



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

FOREIGN AFFAIRS, DEFENCE AND TRADE REFERENCES
COMMITTEE

Reference: Sale of Defence Properties

FRIDAY, 16 MARCH 2001

CANBERRA

BY AUTHORITY OF THE SENATE

INTERNET

The Proof and Official Hansard transcripts of Senate committee hearings, some House of Representatives committee hearings and some joint committee hearings are available on the Internet. Some House of Representatives committees and some joint committees make available only Official Hansard transcripts.

The Internet address is: **<http://www.aph.gov.au/hansard>**

To search the parliamentary database, go to: **<http://search.aph.gov.au>**

SENATE
FOREIGN AFFAIRS, DEFENCE AND TRADE REFERENCES COMMITTEE
Friday, 16 March 2001

Members: Senator Hogg (*Chair*), Senator Sandy Macdonald (*Deputy Chair*), Senators Bourne, Hutchins, Lightfoot and West

Participating members: Senators Abetz, Bolkus, Boswell, Brown, Calvert, Chapman, Cook, Coonan, Crane, Eggleston, Faulkner, Ferguson, Ferris, Forshaw, Gibbs, Gibson, Harradine, Harris, Knowles, Mason, McGauran, Murphy, Payne, Tchen, Tierney and Watson

Senators in attendance: Senators Hogg, Lightfoot and West

Terms of reference for the inquiry:

For inquiry into and report on:

1. The importance and value of the Western Australian Army Museum and the Fremantle Artillery Barracks.
2. Whether the Fremantle Artillery Barracks is the most appropriate and suitable location for the Museum.
3. The reason for the disposal of the Fremantle Artillery Barracks.
4. The disposal of the Fremantle Artillery Barracks and the probity of the disposal process.
5. How the Australian Defence Organisation (ADO) decides whether property is surplus to requirements and the management or disposal of surplus property.
6. Sale and lease-back of ADO property.
7. Any other matter related to the above-mentioned issues.

WITNESSES

BAIN, Mr Ross Kenneth, Assistant Secretary, Property Management, Department of Defence, Canberra.....	555
BELLI, Ms Monique, Client Manager, KFPW Pty Ltd, Melbourne	555
BLACKLEY, Mr Bernard, Director, Defence Estate, Department of Defence, Sydney	555
CLARK, Ms Liz, Director, Property Disposals, Defence Estate, Department of Defence, Canberra.....	555
COREY, Mr Rodney William, Head, Defence Estate, Department of Defence, Canberra.....	555
FITZSIMMONS, Mr Anthony, Planning and Development Manager, Fitzwalter & Associates, Sydney	555
KELLY, Mr Craig, Partner, Minter Ellison, Sydney	555

Committee met at 9.09 a.m.**BAIN, Mr Ross Kenneth, Assistant Secretary, Property Management, Department of Defence, Canberra****BLACKLEY, Mr Bernard, Director, Defence Estate, Department of Defence, Sydney****CLARK, Ms Liz, Director, Property Disposals, Defence Estate, Department of Defence, Canberra****COREY, Mr Rodney William, Head, Defence Estate, Department of Defence, Canberra****BELLI, Ms Monique, Client Manager, KFPW Pty Ltd, Melbourne****FITZSIMMONS, Mr Anthony, Planning and Development Manager, Fitzwalter & Associates, Sydney****KELLY, Mr Craig, Partner, Minter Ellison, Sydney**

CHAIR—I declare open this public meeting of the Senate Foreign Affairs, Defence and Trade References Committee, which is inquiring into the disposal of defence properties. I welcome officers and advisers from the Department of Defence.

The committee prefers all evidence to be given in public, but should you, at any stage, wish to give any part of your evidence in private, you may ask to do so and the committee will consider your request. You will not be required to comment on reasons for certain policy decisions or the advice which you have tendered in formulation of policy and you will not be required to express a personal opinion on matters of policy.

The committee received a letter dated 21 February 2001 from Colonel Shanahan, President of the Victoria Barracks Historical Society, Brisbane Inc., about the society's relations with the Army History Unit. That letter, and a response dated 13 March 2001, from Mr Lee, the director of that unit, are tabled. The committee also tables a letter dated 7 March 2001 and attachments from Ms Barros and Mr van den Dool. I now invite you to make an opening statement and we will then proceed to questions.

Mr Corey—After watching with some interest the hearings of this committee, it's probably useful to provide a bit of an overview of what the Defence Estate Organisation does. If you read the transcripts you would think that we were a group of property developers or property disposers, and not much else. The DEO manages on a national basis, on behalf of the Defence portfolio, all buildings, infrastructure and property as corporate assets. It is responsible for all building owner and landlord functions.

The DEO manages the estate functions of investment, reinvestment, repair and maintenance, acquisition, leasing and divestment. It develops strategic planning and business policy on estate functions, manages the development and delivery of capital facilities projects, undertakes corporate estate management, provides environmental policy development and monitoring of defence activities, and provides planning and facilities operation and maintenance support to bases and establishments throughout Australia.

DEO assets under management comprise 370 separately-owned properties—that is a variable feast because some days we have less than others—and three million hectares of land, which has a gross replacement value of some \$14 billion. DEO has 80-plus properties affected by heritage classifications and it manages 300 expenditure leases and 500 revenue leases.

The business of the Defence Estate Organisation is an integral element of defence capability and is inseparable from key defence outputs and government requirements. The need to respond to the evolving capability of defence requires a focus on the following major goals: to optimise Defence Estate outcomes for the government and the portfolio; to effectively manage the Defence Estate to meet the capability needs of defence groups; to add value to, and be innovative in, the management of the Defence Estate; and to effectively manage the relationship between the DEO, industry, and the community. I might add that, in relation to the latter goal, and after reading the evidence, from the point of view of some people obviously we are not doing that terribly well.

These goals have some inherent restraints when comparing management of the Defence Estate to management of commercial property portfolios, such as provision and retention of high-value assets to meet various defence capabilities and supporting broader government initiatives, such as the regional Australia initiative. However, this has not constrained the DEO from continually improving and implementing efficiencies in estate management. In common with commercially accepted practice, the Defence Estate Organisation continues to identify and market test non-core functions of the organisation. For the financial year 1999-2000, in excess of 95 per cent of the total cost of managing the Defence Estate was provided commercially on a competitively tendered basis.

The head of the Defence Estate is responsible for an expenditure budget that varies between \$618 million annually. He is also responsible for a staff of 355, both military and civilian, about 215 of whom are located in nine regional centres across Australia. The Defence Estate comprises four central branches which look after things such as resources and policy; business practices; project delivery, which delivers the investment program; estate planning and operations, the bulk of the staff, which looks after facilities operations and maintenance of bases. The property management group—the key focus of this inquiry—comprises 23 personnel and provides corporate property management; manages the acquisition, divestment and leasing programs, and contributes to strategies and policies for corporate estate management.

The disposition of the Defence Estate is very much a product of our history. As you are aware, it was principally located on the foreshores of the major cities. Changes over the last two decades have been dramatic. The size, shape and disposition of the ADF have also changed significantly. As a result of these changes, defence properties reduced from over 500 at the beginning of the 1990s to 370 today. Some of the background of that is quite interesting. There were two major initiatives in the late 1980s and the early 1990s.

One initiative was the force structure review of the late 1980s when significant decisions were made to relocate capabilities from the south to the north. That resulted in freeing up a significant number of properties around the Sydney Harbour foreshores and in Sydney generally. The brigade moved to Darwin, other elements moved to Townsville and to the north and there were Navy concentrations in the west. That provided the impetus, in some ways, to rationalise many of the bases. Almost in parallel with that, a decision was taken by government

to provide an incentive for defence to rationalise its property holdings. They were able to retain as revenue up to 1 per cent of defence outlays. That was about \$110 million in the early 1990s and it is probably \$130 million today.

Prior to that decision being made, defence properties that were surplus to requirements were handed over to the then Department of Administrative Services for disposal. The policy of the Department of Administrative Services was pretty much to engage an agent, put a for sale sign on the property, and sell it as is. Little value was added to the property but, from where defence sat, it did not really matter because the revenue was going to the whole of government rather than to defence as an entity. Once defence assumed responsibility for the disposing of properties and the retaining of revenue we made conscious decision to optimise revenue from that disposal process because it had a direct impact on defence capability. That is probably from where we have evolved.

Another issue that I need to engender into the thinking of the committee is that the Defence Reform Program, which followed the force structure review of the early 1990s, had as its focus reallocating about a \$1 billion from the tail of defence to the teeth elements. There was considerable impetus to reduce the number of bases Australia-wide, with significant savings in overheads for defence. That has been quite successful, not just in relation to the Defence Estate, but in relation to defence as a whole. Some \$750 million has been saved or reallocated from the tail areas of defence to the teeth. That is one of the principal drivers that has brought us to where we are today. I do not think I need to say any more than that at this stage.

CHAIR—I indicated earlier today that the committee has a substantial number of questions that it wishes to ask, which will assist the secretariat in the compilation of the committee's report. There are many more questions than even I anticipated. People from Defence Estate have travelled to Canberra to answer our questions. With your agreement, we will ask questions relating, first, to Randwick and, second, to Point Cook. We will then ask questions relating to a range of general issues and some more specific issues.

Mr Corey—It might be useful if the committee had an understanding of some of the processes we go through—we could use Randwick as an example—in vacating or disposing of land.

CHAIR—That is in your hands, Mr Corey. We would welcome that. You hit the nail on the head when you said that this inquiry has revealed a gap between your perception of how you handle things and the way in which the community perceives that things are being handled.

Mr Corey—Before I ask members of the Randwick group to speak you will understand that all the processes we follow are consistent across the country. But we run into different regulatory regimes in all states. In Sydney, for example, all defence properties are zoned or listed as 'defence special purposes.' In some states a state or a local zoning registers them as 'defence special purposes.' They are also in another broader zoning. In some states we can zone properties and submit a development application. In other states we cannot. So we probably need to explain to you how we act and operate in each state.

CHAIR—I hand over to you and your group.

Mr Blackley—As Mr Corey said, in Sydney the majority of properties are zoned, ‘special uses, defence’, or ‘special uses, military’, or what-have-you. Because of the risks perceived by prospective owners acquiring a site with a zoning like that and attempting to change the zoning—

Senator LIGHTFOOT—What do you mean when you refer to ‘prospective owners,’ Mr Blackley?

Mr Blackley—A developer of the land.

Mr Corey—Future developers of the land.

Senator LIGHTFOOT—Purchasers of the land?

Mr Blackley—Yes. Because of the risks that he or she perceives in getting the zoning changed through local council planning controls, the value that he or she is prepared to pay for a site is considerably less than its true worth. So it is all related to trying to remove as much risk from the planning process. What we are really about is adding value by reducing risk.

Mr Corey—I might just go back a little. Some of the properties that we have had in Sydney have been occupied for 100 years by the military. They were occupied under a variety of regimes, none of which had the environment as a consideration. Many of them were built out of structures that contained asbestos, and a whole lot of other things. As we progressively rationalised these things we have had to clean them up. Initially we had to convince the military that they should leave, which is not an easy task when you are sitting on the side of Sydney Harbour. But other imperatives drove that, including the need to make better use of defence dollars and to improve the development of defence capability.

We progressively had to understand how to manage those properties, which is different from what has happened in the private sector. In the private sector you find that many properties that are significantly contaminated have previously been built on. Now, when people are redeveloping those properties, they have to clean them up at very high cost. Fortunately, we have not been in the development game and we have not disposed of any properties until we have been in a position to understand the contamination on those sites. There are also a number of heritage considerations. You heard at least one point of view during the hearings and we hope to be able to give you another point of view today.

Senator LIGHTFOOT—When Mr Blackley said earlier that you maintain these properties, he meant that the DEO maintains them because of some inherent risk that might be passed on to a developer. The DEO carries that risk?

Mr Corey—We carry that risk. Two sorts of risks are involved. One is an environmental or a contamination risk.

Senator LIGHTFOOT—Even if you sell it, you still carry that risk?

Mr Corey—Even if we sell it, we still carry that risk. Mr Blackley will give you information about the commercial risk. It is quite an extensive process to get a zoning through the local

council. In the case of Penrith, which you have seen, we have been working at that for some nine years.

Senator LIGHTFOOT—Are you saying that you are better equipped and informed, and that you have better expertise than a developer for getting that process through the local authorities?

Mr Corey—That is not what we are saying. We have to optimise that revenue for defence. If we sell a property with that risk still there, the property developer or the purchaser will devalue the property to such an extent that the revenue we get for it is insignificant compared with the revenue we would get if the risk were taken out of the equation. I refer to the timing that is involved. We have done a business survey on these sorts of properties—and Randwick is a good example—which shows the return to defence, depending on where you sit. If we had sold that property as is, without doing anything, we would have got something less than \$20 million; and here I am plucking a figure out of my head. However, if we eliminate the majority of risks, the return to defence would be in excess of \$200 million.

Senator LIGHTFOOT—So the integral risk would be less to you than it would be if you sold it to a developer?

Mr Corey—The risk would be the same, with the exception that we are not carrying the commercial risk. While we are going through this process we still have defence people on the land and we still have to remediate that land. We can do a whole lot of productive activities while we are still holding the land. Even if we took into account holding costs, in commercial terms those costs would still be significantly less than the increased revenue we would get from the property.

Mr Blackley—Earlier you asked whether defence was better placed than the private developer. On the day that you visited Sydney I explained to you that we employ only five people. That function is entirely contracted out. We do not do anything in-house; it is all outsourced. We try to select the best consultants. Inevitably, we use the same consultants as developers use. So there is no inference—and I suspect that there may be—that we are doing this in-house or that defence has in-house skills. We do not. Essentially, the five people in Sydney are just project managers. We are just project managing the process and giving the political interface. So the entire function is contracted out.

The objective in Sydney—and I am talking only about Sydney—is to have an approved land use. Prior to putting a property onto the market it must have an approved land use—something that is actually tradeable; something that a purchaser can see and take forward. The first step in the process is to change the land use. There is very little risk in doing that other than the planning risks that are involved. As Mr Corey said earlier, in the case of Penrith, it can take nine years. Last year, in the case of a small site in Liverpool, it took us eight months from start to finish, with collaboration and cooperation from major stakeholders. However, this changes between councils. Attitudes are totally different from council to council.

Without getting into individual properties, having got the change in land use, it is then possible to further reduce the risk for a prospective purchaser by obtaining development consent. That can be either a development consent for the subdivision of a site, or a

development consent for a specific building on a site, which we would design. We would then offer it to the market with an approved subdivision or an approved building design.

Senator LIGHTFOOT—When you say, ‘we’ are you referring to the DEO?

Mr Blackley—Yes. I am talking about the Sydney Property Disposal Unit, its team and its use of private consultants. We are really taking that further risk out of the process so we can take something to the market. We have also reduced the planning risk. In designing things we have taken some design risks out of the equation. We have introduced the marketing or sale of the site, so we are actually now addressing the marketing risk. If, in fact, we are designing a building, which we have done in many instances, we are also taking a lot of the development risk out of the process. We did not show you some sites in Sydney where we have designed buildings and successfully sold them. In fact, we took you to one site at Crows Nest—a perfect example—where we designed 25 apartments. You saw on that site 25 apartments being built, with the exception of some minor changes, precisely in the way in which it was designed prior to its sale. That is a measure of our ability to do it successfully. If you seek these approvals and then when you sell the land to a developer he wants to change the building you have probably missed the target. But to date that has not occurred in Sydney.

Mr Corey—I refer to another risk. The political risk is probably one of the more significant risks in Defence land. No doubt you have heard the view that Defence land is free land and it should be handed back to the people of Australia and used for public, recreational or other purposes, irrespective of our views or the government’s views. Once we have gone through the planning process that Bernard just described, the political risk to a purchaser or a future purchaser is basically eliminated. Councils and governments change. In some cases the planning process can embrace a whole regime of different council constructions and different political constructions at both the state and federal level.

CHAIR—You talked about marketing, development and political risks. Are you able to quantify those risks and tell us what their impact would be upon the sale price of the land?

Mr Corey—We could give you an example. We would not like to give you those examples in public, but we can provide you with many examples as you like. One of the things we do before we go down this track is to identify the risk versus revenue.

CHAIR—Mark that on your list of things to do.

Mr Corey—I will, yes.

CHAIR—When the committee next meets on 25 March we might take in camera evidence so we can get some idea of how you measure those things and how they affect the outcome of the sale price.

Mr Corey—I might add that the measurement of that is again done by private sector experts in this field.

CHAIR—Yes, I know. We accept that.

Mr Blackley—The next step in the process, having received subdivision approval for a block of land, regardless of size, is to add further value. I explained to you in Sydney when we walked around the site at Ermington—and I revealed to you our intentions at Randwick if we get through this current difficulty—that we will follow the subdivision by constructing the infrastructure. We have not done this anywhere. In the last couple of weeks we took the Ermington proposal to the Parliamentary Standing Committee on Public Works. Although that committee has not yet reported on the matter, it appears to be comfortable with the concept.

CHAIR—That is the concept of you facilitating all stages of development?

Mr Blackley—The proposal that we took to the committee was that we actually do the infrastructure.

Senator LIGHTFOOT—What committee were you referring to, Mr Blackley?

Mr Blackley—To the Public Works Committee.

CHAIR—What sorts of costs are you looking at there?

Mr Blackley—The cost of the work, which is on the record, is \$31.6 million. The revenue to be achieved from that is not yet on the record.

CHAIR—I would expect that.

Mr Corey—The investment has a sufficiently significant impact on the revenue to justify the input of the Public Works Committee.

Mr Blackley—When I talk about infrastructure I am referring to dividing up a large site like Ermington, which you will remember is 20 hectares along the Parramatta River. We then put in main roads. Underneath those roads we put in water, power and sewerage. We then sell parts of that site—we often call them super lots—to builders and all they need to do is connect to the services. They then build houses, or whatever the subdivision allows them to build.

Mr Corey—It is probably useful if I add something, taking into account the evidence that you have heard over the last couple of months. We do not put in infrastructure without the agreement and cooperation of the power authorities, or whatever they call themselves, in Sydney. So it is not as though we are doing something that is not consistent with the broader planning infrastructure for the area in which we are involved.

Mr Blackley—In effect, we are selling it into the state system. Obviously we have to get all the necessary state government approvals for everything if we go down that path. In our submission to the Public Works Committee we do not state that we are necessarily going to do it. We are putting forward a concept. We put the property on the market and, if the market determines that it would be far more comfortable for defence to sell off parcels of land and it is in our best financial interests we would proceed with that sale. We are not saying that we will do this. All we are doing is getting parliamentary approval to do it.

Senator LIGHTFOOT—How does the market determine that?

Mr Corey—We go to the market place.

Mr Blackley—We call for expressions of interest or request proposals from developers. We offer the site, either in globo—all in one lot—or in parts, or in any way the market would like it.

Senator LIGHTFOOT—Have you always done this? Has it been your practice to do this with all land disposals?

Mr Blackley—In the case of Ermington that is really the first large site that we have been through. The unit started only in 1996. This is the first project that we have actually got to the line. We have been through the rezoning and the master planning process. We are now ready to put it on the market and sell it. We are trying, along the way, to meet the first objective of the Sydney Property Disposal Unit—to optimise revenue to defence.

Mr Corey—Mr Chairman, I will again add something. In a number of properties we have not done this. Previously, we have taken it to various levels and we have seen significant revenue windfalls to the people to whom we have sold them. In Zetland, a major site in South Sydney, we thought we were fairly innovative in what we did. While we have built in provisions in the contract which give us returns in case of windfall properties—in this case to Landcom—Landcom is sitting there smiling and saying, ‘Thank you very much, Department of Defence.’ We have to balance when we cut off with when we stay in.

CHAIR—As you have referred to Zetland will you give us the facts and figures in relation to Zetland?

Mr Corey—We can give you facts and figures to a certain stage. We project what the final outcome might be from what we read and from what sales there are.

Mr Blackley—Effectively, the site has been sold.

CHAIR—Did purchasers of the Zetland site see the Defence Estate coming and they thought, ‘This is a bargain?’ or was the Defence Estate not prepared?

Mr Corey—I do not think that it is either of those things. I think you have seen a lot of requests for us to sell it as is and for us to do a lot of things. We sold it somewhere between ‘as is’ and somewhere between where Ermington is. We have to make a judgment about when we cut off. At the time, the advice we got was that that was probably an appropriate time for defence to get out. In our learning curve we thought that was a sensible judgment. In the long run it may prove to be not as sad as it looks superficially.

CHAIR—Hindsight is always good when you are trying to make a better judgment than you made at the time. I acknowledge that. I am not being critical of your decision to sell.

Mr Corey—We will be happy to give you some of the background on that.

CHAIR—Give us some of the background. You can do that at the same time as you do those other things so that we can get a proper feel for what goes on.

Mr Blackley—That is the planning continuum. Defence does not subdivide the site into super lots and then build the houses itself. It is not in the business of building houses and selling them to mums and dads. It does not do that.

Senator WEST—Would you not maximise your profits if you did that?

Mr Blackley—Very much so, yes. But it's not necessarily a function of the Department of Defence to sell 650 dwelling lots at Ermington or 661 houses at Randwick.

Mr Corey—I probably need to make a couple of points. Other Commonwealth agencies take the view that we are too involved in properties; that we should be getting out of them much earlier and getting an earlier return for the government, even though it may be significantly less. Another thing I need to point out is that all our properties are different. You cannot say, 'This is the model we will use for this property and this is the model we will use for another property.' In the case of HMAS *Platypus*, which has come up again in your hearings, we inherited a site. We occupied a site in the early 1950s. Prior to our occupying that site as a submarine base it used to be a gas works. The site is significantly polluted. In the last couple of months we went to the Public Works Committee and it has reported on the remediation of *Platypus*. We are spending up to \$16 million remediating that site before we can on-sell it.

During that process we went through a whole lot of negotiations, consultations, discussions and disputes with the local council, local resident interest groups, and other people. The PWC has given us a pat on the back for where we have been. We had to go to the Land and Environment Court to get North Sydney Council to agree to where we wanted to go. However, this is probably one of the most sensitive and best developments on the harbour that they have seen. While a lot of activity is going on around the place, they are all different. *Platypus* is totally different from Ermington, Randwick and Zetland. So you look at each individual property and see what you can do with it.

Mr Blackley—Having addressed the continuum of planning, I will now talk about our consultation process. There are, in fact, three objectives of the Property Disposal Unit. The first is to optimise revenue, which we have talked about; and the second is to follow sound and modern planning principles. That is important because we have so much property that we do not want to do the wrong thing and send the wrong message. We want to do things and be a good neighbour when we do it. If we do not, we will get caught down the track on something else. So, being responsible, in a planning sense, is the second objective. The third objective is to engage in wide and proactive consultation with all relevant stakeholders. One of those objectives is not more important than the others. Revenue is not more important than the consultation. They are all equally important and they have to go together as a combination.

Generally speaking, when we start a property disposal in Sydney, initially I go to see the mayor, the general manager, or both. It does not matter whether it is a small Army Reserve site, Ermington, or Randwick for that matter. In fact, it happened at all those sites. The principal objective in going to see the mayor is, first, to introduce myself and to make myself available to him. I give him my home telephone number so that he can ring me on any matter at any time.

The second objective is to find out his views about the site we are talking about—whether he would like to see it as open space, or whether he would like to see legitimate development on the site. There is a range of reasons why I go to see the mayor. Perhaps one of the more important reasons is to ask the mayor and his council how they want us to go about the consultation process. That is precisely what happened at Randwick, at Ermington and at all the other sites in Sydney.

Defence does not determine that it will be a widely proactive consulter. That is determined by council. We follow council rules that have been set up at these initial meetings. So it is important to know where council is coming from because, frankly, some councils do not want you to consult. When we visit some properties there are councils that prefer not to consult. They want to make the decision. When the decision has been made—and I will not refer to actual properties—council will put the property on public exhibition and seek public comment. Other councils, like Randwick, Parramatta and Ermington councils, like to do it more proactively. They want to start the process in a public way.

In the case of Randwick, an opportunity was given to the mayor early in 1996, within weeks of the meeting I had had with the Lord Mayor of Parramatta. In the case of the Ermington site I had suggested to the Lord Mayor of Parramatta that, first, we should have a partnering workshop with council itself—just defence and its consultants. I suggested that we set up a partnering workshop at which an independent facilitator would talk about those lovely fluffy ideas of partnership, trust, commitment, passion, communication and respect—all those important elements. We held a couple of those partnering workshops at which we tried to dispel the inevitable mistrust which is there at the outset of planning. For some reason there is mistrust, even before we sit down with someone and have initial discussions with him. That level of mistrust is increasing year by year. You can see it in Sydney.

CHAIR—A level of mistrust by whom?

Mr Blackley—A mistrust for the process. They do not believe that the process will be open and frank.

CHAIR—So the mistrust is for DEO per se?

Mr Blackley—No, it is not. They do not know DEO. They have probably never dealt with the DEO before.

CHAIR—So who do they mistrust?

Mr Blackley—We are seen as a large landowner rather than the DEO. But it is defence. Perhaps there is a perception that it will not be as good as we are suggesting. The idea is to have a partnering workshop and to get all those things on the table. We put on the table any concerns that they have about communication or other issues and we discuss them.

Having completed that partnering workshop the Lord Mayor of Parramatta suggested that we should have a public meeting. We had a public meeting in the Ermington community centre, which was attended by 400 people. From the floor of the public meeting the Lord Mayor called for nominations to form a community reference committee, which subsequently became known

as the Ermington Residents Committee. That has recently been nominated, as you know, for the Prime Minister's Award for Excellence in Community and Business Partnerships.

Twelve people were elected to this committee. They have been with defence's planning team and planning manager for the last five years and they have added real value to the process. They are used as a forum where information from the community is put into the planning process. The team disseminates that information and sends it back to the community. Within weeks of that meeting that same proposal was put to the Mayor of Randwick. He chose not to have a public meeting.

He liked the concept of a partnering workshop, so we sat down and had a partnering workshop with Randwick Council staff. Instead of having a public meeting to form the community reference group, his preference was to nominate people to sit on what became known as the Community Reference Group. So that had nothing to do with defence. All we were prepared to do was to facilitate the process. So it was quite different. It was run along similar lines, independently facilitated by someone, and there were free, open and frank discussions.

Tony can tell you how often that group met. During the planning process for Randwick and Ermington they probably met 20 or 30 times. During that process there was genuine dialogue. Not only did they shape the outcome; they shaped it in a positive way. They added real value to the process. So there are real benefits in having consultation. For smaller sites, we do not have a public meeting. But we still start the process by talking to the mayor. That is followed by communication between the mayor and me until the approval is in place.

I suppose that the only other aspect to mention is the environmental side—an issue which Mr Corey has already mentioned. We do a range of site preparation works or remediation on the site. Usually that is done in collaboration with council.

Senator LIGHTFOOT—And the state authorities?

Mr Blackley—And the state authorities, yes.

Senator WEST—How long do environmental assessments for contamination, et cetera, take?

Mr Corey—Again, they are site-specific, depending upon the extent of contamination. At Newington, a site which you have discussed or which someone threw in as a prime example of a development, the village at Newington was the former Defence-Navy armament depot. The contamination and remediation of that site probably occupied a period of three or four years. So it is not as though it depends upon the extent of contamination or the remediation required. On some sites, it may be a six-month exercise.

Senator WEST—I was thinking of Marrangaroo. You could add that to the list when we get down to individual bases.

Mr Corey—We have not disposed of Marrangaroo.

Senator WEST—No, Mr Corey, we have not disposed of Marrangaroo, but it has been hanging around for a number of years, as you well know.

Mr Corey—It surely has. As I understand it, Senator West, the people who were interested in using it have now backed out.

Senator WEST—The people who were interested in using it actually bought a property on the commercial market about 10 kilometres away. So they are still interested in that region. There are a few spin-offs from that which I want to place on the public record. When you carry out these environmental assessments to whom are the contents of your reports disclosed?

Mr Corey—Let us leave Marrangaroo to one side. I will talk about Marrangaroo separately as I have not been briefed to talk about Marrangaroo today.

Senator WEST—I am seeking general information. If an environmental report is prepared—presumably in consultation with the ADF, or the appropriate body—to whom are those documents shown?

Mr Blackley—Let us use Randwick as an example.

Mr Corey—We can talk generally.

CHAIR—We have a specific set of questions relating to Randwick.

Mr Blackley—I will use Randwick as an example because you have actually seen the site and the environmental contamination. Tony can take you through a process that has been ongoing for the last four years.

Senator WEST—I am more interested in the defence aspect. The DEO, or some body within the ADF, undertakes environmental assessments of the levels of contamination. I do not want to do Mr Fitzsimmons a disservice, but I would have thought that defence would have undertaken environmental assessments for contamination prior to inviting anybody into partnership with them, and probably even prior to holding wonderful consultations with council mayors or whatever.

Mr Blackley—The environmental characterisation of a site is something that happens, just as it happens with the assessment of traffic, flora and fauna, environmentally sensitive zones, or heritage. It is one of those processes that happen during the planning process. So we do not start that work. I would suggest that that is not the right way to be doing it. We need to set up a consultative mechanism to deal with these reports as they are being prepared and as assessments are being undertaken and are being made available. In the case of Randwick, for example, it is such a large site that we did not do an environmental contamination assessment of the entire site in one go. It would have taken too long. So we simply started at one end and we worked through various zones at that site. We have done that with an environmental assessor. We have a defence environmental panel. People on the panel are selected to undertake these assessments. As those reports are produced they are made available to the community organisations with whom we are in partnership.

Senator WEST—So for a site like Randwick you have not done an overall environmental contamination assessment prior to anything happening. That is being undertaken as you go through this process. Are you actually doing it block by block, or zone by zone?

Mr Blackley—We have completed the environmental characterisation of Randwick. But it was so large that we just did not have the work force to be able to undertake an assessment of that entire site at one time. We had to do it progressively. That is all I am saying. We have done it progressively. We have completed our environmental assessments, and that has been going along as we have been progressing the planning. Inevitably, they go hand in hand.

Senator WEST—To put it into simple English, you are saying that you put it into bite-size chunks that you can handle and you progress those through. You have to undertake early on in the piece an environmental assessment of the contamination at the whole of the site, maybe even including what you are not going to sell off, so that you know what contaminants are there. Some of the defence contaminants that have been utilised over the years could potentially be nasty little time bombs ticking away. That could have a major impact on the overall disposal of that site. There could be something nastier than you thought at that site. What you have already developed might suddenly see a big drop—

Mr Corey—Let me just address your question, Senator. In a broad sense we have not been in the environmental game all that long. Prior to the Defence Estate Organisation being set up as an entity in 1997, environmental responsibilities rested with individual service organisations. Since taking it up, we have developed an environmental policy, which has been promulgated widely. We have put in place environmental management plans for all our bases, which incorporate an environmental impact assessment, or an assessment of the contamination at those sites. We are progressively working our way around the country. We have 370 sites, so that is quite a big task. We are progressively working our way through existing sites. In many cases, those that are up for disposal have not had that regime applied to them because we have progressively been vacating those sites. In those cases the environmental assessments have been aimed more at the disposal process than at the general management of the site.

Mr Blackley—New South Wales has in place the Contaminated Land Management Act. We comply in every respect with that Act. Under that Act there is provision for an independent environmental auditor. It is his task to validate that the site has been cleaned up to a level that is appropriate to its future land use. That process will continue as long as planning is in place. You would not want to remediate a site to its most pristine condition as there are not enough landfill areas in the world to take our contaminated soil. So we are attempting to ensure that we are only remediating land to a level that is adequate for its future use. We have gradually gained expertise in that area. At the end of the day the person who determines what is cleaned up and what is not is the auditor as he is the person who produces the site auditor statement.

Mr Corey—As Bernard has said, the level of remediation depends upon the future use of that land. It is worldwide practice—the same thing happened at the Olympic Games site—to bury and cap waste. Sometimes burying and capping waste is much more efficient and much more environmentally sensible than carting it off to a landfill. That happens. That is something that not only we have learned; that is something that the whole of Australia has learned.

Mr Fitzsimmons—In the case of Randwick, the environmental assessment was commenced prior to my engagement. I think it was a reflection of the original use of the site as a rifle range. In any planning exercise, typically, an initial site assessment is undertaken by various experts. The outcome of that environmental assessment is the identification of constraints and opportunities on the site. For example, if you strike an area that is highly contaminated and it cannot be remediated for one reason or another, that sets the agenda for what can happen with that site. But in any environmental assessment that is undertaken as part of this planning process the environmental consultant studies the history of the site and does some preliminary testing to identify what those constraints are in environmental terms. That, together with ecological and other studies, sets this framework for engaging an architect to do a subdivision design or an architectural design of a building.

The contamination studies are then gone into in much greater detail in the planning process and we identify the most appropriate way of remediating the site and we determine the level of remediation required. That goes hand in hand with what might be the outcome of the design process. For example, if you have high-density high-rise buildings, the level of remediation for that site would be much less than it would be if it were just a single residential block. To answer your question, Senator West, we do an initial assessment before we start mapping out the ideal development outcome for that site. The environmental assessment at Randwick has taken almost five years. But an overview of the site was done prior to us engaging a consultant for the overall planning.

Senator WEST—I refer to the New South Wales Contaminated Land Management Act. Is Defence Estate and, therefore, all defence lands within New South Wales, subject to this Act if they maintain their existence as defence establishments?

Mr Kelly—That is a difficult and unresolved question at the moment. It has been an evolving position after the repeal of the Environment Protection (Impact of Proposals) Act and the introduction of the Environment Protection and Biodiversity Conservation Act. So to answer your question, the exact position has not been resolved. But it is not relevant to Defence's operations, because they take the view that they will comply in all respects with the requirements of that act. So when we dispose of contaminated properties, as we have done and as we are proposing to do with Randwick, we say to council and the community that the site will be remediated within all the requirements of that act.

Mr Corey—On the broader question, rather than from a legal interpretation, the policy position of defence is that we conform to state regulations. There is still a question as to whether the Environment Protection and Biodiversity Conservation Act legally binds us. It has been our position, since we have been set up as an organisation, that we will conform to state regulations.

Senator WEST—Why is there a question as to whether the act legally binds you? If you are going to conform, why do you bother—

Mr Corey—That is a policy position. The legal position is one that lawyers argue about.

Mr Blackley—It is Commonwealth land and it is a state law. It is a question of whether the state law applies to Commonwealth land.

Senator WEST—But why is it an issue yet to be resolved if it is your policy to comply?

Mr Kelly—We seek not to make it an issue by complying with the standard of the state act.

Mr Corey—Senator, you obviously do not deal with lawyers, whether it be in the private sector or the public sector.

Senator WEST—We deal with lawyers all the time in this job.

CHAIR—Mr Corey, you and I might have something in common. Our view of lawyers might be the same.

Mr Kelly—Our view of the legislators is critical to that question. It would have been a simple matter to draft provisions that went into the EPBC Act, that clarified this position. The EPIP Act has no provision at all, and the EPBC Act has a provision of about three lines in section 10, which states, ‘This act is not intended to oust the operation of state laws.’ Had it been addressed at more length, you would have less trouble with lawyers.

CHAIR—That is the government’s problem. I am in opposition.

Senator WEST—You’re not in opposition in New South Wales, though.

Mr Kelly—That is a condition that might change.

Mr Corey—That is probably enough of an introduction. Senator, would you like to commence asking questions?

CHAIR—No. Mr Blackley said a couple of things that were disturbing. In describing the process for what I would call the larger sites you went through a consultative process. But then you did say—I hope that I did not misunderstand you—that for smaller sites you do not have a public meeting and the same processes. Is that correct?

Mr Blackley—Usually, for a small site like Crows Nest, we just meet with the neighbours. In that instance a drill hall was available and we invited immediate neighbours. We probably had four or five meetings during that process. I cannot be absolutely sure. The plans would have been displayed. The meeting was chaired by the Mayor, Genia McCaffery. She chaired that meeting and the Deputy Mayor chaired another meeting. I went to all those meetings, so I represented defence and Genia represented council. We simply asked the community what they thought of it. Some members of the community did not like it and some members of the community liked it. So you just have to keep working with the community until you get consensus.

CHAIR—When you say, ‘consensus’, does consensus imply your view or genuine consensus where there is movement on the part of both parties. It is easy to say that you will continue to meet with them until there is consensus. If there is no room for movement on your part and no room for movement on their part it becomes difficult to get consensus.

Mr Corey—We could finish up with a Harbour Federation Trust.

CHAIR—You could say that, Mr Corey. When you are talking about smaller sites, the size of the site alone could be more important than something a thousand times bigger. It could be infinitely more significant.

Mr Blackley—Certainly.

CHAIR—And the interest could be far broader than, say, just the immediate local community. That is why I am interested in your consensus process.

Mr Blackley—If we take the Crows Nest site that you went to see in North Sydney, it is a little site. We were proposing to put some townhouses on that site. We started the process with a clean sheet of paper. There was a drill hall on that site, but we started with a clean sheet of paper approach. We sought the community's views about what they wanted. A lot of them said, 'It is Commonwealth land. We want it to be a park'. Others said, 'It needs to be developed'. Council wanted it developed. So all those things went into the melting pot. The urban designers met with the community. At the three or four meetings that we had with the community those preliminary designs went up on the board. People would say, 'No, we do not want cars coming in here or going out there.' It was an entirely open meeting. Individual residents were invited, by letter, by the council; defence did not do that. So it was orchestrated by council, and it was held in a defence building.

CHAIR—Yes. At the end of the day, being realistic, in order to optimise the return to defence you would see some form of development taking place on that site. The site would not be left in its pristine state.

Mr Corey—Defence is governed by the lands acquisition act and some broader policy issues in relation to the government, which do not enable us to make decisions as to whether to leave it as parkland. We are charged with getting a return from property, the same way as anybody else is charged with getting a return from property. If a decision were to be made to hand over property as parkland to a community that would have to be made by the Minister for Finance and Administration.

CHAIR—I understand that. But that could be a recommendation that you would make.

Mr Corey—It could, but it would be very unlikely. But, yes, it could be. We have done it. That is why we have priority sales.

CHAIR—Yes, I understand that.

Mr Corey—We negotiate with the local community and we go to the government and say, 'We recommend that this be sold as a priority sale, or a peppercorn sale, or be given as a gift'—which is rare—'to local council, or whatever.'

CHAIR—But it could be part of your consultative process?

Mr Corey—It is.

CHAIR—That could be the outcome if there were diametrically opposed views.

Mr Corey—Yes. That is why we get to that position.

CHAIR—You could then seek the advice of the minister as to which way you should proceed.

Mr Corey—Yes, we do.

CHAIR—Without going into the nature of the advice—because I know that that is not what should be done—how many times would you consult with the minister to determine where you should proceed in relation to sales?

Mr Corey—If the community view was so strong we would go to the minister and recommend to him that he recommend to the Minister for Finance and Administration that another approach be taken.

CHAIR—How often would that happen?

Mr Corey—It happens more often than we would like it to happen. It is a lot of work for a fairly small group of people. We devote a lot of time to resolve some of the issues relating to low-value properties. I am not sure whether or not that has happened for high-value properties. The Sydney Harbour Federation Trust is the only real example of a high value property where I have seen that happen.

CHAIR—Can you tell us how many times that has happened in relation to low value properties?

Mr Corey—Do you want to know many priority sales we have had?

CHAIR—Yes, in the last 12 months or two years.

Mr Corey—We could get those figures for you, yes.

CHAIR—Are there any instances of stand-offs and you have taken that back to the minister? I am not asking for the nature of the advice; I am asking how many instances of stand-offs there have been?

Mr Corey—You would probably count those on one finger. It was resolved and, in the final analysis, everybody agreed that it should be a priority sale.

CHAIR—Another issue mentioned by Mr Blackley was the inevitable mistrust that seems to be growing. I wish to pursue that issue as that is an issue of concern. I asked whether or not there was a mistrust of the DEO. I am not trying to individualise it; I am just trying to find out why there is growing mistrust. Is it a growing mistrust in relation or about the DEO's ultimate

intentions? Is that mistrust coming from the public or from the business community? Where is the mistrust coming from, and why is it growing? If it is growing, what can you do to counter it?

Mr Corey—We obviously need to give Mr Blackley some lessons in appearing before Senate legislative committees. We must advise him that he should not offer gratuitous information to the group.

Senator WEST—Mr Blackley is good because he is honest.

Mr Corey—As we see it, this mistrust is in Canberra.

CHAIR—Is it at the coalface?

Mr Corey—No, it is not at the coalface.

CHAIR—That is what worries me.

Mr Corey—We are at the coalface quite regularly too, Senator.

CHAIR—I know you are, Mr Corey. You know the respect that I have for you.

Mr Corey—I will let Bernard speak for himself in a moment. I think the mistrust is from special interest or self-interest groups. They suffer a bit from the conspiracy theory. When we talk to them they say, 'You are not telling us the truth anyway.' I think it is a general mistrust of the Commonwealth as a whole, not just the DEO or defence. I think it is a much broader mistrust. A self-interest group that cannot get its way is not going to trust you. It will find all sorts of reasons why it not going to trust you.

CHAIR—Being a politician, I can understand that. Those sorts of groups will find any reason not to trust you. As politicians we can live with that.

Mr Corey—As bureaucrats we have to live with it too.

CHAIR—I wonder whether you do. I am concerned because it is part of the interface between a small but important section of operations of the Department of Defence.

Mr Corey—Let me give you an example, Senator. When we were negotiating with some of the groups around the harbour on the harbour foreshore properties—we had reference groups and a range of consultative mechanisms—it was a one-way process. We would brief these groups of people and they would go off to the press, and say, 'We can't trust these people.' No matter what we told them and no matter how honest we were with them, they distorted the truth, twisted it and threw it back at us. So I am not sure how you can generate a level of trust with a group or groups like that.

CHAIR—That is what worries me.

Mr Blackley—It is not limited to defence; it applies to any large landowner in Sydney. There is an immediate mistrust of large landowners. People fear that they are going to rape these sites and overdevelop them. That fear is increasing in the community.

Mr Corey—That fear is fed by the New South Wales government, the state department and by developers who develop land in Sydney generally. They tend to maximise that development much more than we do. By comparison, we are quite a sensitive group of individuals.

CHAIR—If you are seen as a sensitive group of individuals—and I am not doubting your word—why are you then seen in the same light as others in the marketplace?

Mr Blackley—We are starting from the point that there is mistrust. We are attempting to break down that mistrust, which we believe to be there. We hold meetings and partnering workshop with council and we also form partnerships with the community. In any relationship you have to build trust. It is not something that is immediately there; it is something that you have to gradually develop. We have to walk the walk and talk the talk until we get there. Then we have to maintain that trust. There have been some abominable developments around the world and in Sydney. People do not want that to happen in their backyard. They are as cautious of defence as they are of large landowners, which I will not name.

Mr Fitzsimmons—From my experience, defence is the organisation that kicks off the process. It owns the land and it says, ‘This land will be on-sold and redeveloped.’ We build up the trust with the community. I feel quite confident at the end of the day that members of the community support what we have done and they support the outcome of our process. However, they are concerned that, once it gets to council and once it is on-sold, an aggressive developer will come in, try to change the zoning and increase the housing density.

We are starting this process of the ultimate redevelopment of a site, which is generally undertaken by someone other than defence. During the consultative process they have said to me, ‘We would like you, the Department of Defence, to stay in the process right to the end so we know what you are offering up-front. We want to see that delivered. We do not want someone else beyond this process to take over and change the ground rules.’ A lot of that criticism is directed at councils for allowing changes in zoning, et cetera.

Mr Corey—I will give a good example of that as well, Senator—an example that some of my staff do not like me using. We sold a property in Melbourne with an indicative zoning of, I think, an eight-storey development—or something less than that—which was subsequently bought by a developer. Within a short period of time he got the council agree to an 18-storey development. Local residents were really not impressed. They would have preferred us to stay in and to be able to guarantee the outcome of that development.

CHAIR—I can understand that and I will not harp for too much longer on this problem of mistrust. If there is mistrust, how do you respond to that mistrust? You said that you go along to your meetings, you are open, you lay your cards on the table and you do not hold back. People then take away the information that you have given to them and they say, ‘We cannot trust those people.’ Does this make you cautious as to what you might or might not say?

Mr Corey—No. We still have to give information openly and honestly to the groups. If they interpret it in a different way we just have to wear that. We have learned that we cannot conceal information from them.

CHAIR—I am not advocating that you do. I am just wondering whether or not there is a growing mistrust? How do organisations such as yours overcome that mistrust? The mistrust in itself must cause delays in the process, additional costs and difficulties in achieving the outcomes that you desire to achieve.

Mr Corey—I think it may have been an overstatement on the part of Mr Blackley.

CHAIR—I do not think it was an overstatement at all. The impression that I have gained from this inquiry is that that sums it up. There is a degree of mistrust.

Mr Corey—There is a degree of self-interest.

CHAIR—I am not saying that that mistrust is justifiable but, for whatever reason, there is mistrust. I say that in the broadest of terms. Unless that mistrust is overcome in some way, it will remain an obstacle to the operations of the DEO.

Mr Corey—I am not sure that it does, Senator. We have sold 150 properties, or about that number, over the last seven or eight years. Three or four have been major issues. I do not think it would matter how you approached it; you would still have that uncertainty and mistrust, no matter what. If these self-interest groups do not get their way they will not change their view of the world. That is life; that is democracy.

CHAIR—Before we turn to specific questions I have one other question for Mr Blackley. You said that you have five staff in the Sydney operation. Who are those five staff members and what are their qualifications? Can you give us some idea of what do they do?

Mr Blackley—Yes. Other than me there are two assistant directors. A financial controller processes our expenditure and revenue in the Canberra network. A girl Friday—Marie—also looks after us.

CHAIR—She obviously is an office staff person?

Mr Blackley—Yes.

CHAIR—Obviously that office staff person has clerical skills. What sorts of skills does the financial controller have?

Mr Blackley—He has defence educated financial skills.

CHAIR—Does he have formal qualifications or a degree?

Mr Blackley—No, he does not have a degree. But he has done all the relevant defence financial management courses.

CHAIR—What credentials do the assistant directors have?

Mr Blackley—They are graduates.

CHAIR—In what areas—economics and commerce?

Mr Blackley—One has a degree in economics.

Mr Corey—He has a graduate diploma in urban estate management and he is a master of project management.

CHAIR—A master of project management?

Mr Blackley—Yes. That degree is partially completed. He is currently completing that degree.

CHAIR—What qualifications does the other graduate have?

Mr Corey—The other one is a bachelor of economics and a graduate of the Defence Executive Leadership Program. Bernard has a diploma in medical engineering, a bachelor of administration, and a master of commerce, partially completed. I mentioned the medical word.

Senator WEST—I am trying to compute the medical bit with real estate.

Mr Corey—It is historical, like a lot of things. It is a prerequisite.

Mr Blackley—It is a prerequisite.

Senator WEST—Perhaps my nursing qualifications will help me in real estate.

Mr Blackley—That is probably why all the other landowners are not as successful as we are.

Mr Corey—The people who work in the Sydney office project manage experts in the real estate environment and in other fields. They do not do the work themselves.

CHAIR—I understand that. We want to establish what are the credentials of people in various offices. Are they able to manage people and other consultants in the real world? I now ask specific questions in relation to Randwick as that is a fairly topical case. Residents at Randwick believe that defence ultimately intends to dispose of the entire barracks and not just a part of it. That reference is to be found at page 308 of *Hansard* dated 25 January. Are you able to comment on that?

Mr Corey—Yes, Senator. If and when there is no further defence use for the barracks we would probably dispose of the whole barracks. But at this stage, there is no foreseeable vacation of the area that is occupied by defence. There will be some partial relocations but, so far as I can determine, the newer area will remain a defence property in the future.

CHAIR—Ms Lisa Newell of Randwick City Council told the committee:

The Department of Defence's major business is not planning and developing new suburbs, and planning for new committees. This is a block of land that they are disposing of as an excess asset. That is perfectly fine and understandable. Council is very happy for that to happen if the Department of Defence needs it to happen. But, of course, therein lies an essential difference: we are looking at a community and a suburb being created and planned and it is looking at selling some land for maximum profit. Both of those have equal values. However, the Department of Defence has decided not to sell it in its current state or even with current seven-lot subdivision; it has decided to do some partway there planning. That partway there planning is for marketing purposes and not to set up a new community or a newly planned suburb, and it certainly has not been undertaken with the holistic environmental assessment that needs to be undertaken if you are setting a blueprint like it is.

That was in the *Hansard* of 25 January. This was a fairly contentious group of witnesses. We want your specific reaction to what these people said. It appears that the DEO is acting like a developer—something to which Mr Corey alluded earlier; and one could get that view from reading the transcript—and not just disposing of surplus assets as Ms Newell suggested. Why is the DEO developing this site for non-defence purposes?

Mr Corey—I think we have answered that question in general terms, Senator. We have been through what we do to try to optimise the revenue for defence from properties that it no longer has. We have to remediate the site, which is quite expensive; and a lot of other issues are involved. I guess that we do need to answer the more specific question raised by Ms Newell. I will ask Tony Fitzsimmons to address that question.

Mr Fitzsimmons—Probably the most fundamental aspect is the claim that the Department of Defence has not examined the site in a holistic manner. To me, that is totally untrue. We started this process in 1996 when we engaged a team of consultants. Every conceivable consultant that you could think of was engaged to do a site assessment. That covers heritage, environmental, ecological, town planners and archaeologists. Every conceivable matter that could affect the development of that land was investigated and analysed and reported back to the community. It was worked through the Community Reference Group.

The Community Reference Group, with defence, developed a solution for the site. The Community Reference Group also guided us and the community in this process. As I said earlier, we had an input from specialists in various areas and from many people in the community in relation to open space. We heard from representatives of the environment, Greening Australia, education, et cetera. It was not confined to a particular part of the site; it was confined to that part of the site identified for disposal. The total site at Randwick is approximately 70 hectares, of which 50 hectares have been identified for disposal purposes.

We also invited all government agencies that might have had a formal interest in this site to participate in that process. It cannot be claimed that we are looking at it in a narrow manner. The outcome of the process was managed through government departments, including the Department of Urban Affairs and Planning, where Ms Newell was an employee prior to working with Randwick council. We also sought opinion and advice from the southern Sydney region of councils in the area, which included Botany, Rockdale, South Sydney, et cetera. We gave them a presentation on the process that we were going through, the issues we were looking at, and the possible outcome.

Drawing all that to a conclusion, late last year, Randwick council decided that it was appropriate to produce a development control plan for the site. Council engaged the DUAP urban design advisory service. We had an opportunity to take Jan McCreddie, who headed up that unit, around the site. We showed her what the site was about and we revealed to her the size of the site and the constraints involved. We also worked through the logic that we had used in preparing an outcome for the site.

At the end of that process her comments were that she had never seen such a holistic approach to the site. Her comments also were that it was brilliant; that it was the best-developed solution she had seen in her career. She said that in front of Ms Newell, so I find it hard to comprehend why Ms Newell made those sorts of comments, particularly when she was involved with DUAP prior to moving to Randwick Council. She was also involved in looking at a development control plan for the whole site.

CHAIR—This is the issue that has concerned me. I cannot speak for my colleagues but I am sure that they also have reservations. We really need a response from you in relation to this issue. Some pretty telling stuff has been put into the *Hansard*. Mr Fitzsimmons, I thank you for countering Ms Newell's comments, but why would she make those comments? What would have motivated the comments that were made by Ms Newell? You have now given evidence to the effect that there was a holistic approach, which counters her claim. Is this part of the argy-bargy that has been going on in relation to Randwick?

Mr Fitzsimmons—It is worthy to note that, when we started this process, we were working with a team of councillors and council staff.

CHAIR—Has council changed during the process?

Mr Fitzsimmons—Yes. A new team of council officers is now involved in the process. I have with me a newsletter, which is produced by our competitors, headed 'Consultation Works. Best Practice in Consultation'.

CHAIR—Who are your competitors?

Mr Fitzsimmons—This is Gutteridge Haskins & Davey—GHD.

CHAIR—Your professional competitors?

Mr Fitzsimmons—They are our professional competitors. The newsletter states:

The 50 hectare Defence site at Bundock Street Randwick, the subject of a unique and comprehensive community consultation and planning exercise, was recently nominated by Randwick City Council as a good example of effective practice.

That statement was made by council. This consultant came to us.

CHAIR—What is the date of that newsletter?

Mr Fitzsimmons—It is dated March 1998.

Mr Corey—Prior to the change in council, I presume?

Mr Fitzsimmons—Yes, prior to the change in the current team.

Mr Corey—One of the things that I said to you earlier was that we continually have to deal with changing political environments at the local, state, and federal level. When the planning process encompasses more than one regime it is difficult to keep everybody happy all the time.

CHAIR—That may well be a justification in itself. The DEO has some sort of accelerated process to dispose of assets rather than a long drawn-out process. I am not blaming your department.

Mr Corey—We cannot accelerate the process. It is impossible to accelerate the process any more than we are accelerating it.

CHAIR—I am not trying to get you to work harder.

Mr Corey—We cannot; it is impossible. Mr Fitzsimmons has been working on this project for four years.

Mr Fitzsimmons—It is worthy to note that, when our rezoning application got to council, it was assessed by an independent consultant to council. They endorsed our application 100 per cent. Council resolved to prepare a local environmental plan. But the issue of aircraft noise was brought into the equation as an excuse to defer the processing of this rezoning application.

Mr Corey—Which I remember happened to coincide with an election. It was just prior to a state election.

Mr Fitzsimmons—Subsequent to that Randwick Council prepared a citywide LEP. During the preparation of that citywide LEP Council negotiated with DUAP for the inclusion of residential uses and special-use zones. I do not think council, or the councillors, were particularly aware of what that meant to the defence site at Randwick. I think they were conscious of the schools that might have been sold off. But that process was clearly documented by Randwick council officers and the Department of Urban Affairs and Planning as a means of council avoiding the imposition on it of urban density requirements.

That rezoning or that allowance of residential uses on the defence site enabled defence to prepare a development application and seek development consent, even though it is within a special-use zone. By doing so it also gave the department the right to pursue that through the court system if council failed to process it. At the time we lodged the development application I think it came as a surprise to the mayor. He was not aware that that zoning had that capability. From the time that the application was lodged council took a negative position. In fact, at the meeting which we attended with the mayor, council sought to refuse the application on the day that it was submitted, stating that subdivision was not permissible within that zone.

Council spent some days—or maybe over a week—seeking legal advice to try to refuse the application. From my perspective a culture within council was determined to refuse the application no matter what. Events that have taken place over the past year clearly demonstrate

that. A DUAP application was lodged in October. In December, a report went to council recommending an amendment to the LEP and requiring master plans. Council was well aware—our application was sufficiently detailed—that effectively it was a master plan for the whole site. But the way in which the LEP was drafted by council enabled it to take the consideration of the defence development application out of the appeal process.

It was found that council's exhibition and its first attempt to amend the LEP in this way was flawed. It subsequently amended its LEP and re-exhibited it early in 2000. It was subsequently gazetted in June 2000, which meant that defence had to prepare a master plan and have it adopted or varied by council, rejected or not dealt with by council, before the development application could be considered. In August last year we prepared the master plan in accordance with the local environmental plan and it was amended by council, which significantly reduced the allotment yield by about 110 or so lots, and that significantly affected the value of that land. This was all done in the context of an appeal that was lodged in the court in January last year. Council, throughout that time, had this attitude of not wanting to deal with it. I met with the mayor on two occasions and I encouraged him to have negotiations and dialogue on the issue, but that was declined.

Mr Kelly—I thought that was a good question. It must be an issue for the committee, given the strength of the evidence and the claims made against defence. In my view, it is a simple story. Dominic Sullivan was Mayor of Randwick Council throughout a good deal of this consultation and prior to the commencement of the court case. Dominic Sullivan wanted to go to the election that took place in the middle of last year on the basis of having solved the future of this site. He wanted to reduce the value and utility of the site in ways which had no planning merit. We met with him and we attempted to reach agreement. We gave him a great deal more than just a proper outcome, which could be justified on planning grounds. It was not enough. We told him that we would not agree to his suggestions.

CHAIR—What do you mean when you say that you gave him a great deal more?

Mr Kelly—He wanted about 23-odd hectares of open space at the eastern end of the site. We felt that that was a great deal more than the planning codes provided for, and it was a great deal more than could be justified on any planning grounds. In effect, this case has been about the differences between the cooperative arrangements we could have had with council and what we were prepared to offer. So instead of going to that election and demonstrating that he had solved the future of this site, he made it a political issue, in a populist fashion, and said that he was in dispute with defence.

The resolution of the issue will ultimately occur in court. The court will look at the objective issues and the planning instruments that control the site. From the time that we lodged the application council has continuously sought to avoid looking at issues on their merits. It has sought to postpone the application and to put as much political pressure on defence as possible to settle the proceedings or to withdraw from them. When one undertakes major litigation like this the stakes are high and the game is played hard. That is why Ms Newell is talking about no holistic approach from defence. However, there has been a very comprehensive approach.

Mr Corey—As I understand it, this follows on council's agreed position in 1998.

Mr Fitzsimmons—He was part of the council in 1998.

Mr Corey—That agreed a defence proposal.

Mr Fitzsimmons—In 1998 council agreed to exhibit an LEP to process the defence rezoning.

CHAIR—What do you mean when you say that he was part of the council?

Mr Fitzsimmons—He was a councillor.

CHAIR—He was a councillor and not the mayor?

Mr Fitzsimmons—He was a councillor and not the mayor. The mayor, at the time, was Chris Bastic. He was quite willing to proceed with the rezoning. On the front page of one of the papers was the following statement, ‘It is a terrific outcome for the site. Let us get on with it.’

CHAIR—Was this early in 1998?

Mr Fitzsimmons—I think it was Christmas 1997.

Mr Kelly—The rezoning was ultimately stymied by council resolution of 19 August 1997. You need to appreciate the legal framework that underlies council’s behaviour. In New South Wales, there is no right of appeal. There is no way to review a council decision not to proceed with a rezoning. Dominic Sullivan knew that. That is why council resolved to defer consideration of the rezoning until an up to date ANEF, that is, an Australian noise exposure forecast contour map, and a new Sydney airport long-term operating plan was made. He and council knew that it would be many years in the making before that occurred. Following the rezoning that council in some respects carried out without appreciating the dialogue that defence was having with the mayor, it became possible to take the merits of this issue to court. That is why we have done it.

CHAIR—I refer to the issue of dialogue and ask: who was having the dialogue? Was it a single point of dialogue with defence, or were there a number of points of contact?

Mr Kelly—The three principal people were Mr Blackley, Mr Fitzsimmons and me.

CHAIR—But there were no other spokespersons for defence? When you people spoke, you spoke as one? They would not come and speak with you and then try to speak to Mr Fitzsimmons or Mr Blackley?

Mr Kelly—They appreciated that Mr Fitzsimmons and I acted on the instructions of defence. Principally, those instructions came from Mr Blackley.

CHAIR—I refer now to the site. This is a question for DEO rather than you, Mr Kelly. Could DEO’s view be characterised in the following way: unless there was a proposal for the redevelopment of that site, you would not optimise the revenue for defence when you sold the property?

Mr Corey—That is exactly right. We could have sold it as is, and had it devalued by the risk inherent to a property developer or a purchaser. On the figuring that we had done that did not make any sense at all. Effectively, we would have been handing a windfall gain to the prospective purchaser, notwithstanding the risk.

CHAIR—Was that a view that had been expressed by the marketplace?

Mr Corey—That is the view that was expressed as a result of our experience in the marketplace.

CHAIR—The people who came before us had some quite rigid views about the actions of DEO.

Mr Kelly—That view had been expressed also by private sector land economists.

CHAIR—Who in particular, Mr Kelly?

Mr Kelly—Hill PDA is the principal land economists who advised us on those sorts of issues.

CHAIR—So there was independent advice to the DEO?

Mr Corey—Yes.

CHAIR—I want these facts on the record, Mr Corey. You know what this is about.

Mr Blackley—A land economist is a fundamental member of the defence planning team.

CHAIR—What advice did you receive?

Mr Blackley—The advice was that we were not optimising revenue.

Mr Corey—That is the information that we agreed to give you in camera.

CHAIR—I accept that. Because of the nature of the evidence that we have heard, I was surprised that, in your opening statement, you did not seek to rebut some of that evidence.

Mr Corey—May I be candid, Senator? We did not think that some of it was worth rebutting.

CHAIR—That is fair enough. I accept your judgment. But I think the committee sees a need to at least pursue some of these issues to get your views on the record. I again refer to the site and ask: are you sure that the layout of the site and the services and facilities that you are proposing will fit into the suburb in such a way that they do not create unforeseen problems in surrounding areas?

Mr Fitzsimmons—That is definitely the case. In this process, we started with an architect for the rezoning application. The structure of that rezoning application is similar to the structure of

the development application, which was undertaken by a different architect. The architect that we are using now has just won a number of awards in recognition of his work in the urban design industry. The outcome of this has been proven by all the consultants that council engaged in our battle with council in court. For example, the traffic consultant engaged by council concurred with the traffic logic that we developed for the site.

The engineering consultant concurred with the way in which we are managing engineering stormwater drainage aspects. That follows ESD principles that have been adopted for this subdivision. It integrates with the surrounding area by the connection of streets to the south. The density of development on the site reflects the adjoining density. We have prepared a plan, which shows in different colours the density on-site as opposed to the density surrounding the site. You cannot even pick the border of the site.

The property boundaries to lots on the southern part of the site match identically the boundaries of lots which adjoin that part of the site. The density of proposed developments, with a floor space ratio of 0.5 to 1, is equivalent to the lowest possible residential density you can have. The major criticism that has come out of this process is that those densities could have been a lot higher.

Senator LIGHTFOOT—Mr Fitzsimmons, you said that that was the lowest possible density that you could have, taking into account that plot ratio?

Mr Fitzsimmons—Yes.

Senator LIGHTFOOT—Why could you not have had a lower density than that? Are there any planning laws that stop you from having a lower density than that?

Mr Fitzsimmons—The planning law applicable to the site is a floor space ratio of 0.5 to 1. That means that, if you have a 500 square metre site, the maximum size building—I refer here to livable area—is 250 square metres. There is just no need to go to a lower density.

Senator LIGHTFOOT—That is a lot different to saying that it is the lowest possible density.

Mr Fitzsimmons—It is the lowest possible density.

Senator LIGHTFOOT—But you could go to a lower density if you wished to. No laws are stopping you from doing that.

Mr Fitzsimmons—But it is the lowest density.

Mr Corey—The question is: is there a law that states that you cannot go to a lower density?

Mr Kelly—There is no law that prevents that from occurring.

Senator LIGHTFOOT—That is contradictory then, is it not? That is not the lowest possible density that you could have.

Mr Kelly—Tony is speaking in practical terms, and in practical terms, he is right: the state government has a very longstanding and powerful commitment to urban consolidation. It has been a major matter of debate in land development.

Senator LIGHTFOOT—But in legal terms, Mr Kelly, you could go to a lower density if you wanted to? That is the bottom line, isn't it?

Mr Kelly—Yes, it is.

Senator LIGHTFOOT—Thank you.

CHAIR—It is really a commercial consideration, isn't it? If you go to a lower density then you are not going to—

Mr Corey—It is not a restriction but a planning requirement. I lived in Sydney in the mid-eighties, and urban consolidation has been a platform of governments there for a long time. They do not want quarter-acre blocks in the centre of Sydney. It does not make any sense for a whole lot of reasons that I am not going to go into—

CHAIR—Yes, I understand that.

Mr Fitzsimmons—It is probably worth while, whilst talking about densities, to compare it to the Ermington site. The density for Randwick is 13½ dwellings per hectare; the Ermington site is 35 dwellings per hectare. A similar site at Penrith—a 50-hectare site adjoining the railway station—has a density of 25 dwellings per hectare. That puts it in the context of relative densities. The lowest possible density within a council in New South Wales is regarded as a residential two-way zone, and the FSR applicable to that two-way zone is identical to the FSR that is applicable to this zone—0.5 to 1.

CHAIR—Thank you. Has DEO got agreement with all the relevant state authorities for the redevelopment?

Mr Fitzsimmons—There are a number of issues that have not been resolved. There is a high voltage cable line which dissects the site. The rights for Energy Australia to maintain that cable expired in 1992. We need to agree with Energy Australia on the relocation of that on the site—that has not been resolved—and we need to construct a set of traffic lights on Avoca Street, which will be subject to the approval of the Roads and Traffic Authority following consent from council.

Mr Corey—Can I ask a question?

CHAIR—Mr Corey, this is wonderful!

Mr Corey—Is there any likelihood that those approvals will not be forthcoming?

Mr Fitzsimmons—No.

Senator WEST—The high voltage cable: underground or overhead?

Mr Fitzsimmons—Underground.

CHAIR—It is currently overhead, isn't it?

Mr Fitzsimmons—No, it is underground.

CHAIR—And you said there have been no rights there since 1992?

Mr Fitzsimmons—Energy Australia had two 20-year easement periods for that licence, and the last 20-year expired in 1992. They approached the Department of Defence in 1996 seeking a new easement. They were advised that, until the planning of the site was finalised, no agreement could be made on a new easement or a relocation of that easement.

Mr Corey—It is a bureaucratic thing, for certain.

Senator WEST—If you have got a ruddy great electricity cable going underground, aren't you going to need an easement so that if something goes wrong somebody can get the maintenance people in without destroying people's homes? If you don't have an easement, you might have people—

Mr Fitzsimmons—We have agreed with Energy Australia, in principle, the relocation of that in public roads where you do not need easements. They are the public roads we have identified in our development application.

Senator WEST—So the public roads will run where the cable runs?

Mr Fitzsimmons—Yes.

Senator WEST—I wish you luck when they dig up the road to access the cable. What will that do for your traffic controls?

Mr Fitzsimmons—The cable will be re-laid before the road is constructed through the site.

Senator WEST—So there will have to be a re-lay of the cable?

Mr Fitzsimmons—Yes, and that has been agreed with Energy Australia. Understanding what they are saying now, the reason an update of the further easement has not been agreed is because, until the site is redeveloped, there is no need to relocate the power supply, and so it will be done as part of the redevelopment.

Senator WEST—And there will be no need for an easement, did you say?

Mr Corey—No.

Senator WEST—Okay. What about Telstra?

Mr Fitzsimmons—All services will be located in dedicated public roads.

Senator WEST—And those issues have been resolved?

Mr Fitzsimmons—Yes.

Senator WEST—What about National Parks and Land and Water?

Mr Fitzsimmons—National Parks and the Department of Land and Water Conservation have an authority approval for the subdivision. It entirely rests with council or the court.

Senator WEST—They have given approval?

Mr Kelly—There is no relevant approval to seek from them.

Senator WEST—What about gas?

Mr Fitzsimmons—All services can be accommodated on site and it is recognised by the authorities—sewer and water and stormwater. Upon development consent, we will need to seek approval from Sydney Water. But Sydney Water undertook detailed design work during the rezoning phase where the density was double what we are proposing now and identified the number of areas that need to be amplified and augmented. But that is all physically possible.

Senator WEST—Do any of these organisations or council require the lodgment of funding to them to enable them to undertake the upgrade of a lot of the infrastructure that might be necessary?

Mr Fitzsimmons—It is probably better to talk to Craig about this. There are section 94 contributions.

Senator WEST—Yes, that is what I am referring to.

Mr Kelly—Would you ask the question again, please, Senator?

Senator WEST—Were any section 94 contributions sought?

Mr Kelly—Yes.

Senator WEST—How much?

Mr Kelly—It has not been quantified. When we prepared the development application there was a municipality wide contributions plan. Section 94 contributions can only be levied to the extent that is justified by the making of a contributions plan. I said to Senator Hogg earlier that the council wanted a great deal more than could be justified. A good example of that is that we examined the contributions plan for the municipality of Randwick in preparing the development applications, and it contains no provisions whatever for the acquisition of new open space. That is because the council had formed the view that they had either adequate or more than adequate

open space in their municipality, so they did not let any further section 94 contributions on developers to provide them with the funds that would enable them to buy some more.

Senator WEST—There are not really many areas in Randwick where they could buy more, are there?

Mr Kelly—Land can be bought in any location, for any purpose, and turned to another purpose if they wish.

Senator WEST—I am being realistic.

Mr Corey—If you have a look at the M5 where it now ends on the way into Sydney, the state government or the councils combined have bought all the land from there to the airport which was previously housing.

Senator WEST—For open space? Would you go and buy—

Mr Kelly—To give you an example in just that vein, I live in Randwick about 300 metres from this site and I walk along the edge of the beach and the cliffs regularly. There was a gym located on the northern headland of Coogee beach—quite a substantial structure—and it had been there for a long time. I always thought that it was an eyesore, that the headland would be vastly improved if it was removed. But I thought that it never would; I thought, as you just said, that it would not be practical. But it has been removed in recent times. It is just those sorts of expenses that section 94 contributions can be used for.

Mr Fitzsimmons—It is quite common that council buy developed properties and demolish houses and factories, et cetera for car parking or open space or to create parks.

Mr Kelly—I should clarify so I do not mislead you that I am not absolutely certain that any section 94 moneys were used to remove that gym that I am referring to. I just mention it as an example of the kinds of things that occur.

Senator WEST—Thank you.

CHAIR—I think it would be appropriate if we broke for about 15 minutes.

Mr Corey—Are you going to continue with Randwick after the break?

CHAIR—Yes, we certainly are.

Mr Corey—Okay.

CHAIR—It is our intention to get the questions on Randwick and Point Cook out of the way. It is probably not the ideal way to do it but you have got the personnel here and this way there will be no need for them to come back for the next hearing and we can get to the more general questions.

Mr Corey—Okay. Given that you want to get some of these things on record, Mr Blackley had prepared himself to take some of the claims that were made by witnesses previously and put on record some refuting of those. That will take only a couple of minutes.

CHAIR—That is fine. We have always said to the people appearing before the committee today that today was the opportunity for Defence Estate to answer some quite harsh criticisms that were made of Defence Estate in some instances. It is your opportunity to rebut those. In the interests of fairness, we are prepared to give you as much time as you need.

Mr Kelly—Chair, I have not finished answering Senator West's question; I have not finished referring to the other section 94 plan that has been made. But perhaps I can do that after the break.

CHAIR—All right. We will break now.

Proceedings suspended from 11.00 a.m. to 11.16 a.m.

CHAIR—We will resume the proceedings. Mr Kelly, you had some further information for Senator West.

Mr Kelly—Yes. Senator West asked me about section 94 contributions in respect of the Randwick site and I referred to the contributions plan that existed at the time we prepared the application. To give you an indication of how unreasonable the council has been, in the course of these proceedings they prepared a new contributions plan specifically for our site. The main trial in these proceedings commenced on Monday, 19 February. This plan was approved at the council meeting that occurred at 7.30 a.m. on the Friday preceding that Monday and it provided for a range of things which, frankly, are ridiculous. I will tell you, if I may, about some of the cross-examination that occurred two days ago in the court when the council's principal witness and the principal architect of that contributions plan was cross-examined by our senior counsel.

There were two principal elements to this plan. The first element of that plan requires us to make additional provision for what is called 'community facilities'. The standard that is applied to our site would, if it were applied across the whole of the municipality of Randwick, require the construction of an additional 80,000 square metres of community facility outside Randwick. That figure is absurd and it shows the disproportionate amount of levies that the council is seeking to extract from this site compared with what is reasonable. The second element of that plan requires a community facility to be provided on site for 1,200 square metres. In cross-examination of the council's principal witness, she was forced to admit that she could not justify that standard at all; that she was simply instructed to assume it by the council in preparing the plan and that there was no demographic or other planning merit in the figure.

Likewise in relation to the open space requirements that are in the current plan. The open space that was considered appropriate by the council in respect of the rest of the municipality was 56 square metres per person for new development. If you apply the latest contributions plan to the Randwick site on a per square metre basis, what is being required is 631 square metres of open space on the Randwick site whereas it is 56 square metres per person throughout the rest of Randwick. Again, that 631 square metre levy is absurd and it demonstrates the unreasonableness of the council's position. Many of these allegations of unreasonable behaviour

by Defence have been made but there are answers to all of them and they will occur in the court case.

Senator WEST—Did you say that council meeting was at 7.30 a.m.?

Mr Kelly—Yes.

Senator WEST—Do they normally meet in the mornings?

Mr Kelly—No. The council has been in some disarray in relation to the conduct of this case.

Mr Fitzsimmons—It was an extraordinary council meeting.

CHAIR—Mr Blackley, you wanted to make a few statements. It may well be that the statements you want to make are encompassed in the range of questions that I have got. Do you want to let me ask the range of questions that I have got—

Mr Blackley—Yes, sure.

CHAIR—and then we are efficient in meeting the things you want to say to us rather than traversing the same ground twice.

Mr Blackley—Chair, I was not going to give you the answers; I was just going to tell you that we have also been through the evidence. There are a lot of claims and I want to register that we acknowledge that these allegations have been made but I refute all of them. I was just going to go through and put on the record—

CHAIR—We are going to go through those in some detail.

Mr Blackley—Yes, certainly.

CHAIR—What date did the DEO lodge its development application with the Randwick Council?

Mr Fitzsimmons—18 October 1999.

CHAIR—What was the date that the DEO instituted a deemed refusal appeal to the Environmental Planning and Assessment Act?

Mr Blackley—108 days later.

CHAIR—Which was?

Mr Blackley—29 January 2000.

Mr Kelly—The appeals were lodged in the court on 31 January 2000 and they were not served on the council until 7 February.

CHAIR—Lodged?

Mr Kelly—They were lodged in the court on 31 January 2000—that is, 104 days after lodgement of the application—and they were not served on the council until 7 February. You will recall Ms Gerathy’s evidence that they were lodged on the 41st or the 42nd day.

CHAIR—I will get you to come to that quite specifically. How long after the expiration of the 40-day deemed refusal did Defence commence proceedings?

Mr Kelly—Our right arose on 29 November, proceedings were lodged on 31 January, so that is—

CHAIR—Wait a minute. For the *Hansard* record, 29 November of what year?

Mr Kelly—1999. Proceedings were lodged on 31 January 2000, so that is 62 days.

CHAIR—That is, 62 days after the right was first decreed?

Mr Kelly—Yes.

Senator WEST—So council had taken no actions after 18 October 1999. That would have stopped the clock on this 40-day—

Mr Kelly—They sought to do that, however we took the view that their attempts were ineffective and that the clock was still running.

Mr Fitzsimmons—Council are obliged to request additional particulars of Defence within 21 days of the application being made. Those requests for additional particulars were made on 16 March, after the court proceedings were initiated. I think it is some 150 or—

CHAIR—16th of?

Mr Fitzsimmons—16 March.

CHAIR—I am not being pedantic; for the *Hansard* record, it helps if you tell us what year we are referring to. I know what you are referring to, but it just makes it easier.

Mr Fitzsimmons—There was a letter from Randwick Council dated 16 March 2000 served on Defence requesting additional particulars in regard to the development application. As I understand it, it is 149 days after the lodgement of the application where the requirement on council was to seek additional particulars within 21 days.

Senator WEST—Mr Kelly, you made a comment that although they had made requests—I would not say spurious requests—in your estimation that did not stop the clock running?

Mr Kelly—Yes.

Senator WEST—Was that these or another?

Mr Kelly—No, it is others.

Senator WEST—Can you outline those, please?

Mr Kelly—I have some difficulty remembering the detail of it, but if I could just say, in relation to the 40-day period: far too much was made of that to the committee by the council's witnesses. The 40-day period is there as the minimum statutory limit on how quickly you can go to court after you have lodged the application. It is not improper to go on the 41st day. If one lodges an application that you know before lodgment, or you form the view after lodgment, will be rejected by council, then you should go on the 41st day, and the 40 days will just be a waste of 40 days whilst you get to the ultimate resolution of the position.

In this case, we had a view that the council would continue to be unreasonable about this application; however, we felt that we ought to give it our best shot to deal with the council and to encourage them to deal with it on its merits, in accordance with their own planning instruments. As a result of that, when the 40th day passed we did not go to court; we continued to try to encourage the council to deal with it on its merits. Mr Fitzsimmons and I met with council staff to deal with the obvious kinds of queries that should have come up. It became patently clear that the council was not interested in further information that might have filled the so-called gaps in the information provided by us. They were only interested in objecting to the application—and that is demonstrated by the length of time, as Mr Fitzsimmons has just indicated, it took them to actually call for any real information about the application.

The 40 days, and our legal proceedings, was not the first resort to legal remedies in this case. We lodged the application on a Monday and the council met on the following Tuesday night—the next day. The applications are the width of two telephone books. One could not read them in two days. However, at the meeting on the Tuesday night, the council indicated that it would obtain legal advice with a view to throwing out the application immediately. This is the council, if you will recall from Ms Newell's evidence, that had a holistic and positive attitude to the development of this site—a council which, she claimed, was not antidevelopment. However, within 48 hours of receiving these applications, they resorted to legal advice—copies of which we have inspected during the course of these proceedings—aimed at enabling the council to reject the application out of hand before it had been considered.

Senator WEST—You said you could not recall what had happened, if the council had some communication or something with you in the period between 18 October and 29 November. Can you take that on notice?

Mr Kelly—I can describe it in general terms. It was a letter from Mr Bill O'Brien of the council. It purported to register the receipt of the applications at a time later than they had actually been lodged, and I knew that the council was doing this in order to defer the expiration of the 40-day period and to improve its legal position as much as possible. So I wrote a letter back to him that indicated that he could purport to record the application in any way he chose but it would not affect the operation of the law as to the actual date of lodgment and the running of any relevant time periods.

Senator WEST—When did you receive that letter?

Mr Kelly—I expect that it was one or two weeks after 18 October 1999.

Senator WEST—Which means that, even with the dispute over the dates of the lodgment, by the time you actually did take in to the Land and Environment Court, 40 days was more than elapsed anyway?

Mr Kelly—Yes. As we have just worked out, more than 60 days elapsed after the end of the 40 day period. By that time it was clear that the council was not going to deal with this application properly.

Mr Fitzsimmons—Senator, our entire project team met with council's project team, including the mayor, after the date of lodgment and prior to going to court. That meeting would have been documented.

Senator WEST—Okay.

Mr Blackley—Could I also mention that, having lodged the development applications in October, council moved in December of that year—prior to our lodging any appeal—to change the local environmental plan, with which we had complied in every respect. They were successful in doing that sometime during 2000, and that is when the legislation amendment required Defence to put in two master plans; so we then proceeded to put in the master plans. So between the time that we actually submitted the application and prior to us lodging the appeal, they amply demonstrated their resolve to try to frustrate the process.

Mr Kelly—Perhaps I could add to that. They actually tried to change the zoning in two ways. One of the ways would have had the effect of prohibiting this development altogether. It would have deprived the council of the legal power to consent to it. And I remind you again of Ms Newell's evidence about this benevolent and proactive council that was in favour of development of this site. The fact is that they attempted to amend the planning controls to prohibit this development altogether.

CHAIR—When?

Mr Kelly—7 December 1999 is the council's resolution to proceed with the draft LEP. LEP is the local environmental plan, or the zoning instrument. In fact, the council's efforts to do that were rejected by the state planning department, and as a result of that rejection the council adopted another subterfuge to win this case without resort to its merits, and that subterfuge was to introduce a planning requirement for what are called master plans. 'Master plan' is a misnomer of what actually is required, just as the allegations that we have not master planned this site are totally false. A master plan is, in this context, simply a technical, legal device to achieve a strategic advantage in the litigation, on the basis that our development did not comply with the master plan and therefore should not be approved. I say it is a technical device, because there are no merits in the requirements of the master plan. It does not matter whether they are well put together and whether they are well founded on planning principle or not. The mere inconsistency is what the council will allege is the reason that our development application should be rejected.

The expression ‘master plan’ is a misnomer because the development applications that we have lodged are a complete master plan for the whole of the site and, in a very relevant sense, they are also a microplan of the development of the whole of the site. Our development application is in fact more detailed than the council’s own master plans, and it always was.

Senator WEST—Thank you.

CHAIR—Just following on this issue around the 40 days, I think we were told in evidence that the council believed that it could not adequately assist the application in anything under three months. That was said at the hearing on 25 January. I might have paraphrased it a bit, but I think that was the general thrust. What is your response to that?

Mr Fitzsimmons—The time it has taken, from the time we lodged the applications to the time the appeal was made to the court, was more than three months, and they still had not lodged a request for additional information.

CHAIR—In the same *Hansard*, at page 344, it says that the council formally asked for further information and Defence formally refused to provide that information. How long had elapsed between the council’s request and Defence’s refusal?

Mr Fitzsimmons—To my knowledge, Defence did not at any stage formally refuse to provide that information.

CHAIR—Did it informally refuse—and I am not being smart there; I mean was there some other set of circumstances we might not know about?

Mr Fitzsimmons—I invite Craig to intervene, but council initiated stay proceedings.

Senator WEST—What sort of proceedings?

Mr Fitzsimmons—Stay proceedings, which meant that it was not really appropriate for any information to be given to council.

CHAIR—So that is the basis on which you refused to provide any further information.

Mr Kelly—No, the council did not, at any stage, make any formal and proper request for information in respect of matters that were allegedly deficient in the development application.

CHAIR—What do you mean by ‘formal and proper’? Again, I am not trying to be overly pedantic here.

Mr Kelly—I mean a meaningful request to provide them with some material that they needed in order to consider what was before them, as distinct—

CHAIR—And that would be a meaningful request to whom?

Mr Kelly—To Defence, to me, to Mr Fitzsimmons.

Senator WEST—What requests did they make?

Mr Kelly—I mean what I said in response to your question. In contrast to a tactical request for information, a politically attractive request for information that was irrelevant to support a claim against us that we did not provide relevant information. So, a request of some kind was made that was not complied with in full by us. However, it was not a genuine request for information that the council needed to consider the application.

Senator WEST—Who made the decision in the assessment that it was not a genuine request for information? How was that decision arrived at?

Mr Kelly—That was not the fundamental decision that was arrived at. The decision that was arrived at was whether or not to provide what was requested, and ultimately those decisions are made by Defence. That is, Mr Blackley would make it in most cases, on advice from myself or from other lawyers in my firm, or from Mr Fitzsimmons. He may take advice from other members of the project team, such as our planner, Dan Brindle, or anyone else who was an expert in the discipline that was provoked by the request—such as traffic planners, engineers, et cetera.

Senator WEST—What was the request and why was it considered to be—

CHAIR—Tactical.

Senator WEST—Spurious, tactical—

Mr Kelly—I am sorry; I cannot address that in any more detail than I have, but I could certainly respond in—

Senator WEST—Is that part of the things that are before the court?

Mr Kelly—No, there is no difficulty in responding to you about anything that is before the court. It is just that I do not recall, and I have not got a copy of that letter or our response or our file notes in respect of—

Senator WEST—Can that be on notice please?

Mr Corey—We can provide that.

Senator WEST—Thank you.

CHAIR—I think we might make this into a Randwick inquiry at this rate. I mean, we have hardly got anywhere, Mr Corey. Ms Gerathy said:

In terms of applications for a flat building on a small block, in most instances the council would be able to determine an application. But this is an application for a new suburb. The council had to refer the documents to a number of government bodies which have a vested interest in this application. That includes the Department of Urban Affairs and Planning, Fisheries, the RTA and the STA. All of these bodies have an interest in what goes on in this site. Moreover, many of those bodies also administer legislation for which Defence will require further permits or consents if they are going to undertake these works.

Doesn't Ms Gerathy have a point? This was her statement at page 336 of the *Hansard*. Don't you think that 40 days or so would be an unreasonable period of time for the Randwick Council to determine a development application for such a large project?

Mr Corey—Before you get into that, had they not been involved in the process from day one then, I guess, that would have been a consideration. But I would have thought that the development application would not have been inconsistent with all the planning that had gone on for the previous two or three years.

Mr Kelly—Not inconsistent but, in some respects, quite different. For instance, the consultation about the site resulted in a rezoning application which was for medium density development of the site. As a result of the consultation process, Defence decided to reduce the proposition from medium density to low density. That is a very substantial change—down from something like, perhaps, 1,200 dwellings to 661 lots. But it is true that many of the other issues, indeed that issue, had been looked at by the council and the community and that consultations had been occurring for a very long period of time.

I will be more specific about the 40-day period but we discussed a low density subdivision with the mayor in late 1998 which was, in many respects, the same as the subdivision application that was lodged in the development application in October 1999. But you have asked me about the 40-day period. Whether or not we should have gone to court on the 40th day is not that relevant to these proceedings because we did not go to court on the 40th day; we went on the 104th day. We did not do so on the 40th day because we were attempting, legitimately in my view, to persuade the council to deal with this application properly.

CHAIR—Was there any reason that the council may have believed—for want of better words—from your body language or the messages you were sending out, that you were saying, 'Well, to hell with this, we're going to go to court after the 40 days has elapsed anyway'?

Mr Kelly—No reason whatsoever. The contrary was the case. We made it clear to them that we preferred not to go to court. We made it clear to them that we would assist them in any relevant way at all to assess the applications. We made it clear to them that, if they wanted more information, we would provide it; however, it became perfectly clear that they were not interested in any of that. As Tony said, we had almost the whole of our project team meet with them and, in the course of that meeting, they did not seek any information to remedy any lack of detail in the application. What they sought to do was attack it.

Mr Fitzsimmons—To answer your first question about the 40 days, I think it is quite reasonable that council would require more than 40 days to consider an application of this size. But it was our view—primarily based on their actions in December to change the ground rules which, in a way, added to the argument—that we should take the matter to the court. But council also called a public meeting to discuss these applications, and we were invited to present our case. That issue about the 40th day was raised, and we advised at the public meeting that we would not be doing so and that we would give council the opportunity to assess the applications.

CHAIR—Is it fair to say, then, that the view formed by you was that the council were not acting in good faith in these negotiations?

Mr Kelly—Yes, it is.

Mr Blackley—Their very action in trying to amend the LEP, requiring a master plan, was, as I said before, a sign of their trying to frustrate the process. In fact, they were devoting all of their time to trying to work out how they could frustrate the process rather than to analysing its merits.

Senator WEST—Had the LEP been an issue for discussion over previous months with the council?

Mr Kelly—No.

Senator WEST—Was there any indication that that was a difficulty?

Mr Kelly—No, there has been no discussion whatsoever.

Mr Blackley—There was no consultation. It just happened.

Mr Kelly—When we discussed the subdivision with the mayor in late 1998, in the manner that I explained to you—before the election that occurred—we discussed a subdivision in very similar terms to what has ultimately been pursued. It became apparent to me that the mayor was under the impression that a rezoning would be required to permit that to occur. I knew that rezoning was not required, but the mayor was conducting himself on the basis that Defence had no legal redress. He thought that he could hold us to ransom, and that is why he wanted more open space than any sensible planning standard would require. He thought that we could do nothing about it. We explained to him that we were not prepared to give him the extra open space and, ultimately, we lodged an application in accordance with the council's own planning instruments. But it took us quite a long time to prepare that application, to make sure it was complete and comprehensive, and that is why we lodged it in October and why the mayor was surprised about it.

Senator WEST—Thank you.

CHAIR—Ms Gerathy said:

We have had some difficulties because the Department of Land and Water Conservation has been denied access by Defence. In fact, we have made a number of requests to allow them to be on site so that it can be determined whether or not their act is even invoked, but Defence consistently refuses to allow them access.

That was in the *Hansard*, at page 336. Did Defence deny officers from the Department of Land and Water Conservation access to the site at any time?

Mr Kelly—Yes, we did.

CHAIR—For what reasons?

Mr Fitzsimmons—There was a request by the judge in the proceedings—not long after they started, I think it was in March—through council that the department of water conservation identify—

CHAIR—I am sorry; March in what year?

Mr Fitzsimmons—In 2000. My recollection is that they were to identify certain particulars of the site by a certain date. The Department of Land and Water Conservation or the council did not provide those particulars by that required date.

Mr Kelly—Tony, I think it would be better if I respond from this point. The council sought to involve the Department of Land and Water Conservation in order to achieve a legal advantage that would have been available under the Environmental Planning and Assessment Act if the development for which we sought consent was integrated development instead of ordinary development. To do that, they attempted to persuade the Department of Land and Water Conservation to become involved in this case and run that argument. The department did not do that and, as part of those legal tactics, a request was made on 13 March for access later that day and the following day.

CHAIR—Sorry, when was that?

Mr Kelly—That request was made on 13 March 2000. That request was declined at the time whilst legal advice was sought. It was declined by Tony, and the advice was ultimately provided by me and others in my firm. The request was denied because the initiative to attempt to get the Department of Land and Water Conservation involved in the case was not relevant to the determination of the development applications. It was part of the legal manoeuvring that the council was doing. However, to assist the committee, so that you do not have to rely on my assertions in respect of that, it is far more important to point out that the council made a formal application to the court for an order that officers of the Department of Land and Water Conservation be granted access to the site. That application was made because Defence had later—that is, later than 13 March—refused access for the purpose of allowing the officers from the Department of Land and Water Conservation to prepare evidence in the council's case. That later request was in fact made on 24 January 2001. It was rejected on that occasion because it was made two days after the date by which all the evidence in the proceedings was required to be filed and served.

So the council was late in preparing its case, and we did not consent to further evidence being filed beyond the timetable set by the court. When the application was considered by the judge, he refused the application. In reaching that conclusion the court noted the apparent disinterest in the matter on the part of the Department of Land and Water Conservation and the delay in making the relevant application for access. Ms Gerathy also suggested in her evidence to the committee that they had to obtain orders from the court to gain access to the site. That is not the case. At no stage had orders been made in this litigation against Defence in relation to access to the site for witnesses. At all relevant times, Defence has been cooperative in providing access for the council's retained experts. For instance, on 23 June 2000 we wrote to the council's solicitors and stated:

We refer to your request for additional access to the site. We note that we have already indicated that access can be made available on Monday and Tuesday, 26th and 27th June 2000. Please note that, in accordance with your further verbal request this morning, access can also be made available on Wednesday 28th June 2000.

On the same day the council's solicitors wrote to us and stated:

We refer to the writer's telephone discussion with Duncan McGregor this afternoon—

Duncan McGregor is my partner—

and enclose a timetable of 'access requirements for the respondents' experts'. We also confirm that Bill Davidson, Senior Council, and David Parry, together with a representative of this firm, accompanied by Clare Brown and John Flannagan will be inspecting the site tomorrow, commencing at 2.30 p.m.

As I say, the only time at which access has been denied is access for the Department of Land and Water Conservation both early in the proceedings and late. On the later occasion, the application was made to the court and the judge ruled in our favour.

CHAIR—There is one issue you might clarify for us. You mentioned integrated and ordinary developments. We are not familiar with the terms.

Mr Kelly—Integrated development is development which requires consent from another authority in respect of a matter relevant to that development. The time limits involved in it are longer and the process is more complex. An integrated development—as the name suggests—is a statutory process which is aimed at ensuring that when one needed, say, seven approvals to get, for example, a mining operation up and running, one did not go to the council and to the department of mines and get two approvals and have certain conditions in them and then go to the Department of Land and Water Conservation and get a third approval which had conflicting terms, so that you're unable to proceed. That was the concept of integrated development assessment.

CHAIR—Did Defence deny a request by officers of any other New South Wales department or agency for access to the site in relation to the development application at any time?

Mr Kelly—No.

CHAIR—Ms Gerathy said:

Apart from the fact that it was a 40-day deemed refusal appeal, the council resolved to ask them—which they are entitled to do under the environmental planning and assessment regulations—for further information to enable them to assess this very large and very complex application. Again, rather than do that, we received a formal response saying that no further information was to be provided. So, essentially, apart from the strategic approach of splitting what is the whole of a development into three components and giving us information about only the middle component—which is useless in the absence of the information which is necessary to prepare and then service the development application—when we sought information they specifically and formally under the regulations said, 'We are not providing you with any information.' That was done to preserve their right of appeal, which they then lodged.

That quote was from page 336 of *Hansard*. Did you deny the council additional information that they requested as Ms Gerathy said?

Mr Fitzsimmons—There was no request for additional information prior to us taking the matter to court that referred to the letter mentioned earlier on of 16 March 2000.

Mr Kelly—I am not so sure that there was not some form of request of the kind that I referred to earlier. However, Ms Gerathy's remarks address the fact that this is a development application for subdivision of the site. It is not a development application for the carrying out of a range of works which will, in effect, prepare the site for the proposed subdivision. So we are not seeking development consent from the council to remediate the land. We are not seeking development consent from the council to demolish the buildings because the buildings need to be demolished before we remediate the land. The council seeks to deny the constitutional arrangements that exist in this country. The Commonwealth government is affected by the provisions of the Environment Protection (Impact of Proposals) Act. There is a system of environmental assessment arising out of that act, and Defence has pursued those obligations under the federal legislation in respect of those activities. We explained that to the council—we explained it from day one—and the council has sought to make itself the regulator of those activities. That is really what Ms Gerathy is referring to there.

CHAIR—What information did you provide to the council?

Mr Kelly—In what respect?

CHAIR—With respect to the request that came from the council?

Mr Kelly—The best way to describe it is that we provided all of the necessary information for the council to appreciate the outcome of the work that we would do, as distinct from the manner in which those outcomes would be achieved. For example, in relation to remediation, we indicated that we would provide an unqualified site audit statement from an EPA—a New South Wales Environment Protection Authority certified site auditor—and that that site audit statement would be in accordance with the New South Wales Contaminated Land Management Act and would be unqualified—that is to say, in simple terms, we indicated that it would be a clean site in accordance with the highest standards imposed under the New South Wales legislation. That is fundamentally all that the council needs to know. They need to know whether the site is clean or dirty. If it were clean at this moment, for instance, they would not need to know anything other than that it was clean. We explained to them that we would clean the site up, and the council would know that it had been cleaned because we would provide them with a certificate that fulfilled all of the requirements of the New South Wales legislation.

Senator WEST—Just to refresh my memory, is it correct that the application that has been lodged does not cover the whole of the land that Defence plans to dispose of on that site?

Mr Kelly—It is not correct in all respects. It does cover the whole of the land that Defence proposes presently to dispose of, but it does not seek development consent in respect of the whole of them.

Senator WEST—I am thinking in terms of the buildings that are currently there and the water site. They are not included in the development application, are they?

Mr Kelly—Could I provide you with a plan to assist me in answering this question?

Senator WEST—It might help my memory, yes.

Mr Kelly—This plan—the number in the top right-hand corner is DP1009660—is a registered plan under the New South Wales Land Title system, and it contains seven lots. The seven lots comprise the whole of the Defence lands at Randwick. Lot 1, which is in the north-west corner of the site, is quite a large lot—19.793 hectares. That area of land is presently retained by Defence, which operates from the site. Lot 2 is at the immediate east of lot 1, at the northern or top end of the site, and is 12.287 hectares. Lot 3 is in a south-westerly direction and is 23.76 hectares. Lots 2 and 3 are the subject of the development applications as a legal or technical fact. Lot 7 is at the eastern end of the site and is 3.88 hectares. Lot 6 is in a more south-westerly direction and covers a total area of 8.337 hectares. Lot 5 is in a northerly direction and is quite small—about 3,001 square metres.

Those three sites are what we have referred to in the development application as the Eastern Parklands. Lot 4, the last lot in this plan, is in the extreme south-eastern corner and covers 2,395 square metres. Except for lot 4 in the south-eastern corner and lot 1, on which the Army is presently operating, the development applications deal with the whole of the site. However, by virtue of my legal advice so as to increase the chances that we would succeed in this litigation, the development applications do not seek development consent in respect of lots 5, 6 and 7. What they do is to invite the council to impose a condition upon us that we will carry out embellishment of that land so it can be used for the public benefit. When that work has been completed, lots 6 and 7 will be dedicated to the public in right of Randwick Council.

In respect of lot 5, the development application invites the imposition of a condition that will require us to construct a community facilities building in accordance with the plan that is in the development application. When that building has been built, it will be dedicated to the council at no cost. Both of those propositions are costed in the development applications. The open space one, on our costings, will cost \$1.08 million, and the community facilities building will cost \$1.1 million. It is in that sense that I say that, except for lot 4 and lot 1, our application deals with the whole of the site, but we have a significant legal advantage in structuring it as I have outlined.

Senator WEST—What does that legal advantage mean to Defence?

Mr Kelly—It means we will win this case instead of losing it, and it will be cheaper to litigate.

CHAIR—Cheaper to litigate?

Mr Kelly—Yes, the better you structure the case the more likely you are to win it and, generally, the more cheaper it is to run the evidence in it.

CHAIR—I understand that. That leads me into my next question. How much is it going to cost for litigation? Have you got an idea, Mr Corey?

Mr Corey—I have to rely on Mr Blackley. The question is: how much is the litigation going to cost?

Mr Blackley—Our estimate at the moment is \$865,000.

Mr Corey—Just for the litigation?

Mr Blackley—For legal work, including the work by the barristers, and for the expert witnesses.

Mr Corey—Just for this one hearing?

Mr Blackley—Yes.

CHAIR—How long has the hearing been going and how long has it got to go?

Mr Kelly—It has been proceeding almost constantly from 19 February until yesterday. His Honour adjourned today; however there have been a number of skirmishes before the court since we commenced these proceedings. All of them have been designed by the council to delay the ultimate fate of having the court look at the merits.

CHAIR—I presume that if it is costing Defence in the order of \$865,000 in rough figures, one would consider the it must be costing the other side a comparable amount. It's a fairly expensive battle, isn't it?

Mr Kelly—It is. However, to my mind that is not the most expensive issue involved here. This is an asset that will be worth more than \$200 million if the case is successful, and it is worth a great deal less than that now. The principle economic impact of this dispute is not in the cost of the litigation; it is the time taken to resolve this. It depends on what factor you apply to the time value of money for the Commonwealth. If you use, say, five per cent and if we have lost a year and it is worth \$200 million, we have effectively lost \$10 million. So it depends what figures you apply to that process, but certainly the delay is the greatest financial impact on Defence's position.

CHAIR—Mr Corey, it might be something we can discuss when we go into the in-camera session, but we would be interested in how this impacts on the final outcome for Defence in real money terms—what the sale price might be, what you are able to achieve and how this might impact upon the return to Defence. I will move on. In discussions with Defence, when we were on site at Randwick, I think we were told that to comply with the objections of the Randwick Council would cost in the order of 100 to 120 home sites at a possible cost to Defence of up to \$50 million. Is that right?

Mr Fitzsimmons—Yes, approximately.

CHAIR—Approximately?

Mr Fitzsimmons—Yes. The value of the sites agreement is roughly \$1,200 a square metre and the average lot is in the vicinity of \$400,000.

Mr Blackley—So it is 120 lots by 400,000?

CHAIR—So that's how you get that figure?

Mr Blackley—Yes.

CHAIR—It has been stated by Barros and van den Dool that Defence could achieve the same return by using higher densities and still meeting the environmental concerns of the council if they take an approach to planning such as that used at Newington, which I understand is the Olympic Village site. Has Defence considered such an approach? This was in the *Hansard*.

Mr Kelly—Yes, we have. The rezoning application was for higher densities; however one of the charges against us is that our consultation was tokenistic—that we were arrogant and we did not really consult with the community or the regulators. The fact is that before we conceded that rezoning application we consulted with the council, with the local member and with the Department of Urban Affairs and Planning, and they supported it. However, in response to the community reaction, and the council's treatment of it, we adjusted the proposed development of the site to a low density one. High density development is simply not available under the present zoning.

CHAIR—The approach to planning at Randwick and other sites is to lay down a master plan, and I think we have touched on this. Doesn't this approach tie the hands of the developer and give them little opportunity for developing the site in a way not envisaged by Defence? That is on page 323 of the *Hansard* of 25 January.

Mr Kelly—The use of master plans in New South Wales is becoming more common but it is quite a recent development.

Mr Fitzsimmons—Development of the site can only be in accordance with the zoning of the site and that is what Defence proposes.

CHAIR—But doesn't that tie the hands of any developers that you might onsell the site to?

Mr Kelly—It attempts to tie the hands of the developers; however it does no more tying than the existing zoning instruments that apply to the site or any existing consents. If the developer is persuasive enough, or for other reasons is able to obtain the cooperation of government, will change the future development of the site.

CHAIR—Randwick Council saw the Randwick development as producing new suburbs within inner Sydney. Is that approach taken by Defence, or do you see this merely as a revenue raising housing development? This, again, is from *Hansard*, 25 January, page 330.

Mr Corey—I think we answered that question in some detail earlier when we talked about the planning processes. I think the same question was asked in another way.

CHAIR—All right.

Mr Kelly—The two propositions are not mutually exclusive. The fact that Defence has a proper regard for the revenue implications of the development of the site does not exclude it or include it from being a proposed new suburb. However, to suggest that it is a proposed new suburb is, on the objective evidence, an exaggeration. It might be a new suburb if one were to introduce a retail centre and a town centre as has been sought by the council. However, they are

conveniently doing that because the present zoning—and, for all intents and purposes, the whole of the zoning of this site since we lodged the development application—prohibits retail use. So the council has sought to argue that the future of the site should be restricted by a master plan which is required to comply with the existing zoning, yet they have sought illogically to make a master plan which requires a retail centre.

CHAIR—What has been the cost to Defence so far of the divestment process at Randwick? What is the estimated total cost of the whole project?

Mr Corey—We will provide that to you on the 26th as well.

CHAIR—Thanks very much. Do you think that the developers will discount their investment in a development in a form that is opposed by the local council and the community? This was a view put to the committee on 25 January?

Mr Kelly—No, I don't. Once the consent is obtained, that will be the principle instrument or mechanism by which the market will value the site, and they will do so because they know that they can implement it. They may decide to change it. Because of the conservative and proper approach that Defence has taken, they may seek to intensify the development; however, the claim that there will be devaluation because of what has gone on will have very little effect, if any, on the market.

Mr Blackley—It is certainly contrary to any of our previous experiences, some of which you saw when you were there.

CHAIR—Let me go to something else that came up in our hearing on 25 January. Why does Defence charge the Rudolph Steiner School \$60,000 per annum for rent on disused buildings? Who authorised this amount? I believe in addition the school pays for all renovations, upkeep and maintenance.

Mr Fitzsimmons—The basis of the rent charged to the Steiner school was market value, as advised to the Department of Defence by their managing agent, which is FPD Seviles.

CHAIR—It was the market value for those buildings?

Mr Fitzsimmons—Yes. The initial rent that was charged to the Steiner school in 1998 was \$35 a square metre. The rent at that time was low. That rent is marginally above what you would pay just for land, let alone have a brick and tile building constructed on it. Following the expiration of the six-month tenure, the Steiner school sought a further 12 months. The rent was reviewed by the managing agent and at that time they nominated \$50 a square metre. Following the expiration of that 12-month period, it was reassessed by the managing agent at any amount considerably above \$80 a square metre. I debated that with the managing agent and thought that, on the basis of the evidence they provided me, that \$80 a square metre was the appropriate rent.

Mr Kelly—And that equals the \$60,000?

Mr Fitzsimmons—Yes.

CHAIR—I must say, that although we did not view the inside, the externals did not look all that hot.

Mr Fitzsimmons—Those rents are based on industrial type buildings in the Alexandria area.

CHAIR—I think it is being kind to describe it as ‘industrial’.

Mr Fitzsimmons—That just demonstrates the conservative nature of the rents. The agent advised that, if it was based on a commercial value, the indicative rent should be something like \$300 a square metre.

CHAIR—On the same issue, I understand that the arrangement with the Steiner school is that they have a licence as opposed to a lease. Why do they have a licence as opposed to a lease? Why don't they get a lease?

Mr Bain—The difference with a licence is that it is for a particular use whereas a lease provides broader rights. They wanted to use it as a school, and a licence is appropriate.

Senator WEST—How many of your properties do you licence out rather than lease out?

Mr Bain—I would have to take that on notice.

CHAIR—At the same hearing, it was raised that Defence made a public declaration of offering the school a lease on the new site and then subsequently retracted that offer. Why did you do that?

Mr Bain—There was a comment made back in 1999 in a press release that they be offered a lease as part of the new development. That statement was perhaps a little ambiguous. The Commonwealth cannot deal one-on-one with organisations like this in offering land, and it must be on a commercial basis. Mr Fitzsimmons explained that in a follow-up on that press release, but there was still that perception that that offer had been made.

CHAIR—Refresh my memory: who made the statement in the press release? I remember the press release.

Mr Bain—It was a Defence press release out of our Sydney office.

CHAIR—You are responsible for that, Mr Blackley?

Mr Blackley—Mr Bain's answering the question.

CHAIR—That's the proverbial passing the buck, isn't it!

Senator WEST—Presumably it went through all of the usual approval processes.

Mr Blackley—They have been on the site for many, many years.

Senator WEST—I mean the press release.

Mr Blackley—Yes.

Senator WEST—So whilst it might have been prepared in your office, it would have certainly landed down here and been passed by the eyes of those—

Mr Blackley—No, we do not do that. I have the authority to issue a press release for something like that. I have both planning management responsibility and property management responsibility. I said we would offer them a lease on the site—that is what I said, and I do not resile from that. I was trying to help them by saying that we would offer them a lease elsewhere on the site while they looked around to buy a site, but it way it was written was unintentionally ambiguous. As soon as we realised the ambiguity Tony met with the people from the school and explained it. Ever since then there has been quite a lot of angst about the statement that I made.

CHAIR—That is right. I recall them appearing before the committee, and they stuck to their guns—that a lease it was and a lease was what they wanted.

Mr Blackley—The statement was made, and it is in writing. You probably have it; if not, I can make it available to you.

CHAIR—We have seen it, Mr Blackley.

Mr Fitzsimmons—The Steiner school introduced the words ‘long-term lease’. ‘Long-term’ was never ever mentioned by the Department of Defence.

Mr Bain—I am surprised that these comments were made, and I am not sure where—

CHAIR—That is why we are giving you the opportunity today to address these things. A lot of comments were made. This is your opportunity.

Mr Bain—I am not sure where Ms James sits in relation to Mr Andrew McPhail, who is the chairperson of the Children’s Garden School. I met with Mr McPhail in Canberra on 6 November 2000. This was at a time when they were trying to extend their licence again—they had extended it three times previously and they were unable to find a new location. We wanted them to move because of the disposal, but that was delayed for the reasons that we are covering today. We had that meeting on 6 November, and it was attended by the local federal member Mr Laurie Brereton as well as a member of the minister’s staff, Mr McPhail and two other people. I explained to him the circumstances, including the statement made. He accepted that that issue had now passed and that that offer no longer existed. I offered at the time to consider an extension for a further year, and the acceptance was to be unqualified—that they would leave at the end of 2001, although we have given them until I think January 2002. In the meantime, Mr Brereton would liaise with the state government and endeavour to try to identify alternative sites in the area, which has not been an easy task. They responded back to me, accepting those conditions on 14 November 2000. On 16 November 2000, I wrote back to Mr McPhail indicating that Defence agreed to extend the lease until 31 January 2002.

CHAIR—So they have no expectation, and they are on no promise from Defence, to be on that site beyond January 2002?

Mr Bain—They have every expectation.

CHAIR—They have the expectation, but Defence does not have the expectation.

Mr Corey—They should not have the expectation. We have written to them, they have acknowledged it, and they have agreed.

CHAIR—Is there any place for them in the redevelopment of the site?

Mr Blackley—Not long term, unless they acquire some property.

Mr Fitzsimmons—I want to clarify a comment I made earlier on that this advice from Defence's managing agent, FPD Seviles, dated 23 December 1999. The advice says:

Taking into consideration the area and comparable rentals, we would suggest that a rent of \$150 to \$200 a square metre would be easily obtainable. The market rent for shops in the areas is around \$300 per square metre.

It is that issue of commercial rental values that I challenged them on, and the rent was reassessed by them at \$80 a square metre.

CHAIR—I will not get into an argument about what I think the value of the property is worth.

Mr Corey—Sydney is a—

CHAIR—I know it is Sydney.

Senator WEST—He's a Brisbanite!

CHAIR—I know it is Sydney; I know all of that.

Mr Fitzsimmons—The Olympic Coordination Authority agreed that the rental value for the slabs out there was \$30 a square metre—for a bare slab.

CHAIR—We will not get into that. That is not the debate today.

Senator WEST—After this recession is finished, it might not be the same.

Mr Bain—I am happy to table that correspondence, if you wish.

CHAIR—I think that would help. Moving on, what is Defence's current approach to other community groups that currently use the existing facilities at Randwick? Are there any other community groups that use the facilities? What is your attitude to them?

Mr Fitzsimmons—It is probably worthwhile to go back in history as to how that community centre was established. It was given to a community group in 1972 or 1974. That community group incorporated itself and it subleases the building to various users. It is primarily run by what they call the community centre coordinator. We have had continual discussion with the coordinator. In preparing the community centre plan for the development application, we had regard to existing users' requirements and have indicated that, at the end of the day, it is ultimately a council facility and it will be up to council to determine who would be in the new facility.

CHAIR—So you have no undertaking that you have given to the existing community group that incorporated on your site as to what will happen with the redevelopment?

Mr Fitzsimmons—No.

Mr Blackley—We have not given them an undertaking. We cannot give that undertaking because the new facilities, despite the fact they are well constructed, will be run by the council. The council will review and may actually relocate them to other facilities if it is more appropriate. The whole management issue is up to the Randwick Council.

CHAIR—On what basis does the community group hold tenure on the property they are on—on your site?

Mr Fitzsimmons—It has always been a peppercorn rental.

CHAIR—Is that a lease or a licence?

Mr Fitzsimmons—It is a lease.

CHAIR—What is the term of their lease?

Mr Fitzsimmons—Month to month.

CHAIR—Would you outline, from Defence's perspective, the community consultation that has occurred in regard to the Randwick site? I must say that that was one area where, you would concede, there was a fair degree of criticism.

Mr Corey—We have already covered that in a fair amount of detail. Do you want us to cover that in more detail again? Mr Fitzsimmons can do that.

CHAIR—I think it is an area of real contention.

Mr Fitzsimmons—In the rezoning program in 1996, as Bernard said, we initially met with the council. One of our tasks in addition to undertaking a site assessment was to initiate a community consultation program. That program included the formation of a community reference group. That reference group included two councillors, members from the real estate industry, the department of education, stakeholders on site, Bundock Street project group, Randwick Community Centre, representation from ethnic groups and also representation from

the various precinct committees that surround the site. The council in 1996 divided the whole municipality into precincts, and there are three precinct groups that surround this site. Those precinct groups were given three presentations, briefings and discussions throughout the project—at the beginning, in the middle and at the end.

CHAIR—Did you have a predetermined concept of what you wanted to do at that stage?

Mr Fitzsimmons—Yes.

Mr Blackley—No.

CHAIR—One says yes, and one says no.

Mr Blackley—Not at the outset.

CHAIR—At the outset, did you have a broad concept as to what you were going to do?

Mr Fitzsimmons—As part of my management of the project, one of my initial tasks was to establish that concept.

Mr Blackley—When I spoke to each of these precinct committees, I said the same to them as I said to the mayor: we are here with a clean sheet of paper and we want your views.

CHAIR—We accept that.

Mr Fitzsimmons—We worked through the community reference group to develop an option for the site. We had the precinct briefings. We also met with the state and federal members on a number of occasions throughout the process. The federal member had his own representative as part of the community reference group. We established workshops with the council. The council had their expert team. We met on a regular basis with our expert team to discuss various issues. A site open day was organised. We held a community workshop over a three-day period. That started on a Saturday morning and went continuously through the night until the following Monday night, when the community presented its brief for the site. Defence presented its brief and the council presented its brief. The community was then sent off in groups to develop what they thought was the most appropriate option for that site. At the conclusion of the workshop, three options were presented. From that, those options were refined into one, which went on public exhibition in December 1996 through to the end of January 1997. During that period we also issued five newsletters. The newsletters detailed the processes that we were going through. One of the newsletters provided a reply-paid option for the community to put forward any comments on the scheme that we had exhibited. The culmination of this process was a briefing with the state member as to what we were about to lodge with council in terms of a rezoning application.

CHAIR—When was that?

Mr Blackley—I do not know the date. We lodged in April 1997, so it would have been just prior to that. I do not know the date.

CHAIR—No, not exactly—about April 1997.

Mr Fitzsimmons—It was around the time we lodged Defence.

CHAIR—When would you say that it could be considered that community consultation ceased in any meaningful way; that either you felt it was no longer warranted to proceed or you felt you had gone as far as you reasonably could in consulting with the community reference group?

Mr Fitzsimmons—The rezoning phase concluded upon the lodgment of our rezoning application. But that was not the end of the community consultation that occurred on the site: during our contamination investigations it was necessary to undertake some remedial works and, prior to any of those works occurring, all the local residents were advised by letter. After the development application was lodged we had a presentation to the Waverley precinct group, the major precinct group that adjoins the site. We have had numerous calls to our office asking questions as to what is going on in the process. But there was no structured program of consultation following the rezoning up til the lodgment of the development application. It was undertaken on an ‘as needs’ basis.

CHAIR—All right. Can you give us a rough idea of when the consultation process ceased?

Mr Fitzsimmons—For rezoning it completed upon the lodgment of the rezoning application.

CHAIR—When was that?

Mr Fitzsimmons—April 1997. We have letters here that have been sent to local residents. Various activities have occurred on the site since then.

CHAIR—When were they?

Mr Fitzsimmons—One was 20 November 1998 and the others 3 December 1999.

CHAIR—Has there been anything since those dates or has all that ceased because you have ended up in a fairly litigious position with the council?

Mr Fitzsimmons—There has been no consultation with the community since we lodged the appeal, other than the users of the community centre and the briefing of the Waverley precinct group which I referred to earlier.

CHAIR—It has been alleged that Defence are not meeting their obligations in regard to the environmental maintenance of the wetlands situated on the Bundock Street site. Would you care to outline the actions Defence have been taking, as the current owners, to preserve this area?

Mr Fitzsimmons—The biggest protection that has occurred on the eastern end has been fencing of the site—keeping the public out, allowing vegetation to regrow, et cetera. There was an issue early in the process when there were three horses on the site for agistment purposes. Those horses were used by and associated with the New South Wales police. Upon the advice of

our ecologists we sought the removal of those horses, and they went when new homes were found. We have prepared a management plan for the eastern end; that management plan has not been implemented. But we have avoided undertaking any works in that area until its final land use is determined or agreed with council. Work in that area would be undertaken in conjunction with council out of an agreed management plan.

CHAIR—A Dr Paul Adam expressed concern about the management of the site. He said:

Although active management has been discouraged, there have been various examples over the years of unauthorised access by trail bike riders and other vandals. For a period of time there were horses—

You spoke about that—

on agistment on the site. So even though it is a Defence site, the management of it—certainly in terms of keeping people out—has not been ideal for a number of years. Yet, as I say, proposals to actively manage what is regarded by the local residents as an important resource and what is legally recognised now as a site of conservation concern were not proceeded with.

Why hasn't Defence done more to manage the site, given the statement of Dr Paul Adam?

Mr Kelly—The short answer is that Defence has, in the development application lodged in October 1999, a comprehensive plan for the site which involves its ultimate improvement and handover to the council.

CHAIR—No, I think this goes back in time; I think it predates that lodgement.

Mr Kelly—I am sorry.

CHAIR—I think there had been attempts by the locals to see that there was a better management of the parts of the site that they deemed were of conservation value.

Mr Fitzsimmons—There have been continual breaches of security where illegal access was obtained to the site by people—professional dog walkers, children just building a cubbyhouse or whatever on it—but those security breaches are repaired probably on a six-weekly basis. The vandalism is quite significant. That is demonstrated by the damage that has occurred to the sheds. But there has been no program developed to remove invasive weeds or whatever. A bush regeneration organisation approached the department to commence bush regeneration on-site, but it was felt inappropriate to start that bush regeneration until a management plan had been prepared in total.

CHAIR—Yes, that goes to the question that was raised by Dr Adam: basically, that there was an offer by local residents to establish a bush management group. Apparently that was rejected. Is that correct?

Mr Fitzsimmons—That is right, because there was no agreed management plan with council. There is no point going in and undertaking bush regeneration work when an overall strategy has not been prepared, and we held off doing that strategy until resolution of that parcel of land was agreed with council.

Senator WEST—I do, in some aspects, understand why Randwick council gets a little bit upset. Mr Kelly has assured us that the DA is in and that you have invited them to tell you to do something. But in areas 5, 6 and 7 no application plan has been fully thought out—as is the case with areas 2 and 3—and lodged, as I understand it.

Mr Kelly—No, that is not the case. I said to you that the development application has technically been lodged in respect of lots 2 and 3, and that is the case. However, that development application invites imposition of a condition on Defence that deals with lots 5, 6 and 7 in a very comprehensive way. I have a copy of the application with me and I can show you the plans and specification of works which will readily demonstrate that it is comprehensive, and it covers the entire area of 5, 6 and 7.

Senator WEST—And they have been lodged or worked out?

Mr Kelly—No, they were part of the application and lodged on 18 October 1999.

Senator WEST—The language gets me confused, that is all.

Mr Blackley—We will get a plan to you and show you what the embellishment works in that eastern end of the site are. They are very impressive.

Senator WEST—I remember it being talked about when we did the inspection. Yes, we will look at that later. To continue with the evidence from Mrs McGirr on 25 January, it says on page 310:

Just before Christmas 1999, a huge torrent of water could be heard running for weeks under a drain in Holmes Street. It was like a river and it ran for weeks. Shortly after this—in the new year of 2000—the wetland completely dried up and it has never refilled and all the trees and shrubs at the Henning Street entrance, which is this entrance up here, died—this is the black portion on your map. It was quite apparent that the trees were being poisoned or interfered with in some way. Then on the Easter weekend of 2000, without warning except to a few neighbours, bulldozers moved onto that corner of the site where this black remediation area is, within metres of the wetland, and stripped the southern edge of the wetland of all its vegetation. This is what it looked like before it was stripped—I will pass it around—and this is what it looked like when they had stripped it. There are the two scenarios. The sand washed into the wetland and blew all around. They then began excavating below the level of the wetland. It would seem to us that that was why it was drained.

Do you have some explanation for this particular piece of evidence?

Mr Blackley—Yes, I actually have a statement to make in regard to that allegation. The first element of this concern was drawn to Defence's attention in December 2000 and it relates to an episode in 1999 when, after a prolonged period of rain, Sydney Water undertook repairs to the stormwater pipe in a neighbouring street, Garden Street, just south of the Defence site. This work was entirely unrelated to any Defence activity.

The pipe was relocated at considerable depth and required the ground water surrounding the pipe to be pumped out to complete the necessary repairs. That is in regard to this huge torrent of water—the 'it was running like a river and it ran for weeks' allegation. Other than these specific works, the sound of running water from time to time is the result of water flowing in the council's drainage system, which flows through the site from the north, in a southerly direction, connecting ultimately to the Sydney-Waterloo-Line Bay pipeline and then discharging into the sea.

For the past decade, until 1999, the detention basin remained essentially dry, during which time trees grew to a considerable size. As a result of extended periods of rain in 1998 and 1999, the volume of water significantly increased, killing much of the vegetation grown over the past decade. The area is also directly influenced by the botany aquifer and level of ground water located several metres below the surface of the site. Just as the ground water swells as a result of prolonged heavy rain, so too does it subside during extended dry periods. Though short duration heavy rains were experienced during 2000, these have not been sufficient to maintain the water levels experienced during 1998 and 1999. Today there is no water in the area.

For logical geophysical reasons it is not possible to artificially maintain water in the area, and at no time has Defence intervened in the water levels of the wetland. Mrs McGirr refers in her evidence to remediation undertaken by Defence within metres of the wetlands, stripping the area of its vegetation. This area was contaminated with heavy metals with high leachate characteristics. To remove the source, thereby protecting the environmental integrity of the wetlands and the threatened eastern suburbs banksia scrub, some noxious vegetation—lantana and bitou bush—was removed.

The scope of the work was agreed with council and the National Parks and Wildlife Service. A small area containing native plants and some asbestos cement sheeting was excluded as it did not pose an immediate threat. All residents were advised in advance and all work was undertaken in accordance with the environmental management plan specifically prepared for those works. There was some dust generated by the works, even though sand does not normally generate dust, but when high wind levels were present work was stopped. Water carts were used throughout the duration of the works.

You referred to Mrs McGirr's claims at page 316, where she states that there has been no environmental impact statement and there were not the normal environmental health safeguards in relation to some aspects of the remediation. The fact is that an environmental impact statement was not required, nor was it suggested by the council, as all sensitive environmental issues were managed prior to the project commencing with the National Parks and Wildlife Service. An environmental management plan had been established before the work commenced.

Senator WEST—So there was an excavation done. Has that excavation been filled in?

Mr Blackley—No.

Senator WEST—Has replanting been undertaken?

Mr Fitzsimmons—No, it has not been filled in because of legal action taken by council prior to Defence taking the development applications to the Land Environment Court.

Mr Kelly—It has not been filled in because, after we lodged the development application, it became clear that the council would not deal with it on its merits. I advised Defence that all work on the site should cease because I was apprehensive that the council would, on a pretext or otherwise, commence proceedings seeking an injunction to restrain Defence from carrying out those works and alleging breaches of state legislation. Shortly after I gave that advice and all work on the site stopped, Randwick council did indeed commence proceedings seeking an injunction of that kind. They have maintained those proceedings all along for their tactical

advantage and for the delay that they cause in concluding the case. So were any further work to be undertaken, it is almost certain there would be an application to defer the case and an application for the issuing of an injunction against the Commonwealth.

Senator WEST—Were these works commenced with the approval of the council? Was approval necessary from the council, the EPA and some of those other organisations? You might want to take that on notice. I am conscious of the time running away on us.

Mr Kelly—No formal legal application was made to council.

Senator WEST—Was legal application required?

Mr Kelly—In our view, no.

Senator WEST—Presumably in council's view, yes?

Mr Kelly—No, I expect at that time, in relation to those works, the council's true opinion of that issue was unsullied by their tactical requirements in the litigation. As Mr Fitzsimmons mentioned, the council were consulted and raised no objection. So I expect they were reflecting in their conduct at that time their true view of the legal position that consent was not required.

Mr Fitzsimmons—Those works were undertaken in two stages. On both occasions council and the national parks were invited and, at least on one of those occasions, the mayor was present on-site.

Senator WEST—Was national parks' approval required or had they given you any indication that the work undertaken was appropriate?

Mr Fitzsimmons—National parks assisted, along with council, in mapping out the area to be cleared.

Mr Blackley—They had no objections to the works.

Senator WEST—That is what I am trying to get at—what approvals were sought, what consultations were held and what approvals were given, or what support was given, and by whom? As I said, I am happy for that to go on notice if you are not totally sure of the full—

Mr Fitzsimmons—But the process that was undertaken at the commencement of these works is that a site meeting was called with council and the national parks prior to undertaking the works. They were given a brief as to what the works would involve and we sought advice on them as to how we would go about it. They provided that advice on both occasions, and we proceeded on that basis.

Senator WEST—So it is a matter of waiting and seeing until the injunction is lifted?

Mr Kelly—No injunction has been issued.

Senator WEST—Until the legal situation is sorted out.

Mr Blackley—Defence does not want to take any further action.

Mr Kelly—That is right. Those works had been completed, and further works—

Senator WEST—But there is still an excavation there, isn't there?

Mr Fitzsimmons—It has not been backfilled.

Senator WEST—That is right. So is Defence wanting to leave the excavation there?

Mr Blackley—Perhaps you think it is wider and larger than it is.

Mr Fitzsimmons—It is not a threat to safety.

Mr Blackley—There is no threat in it.

Mr Kelly—There is other contamination in the immediate area which, as Mr Fitzsimmons explained, did not require the urgent action that the targeted contamination did—because that targeted contamination was of a high leachate propensity; that is, it could leach into the ground water. So in order to protect the ground water, more urgent action was taken than in respect of the other contamination immediately adjacent.

Mr Fitzsimmons—Mrs McGirr would have received the consultation advice letter detailing all of that, prior to it happening, and she lives adjoining to the site.

Senator WEST—So you do not think it is an issue for the residents now—that there is an excavation there and the amount of ground cover in that excavation and the dust and sand that gets blown around on windy days?

Mr Fitzsimmons—No, there has been no complaint made by any resident adjoining the site for at least a year.

Senator WEST—Do you think there is a possibility that some of that is because they are so against—or appear to be so against—what is going on that they just would not bother?

Mr Blackley—There is no evidence to suggest that that is the case. They have been consulted and there is no evidence on the table at the moment that they are unhappy about anything. Some people who have appeared before you are unhappy, but those particular residents are not.

Senator WEST—You say that there is no evidence on the table that they are unhappy. We have had quite a number appear before us registering some discontent.

Mr Fitzsimmons—I think that is typical of any project—the people that are very vocal come forward. But I have had a lot of contact with the community centre and the SOS preschool over the management of their lease and there is a general acceptance that what Defence have done

and proposed is good and should happen. I think the criticism now in the broader community is of council.

Mr Corey—I might add that the people who have come before the committee have got a strong vested interest—even the ones who have come in a private capacity have children at the school, for example. It is not as if they are disinterested bystanders.

Mr Kelly—I can add to that. As I said, I live within about 300 metres of the site. I have five children—one attends South Coogee Public School and two attend a school in Randwick—and I am a member of the local surf club. I have lived there since September 1999 and, prior to that, elsewhere in the Randwick municipality. The residents action group is not representative of mainstream community standards at all, nor is the council—although it purports to be. The view in the community is essentially that the residential development of this site is inevitable—that it is an eyesore with the Nissen huts, warehouses and so on. It ought to be redeveloped for residential purposes. What they seek to avoid is gated exclusive communities, such as that at Raleigh Park.

Those people who have seen this plan of subdivision see it as the optimum solution in the interests of the residents and that it is contrary to the state government's urban consolidation objectives, which have been played out elsewhere. In fact, when I met with the Premier about this application he said—and I will quote you his words precisely—'This is a good development; the residents should seize this proposal.' Later in the same meeting, when the possibility of an objection by Randwick council was raised and when his planning minister, Andrew Refshauge, referred to the issue about urban consolidation and the possibility that the council might seek to prevent Defence from proceeding by re-zoning it, the Premier said, 'If the council tries to stop you, I will stop the council.'

CHAIR—Thank you. To everyone's relief, I think we have come to the end of Randwick. But I think it was important because—

Mr Corey—I think it was important too.

CHAIR—Important from the point of view that the questions that were asked had to be asked. Mr Blackley, you said that you had some additional statements you wanted to make. Now is the time to make them and put them on the record.

Mr Blackley—You have picked up most of the items.

CHAIR—No, do not be backward in putting your statements on the record. This is your chance.

Mr Blackley—I do not particularly want to put any statements on the record. I just wanted to refute a whole litany, a miscellany, of allegations, inferences and statements that have been made.

CHAIR—Have we missed any?

Senator WEST—Do you want to go through the *Hansard*, so that you can then, on notice, give us the—

CHAIR—Or you can put it in writing. You know that we want to provide fairness in procedure in terms of what people put on the *Hansard*. What our own personal views are on matters accounts for nought. It is for you to have the opportunity to respond to some quite vigorous statements that were put by people—rightly or wrongly, that is their view. They are entitled to their view; you are entitled to your view; we might not agree with anyone's view. That might be what it is at the end of the day.

Mr Blackley—Could I just make one statement.

CHAIR—Yes, you can make your statement.

Mr Blackley—In some of the evidence given by Mrs McGirr—I noticed that you picked this up during the questioning—she said that there were five non-negotiable items in the master plan. She referred to no built form of the eastern end, no through traffic, preservation of the wetlands and the eastern suburbs banksia scrub, development density similar to Holmes Street—the adjoining development—and preservation of existing community facilities. She led you to the conclusion that there was this impasse between what she was suggesting and what Defence were suggesting. That is totally incorrect—we are at one on this—but she has contrived her statement to say that there are five non-negotiable, impassable items that we just cannot come to terms with. In fact, if she read the application—I do not know whether she has—she would see that all of those issues have been included in our application. That is the point of getting it on the record. So there are quite a lot—probably 20 or 30 one-liners—that I do not believe should be there. In one block I would just like to totally discredit them. That was the purpose.

CHAIR—Anything else you want to put in writing will be put before the committee. Just by way of observation, it seems to me that at the end of this process—whether Defence win, whether the council win; whoever wins—there is a lot of work to be done in the community, one way or the other. You cannot have winners and losers in this sort of affair, from what I can see, and it looks as if that is the path this is heading down.

Having looked at the number of questions we have got on Point Cook, there is no way in the world we will cover that before 1.30 today. Have you sent the people from the Army History Unit packing?

Mr Corey—Yes, I gave them their marching orders.

CHAIR—We will note that they will be back next time to give an explanation.

Mr Corey—As I say, they have tabled—

CHAIR—They have tabled a statement refuting some of the allegations that were made about the Army History Unit. I have a question for you that I raised somewhere else in the proceedings—I think it might have been in Melbourne: whilst there is an Army History Unit, is there a Navy History Unit and an Air Force History Unit?

Mr Corey—They have probably got a different name. The Navy have got a historical society. Whether they have got a history unit that actually fits in within the Navy, I am not sure. But I imagine they would have the equivalent of it.

CHAIR—Can you take that question on notice and check that out for us.

Mr Corey—Yes.

CHAIR—Because one of the things that I will be interested in—

Mr Corey—There is definitely an Air Force one.

CHAIR—is the liaison between those types of organisations and you, as DEA—if there is any. And those organisations might not even exist for Navy and Air Force.

Moving on to Point Cook, Mr Pilkington of the Point Cook Airfield Preservation Action Group told the committee that:

The consultative committee in 1993 headed by Mr Jones, the local Werribee member of parliament, examined the issue and had public consultation. There has been acknowledgment by the Australian Heritage Commission and Heritage Victoria of the site's national significance. DEO, or the defence department, has undertaken conservation studies in the past, such as the Alan Lovell report in 1993. Its conservation and heritage status seem to be more than well documented and understood. We really believe that there should be a long-term management plan for this site, rather than the uncertainty that has sat over it since 1993.

That was from page 409, from the hearing of this committee on 16 February. What is your response to Mr Pilkington's comments?

Mr Corey—As background to this, Point Cook has been an issue of contention politically at both state and commonwealth levels since probably before 1990. It was the focus of a study as to its future use in the Melbourne basin airfield study in 1989, and the debate has been ongoing since then as to what its future use should be. Defence is determined that its long-term requirement for Point Cook, in an operational sense, is that there is not one. We moved the flying school out of there some years back and we are in the process of relocating the operational units—the training units, the RAAF college. That has been approved by government and it will happen over the next two or three years. So the only Air Force presence, as such, will be the RAAF museum in the longer term.

We have been dealing with state and commonwealth governments to develop a strategy for easing ourselves out of Point Cook for 10 years. But it has been brought into a whole range of issues—like the National Aerospace Museum of Australia, NASMA. The previous Premier of Victoria, Premier Kennett, had some agreement to develop an option for a space museum or an aerospace museum at Point Cook, and it was going to attract half a million to a million visitors a year. That did not happen. Premier Kennett withdrew funding from that project, so it died. A number of other options have been developed by the Air Force, principally encouraged by the RAAF museum, for future use at Point Cook. We have been attempting to come to grips with a strategy, at the political level, for 10 years—with very limited success, I might add. So the long-term future of Point Cook—

CHAIR—That is an understatement. Ten years?

Mr Corey—The previous Minister for Defence said to me in 1995 or 1996, ‘This is your highest priority, Rod’. We tried, but we never got anywhere.

CHAIR—I never thought I would hear you say that before a committee of the Senate.

Mr Corey—It got to the stage where we said, ‘This is something that is getting very complicated and we’re not sure there is a way through it yet.’ But there are a lot of people who keep buying into this. The vested interests are killing us. Our solution is to put it on the market. That is the way to flush out what really should happen with Point Cook, because the longer it stays there without a strategy in place the more development that occurs around Point Cook and the more constrained it gets in relation to flying activity, and its future becomes more and more foreclosed. But that is just as background, without trying to second-guess the outcome as far as Point Cook. I was just trying to give you a bit of the flavour as to why we have not been able to resolve it.

CHAIR—What about the statement by Mr Pilkington:

We really believe that there should be a long-term management plan for this site, rather than the uncertainty that has sat over it since 1993.

Mr Corey—I agree with him wholeheartedly.

CHAIR—Who should be responsible for that long-term management plan? I know you are charged with—

Mr Corey—As I said, from a Defence point of view, it is a surplus property. Our future requirement for it, after the RAAF college relocates, will principally be related to the museum. It is and it is not a Defence function in some ways.

CHAIR—Mr Bain was going to help with some words of wisdom.

Mr Bain—I would like to add a bit to what Mr Corey said. The issue of Point Cook is that, all along, there seemed to be parallel events going on with the airfield and the other parts of the property. In 1991 the four-structure review identified the airfield portion as surplus. Later on, in about the mid-1990s, the concept of the National Aerospace Museum of Australia came onto the table, and that ran through to February 1998. At that time, that was maybe a potential outcome and a future for a significant part of the property. In mid-1999, OASITO was tasked with looking at the relationship that might exist between Essendon Airport and Point Cook in relation to the sale of Essendon. That ran through until late 2000, when it was determined that there was not really a linkage there. As you are aware, Essendon Airport has now been put on the market. As for other issues going on in 1997, a horizon tank was located at Point Cook, which has seen two film productions. Also flowing out of the NASMA proposal, was RMIT, which was linked to the NASMA proposal. It then established itself with Chinese civilian pilot training, and that has been going on since that time. With all of those issues, it was clear that the Victorian government’s position was critical to the future of Point Cook. There were substantial interests there—with RMIT, the horizon tank and the film industry—so we had different areas

of the Victorian government involved, and that did not make it any easier. There is the broader issue of the airfield assets in the greater Melbourne metropolitan area.

The state election came along, and that was probably another issue which slowed the thing up for a while. I suppose now, given that the Essendon issue has been taken out of the equation, we are probably about to get on with where we need to go with the property and to set up some group that can progress its disposal and look at what options are involved. For people outside, there was a frustration—it just seemed to be going on and on. From where they were looking, it certainly was. We have adopted a similar approach in relation to a large site in South Australia—the Salisbury site, which is 700 hectares—which we are disposing of progressively. That involves the three levels of government and the relevant major stakeholders in progressing where we might go with the site and looking at what potential exists. So now the time is probably right, with all those behind us, to get on and do that.

Senator WEST—What was the Ambidji report?

Ms Clark—The Ambidji report was commissioned by the Victorian government. It was completed in November last year and comments were sought. The comments came back in January 2001, and they are being consolidated. The report looked at the capacity of aviation facilities in the Port Phillip region should Essendon Airport or Point Cook airfield close. Of course, that has somewhat been superseded. The outcomes of the report might vary because Essendon is not actually closing. So the basis of the study was, I suppose, slightly flawed. It was a bit pre-emptive. It is a pity that the Ambidji report was not generated following the decision on Essendon, because they understand the implications with Essendon now. It was premised somewhat on the fact that the Victorian government had anticipated that Essendon would close.

Senator WEST—Essendon is government owned or privately owned?

Ms Clark—Commonwealth owned.

Senator WEST—Commonwealth owned. And the Commonwealth has made a decision?

Ms Clark—Yes. The Office of Asset Sales and IT Outsourcing did the study through the end of 1999 and through to 2000, with report to cabinet in around October of last year.

Senator WEST—The Ambidji report said that if Essendon closed, it would be highly desirable for Point Cook to be developed as a high capacity aviation centre, didn't it?

Ms Clark—Yes. As Ross was saying, there are these actions that have been in parallel, and it has been very difficult for the Victorian government to make any judgments on their views on the future of Point Cook. With the decision on Essendon, and with the Ambidji report now in, we have the best opportunity we have had in probably the 10 years that we have had this site to move forward on where it goes in the future.

Senator WEST—Has Defence held any consultations or communications or discussions with the state government on the issue?

Ms Clark—Over the last two years, I have had regular meetings with the Victorian government, through the Premier's department and state development departments, about a number of the sites. Point Cook is one of them. We have asked about the situation with Point Cook and told them we want to dispose of it. I have only spoken with them in the last few months. They have no position on the future of Point Cook, which makes it frustrating for us and it makes it frustrating for the councils because they are not quite sure where it fits. That is why I think we could initiate an opportunity for a group that involves us, the state government, entities and various agencies within it like transport and regional development, the councils and probably some elements of industry to come up with a master plan like we have done with Salisbury.

Senator WEST—Has it been Defence's intent to discourage the use of Point Cook for general aviation?

Mr Bain—That is an interesting question because it is no longer a civil airfield. The issue is whether it should continue as an airfield. There are obviously costs associated with that. It would not be fair to say we have discouraged flying.

Senator WEST—But it would be fair to say you have not encouraged it, wouldn't it?

Mr Bain—That would probably be a fair comment, because there are costs and liabilities for the Commonwealth in operating an airfield, and that all needs to be taken into account.

Senator WEST—So you would justify the use of itinerant landing fees of \$250 an aircraft?

Mr Bain—Perhaps we need to explain the basis of that.

Ms Belli—In relation to those fees, they are—

CHAIR—They were the subject of criticism at the inquiry in Melbourne.

Ms Belli—Yes.

Senator WEST—Plus the large public indemnity clauses—in some cases beyond what insurance companies are prepared to pay—and large contracts to operate aircraft from a site being seen as part of this intent.

Mr Bain—Maybe we should go back a little bit. When the Defence Estate Organisation took over the airfield in 1997 the tenure arrangements there were not as they should be; they certainly did not protect the commonwealth and they probably did not protect the tenants either. We went through a process of implementing a structured approach to the occupation and use of the airfield, because the Commonwealth was assessed to be at quite a high risk under the arrangements that existed because it was not a normal airfield; it was a Defence airfield to which there was civilian access. That was the basis of establishing the licences and agreements which I think, at the end of the day, really just covered our costs of establishing them. When you gained access to the airfield it was like joining a club: there was a one-time fee that gave you access from then on to use the airfield. But they had to be a registered user so that they

understood what their obligations were and we understood ours. That was the basis of those arrangements being put in place.

CHAIR—From where did you derive your strategy in your model—internally in Australia—as to how to manage the airfield once it became your possession?

Ms Clark—In 1997, when we took over the responsibility for managing it, there were a number of non-Commonwealth entities, which is why we went through the process of putting the arrangements. An option would have been that we actually closed the airfield; the risk was quite substantial to the Commonwealth. Rather than close the airfield—because there was a lot of use: the RAAF museum was there and obviously the airfield still operating encouraged visitors to the museum as well—we thought it prudent to seek advice on how we could best manage the airfield to make sure it was still accessible to the public and to protect our interest as well. So KFPW investigated other arrangements that were in place in other airfields. You must remember that this is an unlicensed airfield as opposed to your Moorabbin, which are licensed airfields. A licensed airfield comes in underneath CASA regulations and it is related to passenger numbers and things like that, whereas Point Cook is unlicensed. It is quite a difference.

CHAIR—Why is Point Cook unlicensed? Pardon my ignorance.

Ms Clark—A licensed airfield is usually a commercial venture; this is a Defence facility but it is not a commercial—

CHAIR—Does that affect the insurance and so on that for that field as opposed to a licensed field—is that what you are saying?

Ms Clark—I am not sure whether there is any relationship—

CHAIR—I do not know; that is why I am asking you.

Ms Clark—That is where we started from: we had an unlicensed airfield. Therefore we came up with those agreements. Do you want to explain the process we went through, Ms Belli?

Ms Belli—In relation to the way that the agreement first came about, initially some discussions were held between DEO RAAF and the AGS, who was acting for Defence in relation to this particular property. There were certain needs that RAAF had. They had some arrangements whereby they were using non-Defence aircraft for different activities. DEO were obviously aware that there was civilian use of this particular airfield, and there needed to be some formal arrangements in place, as Liz said, to protect the interests of the Commonwealth and to make clear the rights and obligations of all the parties. So initially there were discussions and meetings in relation to that. It became clear then that perhaps there needed to be two separate agreements. The airfield use agreement, as it evolved, became more property principle related, and when that occurred KFPW was invited, in our property capacity, to be involved in that process.

CHAIR—That does not explain, though, how you ended up with this we have in evidence.

Ms Belli—Sorry, what was that?

CHAIR—It does not explain how one ended up with this we have in evidence of the high itinerant landing fees of \$250 or the large public indemnity clauses which Senator West referred to.

Senator WEST—And that insurance companies are not prepared to come at. One would expect that insurance companies would be familiar with all the potential litigation and the insurance needs. But you are obviously requiring things that the insurance companies are not even coming at.

CHAIR—The conspiracy theorists are saying that this has been set up to run Point Cook down—to make it unworkable, unserviceable, unusable—and that part of the plan is to see the gradual decay of the actual buildings that are on the site so that people will then throw their hands up in the air and say, ‘Well, there’s nothing else to do now but level it, sell it and put housing units on it.’

Senator WEST—And say that no-one is using it.

Ms Belli—Obviously there are numerous issues there. If we could address them one at a time.

CHAIR—Yes.

Ms Belli—In relation to the access fees themselves, DEO commissioned a valuation in terms of current market commercial rates. KFPW instructed the valuer and provided details in terms of the rates that were currently being charged at the time.

CHAIR—That \$250: was that a fee that people told us about that would have been applicable at other unlicensed airports or a licensed airport?

Ms Belli—If I could just explain the fee structure—there seems to be a misunderstanding. There is not just one fee that applies—\$260 is, I think, the actual figure.

CHAIR—All right.

Ms Belli—The actual access fees vary. They depend on the type of aircraft and whether you enter into the arrangement as an ongoing user—for a 12-month period initially—or as an itinerant user and then it is a one-off access fee each time you come in and the users would be billed in the month following access. There are different access fees that apply. As I mentioned, a valuer was appointed and did the due process in terms of assessing the various rates and so forth in the marketplace: looking for comparables; taking into consideration, in terms of Point Cook, some of the facilities—other airfields not being available or not to the same level. That is how the access fees were established.

CHAIR—Have you got a schedule of fees?

Ms Belli—Yes, I have got a copy of that.

CHAIR—Can you provide that to us?

Ms Belli—Certainly. That ranges. For example, for non-commercial aircraft there is a \$250 per annum fee; for commercial aircraft there is a \$600 per annum fee; for ultralight non-commercial aircraft there is a \$250 per annum fee; and for ultralight commercial aircraft there is a \$350 per annum fee. Itinerant charges are: commercial single-engined, \$10 per day or part of a day; and commercial twin engined, \$12 per day or part of a day. And it continues.

CHAIR—How do those compare with, say, Moorabbin, which I understand is down the road, so to speak?

Ms Belli—I could not tell you off the top exactly how they compare but—

CHAIR—Could you take that on notice because we are obviously going to come back.

Mr Bain—We will take that on notice.

Ms Belli—Sure.

CHAIR—The allegation was raised in an environment where it makes out that you have deliberately structured your charges and the way you operate—and I am not saying this disparagingly—to make it a place where the operators and the itinerants just cannot operate.

Ms Belli—Yes, we can provide that information. I do know, off the top, that in terms of the valuation assessment in terms of the current market access fees Moorabbin was one of the airfields that was considered as a point of comparison. Moorabbin certainly was not the most comparable airfield as far as assessing the airfield charges was concerned. But we can provide detail on that front.

CHAIR—Whilst you are doing that, the other question is: is there an airfield comparable to Point Cook that you can point to?

Ms Belli—Again, in that information that we will supply there was an airfield that was deemed to be the most comparable. It was a more regional, smaller sized airfield. I cannot recall just off the top of my head the name of it. We can provide that, though.

CHAIR—Take that on notice; again, it will assist us.

Ms Belli—That is right. I should mention, too, just in relation to the \$260 fee that has been mentioned quite a lot, that I perceive that what is actually being raised there is the KFPW fee. That is our administration fee that is charged. It is a one-off fee covering putting in place the actual agreement. Essentially, we allowed for two hours work. Our commercial rate is \$125 an hour. Is quite involved in terms of going through and putting it together. On average, I would say we probably spent three to four hours putting that in place, so there is additional cost. The other point—

CHAIR—Just slow down a bit, because this interests me. This agreement is, I presume, a word processing document?

Ms Belli—We actually have this in electronic form now.

CHAIR—It is in electronic form, so basically it is a matter of typing in the names of the various companies, people, groups or whatever they might be that are involved, pressing a button and out comes the agreement. Is that a reasonable way to describe it?

Ms Belli—It is a little bit more involved than that. As I say, we had allowed for about two hours time but on average it would take longer than that. For example, the process that might take place is that we would take inquiries from potential parties interested in entering into the agreement—obviously those wanting access to Point Cook.

CHAIR—Is this an annual agreement?

Ms Belli—It is. It was commenced as of 1 March last year for 12 months and we have just completed a process of renewal for a further 12-month period.

CHAIR—And is there a similar agreement for an itinerant?

Ms Belli—It is exactly the same agreement but you nominate whether you want to be an ongoing user, for which you pay a per annum access fee.

CHAIR—Someone who may make a one-off landing there: do they get charged that fee?

Ms Belli—The \$260 administration fee?

CHAIR—Yes.

Ms Belli—Yes, they did. And the point I was going to make is that parties could choose to enter into the agreement together; for example, you could have two, three, four or more parties, which would assist in spreading that cost amongst a larger number of people. It provided for numerous aircraft to be listed on that one agreement too.

Senator WEST—So each time an itinerant wants to land they have to sign off on one of these?

Ms Belli—You sign off once; you enter into the agreement and then you are free for that 12-month period or for whatever period the agreement is running to. As I said, we have completed a period of renewal for a further 12 months and that will now run until 28 February 2002. So an itinerant user can, at any time during that period, come and go as they like, essentially. But they do have to follow process in making sure they contact the airfield managers to make sure there are no problems with safety and a high volume of use on a particular day and the actual time for access needing to be altered perhaps.

CHAIR—And how does that fee compare to that at other sites such as Moorabbin and at other regional airports? Is there a similar agreement that people are required to—

Ms Belli—In terms of the administration fee?

CHAIR—Yes.

Ms Belli—There may not be that fee in certain cases. As far as the arrangement with KFPW and DEO is concerned, as I mentioned earlier we are Defence's outsource property provider. Essentially, these agreements fall into a category of revenue leasing, and the arrangement that is in place is that the parties seeking a revenue leasing arrangement would pay the Commonwealth's reasonable legal and consultancy fees. So, with that being the basis for it, our fees are charged to these particular parties. As I say, we made an assessment of allowing about two hours, and that is where we have come up with this fee of \$260, which is \$250 in professional fees and \$10 which we have allowed for disbursements.

Mr Bain—In relation to the issue about encouraging or discouraging users, a serious decision for us would have been to close it. That would, without doubt, have been simplest for us, particularly in relation to the cost. We have got on board an airfield operator to ensure safe running and to make sure the place is operating effectively but it costs us more to keep the airfield open than to close it.

Senator WEST—You must go a fair way towards recouping your costs, though, on these fees.

CHAIR—Yes, they are pretty good. We will not get into that debate.

Senator WEST—Nor will we get into who is making the profit.

CHAIR—No.

Ms Belli—Do you want me to go into detail in terms of what we do in that two-hour period we have allocated?

CHAIR—Yes, I think that would be most interesting to the record.

Ms Belli—As I mentioned, obviously we take inquiries from potential aircraft operators, and that would normally involve some level of discussion for a couple of minutes—it would perhaps go on for quite a bit longer than that—and general inquiries in terms of the commercial terms and conditions, such as the access fees and agreement costs. We then issue a copy of the agreement under cover of what we have developed as a standard form letter setting out the relevant background information, instructions and requirements. We would then take perhaps further inquiries from prospective aircraft operators. It is valid to make the point that there are quite a few queries coming from people and we do spend the time to discuss in detail any queries that they may have to try to cover all the issues. In that standard letter that goes out, we ask for certain information so that we can establish what the appropriate access fee—

CHAIR—Can you give us a copy of that, please?

Ms Belli—Yes.

CHAIR—Thanks.

Ms Belli—We ask for certain information so that we can establish what access fee and security deposit is payable on that. As I mentioned, that does vary. Quite often we perhaps will not get the exact details that we need, so we obviously need to make phone calls and clarify any information.

CHAIR—Can I stop you there. What was the response to this regime when you first introduced it?

Ms Belli—When it was first introduced, basically it was a public process in that there were notices in the paper to make the general public aware that there was going to be a change. This did obviously generate inquiries from people wanting to know the background to the change, what it all meant and what it would mean to them, in particular. So we did get inquiries. There were mixed responses. Previously, obviously, there had not been administration fees, so there was an additional cost. It was not formalised before, so there was no requirement to enter into an arrangement. But, by and large, as far as the responses are concerned, I do not know whether they were favourable; it was a change, so it needed to be discussed in detail.

CHAIR—All right. Sorry to—

Ms Belli—That is okay.

Ms Clark—Certainly the benefits for the occupants that were at the site at the time were that they had some security of tenure, which previously they had not got. Previously, the arrangements were somewhat questionable, so they were certainly thankful for that approach. And certainly the people that were at the site at the time were, once we resolved a few issues that they had specifically, quite happy to enter into the arrangements. This is not a commercial airfield; it is not an airfield that anybody would necessarily use unless they were specifically coming to the museum or were associated with training. Anybody who wants to go and visit the museum only has to pay a landing fee; they do not have to pay any administrative costs at all. The regime we put in did not adversely affect the museum, so there was consideration there. The circuit there is extremely busy; RMIT train, as was mentioned, Chinese pilots. The circuit for training can only take eight at a time and, given that these people are non-English-speaking, there were concerns that the circuit was not overcrowded. That is why we had to engage the airfield operators. So, for the convenience, I suppose, of people we actually had already in place, we had to ensure the Commonwealth was adequately protected. This is all part of the process we went through. Those agreements have come up to the 12 months. We are going through now putting in place—

CHAIR—Is that a 12-month common date?

Ms Clark—Is it a common date?

Ms Belli—Yes, we are trying to make it a common date. I think there were two groups that had an earlier date—off the top of my head it may have been 16 December 2000 that their arrangement expired—everybody else expired 28 February 2000 and 2001, just past.

Ms Clark—In putting those agreements back in place, people have signed up again.

CHAIR—But they are only 12-month agreements at any one time; there is no opportunity for anyone to get longer than a 12-month agreement?

Ms Clark—No, and as you have heard—

CHAIR—Does that lead to uncertainty for some of those clients?

Ms Belli—That is true, but in the context of what Ross has set out as to the background and the uncertainty, I suppose it made it difficult for Defence to provide longer terms; wanting to be up front with people, too. You could provide a five-year term but, in reality, is that really what the Commonwealth would be able to provide at the end of the day?

Mr Bain—Yes, Senator. The one-year term does not necessarily mean they will not get another year.

CHAIR—No, I accept that.

Mr Bain—But, for our purpose, we just go on a year.

CHAIR—All right. But the administrative cost that you mentioned: is that per plane, per organisation—

Ms Belli—Per agreement.

Ms Clark—So it can be a number of parties who sign up to it with a number of planes. They have to detail the planes they have got—the registration numbers, et cetera—but they can actually change—

CHAIR—And what happens if they happen to bring another plane in—

Ms Clark—I was just going to say that if they want to change those numbers they can do that; all they need to do is let KFPW know. We came with as flexible an arrangement as we could, given the circumstances we were dealing with. And I think that seems to be accepted by the community now, because they are re-signing.

CHAIR—We did hear evidence, though, of large—namely, 30-page contracts—to operate an aircraft from the site. That was somewhere in pages 411 or 412 of the evidence of 16 February. Whilst we are not going to address that now, can we address that on the next occasion?

Ms Clark—Certainly.

CHAIR—What we are wanting to do—

Ms Clark—Yes, that is fine.

CHAIR—Mr Corey asked me if he could have the questions and I said no. It was not me being mean; I think it is important that we take oral evidence on this so that we have got your view, in the *Hansard* record, on Point Cook. We have got a substantial number of questions because it is another big issue, and hopefully we will complete Point Cook and the other issues on the next day of hearing.

Mr Corey—Point Cook should be easier, Senator, because we do not have the answers.

CHAIR—No, I know you, Mr Corey. We conveyed to your colleagues from New South Wales that there was no need for them to stay. But I do want to place on the record our thanks for their evidence today, so will you convey that to them?

Mr Corey—I will.

CHAIR—Thank you to yourself and the rest of your officers for your appearance today. The hearing is now adjourned.

Mr Corey—Thank you, Senator.

Committee adjourned at 1.31 p.m.