the negotiation conducted between the representatives of the ACT government and the Tradies as the preferred tenderer. The first phase of negotiations took place between December 2012 and December 2013, and the second between December 2013 and December 2014. That these took place was not in itself at issue: rather it was the degree to which the terms of the final contract diverged from those published in the RFT that was contentious.[[587]](#footnote-587)
  2. The Audit report raised several legal matters. Because the ACTGS acts on behalf of the ACT Government, it would constitute a conflict of interest if ACTGS were to advise the Auditor-General and, in any case, in this instance the ACTGS also came within the scope of the audit. As a result, when the Auditor-General came to prepare the Audit report, she sought legal advice from the Australian Government Solicitor’s Office.

### Changes in terms

* 1. The advice provided to Audit by the Australian Government Solicitor considered the scope of changes from the terms of the RFT to those agreed to in the contract of sale. According to the advice:

Tender negotiations are common in clarifying tender responses before acceptance. Clarifications are typically in relation to matters that have arisen during the tender evaluation, or variations or alternatives identified by the tender in its tender response, or some other matter referable back to the RFT … Tender negotiations can be complex, especially where complex services or equipment are being acquired.[[588]](#footnote-588)

* 1. It advised that in ‘the context of the sale of freehold or leasehold title, the scope of tender negotiations is usually much lower’. In this context matters subject to negotiation may include:
* delayed completion dates
* tenders submitted subject to zoning changes
* tenders submitted subject to development approval [and]
* tenders submitted subject to detailed due diligence.[[589]](#footnote-589)
  1. The ‘key constraint’ on tender negotiation was that ‘the items of negotiation [were] identified as part of the tender evaluation’. It allowed ‘the evaluation board to take these matters into account as part of their tender evaluation and recommendation to the delegate’: that is, before rather than after the tender award. However, in this instance, none of the matters identified had been ‘identified as qualifications or alternatives in Tradies tender response’. They were ‘after the event’ changes ‘designed to secure the valuation’.[[590]](#footnote-590)

### Whether process amounted to a direct sale

* 1. The advice provided by the Australian Government Solicitor and quoted in the Audit report considered whether the sale of Block 30 amounted to a direct sale. It noted that the *Planning and Development Act 2007* (ACT) provided that the Authority must not grant a lease by direct sale unless the Executive or relevant minister approved the grant and certain criteria were met, including ‘benefits to the ACT economy, contribution to social and cultural features or the achievement of major policy objectives’.[[591]](#footnote-591)
  2. The advice noted an exemption to these requirements. Under the ACT the Government may grant a lease by direct sale if the lease were ‘offered by tender but not sold’, and ‘a new lease…proposed that includes conditions materially similar to the conditions of the lease that were offered by tender’. According to the advice, however, this was not the case for Block 30, because it was not possible to view the modified terms as ‘materially similar’.[[592]](#footnote-592)
  3. The Australian Government Solicitor advised that the sale of Block 30 to the Tradies ‘could reasonably be regarded’ as a direct sale rather than the outcome of the RFT, due to significant departures from terms set out in the RFT. There was a ‘significant risk to the validity’ of the transaction because under section 240 of the *Planning and Development Act 2007* only the ACT Government had authority to approve a direct sale in such circumstances, and it did not.[[593]](#footnote-593)

### Potential breach of contract

* 1. Advice provided by the Australian Government Solicitor to the Audit Office considered whether offering different terms to different tenderers was a breach of contract; the EDD had the legal right to remove the requirement for a Project delivery Agreement and security bond; and whether such changes impinged on the rights and interests of the other tenderer, Fabcot Pty Ltd. The Australian Government Solicitor advised:

In the absence of a clear and explicit right to delete these requirements under the RFT conditions, it is doubtful that [the EDD] has the legal right to do this. This is because the RFT conditions create a ‘process contract’ that can only be varied with the consent of all parties in the process ie removal of these conditions may have needed the consent of Fabcot – who should have been given the opportunity to reprice their bid on the basis of the changed conditions. At the very least ED would owe a duty of good faith to both Fabcot and Tradies which requires that they be given an equal opportunity. It is debatable that good faith has been afforded to Fabcot when the change to the RFT conditions (and the right to reprice their bid) was only afforded to Tradies.[[594]](#footnote-594)

* 1. Regarding this, the Audit report put the view that while:

the RFT stated ‘LDA (sic) may at any time … cancel, add to or amend the information, requirements, terms, procedures or processes set out in this RFT’ it is noted that it only did so for one tenderer (the Tradies) and did not offer a similar opportunity to the other tenderer (Fabcot Pty Ltd). These circumstances meant the Economic Development Directorate should have carefully considered the need to cancel and restart the tender, but this did not occur.[[595]](#footnote-595)

### Legal doctrine on the conduct of tenders

* 1. The law of public sector tenders is complex. According to Seddon, a significant part of the tender process lies within the domain of contract law. To this extent, tenders belong to the domain of ‘private law’: concerning matters between two parties free to negotiate and enter into binding agreements as they see fit.[[596]](#footnote-596)
  2. On the other hand, ‘public law’ embodies the expectation that governments should deal with others, in the context of tender processes, in a fair, open and predictable manner. Public law also expresses the requirement that governments seek to achieve value for money through tender processes and conduct them according to agreed standards of probity. This is a more recent legal view of the tender process.[[597]](#footnote-597)
  3. Reflecting this two-fold character, remedies available to aggrieved parties may spring from common law or administrative law. Examples of the former are remedies sought under contract law or *estoppel* (‘detrimental reliance’).[[598]](#footnote-598) Examples of the latter are remedies such as those available under the *Australian Consumer Law*, where the government is ‘carrying on a business’.[[599]](#footnote-599)
  4. According to Seddon, there are adherents to both of these views in Australia. In Australia, public law has not been applied to tenders to the same degree as it has in the UK, Canada and the US, although these are jurisdictions to which Australia is most similar. In these other jurisdictions, there is a greater body of case law and statute which provides guidance on tenders from a public law perspective. In Australia, the ‘private law’ perspective on tenders is, on balance, dominant.[[600]](#footnote-600)
  5. The matter is far from settled: key judgements such as *Hughes Aircraft* (1997)[[601]](#footnote-601) have been delivered in Australia, drawing on precedents from other jurisdictions to support the view that tenders in Australia are subject to public law imperatives—such as openness, transparency and fair dealing[[602]](#footnote-602)—while other cases have supported a traditional view of tenders as primarily a sub-set of contract—that is, private—law.[[603]](#footnote-603)

As a result, Australian legal thought on tenders is mixed, in which some sources see tenders as part of contract law, in which ‘it is open to the parties to agree whatever they please’, ‘so long as it is not illegal’. Other perceive a greater role for public law and the view that contract law itself entails a ‘duty to act in good faith in the performance of a contract’, particularly for governments, a principle itself derived from the public law perspective.[[604]](#footnote-604)

### State of legislative provision

#### Background

* 1. According to the Audit report, the statutory framework for procurement activities in the Territory is established by the *Government Procurement Act 2001*, the *Government Procurement Regulation 2007* and ‘where relevant’ the *Planning and Development Act 2007*.[[605]](#footnote-605)
  2. The Report stated that the ACT Government Solicitor’s Office advised that the *Government Procurement Act 2001* did not apply to the sale as originally proposed. The Act was quoted in the Report only to provide ‘information on value for money principles’.[[606]](#footnote-606)
  3. This section considers potential sources of statutory guidance in the Territory for the sale of Block 30. It asks where a reasonable person would go in the statute book if they had responsibility for the sale—or a similar matter—and wished to establish clear legislative foundations for how they would proceed.

#### *Government Procurement Act 2001*

* 1. The *Government* Procurement *Act 2001* provides that *procurement*:
* ‘means the process of acquiring goods, services, works or property by purchase, lease, rental or exchange’, and
* ‘includes the process of disposing of goods, works or property including by sale’.[[607]](#footnote-607)
  1. The Act provides that a ‘territory entity must pursue value for money in undertaking any procurement activity’. *Value for money* ‘means the best available procurement outcome’,[[608]](#footnote-608) in pursuit of which the entity must have regard to, among other things:
* ‘probity and ethical behaviour’;
* ‘management of risk’; and
* ‘open and effective competition’.[[609]](#footnote-609)
  1. However, another section provides that the Act does not apply to ‘the grant of a licence or lease of land, or the sale of a lease of land’, under the *Planning and Development Act 2007*.[[610]](#footnote-610) In conducting the sale of Block 30, the ACT government did not need to comply with the *Government Procurement Act 2001.*

#### *Government Procurement Regulation 2007*

* 1. The *Government Procurement Regulation 2007* provides that a Territory entity ‘must invite public tenders for the procurement of goods, services or works if the total estimated value of the procurement is $200 000 or more’.[[611]](#footnote-611)
  2. While this provides guidance on the threshold for matters which must be put to tender, again the ACT government was not obliged to comply with this provision because the sale of Block 30 took place under the *Planning and Development Act 2007* and wasexcluded from obligations set out in the *Regulation*.[[612]](#footnote-612)

#### *Public Sector Management Act 1994*

* 1. At a more general level, the *Public Sector Management Act 1994* establishes the *public sector principles* as ‘the best practice principle’ and the ‘merit and equity principle’,[[613]](#footnote-613) and obliges a public servant to do his or her job ‘in accordance with the best practice principle’, met if he or she:
* works efficiently, effectively and constructively; and
* is responsive, collaborative and accountable; and
* makes fair and reasonable decisions.[[614]](#footnote-614)

#### *Integrity Commission Act 2018*

* 1. The *Integrity* Commission *Act 2018*, effective from 1 December 2019, may be considered a further source of legislative guidance. It defines *corrupt conduct* as being conduct that could constitute ‘a criminal offence‘; ‘a serious disciplinary offence’; or ‘reasonable grounds for dismissing, dispensing with the services of, or otherwise terminating the services of, a public official’; and includes any of the following:
* ‘exercise of the public official’s functions as a public official in a way that is not honest or is not impartial’;
* conduct that ‘constitutes a breach of public trust’;
* conduct that ‘constitutes the misuse of information or material’; and
* conduct that ‘adversely affects, either directly or indirectly the honest or impartial exercise of functions by a public official or a public sector entity’.[[615]](#footnote-615)
  1. The Act also makes provision for conduct that would constitute criminal behaviour.[[616]](#footnote-616)

### Committee comment

* 1. As noted above, the Audit report considered whether:
* the tender process for Block 30 amounted to a direct sale, due to differences in terms between those published in the RFT and those the ACT government and the Tradies negotiated;
* the ACT Government breached a process contract by negotiating different terms with one tenderer;
* markets were properly informed and tested; and whether
* the process achieved the stated objective.

#### Direct sale

* 1. The question of whether the sale amounted to a direct sale turns on the degree to which final terms diverged from those originally included in the RFT. This question engages the *Planning and Development Act 2007* and the *Planning and Development Regulation 2008*. It also engages the principal set out in *Hughes Aircraft* that the entity conducting the tender, if it is a public body, should ‘deal fairly with tenderers in the performance of that contract’.[[617]](#footnote-617)
  2. A key question is at what point terms were significantly different from those offered in the RFT. One way to think about this is to consider changes in dollar value between the final transaction and that originally envisaged. The original reserve price was $3.18 million. Changes included waiving a security deposit of $1 million, originally provided for under the Project delivery Agreement, and the inclusion of properties for a land swap to the value of $3.6 million. As a result, the final agreed transaction involved property worth about $6.8 million in total. It changed the transaction from one in which the successful tenderer would pay the ACT government $3.18 million to one in which the ACT government would pay the successful tenderer $414,000.[[618]](#footnote-618)
  3. The Chief Minister put the view that it was a ‘subjective judgement’ as to whether changes in terms were so ‘significant’ as to make it necessary for the decision to come back to Cabinet,[[619]](#footnote-619) however some members of the Committee believe that they were significant in that the final transaction was worth more than double that originally anticipated.[[620]](#footnote-620)
  4. According to the Audit report, the Australian Government Solicitor put the view that under s 240 of the *Planning and Development Act 2007*:

The relevant statutory condition [to the sale of Block 30] is that the Authority cannot grant a lease by direct sale, unless the lease was offered by tender but not sold, and a new lease is proposed that includes conditions materially similar to the conditions of the lease that were offered by tender…[[621]](#footnote-621)

* 1. In light of the above comparison of the original and final value of the transaction, it appears that the sale of Block 30 failed the test of having ‘conditions materially similar’. There are grounds for doubt as to whether the transaction satisfied the condition of ‘a lease of the land [having been] offered by tender but not sold’. There was no point at which representatives of the ACT government declared that the sale by tender had failed.[[622]](#footnote-622)
  2. This bears out the Australian Government Solicitor’s view that a direct sale took place without due authority under the terms of the *Planning and Development Act.* That this must call the validity of the sale into question. These matters should be clarified to provide certainty about the fate of Block 30 and the defensibility of business processes employed by the ACT government. The best way to do this is to seek an opinion from a lawyer eminent in the field.

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| Finding 3  Some members of the Committee find that it is unresolved whether the ACT Government’s sale of Block 30 Section 34 Dickson to the Canberra Tradesmen’s Union Club (the Tradies) departed sufficiently from the original request for tender so that it no longer met the requirements set out in Section 240 of the *Planning and Development Act 2007*.[[623]](#footnote-623) |

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| Recommendation 6  Some members of the Committee recommend that the Legislative Assembly for the ACT seek an independent legal opinion from a suitably qualified lawyer about the status and validity of the sale by the ACT Government of Block 30, Section 34 Dickson to the Canberra Tradesmen’s Union Club (the Tradies) and that the opinion be tabled in the Legislative Assembly by the last sitting day of July 2020.[[624]](#footnote-624) |

* 1. Regarding the obligation of public sector entities to ‘deal fairly with tenderers’, the value of the final transaction was double that originally proposed. The terms offered to the successful tenderer were thus significantly different from those encountered by the unsuccessful party. The Committee questions whether the ACT government met its common law obligations to ‘deal fairly’.[[625]](#footnote-625)

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| Finding 4  Some members of the Committee find that it is unresolved whether the ACT Government met its legal obligation to deal fairly with tenders when it offered terms to the Canberra Tradesmen’s Union Club (the Tradies) that were significantly different to those offered to Fabcot Pty Ltd as the other party responding to the Request for Tender for the sale of Block 30 Section 34 Dickson.[[626]](#footnote-626) |

* + - 1. Breach of contract
  1. The difference between the original terms of the RFT and those finally agreed is relevant to the question of whether the ACT government breached a process contract by offering different conditions to tenderers.
  2. It cannot be assumed that the ACT government was in breach of a process contract due to legal exclusions set out in the RFT. They appear framed to exclude a process contract. The Committee is not able to establish, conclusively, whether a process contract did or did not exist. As noted above however, in some legal cases undertakings which form the basis for a process contract have been found even where RFT documents have appeared to exclude them.[[627]](#footnote-627)
  3. Because these are matters of common law, it not possible for the Committee to determine whether the exclusions set out in the RFT documentation conclusively exclude a process contract. The Australian Government Solicitor asserts that the ACT Government breached a process contract when it offered significantly different terms to the Tradies to those it offered Fabcot Pty Ltd. It is not possible to evaluate the conduct of the tender against any statutory provision or guidance in the ACT. The only way to achieve clarity would be if Fabcot sought a remedy in the courts.
     + 1. Markets informed and tested
  4. The Australian Government Solicitor raised doubt on whether markets were properly informed and tested due when there was limited advertising of the RFT. This is relevant to the question of whether the tender process was impartial.
     + 1. Objective
  5. The question of whether the ACT government achieved its stated sale objective, that the tender would be ‘open to all interested parties and fully transparent’,[[628]](#footnote-628) is linked to the matters considered above. If terms differed significantly from those specified in the RFT, that such changes resulted in an unauthorised direct sale and breach of a process contract, and that markets were not properly informed and tested, it would engage the law of tenders. However, other matters even below this threshold would engage the expectation that governments should, in conducting tenders, be fair and open and achieve value for money. While not all expressions of this view are captured by the law of tenders, they are consistent with public law principles which have changed the face of legal reasoning on tenders in Australia.

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| Finding 5  Some members of the Committee find that the Economic Development Directorate, acting on behalf of the ACT Government, did not meet the stated objective that the tender for the sale of Block 30 Section 34 Dickson would be ‘open to all interested parties and fully transparent’.[[629]](#footnote-629) |

* + - 1. State of legislative provision
  1. The ACT statute book provides little guidance for the conduct of tenders, aside from setting a dollar threshold for when they must be employed.[[630]](#footnote-630) It means that there was a lack of legislative guidance for the sale of Block 30, and there could be again if a similar situation were to arise.
  2. It is symptomatic of this situation that the most specific guidance on practices to follow or avoid is provided in the *Public Sector Management Act 1994* and the *Integrity Commission Act 2018*. While such guidance is useful, it fails to provide direct and immediate guidance for officers conducting tenders or other disposal processes.
  3. The *Government Procurement Regulation* sets out useful principles, including providing that ‘procurement’ includes ‘the process of disposing of goods, works or property including by sale’, but then under Section 3A excludes matters conducted under the *Planning and Development Act 2007.* There is no explanation as to why Section 3A exempts transactions conducted under the *Planning and Development Act*: the Explanatory Statement for the Bill which inserted Section 3A merely states that the new section would ‘clarify that the Act does not apply to the grant of a licence or lease of land, or the sale of a lease of land, under the *Land (Planning and Environment) Act 1991* or the *Planning and Land Act 2002*’. This new section was also not discussed in the Assembly’s debate on the Bill.[[631]](#footnote-631)
  4. The Commonwealth Procurement Rules provide much more specific guidance on the practice of procurement—including definitions of key terms used in the requirement for ‘proper use and management of public resources’, where ‘proper’ means ‘efficient, effective, economical and ethical’. Again, there is an exclusion which provides that ‘procurement’ does not include ‘sales by tender’, with no further explanation.[[632]](#footnote-632)
  5. From the government point of view, such arrangements provide the greatest possible scope to enter into contracts as the Government sees fit. They do not, however, provide much in the way of guidance to officers entrusted with such transactions. They also fail to provide reasonable assurance that legislation guides officers and supports holding them to account.
  6. A better approach would be for the Government to forgo part of the broad scope it currently reserves to itself for entering into contracts in exchange for improved guidance and accountability.

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| Recommendation 7  The Committee recommends that the ACT Government propose amendments to legislation which, if passed by the Assembly, would provide comprehensive legislative provision and guidance on acceptable practice for the acquisition or disposal of land. |

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| Recommendation 8  The Committee recommends that the ACT Government propose amendments to legislation which, if passed by the Assembly, would provide comprehensive legislative guidance on the procurement and disposal of public assets, as in the *Commonwealth Procurement Rules*. |

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| Recommendation 9  The Committee recommends that the ACT Government propose amendments to legislation which, if passed by the Assembly, would provide comprehensive legislative guidance on the conduct of tenders by government. |

## Committee conclusion

* 1. Some members of the Committee take the view that EDD’s conduct of the sale of Block 30 did not meet reasonable expectations of due process and probity.
  2. The ACT Government undoubtedly needs a measure of discretion in entering into contracts to achieve acceptable business outcomes. However, the fact that the ACT Government is dealing with public money and assets means that further obligations must apply, including transparency and accountability. The Committee’s view is that a balance between commercial and accountability imperatives should be struck for transactions of this nature.
  3. This balance does not appear to have been struck with the sale of Block 30. The sale of Block 30 was dealt with as though it were a matter entirely for negotiations of a contract, negotiated by the EDD on behalf of the ACT Government, between the ACT Government and the Tradies, as if they were private parties. There were other—worthwhile—imperatives which came into play due to the use of a tender process to identify the buyer. Officers within EDD responsible for the sale gave these imperatives too little weight. The Committee believes, in the case of this transaction, this placed the principles of value for money, fairness, and probity at risk.
  4. As noted in this report, the final terms of the sale diverged considerably from those advertised in the RFT. It calls into question the validity of the sale, as ACT statute precludes the direct sale of land by the ACT Government unless certain conditions are satisfied. It is vital that the status of the sale and the land involved be clarified.
  5. EDD officers’ conduct appears to have stemmed from a lack of legislative guidance for the conduct of tenders, resulting in those officers operating with the greatest possible scope to enter into contracts as they saw fit. This lack of legislative guidance on the conduct of tenders, and for the disposal of land owned by the ACT Government, continues to persist. The ACT Government must respond to these legislative gaps.
  6. Because this inquiry raises issues which the Committee does not have scope to adjudicate, the Committee will refer the sale to be considered by the ACT Integrity Commission.
  7. Ms Cheyne MLA and Ms Cody MLA asked that the report show that they did not support the present section of the report.

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| Recommendation 10  Some members of the Committee recommend that the ACT Integrity Commission investigate the ACT Government’s sale of Block 30, Section 34 Dickson to the Canberra Tradesman’s Union Club (the Tradies).[[633]](#footnote-633) |

Vicki Dunne MLA  
Chair

Dissenting comments by Tara Cheyne MLA and Bec Cody MLA

There are only sections of the report where agreement could not be reached. These are outlined below:

Chapter 2, paragraphs 2.61, 2.62 and 2.63.

As noted at Footnote 97 in the Report, the proposed release of Block 30 Dickson had been public knowledge for some time and the timing of the Brief going to Cabinet would have been influenced by a range of factors. The Committee did not hear evidence that the timing of the release was influenced by the impending caretaker period.

Although the links between ACT Labor and many ACT unions is common knowledge, it is patent that the RFT process was managed by Agency officials and had no known ministerial involvement. This is consistently supported by statements made by Mr Andrew Barr MLA in public hearings, together with evidence provided by Mr Ponton in a response to a question taken on notice.[[634]](#footnote-634)

Chapter 5, paragraph 5.109, 5.111.

Although we agree with the Auditor-General that there were a number of changes made to the RFT during negotiations, we do not agree that these departures resulted in a doubling of the dollar value of the transaction. As the Solicitor-General’s office was involved in the final stages of negotiation, it would be presumed permissibly likely that the tender should continue.

Chapter 6, 6.93 through to 6.100.

This section outlines specifically the inclusion of payments made by the Canberra Tradesmen’s Union Club (The Tradies) to the Construction, Forestry, Mining and Energy Union (CFMEU). This information was never included in the Audit report and has no bearing on the negotiations during the RFT or on the final outcome. Ms Bec Cody MLA objected during the hearings when this line of questioning was raised.[[635]](#footnote-635) The evidence is clear that the payments were coincidental[[636]](#footnote-636). The inclusion of this section of the report is irrelevant, with no bearing on any other part of the inquiry.

Chapter 6, 6.101 through to 6.102.

The evidence is not inconsistent and it was erroneous for the Committee to form this view.

Chapter 7, paragraph 7.31.

We believe the way this evidence has been presented is misconstrued. The transcript reflects that Mr Andrew Barr MLA was noting there are different views about whether the variance was substantially modified or not, and that the decision on whether to bring the sale back to Cabinet rested with the Director-General.[[637]](#footnote-637)

Conclusion.

While there are elements of the Conclusion with which we agree, taken as a whole the Conclusion represents a view which is inconsistent with where we have raised concerns in the body of the report.

We note evidence that negotiations were undertaken in good faith between the Economic Development Directorate (EDD) and the Tradies, and between these two entities alone. While conducted in good faith, the lack of legislative guidance resulted in EDD officers operating with the greatest possible scope to enter into contracts as they saw fit. A culture within EDD that did not put enough emphasis on record-keeping is a major concern. We have supported findings which reflect these issues, and recommendations to address them.

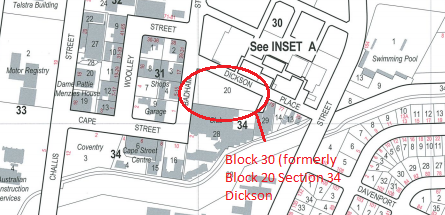
The transaction, RFT and subsequent negotiations were commenced almost eight years ago, and lasted for over two years (with the Tradies still not taking ownership of Block 30 Dickson). They have been subject to significant media scrutiny, Auditor-General scrutiny, Opposition scrutiny and now Committee scrutiny, with no evidence of corruption or inappropriate conduct. For this reason we do not support the final recommendation.

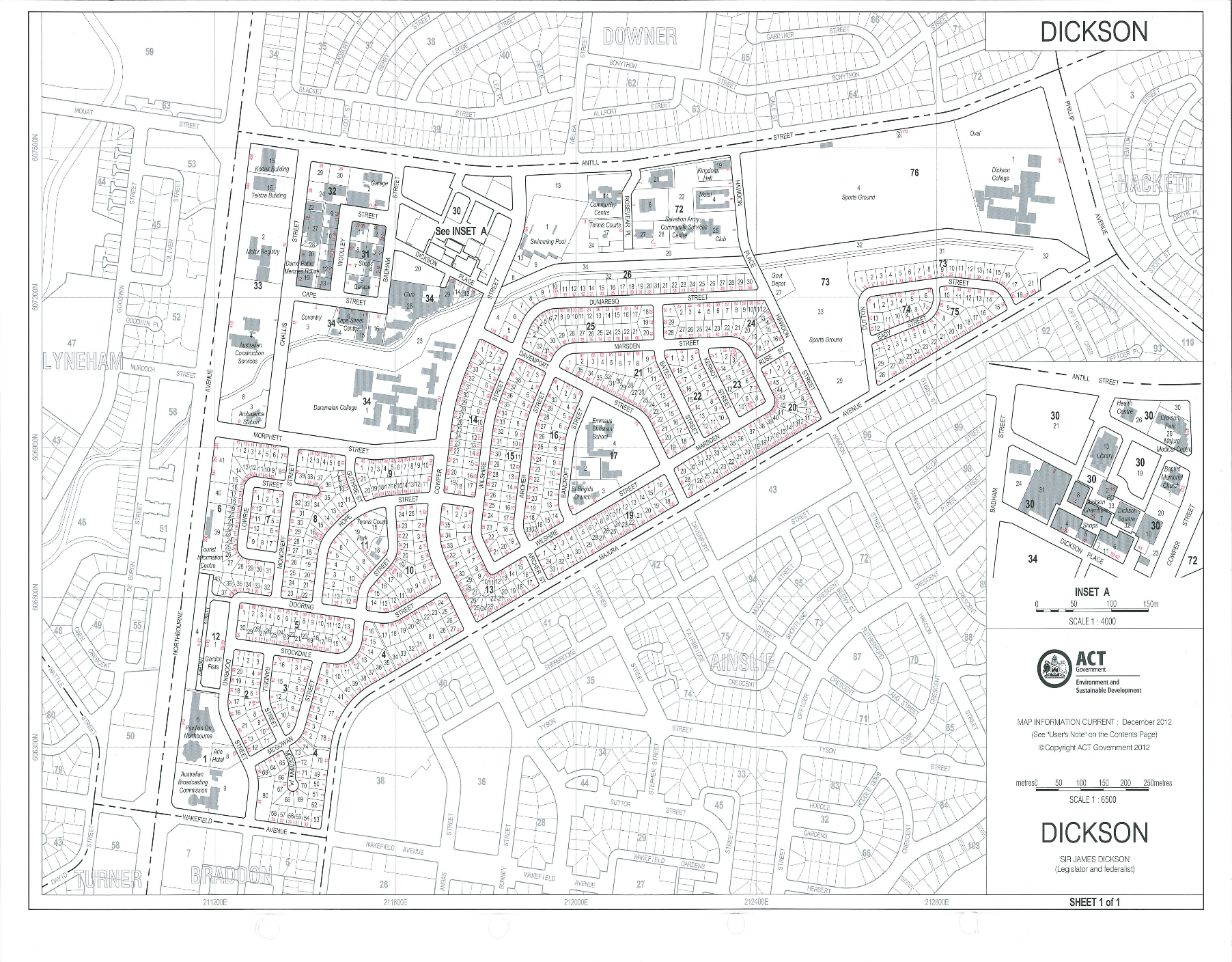
We support Finding 1 and Recommendations 3, 4, 5, 7, 8 and 9.

We dissent from Findings 2, 3, 4 and 5 and Recommendations 1, 2, 6, and 10.

## Appendix A – Map showing Block 30 Section 34 Dickson

Detail from ‘Dickson’ in ACT Government, Environment and Sustainable Development, *Maps of Canberra by Suburbs and ACT Districts* (2013) [un-paginated]. See the following page for full map.



‘Dickson’ in ACT Government, Environment and Sustainable Development, *Maps of Canberra by Suburbs and ACT Districts* (2013), [un-paginated].

## Appendix B – Map showing Section 72, Dickson

A picture containing text, map

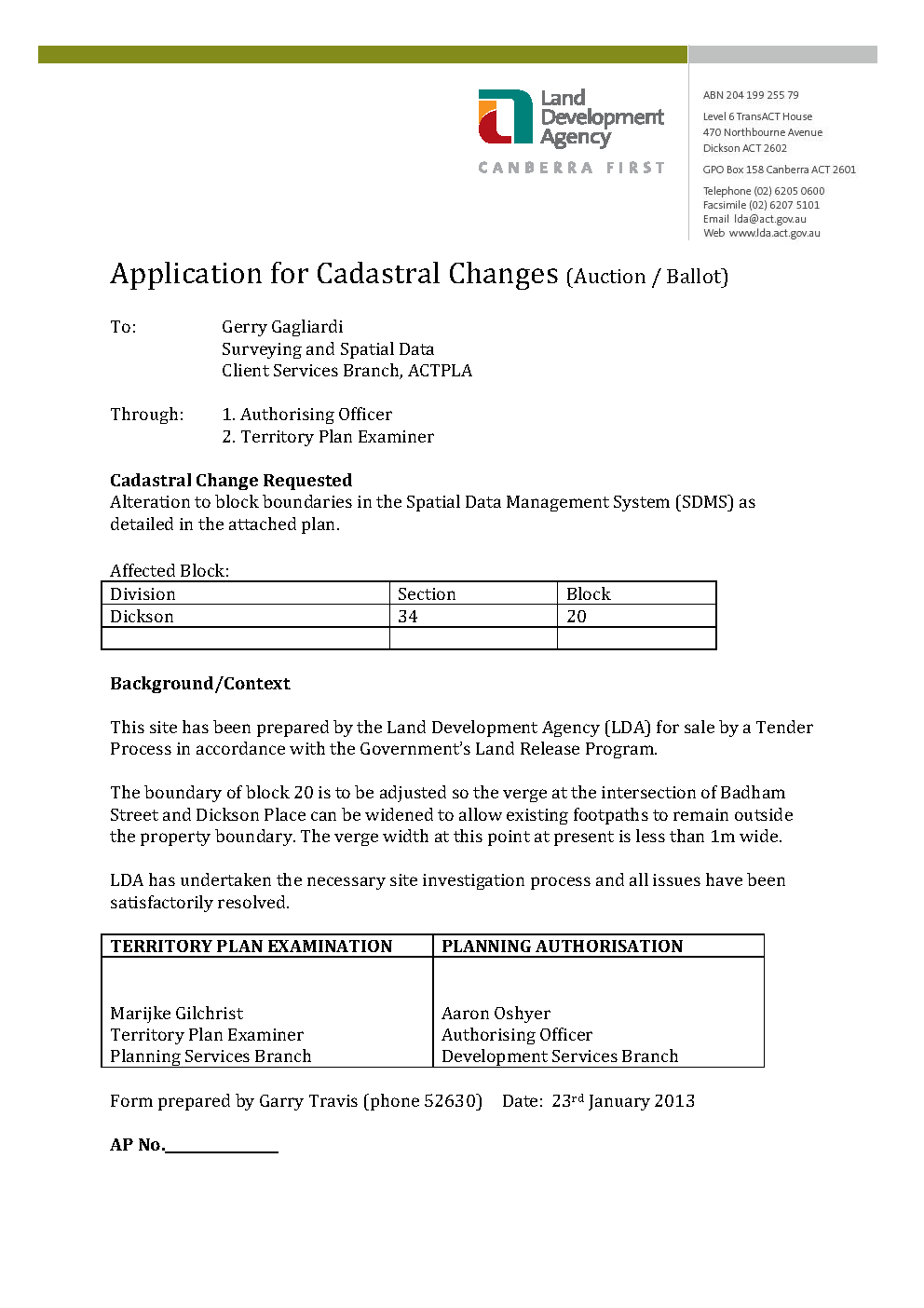
Description automatically generated

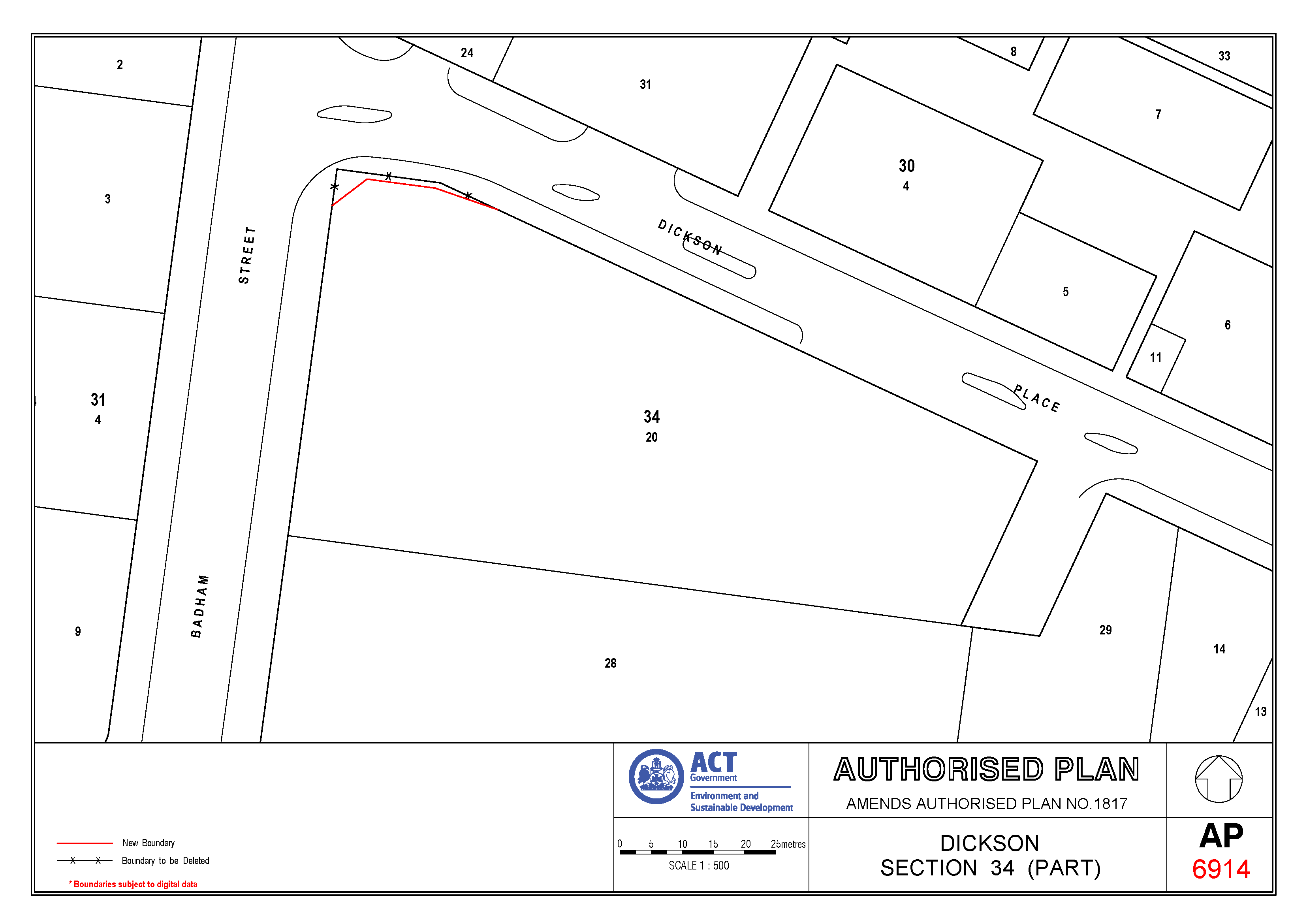
## Appendix C – Name change from Block 20 to Block 30

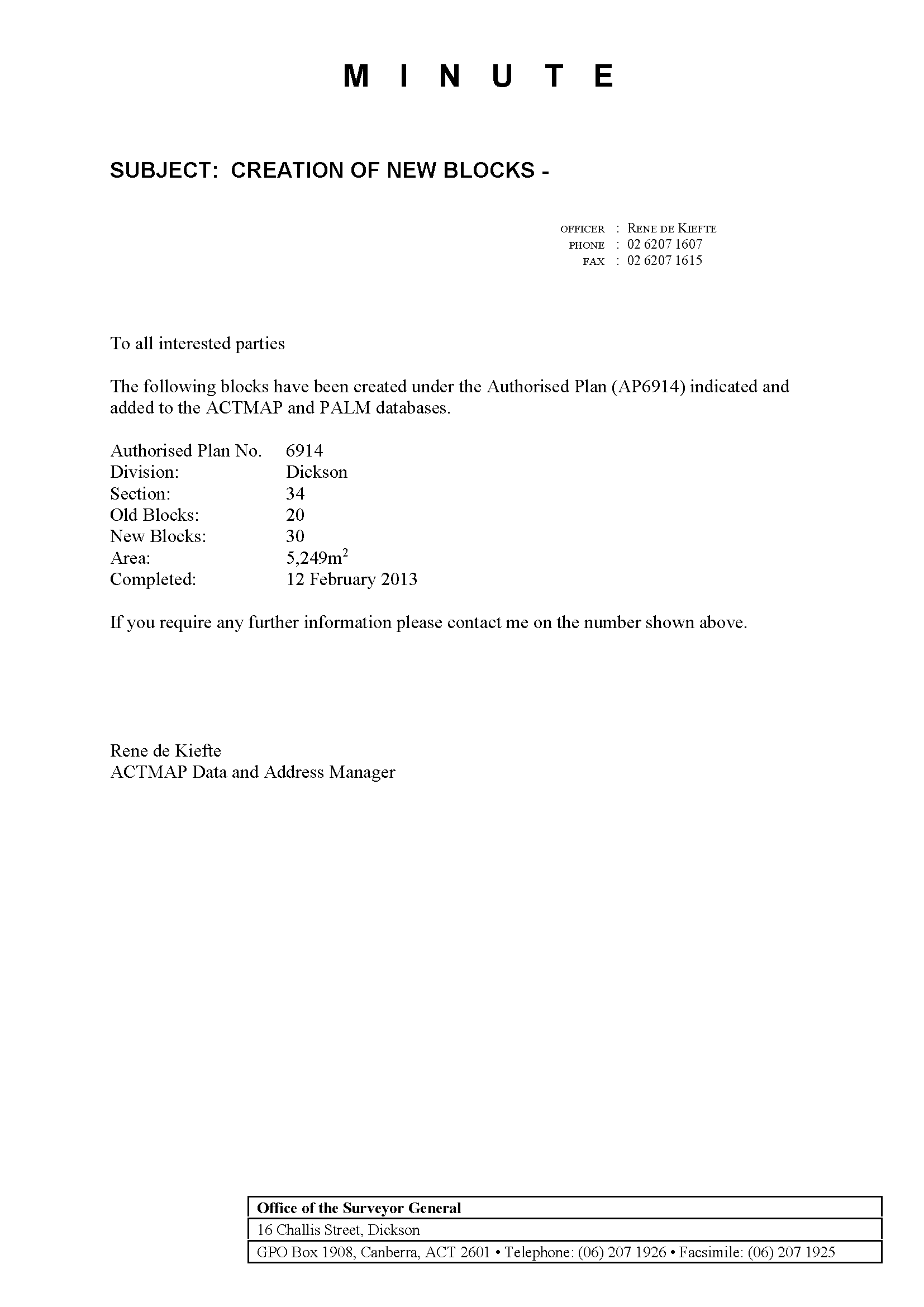
The following documents, provided to the Committee on 31 January 2020, show how and why the Block 20 Section 34 Dickson was renamed ‘Block 30 Section 34 Dickson’.

They are:

* A document entitled ‘Dickson B20 S34’, which is an Application for a Cadastral Change. It states that that the ‘boundary of Block 20 is to be adjusted so the verge at the intersection of Badham Street and Dickson Street can be widened to allowing existing footpaths to remain outside the property boundary’ and noting that the ‘verge width at this point is less than 1m wide’.
* A document entitled ‘Dickson S034 B0020 Authorised Plan (A7959286), which is a map showing the re-drawing of the boundary of the Block.
* A document entitled ‘AP6914 Completion Report (A7990428)’, documenting the creation of the new Block 30 Section 34 Dickson.







## Appendix D – Hearings and witnesses

Wednesday, 23 May 2018

* In camera hearing

Wednesday, 30 May 2018

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

Wednesday, 11 July 2018

* Mr Robert Docker, Chief Executive Officer, Tradies Group

Wednesday, 5 December 2018

* Mr Stephen Brennan, former Chief Financial Officer, Tradies Group
* Mr David Dawes, former Director-General, Economic Development Directorate, and former Chief Executive Officer, Land Development Agency
* Mr Greg Ellis, former Director, Sustainable Land Strategy, Economic Development Directorate

Thursday, 6 December 2018

* Ms Julia Forner, former Senior Manager, Sales, Land Development Agency
* Mr Peter Garrisson SC, Solicitor-General for the ACT
* Mr Graham Mundy, Project Director, Urban Projects, Urban Renewal, Environment, Planning and Sustainable Development Directorate (EPSDD)
* Mr Clint Peters, former Director, Sales, Land Development Agency
* Mr Stephen Terracini, Manager, Valuations and Estate Management, Urban Projects, Sales and Marketing, Suburban Land Agency, Environment, Planning and Sustainable Development Directorate (EPSDD)
* Mr Ian Wood-Bradley, former member, Tender Evaluation Panel

Wednesday, 12 December 2018

* Mr Ben Ponton, as Chief Planner, ACT Planning and Land Authority
* Mr Greg Ellis, former Director, Sustainable Land Strategy, Economic Development Directorate

Friday, 22 March 2019

* Mr Andrew Barr MLA, Chief Minister, Treasurer, Minister for Social Inclusion and Equality, Minister for Tourism and Special Events and Minister for Trade, Industry and Investment
* Mr Richard Drummond, former Project Manager, Economic Development Directorate
* Mr Andrew Loveday, representative of Fabcot Pty Ltd
* Mr Ben Ponton, as Director-General, Environment, Planning and Sustainable Development Directorate (EPSDD)
* Mr Dan Stewart, former Deputy Director-General, Economic Development Directorate

## Appendix E – Response to a Question Taken on Notice

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| Please note:   * Identifying headers for emails added after-the-fact are formatted in **bold green**. * Notations not originally present in email are provided in plain (un-bolded) green. * In the notated email of 10:35 AM 19 September 2014, below, notations provided by Katrina Andric is provided in red and the original text provided by the Senior lawyer at Clayton Utzis provided in blue. * Emails are presented here in chronological order, with the exception of the notated email of 10:35 AM 19 September 2014, which follows immediately after the email of 21 October 2014 11:15 AM, which provided the notated email. This is a different order to that in which they were provided by the Solicitor-General. |

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| **Email of 15 April 2014 12:36 PM from Officer A, ACTGS, to Officer B, ACTGS**  From: xxxx  Sent: Tuesday, 15 April 2014 12:36 PM  To: xxxx  Cc: xxxx  Subject: Block 20 Section 34 Dickson - probity  Dear xxxx  Thank you for speaking with me today regarding the RFT for Block 20 Section 34 Dickson.  As discussed, I met with staff from the LDA earlier today regarding the sale of the site to the Tradesmen’s Union Club. LDA have requested our advice in respect of any probity issues that may arise from the following:  - LDA have decided that the Project delivery Agreement which was included in the RFT is no longer required and would like this removed from the contract.  - LDA would like to settle the sale this financial year. This means that the special condition regarding a delayed completion will be removed, however LDA would still like to ensure that the car park on the land continues to be operational until the nearby land which was recently purchased by Coles has been redeveloped. This, in turn, also means that LDA would like to extend the ’completion covenant’ in the Crown lease to ensure that the time reasonably required by the Tradesmen’s Union Club to develop the site does not run out while they are being required to keep the car park open.  I understand that you do not consider that those issues raise any probity concerns and would be grateful if you could please provide your view.  Thank you  xxxx, Solicitor, ACT Government Solicitor | | |
| **Email of 15 April 2014 1:40 PM from Officer B, ACTGS, to Officer A, ACTGS**  From: xxxx  From: xxxx  Sent: Tuesday, 15 April 2014 1:40 PM  To: xxxx  Cc: xxxx  Subject: RE: Block 20 Section 34 Dickson - probity  ACT GOVERNMENT SOLICITOR  (see confidentiality notice below)  Dear xxxx  I confirm that I have no probity concerns in relation to what is proposed. In the case of this particular sale by tender process, there was only one tenderer. Had there been other tenderers we would have needed to analyse more closely to what extent what is proposed differs in substance from what was set out in the RFT, and to consider those other tenderers' expectations to be invited to tender again on the basis of substantively revised provisions.  In any event I would think that the RFT include very broad-ranging discretions for the Territory including to negotiate with any entity.  Regards  xxxx  xxxx I xxxx I ACT Government Solicitor | | |
| **Email of 19 September 2014 9:30 AM from Officer C, ACTGS to the** Senior lawyer at Clayton Utz  From: xxxx  Sent: Friday, 19 September 2014 9:30 AM  To: xxxx  Cc: xxxx  Subject: Block 30 Section 34 Dickson - Crown lease  ACT GOVERNMENT SOLICITOR  (see confidentiality notice below)  Dear Alfonso  We refer to your email dated 2 September 2014. Please find attached the amended specimen Crown lease and our response to the Tradies's concerns in the table below. | | |
|  | Clayton Utz comments | LDA’s Response | |
| 1 | Permitted uses should also include (based on a document I have dated December 2013 setting out some principles/heads of agreement) car park (noting that the car park may be run independently of other uses and therefore not (arguably) ancillary | Car parking is only permitted as an ancillary use to the permitted uses on the block. | |
| 2 | Commercial accommodation (not limited to hotel) | This was a requirement of the RFT. | |
| 3 | Community use (not limited to community activity centre) | This was a requirement of the RFT. | |
| 4 | Office limitation was 4,000 sqm and was limited to first and above (not just first floor) | Amended to reflect Dickson Precinct Code. | |
| 5 | Shop had no limitation on areas for supermarkets or shops selling food (limited to 300 sqm) | Rule 13.2 of the commercial development code notes the GFA for a supermarket is limited to 300 sqm. The Crown lease was endorsed in reference to DV 312 where shops selling food (including restaurants) was limited to 300 sqm. | |
| 6 | Line A I don't understand what this is intended to represent. | Line A is the boundary of the block. This is a standard notation in ACTPLA leasing plans, but is not referenced in the Crown lease. | |
| 7 | Area B appears to be larger than 1300 sqm contemplated for the pedestrian plaza and shown on variation 311. f note there is a registered DP do you know If this area (Area B) has been surveyed?  In addition do you know why it extends from the edge of the proposed plaza down Badham Street? In figure two this Is a primary active frontage again I think it might be an error In the plan to Include It In the pedestrian plaza I note that the proposed access easement is unlimited as to height over all of Area B?  We had agreed that a basement car park under Area B was permitted but arguably this area is limited to a pedestrian Plaza based on wording of 3(b) | This plan was modelled on figure 2 of the Dickson Precinct Code.  The plan is not a surveyed plan and the hatched area is only intended to cover 1300sqm for the required pedestrian plaza.  ACTPLA has agreed to remove the "tail" from the plan.  With respect to the concern raised that underground car parking will not be permitted under Area B we respectfully disagree. Provided the surface of Area B is available for pedestrian plaza there Is nothing in the Crown lease which purports to restrict its underground use. | |
| 8 | Area C relates to blocks 28 and 29 and therefore all references to it need to be removed from the lease (which only relates to Block 30).  The plan legend contemplates that there is only one Crown lease over blocks 28, 29 & 30?  Note that the Area C as identified would have the effect of prohibiting the existing club use through the middle of existing buildings located on Blocks 28 & 29. | We don't accept that the legend contemplates any particular number of leases over Blocks 28, 29 and 30 Section 34 Dickson. The Intention of clause 3(b) concerning Area C is to ensure that, to the extent that there are improvements which straddle Blocks 28 and 30 Section 34 Dickson, such improvements must satisfy the purposes set out in clause 3(b). To the extent that any building Is wholly confined within Block 30 Section 34 Dickson the reference to Area C does not apply.  The purpose for this requirement stems from the terms of the RFT and Tradies tender. In particular, the Tradies is required to construct a pedestrian access way from Badham Street to Dickson Place with a minimum width of 11 metres. The RFT was silent on the location for that access way, however, as the owner of Blocks 28 and 29, Tradies is in a position to create the access on the southern and eastern boundaries of Block 28 Section 34 Dickson passing through Block 29 Section 34. Any building with frontage to that access way was intended to be used for one of the purposes listed in clause 3(b). | |
| **Email of 21 October 2014 11:15 AM from Officer C, ACTGS, to a senior lawyer at Clayton Utz**  From: xxxx  Sent: Tuesday, 21 October 2014 11:15 AM  To: [a senior lawyer at Clayton Utz]  Cc: xxxx  Subject: Block 30 Section 34 Dickson - Crown lease  Dear xxxx  Please see our response in red below.  Kind regards  xxxx I Solicitor I ACT Government Solicitor  [Copy of email from Senior lawyer at Clayton Utz of 10:35 AM 19 September 2014, notated by Officer C, ACTGS, as indicated above, follows – original text is in blue, notations are in red]  From: [a senior lawyer at Clayton Utz]  Sent: Friday, 19 September 2014 10:35 AM  To: xxxx  Cc: xxxx  Subject: RE: Block 30 Section 34 Dickson - Crown lease  [[Senior lawyer at Clayton Utz] (original)]:  Hi,  I am not sure of the relevance of the tender in light of the negotiations in this matter which relate to what is effectively a land swap.  The commercial discussions between my client and Greg Ellis as evidenced by various drafts of a discussion paper (last version issued in December 2013) stated that the crown lease would include the following:  The Crown Lease Purpose Clause is to read as follows:  To use land for one or more of the following:  (i) business agency;  (ii) car parking;  (iii) club;  (iv) commercial accommodation;  (v) community use;  (vi) drink establishment;  (vii) financial establishment;  (viii) indoor entertainment facility;  (ix) indoor recreation facility;  (x) office LIMITED TO a maximum combined gross floor area of 4,000 square metres and RESTRICTED TO the first floor and above;  (xi) parkland;  (xii) pedestrian plaza;  (xiii) place of assembly;  (xiv) public agency;  (xii) residential use RESTRICTED TO the first floor and above;  (xvi) restaurant, or  (xvii) shop  PROVIDED THAT not less than 1,300 square metres of parkland shall be provided on the land and at all times accessible to the public;  GFA: That the combined gross floor area of all buildings erected on the land shall not exceed 14,000 square metres PROVIDED ALWAYS that the maximum gross floor area for the use of office shall be 4,000 square metres;  It is my understanding that the value was based on these uses.  [Officer C, ACTGS:] We are not aware of any such discussions and have not seen the extract from the Crown lease included above. As noted previously, car parking is only permitted as an ancillary use to the permitted uses on the block.  [Senior lawyer at Clayton Utz (original)]: If uses are restricted by the Territory Plan then that is fine but that would seem to mean that there is no need to put them in the crown lease?  [Officer C, ACTGS:] The permitted uses are generally consistent with the zoning. However, ACTPLA does not grant a general right to do anything permitted under the zoning.  [Senior lawyer at Clayton Utz (original)]: The Plan - Area C in particular makes no sense In my view as it relates to a different block and is not tied to the Crown Lease.  [Officer C, ACTGS:] The plan annexed to the specimen Crown lease will be amended to remove reference to "Area C" and the following will be removed from the purpose clause:  PROVIDED THAT the ground floor of any building facing Badham Street and the area shown by cross hatching identified as 'C' on the legend on the plan annexed hereto ("the plan") shall only be used for one or more of the following:  (A) club;  (B) drink establishment;  (C) hotel;  (D) indoor entertainment facility;  (E) indoor recreation facility;  (F) restaurant; and  (G) shop  [Senior lawyer at Clayton Utz (original)]: I am not sure why you refer to DV132 when it is variation 311 that applies <http://www.legislation.act.qov.au/ni/2013-208/20130503-55143/pdf/2013-208.pdf>  [Officer C of GSO:] Noted  [Senior lawyer at Clayton Utz (original)]: The land is in a CZ3 zone which permits car parking as a stand alone use so why are you seeking to restrict to ancillary?  [Officer C, ACTGS:] As noted above, car parking is only permitted as an ancillary use to the permitted uses on the block.  [Senior lawyer at Clayton Utz (original)]: In relation to the plaza the purpose clause says:  To use the land for the purpose of a pedestrian plaza on the corner of Badham Street and Dickson Place with a minimum gross floor area of 1,300 square metres  All I want to do is clarify that that area can also be used as a car park.  [Officer C, ACTGS:] The clause reads:  "To use the land for the purpose of a pedestrian plaza on the corner of Bad ham Street and Dickson Place with a minimum gross floor area of 1,300 square metres and IN ADDITION the premises may also be used for one or more of the following purposes"  [Officer C, ACTGS:] This does not prohibit a subterranean car park to be constructed under the plaza.  [Senior lawyer at Clayton Utz (original)]: Can we please arrange another meeting and discuss this (with clients) as what you have stated in the email does not reflect my client's understanding of what was agreed.  I am sure everyone is keen to finalize this matter.  [Senior lawyer at Clayton Utz]  Clayton Utz  Level 10, 2 Phillip Law Street | | |
| **Email of 21 October 2014 11:42 AM from** Senior lawyer at Clayton Utz **to Officer C, ACTGS**  From: xxxx  Sent: Tuesday, 21 October 2014 11:42 AM  To: xxxx  Cc: xxxx  Subject: RE: Block 30 Section 34 Dickson - Crown lease  Hi,  I have discussed with my client who has asked that I request a meeting with your client to discuss this as they feel the lease does not reflect what was previously agreed.  Issues to be discussed are set out below,  **Permitted use**  Why the limitation to 2,000 sqm office?  Why is car park not permitted as a stand alone use?  Why are some of the uses that were on the original discussion paper not included?  I am not seeking a general right "any use permitted under the Territory Plan" just trying to understand what is motivation behind excluding some uses.  Please note that I have had issues before where parking is charged and managed by an Independent operator as the operator wants certainty and are concerned about references to "ancillary".  **Pedestrian plaza**  Clause 3(d) refers to pedestrian access (can we limit this to "ground level" please)  The area uses GFA as a measurement which is wrong as it should be an area (GFA needs walls) i.e. delete "gross floor" in clause 3(b).  [Senior lawyer at Clayton Utz]  Clayton Utz  Level 10, 2 Phillip Law Street | | |
| **Email of 22 October 2014 12:31 PM from Officer C, ACTGS, to** Senior lawyer at Clayton Utz  From: xxxx  Sent: Wednesday, 22 October 2014 12:31 PM  To: xxxx  Cc: xxxx  Subject: Block 30 Section 34 Dickson - Crown lease  Dear xxxx  It was LDA's understanding that there was only a couple of outstanding issues on this matter.  In relation to the limitation of 2,000ml for the use of office, as discussed previously there is a discrepancy between the Development Code (which limits office GFA to 2,000m2) and the Precinct Code (which limits office GFA to 4,000m2). As noted in previous correspondence, LDA has addressed this concern and amended the Crown lease to allow for the higher limit of 4,000m2 permitted under the Territory Plan.  In relation to car parking, we are not aware of discussions following the release of the RFT that permits car parking as an independent use. Car parking is only permitted as an ancillary use to the permitted uses on the block.  Likewise all uses permitted in the specimen Crown lease are what was provided in the RFT. We are not aware of any a [*sic*] "discussion paper" which allowed uses outside of what is in the specimen Crown lease.  In relation to your proposed amendment to the pedestrian plaza, we agreed to amending 3(d) to limit the pedestrian plaza to the ground floor and amending the wording to refer to Area in the place of GFA.  LDA does not believe that it has limited uses without cause. All uses permitted under the Crown lease are what was contained in the RH or agreed to in consequent discussions.  Without clarity on the outstanding issues LDA does not believe a meeting is necessary at this stage.  Kind regards  xxxx, Solicitor, ACT Government Solicitor | | |
| **Email of 22 October 2014 1:10 PM from** Senior lawyer at Clayton Utz **to Officer C, ACTGS**  From: xxxx  Sent: Wednesday, 22 October 2014 1:10 PM  To: xxxx  Cc: xxxx  Subject: RE: Block 30 Section 34 Dickson - Crown lease  Subject: RE: on 30 Section 34 Dickson - Crown lease  Hi,  Office - sorry I can‘t recall seeing a new crown lease with the 4.000 sqm noted. I did not appreciate your note 'amended to suit precinct code’ meant the 4.000 sqm was agreed.  Uses - l will confirm but my understanding was that the agreed value was based on a presumed purpose clause based on what I set out in my email. I understood the use and value were discussed between our clients respective valuers (Steve Flannery and Paul Powderly). It may be that there has been a communication problem. The discussion paper was the paper which outlined the commercial terms of the 'land swap' noting that this transaction involves more than the sale of 30/34 Dickson.  Pedestrian Plaza -- all noted and thanks.  The request for a meeting was by my client and I will advise them that your client is not interested in meeting at this stage.  I will come back to you once I hear back from the valuer on the use issue.  [Senior lawyer at Clayton Utz]  Clayton Utz | | |
| **Email of 24 October 2014 9:39 AM from** Senior lawyer at Clayton Utz **to Officer C, ACTGS**  From: xxxx  Sent: Friday, 24 October 2014 9:39 AM  To: xxxx  Cc: xxxx  Subject: RE: Block 30 Section 34 Dickson - Crown lease  xxxx,  The valuers have met and discussed this morning.  My instructions are to seek the following changes to the purpose clause:  — add car park (as a stand alone use)  — remove the limitation in relation to commercial accommodation use i.e. delete "LIMITED TO hotel“  In addition in relation to shop can you please delete the words "or shop selling food".  The Valuers advised that there was no limitation on the shop use however I accept that there are requirements In the Territory Plan.  At one level the limitation should be removed entirely as the Territory Plan limitations apply irrespective of the terms of the crown lease but l don't have an issue including a limitation.  The land is zoned CZ3 so the relevant limitation (section 13.2. rule 42) see below  13.2 Shops -floor area limit – CZ3  R42  This rule applies to CZ3.  The maximum gross floor area for a shop used or Intended to be used as a supermarket is 300m2.  This is a mandatory requirement. There is no applicable criterion.  l have no issue if the limitation was in the terms set out in the Territory Plan (i.e. extended reference to "intended to be used")  I think this is the last remaining issue so l believe you should be able to issue and execution (sic) version of the contract.  I think you have execution copies of contracts in relation to  — Block 26 Section 72  — Block 6 Section 72  Can you confirm?  Happy to go through those one more time to make sure our counterparts are identical.  Let me know if there is anything you would like to discuss.  [Senior lawyer at Clayton Utz]  Clayton Utz | | |
| **Email of 24 October 2014 11:05 AM from Officer C, ACTGS, to Graham Mundy of LDA**  From: xxxx  Sent: Friday, 24 October 2014 11:05 AM  To: Mundy, Graham  Cc: Peters, Clint; xxxx  Subject: RE: Block 30 Section 34 Dickson - Crown lease  Dear Graham  Please find attached further correspondence from Alfonso below.  It appears there is a misunderstanding of what was offered to Tradies. Whether or not this misunderstanding is justified is irrelevant, the question remains what the LDA is willing to offer.  We note our previous advice that the concessions they are seeking are at odds with the Minister's brief signed by David Dawes and the content of the RFT. We would expect that any changes inconsistent with Mr Dawes briefing would need to be cleared through him or the Minister.  It appears that the options at this stage are either they agree with our position, we agree to negotiate a new price or we terminate this arrangement and start the negotiation process again.  Any further concessions at this stage may contaminate the RFT process to the point that there may be a significant probity issues in selling the Land on that basis. If you wish for further advice on this matter please instruct us accordingly.  We look forward to your instructions on this matter.  If you have any questions please do not hesitate to contact or me.  Kind regards  xxxx, Solicitor, ACT Government Solicitor | | |
| **Email of 27 October 2014 2:36 PM from Clint Peters of the LDA to Officer C, ACTGS**  From: Peters, Clint  Sent: Monday, 27 October 2014 2:36 PM  To: xxxx  Cc: xxxx; Mundy, Graham; Stewart, Daniel  Subject: RE: Block 30 Section 34 Dickson - Crown lease  Importance: High  xxxx,  I would rather not go into the detail of the RFT, what I would like is to understand in your opinion what the differences are that are being requested?  In order to prevent it becoming another Kingston (protected negations, he said she said and other complexities) I am prepared to work through each issue and move forward. l am very reluctant to negotiate a new price or terminate this arrangement and start the negotiation process again.  Simply, please advise me of the best position the LDA can take so I can discuss these options with Dan.  Clint | | |
| **Email of 28 October 2014 11:49 AM from Officer C, ACTGS to Clint Peters of LDA**  From: xxxx  Sent: Tuesday, 28 October 2014 11:49 AM  To: Peters, Clint  Cc: xxxx; Mundy, Graham; Stewart, Daniel  Subject: Block 30 Section 34 Dickson - Crown lease  Sent: Tuesday, 28 October 2014, 11:49 AM  Subject: Block 30 Section 34 Dickson - Crown lease  Dear Clint  The difference between the Crown lease that has been endorsed and the position presented in Alfonso's email is Tradies are requesting (as they believe they were offered during the valuation process):  - car park be included as an independent use in the Crown lease. Currently, it is only an ancillary use to any other use permitted on the land;  - a commercial accommodation not be limited to hotel and community use not be limited to community activity centre:  - the current limitation of 300m2 on shops selling food be removed; and  - the removal of the clause which relates to any building which straddle both Blocks 28 and 30 Section 34 Dickson with frontage to that proposed access way.  These divergences from the original offering in the RFT can possible [*sic*] be viewed as the normal post tender negotiations that the Territory engages in with most transactions.  This really only becomes an issue if a reasonable person (say the Auditor General) considers that negotiations have gone so far that the terms of the sale no longer reflect the offering to the market in the RFT.  As you know, section 240 of the *Planning and Development Act 2007* prohibits ACTPLA issuing a Crown lease via direct sale except in circumstances set out in the Act and the Regs. lf the terms of sale are so divergent from the terms of the RFT, it may be considered a direct sale rather than the outcome of the RFT process.  If this were the case, the exemption for the direct sale of land offered under a tender but not sold (reg 130(1)(b)) would not be effective because the conditions of sale were not materially the same as those in the tender.  Whether the terms to the Tradies are “conditions materially similar to the conditions of the lease offered by tender” are a matter of degree and judgement, however, we have concerns that making any of the requested concessions may move the terms offered beyond what is “materially similar" to the original tender.  Please advise us of your position and we will respond appropriately to [Senior lawyer at Clayton Utz].  We look forward to you [*sic*] instructions  If you have any question please do not hesitate to contact xxxx or me.  Kind regards  xxxx, Solicitor, ACT Government Solicitor | | |
| [End] | | |

## Appendix F – Minute to Director-General, EDD

The following are copies are provided of a two-page minute to Director-General, Economic Development Directorate of 17 December 2013 from the former Director, Sustainable Land Strategy, Economic Development Directorate.

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1. 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-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, Minutes of Proceedings, 22 February 2018, p.709, available at: <https://www.parliament.act.gov.au/__data/assets/pdf_file/0005/1168583/MoP049F.pdf> [↑](#footnote-ref-3)
4. Legislative Assembly for the ACT, Minutes of Proceedings, 20 March 2018, p.722, available at: <https://www.parliament.act.gov.au/__data/assets/pdf_file/0017/1180034/MoP050F.pdf> [↑](#footnote-ref-4)
5. Ms Cheyne MLA and Ms Cody MLA asked that the report show that they did not support this paragraph. [↑](#footnote-ref-5)
6. Auditor-General’s Report No 3 of 2018, *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.23, viewed 1 May 2019, ii, available at: <https://www.audit.act.gov.au/__data/assets/pdf_file/0012/1184898/Report-No-3-of-2018-Tender-for-the-sale-of-Block-30-formerly-Block-20-Section-34-Dickson.pdf> [↑](#footnote-ref-6)
7. Block 20 became Block 30 on 12 February 2013 when part of the block at the corner of Badham St and Dickson Place was removed. In the ACT blocks are renamed when their dimensions change. The new boundary was shown in an amendment to Authorised Plan No.1817. The new Block 30 was created under Authorised Plan No 6914 on 12 February 2013, provided to the Committee 31 January 2020. These documents are provided at Appendix [↑](#footnote-ref-7)
8. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.24. [↑](#footnote-ref-8)
9. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.1. Figures quoted are GST exclusive. [↑](#footnote-ref-9)
10. At time of writing this had not been paid. A letter from Mr Mick Gentleman MLA, Minister for Planning and Land Management of 5 May 2020 advised the Committee that ‘settlement has not yet taken place for the sale of Block 30 Section 34 Dickson as a certificate of occupancy is yet to be issued for the development on the adjacent car park on Block 21 Section 30, that is being developed by Coles’, and that he had been advised that the City Renewal Authority was ‘currently holding a ten percent deposit for this site’. [↑](#footnote-ref-10)
11. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.1. Figures quoted are GST exclusive. [↑](#footnote-ref-11)
12. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.1. [↑](#footnote-ref-12)
13. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.1. [↑](#footnote-ref-13)
14. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.1. [↑](#footnote-ref-14)
15. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.1. The Audit report expressed concern that the EDD had in selling Block 30 contravened the *Planning and Development Act 2007* (ACT), s 240. [↑](#footnote-ref-15)
16. Legislative Assembly for the ACT, Minutes of Proceedings, 20 March 2018, p.722, available at: <https://www.parliament.act.gov.au/__data/assets/pdf_file/0017/1180034/MoP050F.pdf> [↑](#footnote-ref-16)
17. Section 38(1)(d) of the *Planning and Development Act 2007* (ACT) provides that the ACT government may grant a lease by direct sale. Section 240 of the Act provides that this can only be done where the grant is consistent with one or more criteria listed under the Section, or listed under Section 130 of the *Planning and Development Regulation 2008*. ‘Grant objectives’ under the *Planning and Development Act 2007* (ACT), s 240(2)(4) are: ‘(a) to benefit the economy of the ACT or region; (b) to contribute to the environment, or social or cultural features in the ACT; (c) to introduce new skills, technology or services in the ACT; (d) to contribute to the export earnings and import replacement of the ACT or region; (e) to facilitate the achievement of a major policy objective.’ See *Planning and Development Act 2007* (ACT), A2007-24, viewed 1 May 2019, available at: <https://www.legislation.act.gov.au/View/a/2007-24/current/PDF/2007-24.PDF> and *Planning and Development Regulation 2008* (ACT), SL2008-2, viewed 1 May 2019, available at: <https://www.legislation.act.gov.au/View/sl/2008-2/current/PDF/2008-2.PDF> [↑](#footnote-ref-17)
18. *Planning and Development Act 2007*, s 240(2)(b). [↑](#footnote-ref-18)
19. *Planning and Development Regulation 2008* (ACT), s 130(1)(b). [↑](#footnote-ref-19)
20. Appendix C provides copies of documents on a change of name from ‘Block 20 Section 34 Dickson’ to ‘Block 30 Section 34 Dickson’. [↑](#footnote-ref-20)
21. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.15. [↑](#footnote-ref-21)
22. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.15. [↑](#footnote-ref-22)
23. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.16. [↑](#footnote-ref-23)
24. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.15. [↑](#footnote-ref-24)
25. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.15. [↑](#footnote-ref-25)
26. Mr Stephen Brennan, *Transcript of Evidence*, 5 December 2018, p.61. [↑](#footnote-ref-26)
27. Mr Stephen Brennan, *Transcript of Evidence*, 5 December 2018, p.62. [↑](#footnote-ref-27)
28. Mr Stephen Brennan, *Transcript of Evidence*, 5 December 2018, p.66. [↑](#footnote-ref-28)
29. Mr Stephen Brennan, *Transcript of Evidence*, 5 December 2018, p.66. [↑](#footnote-ref-29)
30. Mr Andrew Barr MLA, *Transcript of Evidence*, 22 March 2019, p.218. [↑](#footnote-ref-30)
31. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.79. [↑](#footnote-ref-31)
32. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.80. [↑](#footnote-ref-32)
33. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.80. [↑](#footnote-ref-33)
34. Mr David Dawes, *Transcript of Evidence*, 5 December 2018, p.41. See also *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.13. [↑](#footnote-ref-34)
35. Email chain commencing with email of 25 July 2012 from an advisor in the Chief Minister’s office to former Director, Sales, Land Development Agency, and copied to the former Director, Sustainable Land Sales, Land Development Agency, quoted at *Transcript of Evidence*, 12 December 2018, p.154. Block 30 (then Block 20) Section 34 Dickson was not listed in the Commercial Land Release Program for 2009-10 to 2013-14, or Indicative Land Release Program documents for 2010-11 to 2013-14 or 2011-12 to 2014-15, but was listed in the *Dickson Master Plan* of May 2011. [↑](#footnote-ref-35)
36. Mr Richard Drummond, email of 26 July 2012, available at: <https://www.cmtedd.act.gov.au/__data/assets/pdf_file/0009/1187523/17_18554-Document-6.pdf> and see ACT Open Government, ‘Section 72 & Section 34 Dickson’, FOI Reference No: EPSDD 17/18554, viewed 23 April 2020, available at: <https://www.cmtedd.act.gov.au/open_government/foi/epd/section-72-and-section-34-dickson> [↑](#footnote-ref-36)
37. Mr Greg Ellis, *Transcript of Evidence*, 12 December 2018, p.154. [↑](#footnote-ref-37)
38. Mr Greg Ellis, *Transcript of Evidence*, 12 December 2018, p.151. [↑](#footnote-ref-38)
39. Mr Greg Ellis, *Transcript of Evidence*, 12 December 2018, p.155. [↑](#footnote-ref-39)
40. Mr Greg Ellis, *Transcript of Evidence*, 12 December 2018, p.155. [↑](#footnote-ref-40)
41. Mr Greg Ellis, *Transcript of Evidence*, 12 December 2018, p.155. [↑](#footnote-ref-41)
42. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.37. [↑](#footnote-ref-42)
43. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.38.  [↑](#footnote-ref-43)
44. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.40, citing advice from the Australian Government Solicitor reproduced at *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.38.  [↑](#footnote-ref-44)
45. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.40. [↑](#footnote-ref-45)
46. Mr John Dietz, Answer to Question Taken on Notice from hearings of 6 December 2018, pp.1-2. [↑](#footnote-ref-46)
47. Mr Greg Ellis, *Transcript of Evidence*, 5 December 2018, pp.77-78. [↑](#footnote-ref-47)
48. Mr Greg Ellis, *Transcript of Evidence*, 5 December 2018, p.78. [↑](#footnote-ref-48)
49. Mr Greg Ellis, *Transcript of Evidence*, 5 December 2018, p.78. [↑](#footnote-ref-49)
50. Mr Greg Ellis, *Transcript of Evidence*, 5 December 2018, p.79. [↑](#footnote-ref-50)
51. Mr David Dawes, *Transcript of Evidence*, 5 December 2018, p.42. [↑](#footnote-ref-51)
52. Mr Clint Peters, *Transcript of Evidence*, 6 December 2018, p.97. [↑](#footnote-ref-52)
53. Mr Clint Peters, *Transcript of Evidence*, 6 December 2018, p.97. [↑](#footnote-ref-53)
54. Mr Clint Peters, *Transcript of Evidence*, 6 December 2018, p.97. [↑](#footnote-ref-54)
55. Mr Clint Peters, *Transcript of Evidence*, 6 December 2018, pp.97-98. [↑](#footnote-ref-55)
56. Mr Clint Peters, *Transcript of Evidence*, 6 December 2018, p.98. [↑](#footnote-ref-56)
57. Mr Clint Peters, *Transcript of Evidence*, 6 December 2018, p.98. [↑](#footnote-ref-57)
58. Mr Greg Ellis, *Transcript of Evidence*, 5 December 2018, pp.77-78. [↑](#footnote-ref-58)
59. Mr Clint Peters, *Transcript of Evidence*, 6 December 2018, p.99. [↑](#footnote-ref-59)
60. Mr Dan Stewart, *Transcript of Evidence*, 22 March 2019, p.202. [↑](#footnote-ref-60)
61. Mr Dan Stewart, *Transcript of Evidence*, 22 March 2019, p.202. [↑](#footnote-ref-61)
62. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, pp.17-18. [↑](#footnote-ref-62)
63. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.18. Figures are GST exclusive. [↑](#footnote-ref-63)
64. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.19. Figures are GST exclusive. [↑](#footnote-ref-64)
65. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.40. [↑](#footnote-ref-65)
66. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, pp.40-41. [↑](#footnote-ref-66)
67. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, pp.41, 44. [↑](#footnote-ref-67)
68. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.42. [↑](#footnote-ref-68)
69. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.44. [↑](#footnote-ref-69)
70. Reproduced from Table 2‐4, ‘Assessment of tenderers against the evaluation criteria’, *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.44. [↑](#footnote-ref-70)
71. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.44. The table refers to Fabcot Pty Ltd as ‘Woolworths’. Fabcot is a wholly-owned subsidiary of Woolworths Group (Australia). [↑](#footnote-ref-71)
72. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.44. Figures provided are GST exclusive. [↑](#footnote-ref-72)
73. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.45. At this point the Audit report stated that the correct figure for car parks was 154: the figure quoted by the Panel of 139 car parks was incorrect. [↑](#footnote-ref-73)
74. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.81. [↑](#footnote-ref-74)
75. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.45. [↑](#footnote-ref-75)
76. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.44. [↑](#footnote-ref-76)
77. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.45. [↑](#footnote-ref-77)
78. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.44. [↑](#footnote-ref-78)
79. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.45. [↑](#footnote-ref-79)
80. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.46. [↑](#footnote-ref-80)
81. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.46. [↑](#footnote-ref-81)
82. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.46. [↑](#footnote-ref-82)
83. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.18. [↑](#footnote-ref-83)
84. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.46. [↑](#footnote-ref-84)
85. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.18. [↑](#footnote-ref-85)
86. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.47. [↑](#footnote-ref-86)
87. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.47. [↑](#footnote-ref-87)
88. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.42. [↑](#footnote-ref-88)
89. Mr Richard Drummond, *Transcript of Evidence*, 22 March 2019, p.178. [↑](#footnote-ref-89)
90. Mr Richard Drummond, *Transcript of Evidence*, 22 March 2019, p.177. [↑](#footnote-ref-90)
91. Mr Richard Drummond, *Transcript of Evidence*, 22 March 2019, p.178. [↑](#footnote-ref-91)
92. Mr Greg Ellis, *Transcript of Evidence*, 12 December 2018, p.140. [↑](#footnote-ref-92)
93. Mr Clint Peters, *Transcript of Evidence*, 6 December 2018, p.100. [↑](#footnote-ref-93)
94. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.16. [↑](#footnote-ref-94)
95. Mr Richard Drummond, email of 26 July 2012. [↑](#footnote-ref-95)
96. Mr Greg Ellis, *Transcript of Evidence*, 12 December 2018, p.151. [↑](#footnote-ref-96)
97. Mr Dan Stewart, Transcript of Evidence, 22 March 2020, p.192. [↑](#footnote-ref-97)
98. Ms Cheyne MLA and Ms Cody MLA asked that the report show that they did not take this view. They noted that the proposed release of the site had been public knowledge for some time and that the timing of the brief going to Cabinet would be influenced by a range of factors, including the need to complete the site investigations (Mr Richard Drummond, email of 26 July 2012, quoted in *Transcript of Evidence*, 12 December 2018, p.154). [↑](#footnote-ref-98)
99. Mr Rob Docker: ‘The purpose of our organisation is very clearly articulated in the constitution of the Canberra Tradies club and our object is very clear: it is to provide the necessary support to our core object, which is the CFMEU. That is why we exist.’, *Transcript of Evidence*, 11 July 2018, p.26. [↑](#footnote-ref-99)
100. See for example entries for the CFMEU in Elections ACT, ‘Annual Returns 2018-19’, ‘Political Parties – Receipts totalling $1,000 or more’, viewed 29 January 2020, available at: <https://www.elections.act.gov.au/funding_and_disclosure/financial_disclosure_returns/financial-disclosure-returns-annual-returns/20182019-annual-returns> [↑](#footnote-ref-100)
101. See Katie Burgess, ‘Labor rejects call to cut ties with CFMEU’, *Canberra Times*,23 August 2018, p.10; Dana McCauley, ‘CFMEU takes list of radical demands to Labor conference’, *Canberra Times*, 15 December 2018, p.19; and Jack Waterford, ‘A problem of perception’, *Canberra Times*, 1 October 2016, p.1. [↑](#footnote-ref-101)
102. Ms Cheyne MLA and Ms Cody MLA asked that the report show that they did not take this view. [↑](#footnote-ref-102)
103. Mr Andrew Barr MLA, Proof *Transcript of Evidence*, 22 March 2019, p.233. [↑](#footnote-ref-103)
104. Mr Richard Drummond, email of 26 July 2012, quoted in *Transcript of Evidence*, 12 December 2018, p.154. [↑](#footnote-ref-104)
105. Ms Cheyne MLA and Ms Cody MLA dissent from this paragraph. *Negotiations* relating to the site are different to decisions regarding the *release* of the site. They believe the quotes referenced at footnotes 102 and 103 have been erroneously conflated: the quote referenced footnote 102 is about the negotiations related to the site [end 2012 and beyond] and the quote referenced at footnote 103 is about the release of the site [mid-2012]. Further, they believe that not all relevant evidence is included. On the evidence available to the Committee, the Chief Minister has consistently said he was not involved in negotiations relating to the site (see Mr Andrew Barr MLA, *Transcript of Evidence,* 22 March 2019, pp. 224-225, 230, 231-2). They draw particular attention to key evidence not included in the body of this report: “For obvious reasons, ministers do not get involved in tender negotiations. That is a very clear and important distinction and line that you do not cross: you are not involved in the nitty-gritty of tender negotiations. It is just not a minister’s role under the procurement act. There is a very clear separation. We have a decision-making role in relation to the determination to sell a block of land, but we are not sitting around the table negotiating those processes” (Mr Andrew Barr MLA, *Transcript of evidence*, 22 March 2019, pp. 224); “My decision-making role, along with every other member of cabinet, is to determine a process for procurement” (Mr Andrew Barr MLA, *Transcript of evidence*, 22 March 2019, pp. 231-2); and “While it is apparent that Cabinet and the minister authorised the RFT and reacted to early agency briefs, there is no evidence they were advised by executive management of the departures of the process Cabinet approved, or asked to review and approve the final outcome” (*Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p. 66). On this basis, they consider that there are no inconsistencies nor contradictions in the Chief Minister’s evidence. [↑](#footnote-ref-105)
106. Mr John Dietz, Answer to Question Taken on Notice from hearings of 6 December 2018, pp.1-2. See *Planning and Development Act 2007*, s 240(1)(a)(ii). [↑](#footnote-ref-106)
107. Table 2‐4, ‘Assessment of tenderers against the evaluation criteria’, *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.44. [↑](#footnote-ref-107)
108. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.47. [↑](#footnote-ref-108)
109. Mr Richard Drummond, *Transcript of Evidence*, 22 March 2019, p.177 and see *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, pp.5-6. [↑](#footnote-ref-109)
110. Nicholas Seddon, *Government Contracts: Federal, State and Local*, (6th ed.), Federation Press, Leichhardt, NSW, 2018, p.344. [↑](#footnote-ref-110)
111. Seddon, *Government Contracts*, p.344. [↑](#footnote-ref-111)
112. Seddon, 6th ed., p.344. [↑](#footnote-ref-112)
113. Ms Cheyne MLA and Ms Cody MLA asked that the report show that they did not support the recommendation. [↑](#footnote-ref-113)
114. Ms Cheyne MLA and Ms Cody MLA asked that the report show that they did not support the recommendation. [↑](#footnote-ref-114)
115. Mr Richard Drummond, *Transcript of Evidence*, 22 March 2019, p.180. [↑](#footnote-ref-115)
116. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, pp. 13-14. [↑](#footnote-ref-116)
117. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.14. [↑](#footnote-ref-117)
118. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.15. [↑](#footnote-ref-118)
119. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.59. In hearings, Mr Brennan told the Committee that he did not ‘have a precise recollection of those meetings’ and could not ‘recall how many meetings there were’. See *Transcript of Evidence*, 5 December 2018, p.58. [↑](#footnote-ref-119)
120. Dr Maxine Cooper, *Transcript of Evidence*, 30 May 2018, pp.14, 17 [↑](#footnote-ref-120)
121. Mr Rob Docker, *Transcript of Evidence*, 11 July 2018, p.25. [↑](#footnote-ref-121)
122. Mr Rob Docker, *Transcript of Evidence*, 11 July 2018, p.25. [↑](#footnote-ref-122)
123. Mr Stephen Brennan, *Transcript of Evidence*, 5 December 2018, p.59. [↑](#footnote-ref-123)
124. Mr Stephen Brennan, *Transcript of Evidence*, 5 December 2018, p.63. [↑](#footnote-ref-124)
125. Mr Stephen Brennan, *Transcript of Evidence*, 5 December 2018, p.67. [↑](#footnote-ref-125)
126. Mr Stephen Brennan, *Transcript of Evidence*, 5 December 2018, p.67. [↑](#footnote-ref-126)
127. Mr Richard Drummond, *Transcript of Evidence*, 22 March 2019, p.184. [↑](#footnote-ref-127)
128. Mr Richard Drummond, *Transcript of Evidence*, 22 March 2019, p.186. [↑](#footnote-ref-128)
129. Mr Richard Drummond, *Transcript of Evidence*, 22 March 2019, pp.186-187. [↑](#footnote-ref-129)
130. Mr Richard Drummond, *Transcript of Evidence*, 22 March 2019, p.180. [↑](#footnote-ref-130)
131. Mr Richard Drummond, *Transcript of Evidence*, 22 March 2019, p.180. [↑](#footnote-ref-131)
132. Mr Richard Drummond, *Transcript of Evidence*, 22 March 2019, p.180. [↑](#footnote-ref-132)
133. Mr Richard Drummond, *Transcript of Evidence*, 22 March 2019, p.179. [↑](#footnote-ref-133)
134. Mr Richard Drummond, *Transcript of Evidence*, 22 March 2019, p.180. [↑](#footnote-ref-134)
135. Mr Richard Drummond, *Transcript of Evidence*, 22 March 2019, p.181. [↑](#footnote-ref-135)
136. Mr Greg Ellis, *Transcript of Evidence*, 12 December 2018, p.146. [↑](#footnote-ref-136)
137. Mr Greg Ellis, *Transcript of Evidence*, 12 December 2018, p.147. [↑](#footnote-ref-137)
138. Mr Greg Ellis, *Transcript of Evidence*, 12 December 2018, p.147. [↑](#footnote-ref-138)
139. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.81. [↑](#footnote-ref-139)
140. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.82. [↑](#footnote-ref-140)
141. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.82. [↑](#footnote-ref-141)
142. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.82. [↑](#footnote-ref-142)
143. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, pp.82-83. [↑](#footnote-ref-143)
144. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.83. [↑](#footnote-ref-144)
145. Mr Greg Ellis, *Transcript of Evidence*, 5 December 2018, p.76. [↑](#footnote-ref-145)
146. Mr Greg Ellis, *Transcript of Evidence*, 5 December 2018, pp.76-77. [↑](#footnote-ref-146)
147. Mr Greg Ellis, *Transcript of Evidence*, 5 December 2018, p.77. [↑](#footnote-ref-147)
148. Mr Greg Ellis, *Transcript of Evidence*, 5 December 2018, p.75. [↑](#footnote-ref-148)
149. Mr Greg Ellis, *Transcript of Evidence*, 5 December 2018, p.75. [↑](#footnote-ref-149)
150. Mr Greg Ellis, *Transcript of Evidence*, 5 December 2018, p.76. [↑](#footnote-ref-150)
151. Mr Greg Ellis, *Transcript of Evidence*, 5 December 2018, p.76. [↑](#footnote-ref-151)
152. Mr Richard Drummond, *Transcript of Evidence*, 22 March 2019, pp.184-185. The former Project Director identified the person who commissioned the market appraisals as Mr Graham Mundy. [↑](#footnote-ref-152)
153. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.84. [↑](#footnote-ref-153)
154. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.84. [↑](#footnote-ref-154)
155. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.85. [↑](#footnote-ref-155)
156. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.85. [↑](#footnote-ref-156)
157. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.85. [↑](#footnote-ref-157)
158. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.85. Please see Appendix F for a copy of the minute. [↑](#footnote-ref-158)
159. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.86. [↑](#footnote-ref-159)
160. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, pp.87-88. [↑](#footnote-ref-160)
161. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.88. [↑](#footnote-ref-161)
162. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.86. [↑](#footnote-ref-162)
163. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.86. [↑](#footnote-ref-163)
164. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.86. [↑](#footnote-ref-164)
165. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.86. [↑](#footnote-ref-165)
166. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.86. [↑](#footnote-ref-166)
167. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.86. [↑](#footnote-ref-167)
168. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, pp.86-87. Fifty-five car parking spaces was the difference between the 154 originally required and the 84 agreed for the successful tenderer: see *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.76. [↑](#footnote-ref-168)
169. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.87. [↑](#footnote-ref-169)
170. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.87. [↑](#footnote-ref-170)
171. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.87. [↑](#footnote-ref-171)
172. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.86. [↑](#footnote-ref-172)
173. Mr Greg Ellis, *Transcript of Evidence*, 5 December 2018, p.84. [↑](#footnote-ref-173)
174. Mr Greg Ellis, *Transcript of Evidence*, 5 December 2018, p.84. [↑](#footnote-ref-174)
175. Mr Greg Ellis, *Transcript of Evidence*, 5 December 2018, p.84, and see also *Transcript of Evidence*, 12 December 2018, p.156. [↑](#footnote-ref-175)
176. Mr Greg Ellis, *Transcript of Evidence*, 5 December 2018, p.85. [↑](#footnote-ref-176)
177. Mr Stephen Brennan, *Transcript of Evidence*, 5 December 2018, p.65. [↑](#footnote-ref-177)
178. Mr Stephen Brennan, *Transcript of Evidence*, 5 December 2018, p.65. [↑](#footnote-ref-178)
179. Specimen Lease for Block 30, Dickson, appended to Contract of sale for Block 30, Dickson, dated 15 December 2014, Clause (g), (un-paginated). [↑](#footnote-ref-179)
180. Letter from Chair, Standing Committee on Public Accounts to the Minister for Planning and Land Management, 8 August 2019. [↑](#footnote-ref-180)
181. Letter from Minister for Planning and Land Management to the Chair, Standing Committee on Public Accounts, 13 August 2019. [↑](#footnote-ref-181)
182. As noted above, in a letter of 5 May 2020, Mr Mick Gentleman MLA advised the Committee that settlement had not taken place on Block 30 Section 34 Dickson because a certificate of occupancy was yet to be issued for a development on Block 21 Section 30, and that the City Renewal Authority was holding a 10 percent deposit on Block 30. [↑](#footnote-ref-182)
183. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.88. The Audit report noted that the Tradies’ November 2010 third attempt at a direct sale of Block 30 proposed a land swap which involved Block 25 Section 72: see *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.15. [↑](#footnote-ref-183)
184. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.88. [↑](#footnote-ref-184)
185. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.88. [↑](#footnote-ref-185)
186. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.89. [↑](#footnote-ref-186)
187. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, pp.88-89, and see *Planning and Development Act 2007*, s 263(1), viewed 21 May 2019, available at: <https://www.legislation.act.gov.au/View/a/2007-24/current/PDF/2007-24.PDF> [↑](#footnote-ref-187)
188. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.93. [↑](#footnote-ref-188)
189. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.90. [↑](#footnote-ref-189)
190. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.90. [↑](#footnote-ref-190)
191. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.95. Please see Appendix F for a copy of the minute. [↑](#footnote-ref-191)
192. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.93. [↑](#footnote-ref-192)
193. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.93. [↑](#footnote-ref-193)
194. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.93. [↑](#footnote-ref-194)
195. Mr Brett Stanton, *Transcript of Evidence*, 30 May 2018, p.16. [↑](#footnote-ref-195)
196. Mr Brett Stanton, *Transcript of Evidence*, 30 May 2018, p.11. [↑](#footnote-ref-196)
197. Mr Brett Stanton, *Transcript of Evidence*, 30 May 2018, p.11. [↑](#footnote-ref-197)
198. Mr Brett Stanton, *Transcript of Evidence*, 30 May 2018, p.11. [↑](#footnote-ref-198)
199. Mr Brett Stanton, *Transcript of Evidence*, 30 May 2018, p.11. [↑](#footnote-ref-199)
200. Mr Rob Docker, *Transcript of Evidence*, 11 July 2018, p.20. [↑](#footnote-ref-200)
201. Mr Rob Docker, *Transcript of Evidence*, 11 July 2018, p.28. [↑](#footnote-ref-201)
202. Mr Rob Docker, *Transcript of Evidence*, 11 July 2018, p.24. [↑](#footnote-ref-202)
203. Mr Greg Ellis, *Transcript of Evidence*, 12 December 2018, p.157. [↑](#footnote-ref-203)
204. Mr Greg Ellis, *Transcript of Evidence*, 12 December 2018, pp.158-159. [↑](#footnote-ref-204)
205. Mr Stephen Brennan, *Transcript of Evidence*, 5 December 2018, pp.60-61, 64. [↑](#footnote-ref-205)
206. Mr David Dawes, *Transcript of Evidence*, 5 December 2018, pp.53-54. [↑](#footnote-ref-206)
207. Mr Graham Munday, *Transcript of Evidence*, 6 December 2018, p.118. [↑](#footnote-ref-207)
208. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.8. [↑](#footnote-ref-208)
209. Dr Maxine Cooper, *Transcript of Evidence*, 30 May 2018, p.14. [↑](#footnote-ref-209)
210. Mr Brett Stanton, *Transcript of Evidence*, 30 May 2018, p.14. [↑](#footnote-ref-210)
211. Mr Greg Ellis, *Transcript of Evidence*, 12 December 2018, p.150. [↑](#footnote-ref-211)
212. Mr Greg Ellis, *Transcript of Evidence*, 12 December 2018, p.150. [↑](#footnote-ref-212)
213. Mr Rob Docker, *Transcript of Evidence*, 11 July 2018, p.31. [↑](#footnote-ref-213)
214. Mr Rob Docker, *Transcript of Evidence*, 11 July 2018, p.31. [↑](#footnote-ref-214)
215. Mr Rob Docker, *Transcript of Evidence*, 11 July 2018, p.32. [↑](#footnote-ref-215)
216. Mr Stephen Brennan, *Transcript of Evidence*, 5 December 2018, p.64. [↑](#footnote-ref-216)
217. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.8. [↑](#footnote-ref-217)
218. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.18. [↑](#footnote-ref-218)
219. Mr Greg Ellis, *Transcript of Evidence*, 12 December 2018, p.142. [↑](#footnote-ref-219)
220. Mr Stephen Brennan, *Transcript of Evidence*, 5 December 2018, p.59; Mr Richard Drummond, *Transcript of Evidence*, 22 March 2019, p.179; Mr Greg Ellis, *Transcript of Evidence*, 5 December 2018, pp.76-77 and *Transcript of Evidence*, 12 December 2018, p.146. Regarding the car parking and easement, see *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, pp.83-84. Regarding the security bond, see *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.14. [↑](#footnote-ref-220)
221. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, pp.87-88. [↑](#footnote-ref-221)
222. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.2. [↑](#footnote-ref-222)
223. Letter from Minister for Planning and Land Management to the Chair, Standing Committee on Public Accounts, 13 August 2019. [↑](#footnote-ref-223)
224. Mr Rob Docker, *Transcript of Evidence*, 11 July 2018, p.20. [↑](#footnote-ref-224)
225. See Mr Rob Docker, *Transcript of Evidence*, 11 July 2018, p.28; Mr Greg Ellis, *Transcript of Evidence*, 12 December 2018, p.157; Mr Stephen Brennan, *Transcript of Evidence*, 5 December 2018, pp.60-61, 64; Mr David Dawes, *Transcript of Evidence*, 5 December 2018, pp.53-54; and Mr Graham Munday, *Transcript of Evidence*, 6 December 2018, p.118. [↑](#footnote-ref-225)
226. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.13. [↑](#footnote-ref-226)
227. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.53:

     Under the terms of the Agreement, the Developer (i.e. the successful tenderer) was required to: (a) consult with the LDA in accordance with … [the agreement]; (b) obtain the endorsement of TAMSD in respect of all improvements to the Parkland that are required as part of the Developer’s Works and its agreement to accept responsibility for the Parkland following subdivision of the Land; (c) submit the draft of the Initial Development Application to the LDA for endorsement; and (d) make all changes to the draft Initial Development Application that are required by the LDA.

     In turn, the LDA gave an undertaking to endorse the Developers’ draft Initial Development Application (to ACTPLA) if it: (a) [complied] with this Agreement and all applicable laws; (b) [was] substantially in accordance with the schematic development plan for the Land provided by the Developer to the Territory in the Tender; (c) [contained] written endorsement from TAMSD as required under… [this agreement]; and (d) [included] all changes to the draft Initial Development Application that are required by the LDA. See *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.53. [↑](#footnote-ref-227)
228. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.19. [↑](#footnote-ref-228)
229. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.54. Probity concerns arose because different terms were being offered to different tenderers in the course of a tender-based process. [↑](#footnote-ref-229)
230. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.54. [↑](#footnote-ref-230)
231. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.54. [↑](#footnote-ref-231)
232. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, pp.54-55. [↑](#footnote-ref-232)
233. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.55. [↑](#footnote-ref-233)
234. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.83. [↑](#footnote-ref-234)
235. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.83. [↑](#footnote-ref-235)
236. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, pp.83-84. [↑](#footnote-ref-236)
237. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.84. [↑](#footnote-ref-237)
238. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.84. [↑](#footnote-ref-238)
239. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.84. [↑](#footnote-ref-239)
240. The full text of the Answer to the Question on Notice from hearings of 6 December 2018, received 7 January 2019, is available from: <https://www.parliament.act.gov.au/in-committees/standing-committees-current-assembly/standing-committee-on-public-accounts/review-of-auditor-generals-report-no.-3-of-2018-tender-for-the-sale-of-block-30-formerly-block-20-section-34-dickson/questions-taken-on-notice/20190107-04-Solicitor-General-answers-to-QToNs-Dickson-Land-swap_Redacted.pdf> [↑](#footnote-ref-240)
241. Letter from Mr Peter Garrisson SC to the Chair, Standing Committee on Public Accounts of 20 December 2018. [↑](#footnote-ref-241)
242. Email from Officer A, ACTGS to Officer B, ACTGS, of 12:36 pm, 15 April 2014. [↑](#footnote-ref-242)
243. Email from Officer B, ACTGS to Officer A, ACTGS, of 1:40 pm, 15 April 2014. [↑](#footnote-ref-243)
244. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.57. Having received this erroneous advice, it was open to Officer A to advise Officer B that there had been more than one tenderer in response to the RFT, however the emails provided in the Answer to the Question Taken on Notice do not show such advice. [↑](#footnote-ref-244)
245. The correlative of this statement was that, given that there was more than one tenderer, the ACT government should have invited the unsuccessful tenderer to ‘tender again’. Email from Officer B, ACTGS to Officer A, ACTGS, of 1:40 pm, 15 April 2014, referenced at *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.57. [↑](#footnote-ref-245)
246. Email of 19 September 2014 9:30 AM from Officer C, ACTGS, to a senior lawyer at Clayton Utz. [↑](#footnote-ref-246)
247. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, pp.18, 20. According to the report, settlement was reach on Block 6 Section 72 on 19 December 2014, and on 19 February 2016, the parties settled on Block 25 Section 72 after the Tradies remediated the site. See *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.20. [↑](#footnote-ref-247)
248. Email of 19 September 2014 9:30 AM from Officer C, ACTGS, to a senior lawyer at Clayton Utz. [↑](#footnote-ref-248)
249. Clause 1.2, ‘Office’, Dickson Precinct Map and Code, *Territory Plan*, NI2008-27, effective 21 June 2013, viewed 19 June 2019, available at: <https://www.legislation.act.gov.au/DownloadFile/ni/2008-27/copy/92635/PDF/2008-27.PDF> [↑](#footnote-ref-249)
250. At this point Clayton Utz appears to be referencing documentation agreed to in the first period of negotiation, from December 2012 to December 2013, and asserting a disparity between what was provided for in that documentation and limitations on permitted uses being indicated by the ACTGS on behalf of the LDA. [↑](#footnote-ref-250)
251. See ‘Commercial Zones Development Code’, *Territory Plan*, NI2008-27, effective 20 June 2014, viewed 19 June 2019, available at: <https://www.legislation.act.gov.au/DownloadFile/ni/2008-27/copy/97847/PDF/2008-27.PDF> [↑](#footnote-ref-251)
252. This appears to be an error. DV 312 made provision for land at Hume. DV 311 made provision for land at Dickson, but did not refer to limitations on area for shops selling food. The ‘Approved plan variation’ for Dickson is published as Notifiable Instrument NI2013-208, viewed 19 June 2019, available at: <http://www.legislation.act.gov.au/ni/2013-208/default.asp> and see Environment, Planning and Sustainable Development Directorate, ‘Territory Plan variations approved or withdrawn since 31 March 2008’, viewed 19 June 2019, available at: <https://www.planning.act.gov.au/tools-resources/plans-registers/plans/territory_plan/approved_variations> [↑](#footnote-ref-252)
253. Email of 19 September 2014 9:30 AM from Officer C, ACTGS to a senior lawyer at Clayton Utz. [↑](#footnote-ref-253)
254. This suggested that the transaction had departed sufficiently from the terms of the RFT to become a different kind of transaction, which was indicated elsewhere, including in the Auditor-General’s report, as being a matter of some significance with regard to probity. See Email of 19 September 2014 9:30 AM from Officer C, ACTGS, to a senior lawyer at Clayton Utz. [↑](#footnote-ref-254)
255. Email of 19 September 2014 9:30 AM from Officer C, ACTGS, to a senior lawyer at Clayton Utz. [↑](#footnote-ref-255)
256. Email of 19 September 2014 9:30 AM from Officer C, ACTGS, to a senior lawyer at Clayton Utz. [↑](#footnote-ref-256)
257. This supports the view that there were significant differences and discontinuities between terms negotiated in the period December 2012 to December 2013 and the basis for negotiations in the period December 2013 to December 2014. See Email of 21 October 2014 11:42 AM from a senior lawyer at Clayton Utz to Officer C, ACTGS. [↑](#footnote-ref-257)
258. See Email of 21 October 2014 11:42 AM from a senior lawyer at Clayton Utz to Officer C, ACTGS. [↑](#footnote-ref-258)
259. Email of 22 October 2014 12:31 PM from Officer C, ACTGS, to a senior lawyer at Clayton Utz. [↑](#footnote-ref-259)
260. Email of 22 October 2014 12:31 PM from Officer C, ACTGS, to a senior lawyer at Clayton Utz. [↑](#footnote-ref-260)
261. Email of 22 October 2014 12:31 PM from Officer C, ACTGS, to a senior lawyer at Clayton Utz. [↑](#footnote-ref-261)
262. Email of 22 October 2014 1:10 PM from a senior lawyer at Clayton Utz to Officer C, ACTGS. [↑](#footnote-ref-262)
263. Email of 22 October 2014 1:10 PM from a senior lawyer at Clayton Utz to Officer C, ACTGS. [↑](#footnote-ref-263)
264. Email of 22 October 2014 1:10 PM from a senior lawyer at Clayton Utz to Officer C, ACTGS.. [↑](#footnote-ref-264)
265. It is significant that at this advanced stage that Officer C, ACTGS, was advising that there were notable differences in the view of the deal between the Tradies and the LDA, expressing concerns about probity (due to different terms being offered, in effect, to different tenderers) and canvassing options either to negotiate a new price or terminate the agreement. It is also significant that the former Project Director, Urban Projects, Urban Renewal, EPSDD, when he appeared before the Committee, described his role as being limited to undertaking ‘due diligence under site assessments-engineering, traffic, environmental’ and was thus peripheral to the transaction: see Mr Graham Mundy, *Transcript of Evidence*, 6 December 2018, p.108. See Email of 24 October 2014 11:05 AM from Officer C, ACTGS, to Mr Graham Mundy of LDA, copied to Mr Clint Peters and another ACTGS officer. [↑](#footnote-ref-265)
266. This was significant in that the Director, Land Sales, Land Development Agency, and the Deputy Director-General, Economic Development Agency, both denied direct involvement in the sale of Block 30 when they appeared before the Committee in public hearings: including Mr Clint Peters, *Transcript of Evidence*, 6 December 2018, pp.87-88, and Mr Dan Stewart, *Transcript of Evidence*, 22 March 2019, pp.192-193. See Email of 27 October 2014 2:36 PM from Mr Clint Peters of LDA to Officer C, ACTGS, copied to another ACTGS officer, Mr Graham Mundy and Mr Dan Stewart. [↑](#footnote-ref-266)
267. Email of 28 October 2014 11:49 AM from Officer C, ACTGS, to Mr Clint Peters of LDA, copied to another ACTGS officer, Mr Graham Mundy and Mr Dan Stewart. [↑](#footnote-ref-267)
268. Email of 28 October 2014 11:49 AM from Officer C, ACTGS, to Mr Clint Peters of LDA, copied to another ACTGS officer, Mr Graham Mundy and Mr Dan Stewart. [↑](#footnote-ref-268)
269. This part of the email was quoted at *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.61. See email of 28 October 2014 11:49 AM from Officer C, ACTGS, to Mr Clint Peters of LDA, copied to another ACTGS officer, Mr Graham Mundy, and Mr Dan Stewart. [↑](#footnote-ref-269)
270. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, Table 1-1, p.20. [↑](#footnote-ref-270)
271. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, Table 1-1, p.20. [↑](#footnote-ref-271)
272. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.14. [↑](#footnote-ref-272)
273. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, pp.49-52. [↑](#footnote-ref-273)
274. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.52. [↑](#footnote-ref-274)
275. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.52. [↑](#footnote-ref-275)
276. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.64. [↑](#footnote-ref-276)
277. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, pp.49-52. [↑](#footnote-ref-277)
278. See Chapter 4 of this report. [↑](#footnote-ref-278)
279. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, pp.49-52. [↑](#footnote-ref-279)
280. Dr Maxine Cooper, *Transcript of Evidence*, 30 May 2018, p.2. [↑](#footnote-ref-280)
281. Dr Maxine Cooper, *Transcript of Evidence*, 30 May 2018, p.4. [↑](#footnote-ref-281)
282. Dr Maxine Cooper, *Transcript of Evidence*, 30 May 2018, p.2. [↑](#footnote-ref-282)
283. Mr Greg Ellis, *Transcript of Evidence*, 12 December 2018, p.141. [↑](#footnote-ref-283)
284. Mr Greg Ellis, *Transcript of Evidence*, 5 December 2018, p.83. [↑](#footnote-ref-284)
285. Mr Greg Ellis, *Transcript of Evidence*, 5 December 2018, p.83. [↑](#footnote-ref-285)
286. Mr Greg Ellis, *Transcript of Evidence*, 5 December 2018, p.83. [↑](#footnote-ref-286)
287. Mr Greg Ellis, *Transcript of Evidence*, 5 December 2018, p.83. [↑](#footnote-ref-287)
288. Mr Greg Ellis, *Transcript of Evidence*, 5 December 2018, p.83. [↑](#footnote-ref-288)
289. Mr Greg Ellis, *Transcript of Evidence*, 12 December 2018, p.158. [↑](#footnote-ref-289)
290. Mr Greg Ellis, *Transcript of Evidence*, 12 December 2018, p.158. A copy of the minute is provided at Appendix F. [↑](#footnote-ref-290)
291. Mr Greg Ellis, *Transcript of Evidence*, 12 December 2018, p.158. [↑](#footnote-ref-291)
292. Mr Greg Ellis, *Transcript of Evidence*, 12 December 2018, p.158. [↑](#footnote-ref-292)
293. Mr Greg Ellis, *Transcript of Evidence*, 12 December 2018, p.157. [↑](#footnote-ref-293)
294. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, pp.78-79. [↑](#footnote-ref-294)
295. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.67. [↑](#footnote-ref-295)
296. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.70. [↑](#footnote-ref-296)
297. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.90. [↑](#footnote-ref-297)
298. Dr Maxine Cooper, *Transcript of Evidence*, 30 May 2018, p.16. [↑](#footnote-ref-298)
299. Mr Brett Stanton, *Transcript of Evidence*, 30 May 2018, pp.16-17. [↑](#footnote-ref-299)
300. Dr Maxine Cooper, *Transcript of Evidence*, 30 May 2018, p.17. [↑](#footnote-ref-300)
301. Dr Maxine Cooper, *Transcript of Evidence*, 30 May 2018, p.17. [↑](#footnote-ref-301)
302. Mr Brett Stanton, *Transcript of Evidence*, 30 May 2018, p.13. [↑](#footnote-ref-302)
303. Dr Maxine Cooper, *Transcript of Evidence*, 30 May 2018, p.4. [↑](#footnote-ref-303)
304. Dr Maxine Cooper, *Transcript of Evidence*, 30 May 2018, p.4. [↑](#footnote-ref-304)
305. Mr Dan Stewart, *Transcript of Evidence*, 22 March 2019, p.187. [↑](#footnote-ref-305)
306. Mr Dan Stewart, *Transcript of Evidence*, 22 March 2019, p.187. [↑](#footnote-ref-306)
307. Mr Dan Stewart, *Transcript of Evidence*, 22 March 2019, pp.187-188. [↑](#footnote-ref-307)
308. Mr Richard Drummond, *Transcript of Evidence*, 22 March 2019, p.178. [↑](#footnote-ref-308)
309. Mr Richard Drummond, *Transcript of Evidence*, 22 March 2019, p.178. [↑](#footnote-ref-309)
310. Mr Richard Drummond, *Transcript of Evidence*, 22 March 2019, p.179. [↑](#footnote-ref-310)
311. Mr Richard Drummond, *Transcript of Evidence*, 22 March 2019, p.189. [↑](#footnote-ref-311)
312. Mr Richard Drummond, *Transcript of Evidence*, 22 March 2019, p.190. [↑](#footnote-ref-312)
313. Mr Ben Ponton, *Transcript of Evidence*, 12 December 2018, p.165. [↑](#footnote-ref-313)
314. Mr Ben Ponton, *Transcript of Evidence*, 12 December 2018, p.163. [↑](#footnote-ref-314)
315. Mr Ben Ponton, *Transcript of Evidence*, 12 December 2018, p.163. [↑](#footnote-ref-315)
316. Mr Ben Ponton, *Transcript of Evidence*, 12 December 2018, p.163. The Director-General referred to Block 24, Section 65, City, as considered in Auditor-General’s Report No 7 of 2016: *Certain Land Development Agency acquisitions*. [↑](#footnote-ref-316)
317. ‘TRIM’ originally referred to the *Tower Records Information Management* software application. Its successor was Hewlett Packard’s *HP Trim,* now known as *HP Records Manager.* [↑](#footnote-ref-317)
318. Mr Ben Ponton, *Transcript of Evidence*, 12 December 2018, p.163. [↑](#footnote-ref-318)
319. Mr Ben Ponton, *Transcript of Evidence*, 12 December 2018, p.163. [↑](#footnote-ref-319)
320. Mr Ben Ponton, *Transcript of Evidence*, 12 December 2018, p.164. [↑](#footnote-ref-320)
321. Mr Ben Ponton, *Transcript of Evidence*, 12 December 2018, p.164. [↑](#footnote-ref-321)
322. Mr Ben Ponton, *Transcript of Evidence*, 12 December 2018, p.164. [↑](#footnote-ref-322)
323. Mr Ben Ponton, *Transcript of Evidence*, 12 December 2018, p.165. [↑](#footnote-ref-323)
324. Mr Ben Ponton, *Transcript of Evidence*, 12 December 2018, p.165. [↑](#footnote-ref-324)
325. Mr Ben Ponton, *Transcript of Evidence*, 12 December 2018, p.172. [↑](#footnote-ref-325)
326. Mr Ben Ponton, *Transcript of Evidence*, 12 December 2018, p.172. [↑](#footnote-ref-326)
327. Mr Ben Ponton, *Transcript of Evidence*, 12 December 2018, p.172. [↑](#footnote-ref-327)
328. Mr Ben Ponton, *Transcript of Evidence*, 12 December 2018, p.173. [↑](#footnote-ref-328)
329. Mr Greg Ellis, Mr Greg Ellis, *Transcript of Evidence*, 12 December 2018, p.143. [↑](#footnote-ref-329)
330. Mr Greg Ellis, *Transcript of Evidence*, 12 December 2018, p.144. [↑](#footnote-ref-330)
331. Mr Greg Ellis, *Transcript of Evidence*, 12 December 2018, p.145. [↑](#footnote-ref-331)
332. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.59. [↑](#footnote-ref-332)
333. Dr Maxine Cooper, *Transcript of Evidence*, 30 May 2018, p.14 and see also p.17. [↑](#footnote-ref-333)
334. Mr Greg Ellis, *Transcript of Evidence*, 12 December 2018, p.145. [↑](#footnote-ref-334)
335. Mr Greg Ellis, *Transcript of Evidence*, 12 December 2018, p.145. [↑](#footnote-ref-335)
336. Mr Greg Ellis, *Transcript of Evidence*, 12 December 2018, p.146. [↑](#footnote-ref-336)
337. Mr Greg Ellis, *Transcript of Evidence*, 12 December 2018, p.149. [↑](#footnote-ref-337)
338. Mr Greg Ellis, *Transcript of Evidence*, 12 December 2018, p.149. [↑](#footnote-ref-338)
339. Mr Graham Mundy, *Transcript of Evidence*, 6 December 2018, p.112. [↑](#footnote-ref-339)
340. Mr Graham Mundy, *Transcript of Evidence*, 6 December 2018, p.120. [↑](#footnote-ref-340)
341. Mr Graham Mundy, *Transcript of Evidence*, 6 December 2018, p.121. [↑](#footnote-ref-341)
342. Mr Graham Mundy, *Transcript of Evidence*, 6 December 2018, p.112. [↑](#footnote-ref-342)
343. Mr Graham Mundy, *Transcript of Evidence*, 6 December 2018, p.112. [↑](#footnote-ref-343)
344. Mr Graham Mundy, *Transcript of Evidence*, 6 December 2018, p.113. [↑](#footnote-ref-344)
345. Mr Graham Mundy, *Transcript of Evidence*, 6 December 2018, p.113. [↑](#footnote-ref-345)
346. Mr Graham Mundy, *Transcript of Evidence*, 6 December 2018, pp.113-114. [↑](#footnote-ref-346)
347. Mr Graham Mundy, *Transcript of Evidence*, 6 December 2018, p.114. [↑](#footnote-ref-347)
348. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.83. [↑](#footnote-ref-348)
349. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, pp.89-92. [↑](#footnote-ref-349)
350. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.83. [↑](#footnote-ref-350)
351. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.83. [↑](#footnote-ref-351)
352. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, pp.83-84. [↑](#footnote-ref-352)
353. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.84. [↑](#footnote-ref-353)
354. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.84. [↑](#footnote-ref-354)
355. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.85. [↑](#footnote-ref-355)
356. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.85. [↑](#footnote-ref-356)
357. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.91. [↑](#footnote-ref-357)
358. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.89. [↑](#footnote-ref-358)
359. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.91. [↑](#footnote-ref-359)
360. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.93. [↑](#footnote-ref-360)
361. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.94. [↑](#footnote-ref-361)
362. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.2. [↑](#footnote-ref-362)
363. Mr Brett Stanton, *Transcript of Evidence*, 30 May 2018, p.6. [↑](#footnote-ref-363)
364. Dr Maxine Cooper, *Transcript of Evidence*, 30 May 2018, p.10, and see *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.14. The statutory formula for paying out a concessional lease is set out in Section 63 of the *Planning and Development Act 2007* (ACT), viewed 27 June 2019, available at: <https://www.legislation.act.gov.au/View/a/2007-24/current/PDF/2007-24.PDF> [↑](#footnote-ref-364)
365. Dr Maxine Cooper, *Transcript of Evidence*, 30 May 2018, p.6. [↑](#footnote-ref-365)
366. Mr Brett Stanton, *Transcript of Evidence*, 30 May 2018, pp.6-7, and see *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.6: ‘The assumptions on which the $3.18 million valuation was based were stated in the valuation report, including the provision of a total of 445 car parks which includes 154 replacement public car parks for those to be ‘lost’ from the existing public car parking site’. [↑](#footnote-ref-366)
367. Mr Brett Stanton, *Transcript of Evidence*, 30 May 2018, p.7. [↑](#footnote-ref-367)
368. Mr Brett Stanton, *Transcript of Evidence*, 30 May 2018, p.7. [↑](#footnote-ref-368)
369. Mr Brett Stanton, *Transcript of Evidence*, 30 May 2018, p.7. [↑](#footnote-ref-369)
370. Dr Maxine Cooper, *Transcript of Evidence*, 30 May 2018, p.8. [↑](#footnote-ref-370)
371. Mr Brett Stanton, *Transcript of Evidence*, 30 May 2018, p.8, referencing *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.75. [↑](#footnote-ref-371)
372. Dr Maxine Cooper, *Transcript of Evidence*, 30 May 2018, p.8. [↑](#footnote-ref-372)
373. Mr Greg Ellis, quoted in *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.85. [↑](#footnote-ref-373)
374. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, pp.85 & 86. [↑](#footnote-ref-374)
375. Mr Greg Ellis, quoted in *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, pp.86-87. [↑](#footnote-ref-375)
376. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.84. [↑](#footnote-ref-376)
377. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.84. [↑](#footnote-ref-377)
378. Mr Greg Ellis, quoted in *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, pp.90-91, 91-92. [↑](#footnote-ref-378)
379. Mr Greg Ellis, quoted in *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.91. [↑](#footnote-ref-379)
380. Mr Greg Ellis, quoted in *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.92. [↑](#footnote-ref-380)
381. Mr Greg Ellis, quoted in *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.92. [↑](#footnote-ref-381)
382. Mr Greg Ellis, quoted in *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.92. [↑](#footnote-ref-382)
383. Mr Greg Ellis, quoted in *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.92. [↑](#footnote-ref-383)
384. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.2. [↑](#footnote-ref-384)
385. Mr Greg Ellis, *Transcript of Evidence*, 5 December 2018, p.69. [↑](#footnote-ref-385)
386. Mr Greg Ellis, *Transcript of Evidence*, 5 December 2018, p.69. [↑](#footnote-ref-386)
387. Mr Greg Ellis, *Transcript of Evidence*, 5 December 2018, p.70. [↑](#footnote-ref-387)
388. Mr Greg Ellis, *Transcript of Evidence*, 5 December 2018, p.70. See *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.8: ‘Taking into account the overall effects on value from reduced requirements for easement access and the replacement of only 84 car parking spaces Capital Valuers Pty Ltd advised of an estimated ‘adjusted value range’ for Block 30 of between $4,750,000 and $5,000,000. This is approximately $1.57 million to $1.82 million more than the November 2012 MMJ Real Estate valuation of the block of $3.18 million, which was used to establish the reserve price for the block, and which represented the final price that was agreed to between the Economic Development Directorate and the Tradies’. [↑](#footnote-ref-388)
389. Mr David Dawes, quoted in *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.94. [↑](#footnote-ref-389)
390. Mr David Dawes, quoted in *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.94. [↑](#footnote-ref-390)
391. Mr David Dawes, quoted in *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.94. [↑](#footnote-ref-391)
392. Mr David Dawes, quoted in *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, pp. 77, 93. [↑](#footnote-ref-392)
393. Mr David Dawes, quoted in *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.93. [↑](#footnote-ref-393)
394. Mr David Dawes, quoted in *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.93. [↑](#footnote-ref-394)
395. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.93. [↑](#footnote-ref-395)
396. Mr David Dawes, *Transcript of Evidence*, 5 December 2018, p.45. [↑](#footnote-ref-396)
397. Mr David Dawes, *Transcript of Evidence*, 5 December 2018, pp.44-45. [↑](#footnote-ref-397)
398. Mr David Dawes, *Transcript of Evidence*, 5 December 2018, p.46. [↑](#footnote-ref-398)
399. Mr David Dawes, *Transcript of Evidence*, 5 December 2018, p.46. [↑](#footnote-ref-399)
400. Mr David Dawes, *Transcript of Evidence*, 5 December 2018, pp.51-52. [↑](#footnote-ref-400)
401. Mr David Dawes, *Transcript of Evidence*, 5 December 2018, p.52. [↑](#footnote-ref-401)
402. Mr Stephen Brennan, *Transcript of Evidence*, 5 December 2018, p.65. [↑](#footnote-ref-402)
403. Mr Stephen Brennan, *Transcript of Evidence*, 5 December 2018, p.59. [↑](#footnote-ref-403)
404. Mr Stephen Brennan, *Transcript of Evidence*, 5 December 2018, p.60. [↑](#footnote-ref-404)
405. Mr Rob Docker, *Transcript of Evidence*, 11 July 2018, p.20. [↑](#footnote-ref-405)
406. Mr Rob Docker, *Transcript of Evidence*, 11 July 2018, p.20. [↑](#footnote-ref-406)
407. Mr Rob Docker, *Transcript of Evidence*, 11 July 2018, p.20. [↑](#footnote-ref-407)
408. Mr Rob Docker, *Transcript of Evidence*, 11 July 2018, p.20. [↑](#footnote-ref-408)
409. Mr Rob Docker, *Transcript of Evidence*, 11 July 2018, p.20. [↑](#footnote-ref-409)
410. Mr Rob Docker, *Transcript of Evidence*, 11 July 2018, p.21. [↑](#footnote-ref-410)
411. Mr Rob Docker, *Transcript of Evidence*, 11 July 2018, p.21. [↑](#footnote-ref-411)
412. Mr Rob Docker, *Transcript of Evidence*, 11 July 2018, p.19. [↑](#footnote-ref-412)
413. Mr Rob Docker, *Transcript of Evidence*, 11 July 2018, p.22. [↑](#footnote-ref-413)
414. Mr Rob Docker, *Transcript of Evidence*, 11 July 2018, p.29. [↑](#footnote-ref-414)
415. Mr Rob Docker, *Transcript of Evidence*, 11 July 2018, p.30. [↑](#footnote-ref-415)
416. Mr Richard Drummond, *Transcript of Evidence*, 22 March 2019, p.187. [↑](#footnote-ref-416)
417. Mr Richard Drummond, *Transcript of Evidence*, 22 March 2019, p.187. [↑](#footnote-ref-417)
418. Mr Richard Drummond, *Transcript of Evidence*, 22 March 2019, p.187. [↑](#footnote-ref-418)
419. Ms Cheyne MLA and Ms Cody MLA asked that the report show that they did not support this paragraph. [↑](#footnote-ref-419)
420. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.64 and *Planning and Development Regulation 2008*, s 130. [↑](#footnote-ref-420)
421. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.64 and *Planning and Development Regulation 2008*, s 130. A further significant departure from Section 130 of the *Planning and Development Act* is that the lease for Block 30 was never passed-in at auction. [↑](#footnote-ref-421)
422. Ms Cheyne MLA and Ms Cody MLA asked that the report show that they did not support this paragraph. [↑](#footnote-ref-422)
423. Mr Ben Ponton, Answer to Question Taken on Notice from hearings of 22 March 2019, dated 4 April 2019, received 24 April 2019, available at: <https://www.parliament.act.gov.au/__data/assets/pdf_file/0006/1365756/PAC-ACT-government-answers-to-QToNs-12-to-20-inclusive-from-hearings-of-22-March-2019.pdf> and Mr Andrew Barr MLA, *Transcript of Evidence*, 22 March 2019, p.231. [↑](#footnote-ref-423)
424. Mr David Dawes, Transcript of Evidence, 5 December 2018, pp.44-45. [↑](#footnote-ref-424)
425. Ms Cheyne MLA and Ms Cody MLA asked that the report show that they did not support the finding. [↑](#footnote-ref-425)
426. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, pp.15, 16. [↑](#footnote-ref-426)
427. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.20. [↑](#footnote-ref-427)
428. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.20. The Audit report also noted that on 1 July 2017 the functions of the Land Development Agency were transferred to the City Renewal Authority and the Suburban Land Agency, and that the Environment, Planning and Sustainable Development Directorate had been ‘given responsibility for undertaking the delivery of due diligence activities previously undertaken by the Land Development Agency’: see *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.21. [↑](#footnote-ref-428)
429. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.67. [↑](#footnote-ref-429)
430. Mr Andrew Barr MLA, *Transcript of Evidence*, 22 March 2019, p.231-2. [↑](#footnote-ref-430)
431. Mr Andrew Barr MLA, *Transcript of Evidence,* 22 March 2019, p. 230. [↑](#footnote-ref-431)
432. Mr Andrew Barr MLA, *Transcript of Evidence*, 22 March 2019, p.230. [↑](#footnote-ref-432)
433. Mr Andrew Barr MLA, *Transcript of Evidence*, 22 March 2019, p.221. [↑](#footnote-ref-433)
434. Mr Andrew Barr MLA, *Transcript of Evidence*, 22 March 2019, pp.221, 222. [↑](#footnote-ref-434)
435. Mr Andrew Barr MLA, *Transcript of Evidence*, 22 March 2019, pp.229-231. [↑](#footnote-ref-435)
436. Mr Ben Ponton, Answer to Question Taken on Notice from hearings of 22 March 2019, dated 4 April 2019, received 24 April 2019, available at: <https://www.parliament.act.gov.au/__data/assets/pdf_file/0006/1365756/PAC-ACT-government-answers-to-QToNs-12-to-20-inclusive-from-hearings-of-22-March-2019.pdf> and Mr Andrew Barr MLA, *Transcript of Evidence*, 22 March 2019, p.231. [↑](#footnote-ref-436)
437. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.66. [↑](#footnote-ref-437)
438. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.66. [↑](#footnote-ref-438)
439. Mr David Dawes, *Transcript of Evidence*, 5 December 2018, p.48. [↑](#footnote-ref-439)
440. Mr David Dawes, *Transcript of Evidence*, 5 December 2018, p.48. [↑](#footnote-ref-440)
441. Mr David Dawes, *Transcript of Evidence*, 5 December 2018, p.41. [↑](#footnote-ref-441)
442. Mr David Dawes, *Transcript of Evidence*, 5 December 2018, p.42. Block 30 (then Block 20) Section 34 Dickson was not listed in the Commercial Land Release Program for 2009-10 to 2013-14, or Indicative Land Release Program documents for 2010-11 to 2013-14 or 2011-12 to 2014-15 but its release is explicitly referenced in the Dickson Master Plan as key to implementing the master plan. [↑](#footnote-ref-442)
443. Mr David Dawes, *Transcript of Evidence*, 5 December 2018, p.42. [↑](#footnote-ref-443)
444. Mr David Dawes, *Transcript of Evidence*, 5 December 2018, p.49. [↑](#footnote-ref-444)
445. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.63. [↑](#footnote-ref-445)
446. Mr David Dawes, *Transcript of Evidence*, 5 December 2018, p.54. [↑](#footnote-ref-446)
447. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.63. [↑](#footnote-ref-447)
448. Mr David Dawes, *Transcript of Evidence*, 5 December 2018, p.54. [↑](#footnote-ref-448)
449. Mr David Dawes, *Transcript of Evidence*, 5 December 2018, p.54. [↑](#footnote-ref-449)
450. Mr David Dawes, *Transcript of Evidence*, 5 December 2018, p.55. [↑](#footnote-ref-450)
451. Mr David Dawes, *Transcript of Evidence*, 5 December 2018, p.55. [↑](#footnote-ref-451)
452. Mr Dan Stewart, *Transcript of Evidence*, 22 March 2019, pp.193-194. [↑](#footnote-ref-452)
453. Mr Dan Stewart, *Transcript of Evidence*, 22 March 2019, p.193. [↑](#footnote-ref-453)
454. Mr Dan Stewart, *Transcript of Evidence*, 22 March 2019, p.192. [↑](#footnote-ref-454)
455. Mr Dan Stewart, *Transcript of Evidence*, 22 March 2019, p.195. [↑](#footnote-ref-455)
456. Mr Dan Stewart, *Transcript of Evidence*, 22 March 2019, p.195. [↑](#footnote-ref-456)
457. Mr Dan Stewart, *Transcript of Evidence*, 22 March 2019, p.196. [↑](#footnote-ref-457)
458. Mr Dan Stewart, *Transcript of Evidence*, 22 March 2019, p.199. [↑](#footnote-ref-458)
459. Mr Dan Stewart, *Transcript of Evidence*, 22 March 2019, p.199. [↑](#footnote-ref-459)
460. *Transcript of Evidence*, 22 March 2019, p.201, and see Mr Richard Drummond, *Transcript of Evidence*, 22 March 2019, p.185, and Ms Julia Forner, *Transcript of Evidence*, 6 December 2018, p.93. [↑](#footnote-ref-460)
461. Mr Dan Stewart, *Transcript of Evidence*, 22 March 2019, p.201. [↑](#footnote-ref-461)
462. Mr Dan Stewart, *Transcript of Evidence*, 22 March 2019, pp.199-200. [↑](#footnote-ref-462)
463. *Transcript of Evidence*, 22 March 2019, p.201. [↑](#footnote-ref-463)
464. *Transcript of Evidence*, 22 March 2019, p.202. [↑](#footnote-ref-464)
465. *Transcript of Evidence*, 22 March 2019, p.203. [↑](#footnote-ref-465)
466. Mr Dan Stewart, *Transcript of Evidence*, 22 March 2019, p.204. [↑](#footnote-ref-466)
467. Mr Dan Stewart, *Transcript of Evidence*, 22 March 2019, p.204. [↑](#footnote-ref-467)
468. Mr Dan Stewart, *Transcript of Evidence*, 22 March 2019, pp.204-205. [↑](#footnote-ref-468)
469. Mr Dan Stewart, *Transcript of Evidence*, 22 March 2019, p.206. [↑](#footnote-ref-469)
470. Mr Dan Stewart, *Transcript of Evidence*, 22 March 2019, p.207. [↑](#footnote-ref-470)
471. Mr Dan Stewart, *Transcript of Evidence*, 22 March 2019, pp.207-208. [↑](#footnote-ref-471)
472. Mr Dan Stewart, *Transcript of Evidence*, 22 March 2019, p.208. [↑](#footnote-ref-472)
473. Mr Dan Stewart, *Transcript of Evidence*, 22 March 2019, p.208. An organisational chart published in the Economic Development Directorate’s *Annual Report 2012-13* showed Mr Greg Ellis, as Director of Sustainable Land Strategy, reporting directly to Mr Dan Stewart as Deputy Director-General, Land Development, Strategy and Finance. See Economic Development Directorate, *Annual Report 2012-13*, p.15, viewed 30 January 2020, available at: <https://www.cmtedd.act.gov.au/__data/assets/pdf_file/0008/1170773/ac_2012-13_EDD_Annual_Report.pdf> [↑](#footnote-ref-473)
474. Mr Dan Stewart, *Transcript of Evidence*, 22 March 2019, p.208. [↑](#footnote-ref-474)
475. Mr Dan Stewart, *Transcript of Evidence*, 22 March 2019, p.209. This appears to be the meeting of 19 November 2014 referenced in *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson* at pp.11, 58 & 62. [↑](#footnote-ref-475)
476. Mr Dan Stewart, *Transcript of Evidence*, 22 March 2019, pp.209-210. [↑](#footnote-ref-476)
477. Mr Dan Stewart, *Transcript of Evidence*, 22 March 2019, p.210. [↑](#footnote-ref-477)
478. Mr Dan Stewart, *Transcript of Evidence*, 22 March 2019, pp.210-211. [↑](#footnote-ref-478)
479. Mr Dan Stewart, *Transcript of Evidence*, 22 March 2019, p.211. [↑](#footnote-ref-479)
480. Mr Dan Stewart, *Transcript of Evidence*, 22 March 2019, p.209. [↑](#footnote-ref-480)
481. *Transcript of Evidence*, 5 December 2018, p.73. [↑](#footnote-ref-481)
482. Mr Greg Ellis, *Transcript of Evidence*, 5 December 2018, p.73. [↑](#footnote-ref-482)
483. Mr Greg Ellis, *Transcript of Evidence*, 5 December 2018, p.73. [↑](#footnote-ref-483)
484. Mr Greg Ellis, *Transcript of Evidence*, 5 December 2018, pp.74-75. [↑](#footnote-ref-484)
485. Mr Greg Ellis, *Transcript of Evidence*, 5 December 2018, p.74. [↑](#footnote-ref-485)
486. Mr Greg Ellis, *Transcript of Evidence*, 5 December 2018, p.74. [↑](#footnote-ref-486)
487. Mr Greg Ellis, *Transcript of Evidence*, 12 December 2018, p.140. [↑](#footnote-ref-487)
488. Mr Greg Ellis, *Transcript of Evidence*, 12 December 2018, p.141. [↑](#footnote-ref-488)
489. Mr Greg Ellis, *Transcript of Evidence*, 12 December 2018, p.141. [↑](#footnote-ref-489)
490. Mr Greg Ellis, *Transcript of Evidence*, 12 December 2018, p.141. [↑](#footnote-ref-490)
491. Mr Greg Ellis, *Transcript of Evidence*, 12 December 2018, p.141. [↑](#footnote-ref-491)
492. Mr Greg Ellis, *Transcript of Evidence*, 12 December 2018, p.142. [↑](#footnote-ref-492)
493. Mr Greg Ellis, *Transcript of Evidence*, 12 December 2018, p.142. [↑](#footnote-ref-493)
494. Mr Greg Ellis, *Transcript of Evidence*, 12 December 2018, p.149. [↑](#footnote-ref-494)
495. Mr Greg Ellis, *Transcript of Evidence*, 12 December 2018, p.151. [↑](#footnote-ref-495)
496. Mr Greg Ellis, *Transcript of Evidence*, 12 December 2018, p.152. [↑](#footnote-ref-496)
497. Mr Greg Ellis, *Transcript of Evidence*, 12 December 2018, p.153. [↑](#footnote-ref-497)
498. Mr Dan Stewart, *Transcript of Evidence*, 22 March 2019, p.193. [↑](#footnote-ref-498)
499. See *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.16: ‘On 24 October 2011, the government did not agree to the direct sale and decided that Block 30 should be brought to market and auctioned in the 2011‐12 financial year’. [↑](#footnote-ref-499)
500. Mr Greg Ellis, *Transcript of Evidence*, 12 December 2018, p.153. [↑](#footnote-ref-500)
501. Mr Greg Ellis, *Transcript of Evidence*, 12 December 2018, p.153. [↑](#footnote-ref-501)
502. *Transcript of Evidence*, 12 December 2018, p.154. [↑](#footnote-ref-502)
503. *Transcript of Evidence*, 12 December 2018, p.154. [↑](#footnote-ref-503)
504. *Transcript of Evidence*, 12 December 2018, p.154. [↑](#footnote-ref-504)
505. Mr Greg Ellis, *Transcript of Evidence*, 12 December 2018, p.155. [↑](#footnote-ref-505)
506. Mr Greg Ellis, *Transcript of Evidence*, 12 December 2018, p.155. [↑](#footnote-ref-506)
507. *Transcript of Evidence*, 12 December 2018, p.150, and see *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.5. [↑](#footnote-ref-507)
508. Mr Greg Ellis, *Transcript of Evidence*, 12 December 2018, p.150. This is does not follow from the account provided in Audit report: please see *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, at pp.5, 19 & 57-58. While the Australian Government Solicitor’s advice quoted in the Audit report does in some places reference changes in terms which were made after April 2014, such as the removal of the Project delivery Agreement and security bond (*Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.57, at other places the advice indicates more generally the risk that departures from the terms of the RFT increased risks to probity: see for example, *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, pp.5, 22. [↑](#footnote-ref-508)
509. Mr Greg Ellis, *Transcript of Evidence*, 12 December 2018, p.141: ‘In January 2014 … I was notified that I would not have a position in the new structure that had been brought down. It just so happened that I broke my foot around that time and I went on extended leave. I came back very briefly in April and said my goodbyes, and that was it.’ [↑](#footnote-ref-509)
510. *Transcript of Evidence*, 22 March 2019, p.219. [↑](#footnote-ref-510)
511. Mr Ben Ponton, *Transcript of Evidence*, 22 March 2019, p.219. [↑](#footnote-ref-511)
512. Mr Ben Ponton, Answer to Question Taken on Notice from hearings of 22 March 2019, dated 2 April 2019, received 24 April 2019, available at: <https://www.parliament.act.gov.au/__data/assets/pdf_file/0006/1365756/PAC-ACT-government-answers-to-QToNs-12-to-20-inclusive-from-hearings-of-22-March-2019.pdf> [↑](#footnote-ref-512)
513. Mr Richard Drummond, *Transcript of Evidence*, 22 March 2019, p.176. [↑](#footnote-ref-513)
514. Mr Richard Drummond, *Transcript of Evidence*, 22 March 2019, p.176. [↑](#footnote-ref-514)
515. Mr Richard Drummond, *Transcript of Evidence*, 22 March 2019, p.176. [↑](#footnote-ref-515)
516. Mr Richard Drummond, *Transcript of Evidence*, 22 March 2019, p.181 & p.185. [↑](#footnote-ref-516)
517. Mr Richard Drummond, *Transcript of Evidence*, 22 March 2019, p.182. [↑](#footnote-ref-517)
518. Mr Richard Drummond, *Transcript of Evidence*, 22 March 2019, pp.182-183. [↑](#footnote-ref-518)
519. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.60. [↑](#footnote-ref-519)
520. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, pp.61-62. [↑](#footnote-ref-520)
521. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.63. [↑](#footnote-ref-521)
522. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.63. [↑](#footnote-ref-522)
523. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.62. [↑](#footnote-ref-523)
524. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.64. [↑](#footnote-ref-524)
525. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, pp.64-65. [↑](#footnote-ref-525)
526. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, pp.64-65. [↑](#footnote-ref-526)
527. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.65. [↑](#footnote-ref-527)
528. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.65. [↑](#footnote-ref-528)
529. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, pp.64-65. [↑](#footnote-ref-529)
530. Mr Peter Garrisson, *Transcript of Evidence*, 6 December 2018, p.137. [↑](#footnote-ref-530)
531. Mr Peter Garrisson, *Transcript of Evidence*, 6 December 2018, p.137. [↑](#footnote-ref-531)
532. Mr Peter Garrisson, *Transcript of Evidence*, 6 December 2018, p.134. [↑](#footnote-ref-532)
533. Mr Peter Garrisson, *Transcript of Evidence*, 6 December 2018, pp.124-125. [↑](#footnote-ref-533)
534. Mr Peter Garrisson, *Transcript of Evidence*, 6 December 2018, pp.124-125. [↑](#footnote-ref-534)
535. Mr Peter Garrisson, *Transcript of Evidence*, 6 December 2018, p.123. [↑](#footnote-ref-535)
536. Mr Peter Garrisson, *Transcript of Evidence*, 6 December 2018, pp.123-124. [↑](#footnote-ref-536)
537. Mr Peter Garrisson, *Transcript of Evidence*, 6 December 2018, p.137. [↑](#footnote-ref-537)
538. Mr Peter Garrisson, *Transcript of Evidence*, 6 December 2018, p.136. [↑](#footnote-ref-538)
539. Mr Peter Garrisson, *Transcript of Evidence*, 6 December 2018, p.136. [↑](#footnote-ref-539)
540. Mr Peter Garrisson, *Transcript of Evidence*, 6 December 2018, pp.136-137. [↑](#footnote-ref-540)
541. Mr Peter Garrisson, *Transcript of Evidence*, 6 December 2018, p.135. [↑](#footnote-ref-541)
542. Mr Peter Garrisson, *Transcript of Evidence*, 6 December 2018, p.124. [↑](#footnote-ref-542)
543. Mr Peter Garrisson, *Transcript of Evidence*, 6 December 2018, p.124. [↑](#footnote-ref-543)
544. Mr Peter Garrisson, *Transcript of Evidence*, 6 December 2018, p.124. [↑](#footnote-ref-544)
545. Mr Peter Garrisson, *Transcript of Evidence*, 6 December 2018, p.124. [↑](#footnote-ref-545)
546. Mr Peter Garrisson, *Transcript of Evidence*, 6 December 2018, p.135. [↑](#footnote-ref-546)
547. Mr Peter Garrisson, *Transcript of Evidence*, 6 December 2018, p.136. [↑](#footnote-ref-547)
548. Mr Peter Garrisson, *Transcript of Evidence*, 6 December 2018, p.136. [↑](#footnote-ref-548)
549. Mr Peter Garrisson, *Transcript of Evidence*, 6 December 2018, pp.124-125. [↑](#footnote-ref-549)
550. Mr Peter Garrisson, *Transcript of Evidence*, 6 December 2018, p.133. [↑](#footnote-ref-550)
551. Mr Peter Garrisson, *Transcript of Evidence*, 6 December 2018, pp.132-133. [↑](#footnote-ref-551)
552. Mr Peter Garrisson, *Transcript of Evidence*, 6 December 2018, p.130. [↑](#footnote-ref-552)
553. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.5. [↑](#footnote-ref-553)
554. Mr Peter Garrisson, *Transcript of Evidence*, 6 December 2018, p.129 and see also pp.126-127. [↑](#footnote-ref-554)
555. Mr Peter Garrisson, *Transcript of Evidence*, 6 December 2018, p.129. [↑](#footnote-ref-555)
556. Mr Peter Garrisson, *Transcript of Evidence*, 6 December 2018, p.125, and see pp.129-130. [↑](#footnote-ref-556)
557. Mr Rob Docker, *Transcript of Evidence*, 11 July 2018, p.19. [↑](#footnote-ref-557)
558. Mr Rob Docker, *Transcript of Evidence*, 11 July 2018, p.20. [↑](#footnote-ref-558)
559. Mr Rob Docker, *Transcript of Evidence*, 11 July 2018, p.20. [↑](#footnote-ref-559)
560. Mr Rob Docker, *Transcript of Evidence*, 11 July 2018, p.20. [↑](#footnote-ref-560)
561. Mr Rob Docker, *Transcript of Evidence*, 11 July 2018, p.21. [↑](#footnote-ref-561)
562. Ms Cheyne MLA and Ms Cody MLA asked that the report show their dissent from this section. [↑](#footnote-ref-562)
563. *Transcript of Evidence*, 11 July 2018, p.25. [↑](#footnote-ref-563)
564. Mr Rob Docker, *Transcript of Evidence*, 11 July 2018, p.25. Ms Cheyne MLA and Ms Cody MLA record their dissent regarding the inclusion of this quote. In their view, when the exchange during the hearing is read in full (Mr Rob Docker, *Transcript of Evidence*, 11 July 2018, pp.25-26) it is evident that Mr Docker did not understand the question that was initially being asked, but the report has included his answer in spite of this. In their view it is unjustifiable to include a quote which a witness later clarified was in response to a question that they did not initially understand. [↑](#footnote-ref-564)
565. Mr Rob Docker, *Transcript of Evidence*, 11 July 2018, p.26. [↑](#footnote-ref-565)
566. Mr Rob Docker, *Transcript of Evidence*, 11 July 2018, p.27. [↑](#footnote-ref-566)
567. Mr Rob Docker, *Transcript of Evidence*, 11 July 2018, p.27. [↑](#footnote-ref-567)
568. Mr Rob Docker, *Transcript of Evidence*, 11 July 2018, p.28. [↑](#footnote-ref-568)
569. *Transcript of Evidence*, 11 July 2018, p.30. [↑](#footnote-ref-569)
570. Mr Rob Docker, *Transcript of Evidence*, 11 July 2018, p.30. [↑](#footnote-ref-570)
571. Mr Rob Docker, *Transcript of Evidence*, 11 July 2018, p.29. [↑](#footnote-ref-571)
572. Mr Rob Docker, *Transcript of Evidence*, 11 July 2018, p.29. [↑](#footnote-ref-572)
573. See Mr Andrew Barr MLA, *Transcript of Evidence*, 22 March 2019, pp.220-234, and Mr Andrew Barr MLA, Answer to Question Taken on Notice from hearings of 22 March 2019, dated 16 April 2019, received 24 April 2019, available at: <https://www.parliament.act.gov.au/__data/assets/pdf_file/0006/1365756/PAC-ACT-government-answers-to-QToNs-12-to-20-inclusive-from-hearings-of-22-March-2019.pdf> [↑](#footnote-ref-573)
574. Mr David Dawes, *Transcript of Evidence*, 5 December 2018, p.48. [↑](#footnote-ref-574)
575. See Mr Greg Ellis, *Transcript of Evidence*, 12 December 2018, pp.149, 152-153, [↑](#footnote-ref-575)
576. See *Transcript of Evidence*, 12 December 2018, p.154. [↑](#footnote-ref-576)
577. Ms Cheyne MLA and Ms Cody MLA dissent from this paragraph. As outlined elsewhere in this report, the Chief Minister has explained his, and cabinet’s, role related to the release of the block and not to the subsequent negotiations of the sale (see Mr Andrew Barr MLA, *Transcript of Evidence,* 22 March 2019, pp. 224-225, 230, 231-2). Mr Dawes’ evidence is that the Chief Minister ‘was not involved in any way, shape or form in the transactions. He did not give us any direction at all about the way we proceeded, but I kept the government informed of where the negotiations were’ (Mr David Dawes, *Transcript of Evidence*, 5 December 2018, p.48). Mr Ellis’s evidence is that he did not specifically remember conversations with ministerial staff during the negotiation period, but that ‘they would have been very few and far between and of a very generalised nature’ (Mr Greg Ellis, *Transcript of Evidence,* 12 December 2018, p.153-4). Ms Cheyne MLA and Ms Cody MLA have earlier expressed that they are of the view, on the evidence, that Mr Barr’s evidence and the quoted email are not contradictory (see dissenting footnote in Chapter 2). On that basis, Ms Cheyne MLA and Ms Cody are of the view that what is quoted at footnotes 567, 568, 569 and 570 is not inconsistent. [↑](#footnote-ref-577)
578. Mr Dan Stewart, *Transcript of Evidence*, 22 March 2019, pp.192-196, 199-203, 204-211. [↑](#footnote-ref-578)
579. Mr Richard Drummond, *Transcript of Evidence*, 22 March 2019, p.181 & p.185. [↑](#footnote-ref-579)
580. Mr Greg Ellis, *Transcript of Evidence*, 12 December 2018, p.152. [↑](#footnote-ref-580)
581. Mr Clint Peters and Ms Julia Forner, *Transcript of Evidence*, 6 December 2018, pp.87-89, 92-94 & 101. [↑](#footnote-ref-581)
582. Mr Graham Mundy, *Transcript of Evidence*, 6 December 2018, pp.116-117. [↑](#footnote-ref-582)
583. ACT Solicitor-General, Answer to the Question on Notice from hearings of 6 December 2018, available at: <https://www.parliament.act.gov.au/in-committees/standing-committees-current-assembly/standing-committee-on-public-accounts/review-of-auditor-generals-report-no.-3-of-2018-tender-for-the-sale-of-block-30-formerly-block-20-section-34-dickson/questions-taken-on-notice/20190107-04-Solicitor-General-answers-to-QToNs-Dickson-Land-swap_Redacted.pdf> [↑](#footnote-ref-583)
584. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, at pp.5, 19 & 57-58. [↑](#footnote-ref-584)
585. Ms Cheyne MLA and Ms Cody MLA asked that the report show that they did not support this view because they do not believe there are contradictions in this evidence; refer to their comments above. [↑](#footnote-ref-585)
586. [↑](#footnote-ref-586)
587. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.1. [↑](#footnote-ref-587)
588. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.64. [↑](#footnote-ref-588)
589. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.64. [↑](#footnote-ref-589)
590. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.64. [↑](#footnote-ref-590)
591. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.22, citing *Planning and   
     Development Act 2007*, s 240, and *Planning and Development Regulation 2008*, Division 5.1, ‘Direct Sale of Leases’, including Division 5.1.2 ‘Direct sales approved by Executive’; Division 5.1.3, ‘Direct sales approved by Minister’. Particularly relevant to the sale of Block 30 are note s 110, ‘Direct sale criteria for leases of contiguous unleased land that is public land—Act, s 240(1)(a)(i)’ and s 130, ‘Certain direct sales not requiring approval—Act, s 240(1)(d)’. [↑](#footnote-ref-591)
592. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.22, citing *Planning and Development Regulation 2008*, s 130, ‘Certain direct sales not requiring approval—Act, s 240(1)(d)’. [↑](#footnote-ref-592)
593. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.64. [↑](#footnote-ref-593)
594. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, pp.57-58. [↑](#footnote-ref-594)
595. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.58. [↑](#footnote-ref-595)
596. *Government Contracts*pp.351-352, 372. Note however that Seddon considers the ‘private’ and ‘public’ law aspects of tenders not to be mutually exclusive, in that a ‘duty to act in good faith in the performance of a contract is an emerging doctrine in Australian contract law’, p.383. [↑](#footnote-ref-596)
597. *Government Contracts*, p.385. [↑](#footnote-ref-597)
598. *Government Contracts*, pp.382-386, 407-412. *Estoppel* refers to a legal claim that a party was entitled to rely on undertakings or information provided by another party, which proved unreliable and led to a loss, for which a remedy is sought. [↑](#footnote-ref-598)
599. *Government Contracts*, pp.343, 416-419. [↑](#footnote-ref-599)
600. *Government Contracts*, p.385. [↑](#footnote-ref-600)
601. Seddon describes *Hughes Aircraft* as a watershed in Australian case law of public law principles in tenders. This judgement drew significantly on two judgements from the UK and Canada, in effect importing key findings from those cases into Australian jurisprudence. The principal finding was that there was a ‘preliminary “process” contract governing the conduct of the tender before award’ and that there had been ‘breaches of that contract’. The most important breach in this instance was that the authority which had issued the RFT had ‘failed to evaluate the tenders in accordance with the priorities and methodology prescribed in the RFT’. See *Government Contracts*, pp.365-369. [↑](#footnote-ref-601)
602. Most particularly *Hughes Aircraft Systems International v Airservices Australia (1997)* 76 FCR; 146 ALR 1; see *Government Contracts*, pp.365-369, 391-393, 395. [↑](#footnote-ref-602)
603. These cases are cited at *Government Contracts*, p.359, *n.* 96. [↑](#footnote-ref-603)
604. *Government Contracts*, pp.372, 385, respectively. [↑](#footnote-ref-604)
605. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.21. [↑](#footnote-ref-605)
606. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.21. [↑](#footnote-ref-606)
607. *Government Procurement Act 2001* (ACT), s 2A. [↑](#footnote-ref-607)
608. *Government Procurement Act 2001* (ACT), s 22A(1)-(2). [↑](#footnote-ref-608)
609. *Government Procurement Act 2001* (ACT), s 22A(3). [↑](#footnote-ref-609)
610. *Government Procurement Act 2001* (ACT), s 3A. [↑](#footnote-ref-610)
611. *Government Procurement Regulation 2007* (ACT), s 9. [↑](#footnote-ref-611)
612. *Government Procurement Act 2001* (ACT), s 3A. [↑](#footnote-ref-612)
613. *Public Sector Management Act 1994* (ACT), s 8(1). The ‘merit and equity principle’ is binding on the head of service of a Territory entity: *Public Sector Management Act 1994* (ACT), s 8(4). [↑](#footnote-ref-613)
614. *Public Sector Management Act 1994* (ACT), s 8(4). [↑](#footnote-ref-614)
615. *Integrity Commission Act 2018* (ACT), 9(1)(a). [↑](#footnote-ref-615)
616. *Integrity Commission Act 2018* (ACT), s 9(1)(b). [↑](#footnote-ref-616)
617. *Government Contracts*, p.366. This is concept is also described as a ‘two-contract analysis’ in the terms of *Ron Engineering*, ‘one governing the pre-award period and the other being the award itself’: *Government Contracts*, p.358. [↑](#footnote-ref-617)
618. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.1. [↑](#footnote-ref-618)
619. Mr Andrew Barr MLA, *Transcript of Evidence*, 22 March 2019, pp.225, 226. [↑](#footnote-ref-619)
620. Ms Cheyne MLA and Ms Cody MLA asked that the report show that there are different views about whether the variance was substantially variant or not and this is reflected in the transcript (Mr Andrew Barr MLA and the Chair, 22 March 2019, p. 225), and that the decision on whether to bring the sale back to Cabinet rested with the Director-General. [↑](#footnote-ref-620)
621. *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.22, referring to the *Planning and Development Regulation 2008*, s 130(1)(b). [↑](#footnote-ref-621)
622. *Planning and Development Regulation 2008*, s 130(1)(b)(i). [↑](#footnote-ref-622)
623. Ms Cheyne MLA and Ms Cody MLA asked that the report show that they did not support this finding. [↑](#footnote-ref-623)
624. Ms Cheyne MLA and Ms Cody MLA asked that the report show that they did not support this recommendation. [↑](#footnote-ref-624)
625. *Government Contracts*, p.366. [↑](#footnote-ref-625)
626. Ms Cheyne MLA and Ms Cody MLA asked that the report show that they did not support this finding. [↑](#footnote-ref-626)
627. *Government Contracts*, p.361. [↑](#footnote-ref-627)
628. As quoted in *Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson*, p.15. [↑](#footnote-ref-628)
629. Ms Cheyne MLA and Ms Cody MLA asked that the report show that they did not support this finding. [↑](#footnote-ref-629)
630. *Government Procurement Regulation 2007* (ACT), s 9. [↑](#footnote-ref-630)
631. Explanatory Statement, Government Procurement Amendment Bill 2007, presented by Mr John Stanhope MLA, 6 March 2007 and see *Debates*, Legislative Assembly for the ACT, 6 March 2007, pp.155-158; *Debates*, pp.972-981; and *Debates*, 29 May 2007, pp.1072-1080. The *Planning and Land Act 2002* was the precursor to the *Planning and Development Act 2007*. [↑](#footnote-ref-631)
632. Commonwealth Procurement Rules, created under section 105B(1) of the *Public* *Governance, Performance and Accountability Act 2013* (Cth), commencing 20 April 2019, pp.14-15, viewed 15/08/2019, available at: <https://www.finance.gov.au/sites/default/files/CPRs%20-%2020%20April%202019.pdf> [↑](#footnote-ref-632)
633. Ms Cheyne MLA and Ms Cody MLA asked that the report show that they did not support this recommendation. [↑](#footnote-ref-633)
634. Mr Ben Ponton, Answer to Question Taken on Notice from hearings of 22 March 2019, dated 4 April 2019, received 24 April 2019, available at: <https://www.parliament.act.gov.au/__data/assets/pdf_file/0006/1365756/PAC-ACT-government-answers-to-QToNs-12-to-20-inclusive-from-hearings-of-22-March-2019.pdf> and Mr Andrew Barr MLA, *Transcript of Evidence*, 22 March 2019, p.231, p.233. [↑](#footnote-ref-634)
635. Ms Bec Cody MLA, *Transcript of Evidence,* 11 July 2018, p 26. Ms Cheyne was not a member of the Committee at this time. [↑](#footnote-ref-635)
636. Mr Rob Docker, *Transcript of Evidence*, 11 July 2018, pp.25-26. [↑](#footnote-ref-636)
637. Mr Andrew Barr MLA and the Chair, *Transcript of Evidence,* 22 March 2019, p. 225 [↑](#footnote-ref-637)