



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

JOINT STANDING COMMITTEE ON THE NATIONAL CAPITAL
AND EXTERNAL TERRITORIES

Reference: Sale of the Christmas Island casino and resort

WEDNESDAY, 7 FEBRUARY 2001

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JOINT COMMITTEE ON THE NATIONAL CAPITAL AND EXTERNAL TERRITORIES

Wednesday, 7 February 2001

Members: Senator Lightfoot (*Chairman*), Senators Crossin, Greig, Lundy, Watson and West, and Mr Cameron, Ms Ellis, Mr Nehl, Mr Neville, Mr Snowdon and Mr Somlyay

Senators and members in attendance: Senators Crossin, Lightfoot, Watson and West, and Mr Cameron, Ms Ellis, Mr Nehl, Mr Neville and Mr Snowdon

Terms of reference for the inquiry:

To inquire into and report on:

- (a) the development and implementation of the tender process followed in the sale of the Christmas Island resort; and
- (b) the outcome of the tender process, the current status of the resort and proposals for the resort's future development.

WITNESSES

KWON, Mr David, Managing Director, Soft Star Pty Ltd, and Managing Director, Asia Pacific Space Centre Pty Ltd.....27

MRDAK, Mr Michael, Acting First Assistant Secretary, Territories and Regional Support Division, Department of Transport and Regional Services..... 1

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THOMPSON, Ms Janet, Legal Services, Department of Transport and Regional Services..... 1

YUILE, Mr Peter, Deputy Secretary, Department of Transport and Regional Services 1

[11.34 a.m.]

MRDAK, Mr Michael, Acting First Assistant Secretary, Territories and Regional Support Division, Department of Transport and Regional Services

THOMPSON, Ms Janet, Legal Services, Department of Transport and Regional Services

YUILE, Mr Peter, Deputy Secretary, Department of Transport and Regional Services

CHAIRMAN—Ladies and gentlemen, I declare open this first public hearing of the Joint Standing Committee on the National Capital and External Territories inquiry into the tendering process followed in the sale of the Christmas Island casino and resort. The inquiry was referred to the committee by the Senate on 8 November 2000. The purpose of the inquiry is to examine: (a) the development and implementation of the tender process followed in the sale of the Christmas Island resort; and (b) the outcome of the tender process, the current status of the resort, and proposals for the resort's future development. At the conclusion of the inquiry the committee will table its findings, conclusions and recommendations in the parliament in a report which will be publicly available. The committee will report on 5 April 2001.

The committee normally authorises submissions for publication and they are placed on the committee's web site. To date, the committee has received five submissions from interested parties.

Resolved (on motion by **Mr Snowdon**):

That the submissions tabled by the Union of Christmas Island Workers, Soft Star Pty Ltd, Mr Dave McLane, the Department of Transport and Regional Services and the Christmas Island Divers Association be accepted as evidence to this inquiry and authorised for publication.

CHAIRMAN—If you would like further details about the inquiry, please ask any of the committee staff present at the hearing for assistance. Although the committee does not require that witnesses give evidence under oath, you should understand that these hearings are legal proceedings of parliament and warrant the same respect as proceedings of the parliament itself. Giving false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. Are there any corrections or amendments you would like to make to your submission, Mr Yuile?

Mr Yuile—No, there are not.

CHAIRMAN—The committee prefers that evidence be taken in public, but if you wish to give confidential evidence to the committee you may request that the hearings be held in camera and the committee will consider your particular request. Before we ask you some questions, do you wish to make an opening statement, Mr Yuile?

Mr Yuile—Chairman, thank you for your welcome. No, I do not have anything more to add at this stage than is contained in the department's submission. I should perhaps explain. I arrived in the department just at the end of last year and Mr Mrdak has arrived and taken responsibility for the Territories and Regional Support Division only in the last week. We come

prepared to assist and respond to your questions and, clearly, if there are things we need to take on notice, we will do that.

CHAIRMAN—Although I anticipate the answer will be negative, Mr Mrdak, do you have anything you wish to add?

Mr Mrdak—No, Chairman.

Mr SNOWDON—Could you outline the original terms and conditions under which the Christmas Island resort was given over to Mr Robby Sumampow and his company, and partner Mr Frank Woodmore—that is, the terms of the lease and the terms of the licence?

Mr Yuile—This is the one in 1989?

Mr SNOWDON—Yes.

Mr Yuile—Mr Snowdon, I do not have that with me, but I can obviously obtain it if the committee members do not have a copy of that original lease.

Mr SNOWDON—I have a copy of the original licence agreement because I signed it, but I do not have a copy of the lease.

Mr Yuile—It is a public document. We can obtain one for you.

Mr SNOWDON—In doing so, could you provide us with a written briefing on the terms and conditions under which the lease was granted, the purpose for which it was granted and any covenants which appeared on the lease in relation to how the property on which the development was built could be used.

Mr Yuile—I assume that there would be provisions in that lease, with milestones and so on, which relate to the original owners.

Mr SNOWDON—Yes, that is irrelevant. It is really the conditions under which they were placed in terms of the operation of a casino that I am after.

Mr Yuile—The casino?

Mr SNOWDON—Yes, the resort and casino, and the conditions which applied to them in relation to their original lease. I know that you have given us some background, but you might also give us some background on why that particular piece of land was identified, and why that particular piece of land was granted for that particular purpose and how it was granted.

Mr Yuile—Yes, certainly we will get that for you. In responding at least to part of your question, which relates to the use clause in the lease, the use clause in the original lease provides that, ‘The lessee shall use the premises only for the purpose of a hotel-casino and, ancillary thereto, for personal services, retail and non-retail shops, recreation, accommodation

and entertainment facilities or such other purpose as may be approved in writing by the Commonwealth.' I think that is probably the fundamental answer.

Mr SNOWDON—Thank you; that is succinct. We have a chronology, but can you explain the process by which the original lease was forfeited?

Mr Mrdak—I might draw on some officers who are with us.

Mr SNOWDON—Go ahead.

Mr Mrdak—The casino ran into financial difficulties, as you would be aware, in 1998. It was no longer economically feasible to operate. As far as I am aware, one of the shareholders of the casino asked that the casino be placed into receivership.

CHAIRMAN—Who was that?

Mr Mrdak—It was Mr Woodmore. He asked that the company be placed into receivership and that a receiver be appointed. Mr Herbert, who was Mr Woodmore's nominee for that appointment, was appointed, initially as a provisional receiver and then as a provisional liquidator and then, finally, as a liquidator of the company. That took place in June 1998. While that was happening, the then minister cancelled the casino licence on 28 July 1998 on the grounds that the company Christmas Island Resort Ltd had failed to meet its financial commitments to its creditors, including the Commonwealth and its employees, and was thereby in breach of its licence to operate the casino. Following an application under the Corporations Law by the minority shareholder Mr Woodmore, the receiver was appointed and, as I say, he was confirmed as the liquidator of the company on 8 December 1998.

Mr SNOWDON—Who were the other major creditors at the time?

Mr Yuile—I do not have that information with me. I know that, obviously, the Commonwealth was. My understanding is that the liquidator did publish a trade creditors list in 1998.

CHAIRMAN—Do you have that list, Mr Yuile?

Mr Yuile—No, I do not have the liquidator's list.

CHAIRMAN—Can you get that?

Mr Yuile—We can certainly inquire, yes. May I ask, Chairman, is the liquidator giving evidence?

Mr SNOWDON—Yes.

Mr Yuile—Clearly, he will have that sort of detail.

Mr SNOWDON—I am interested to know what discussions took place between the Commonwealth, Mr Woodmore and other creditors about the future of the resort at that time.

Mr Yuile—I am not sure that there was any discussion about the future of the resort once the application had been made for a receiver and then a liquidator. My understanding is that the question of the disposal of the resort then resided with the liquidator. To clarify, my understanding is that the lease was not forfeited; it was the casino licence that was cancelled.

Mr SNOWDON—Yes, I understand that. Were there creditors meetings?

Mr Yuile—With the liquidator?

Mr SNOWDON—With the liquidator.

Mr Yuile—I assume there would have been.

Mr SNOWDON—Presumably the Commonwealth was involved in those meetings as a creditor.

Mr Yuile—I assume so.

Mr SNOWDON—Could you give us the information as to when those creditors meetings took place and who was present?

Mr Mrdak—Yes, we will take that on notice.

Mr SNOWDON—I assume one of the principal creditors, at least in terms of the community of Christmas Island, was the employees of the resort. Is that correct?

Mr Yuile—I believe there are outstanding payments, that is right.

Mr SNOWDON—What instructions were given to the liquidator by the Commonwealth regarding the framing of the tender?

Mr Mrdak—I am not aware that any such instructions were given by the Commonwealth. The liquidator, in preparing the tender documents, as I understand, did present those documents to the Commonwealth. Our interest was largely in the advice we gave, which was to ensure that they were completely factual in respect of the position vis-a-vis the casino licence, and the correspondence that I have seen is really in relation to ensuring that the tender material and the promotional material advertising the sale correctly reflected the Commonwealth's position vis-a-vis people would need to apply for a casino licence through a statutory process, and that really was the extent of our comment on the tender documentation.

Mr Yuile—To clarify, I think that advice related to the early expressions of interest, so there was no misleading of potential or interested parties. The tender documents themselves, as I understand it, were certainly prepared by the liquidator, and the Commonwealth was not asked to comment on those.

Mr SNOWDON—What did those documents contain in relation to the nature of the lease?

Mr Yuile—The nature of the lease over the property?

Mr SNOWDON—You read a paragraph earlier about the purpose for which the lease could be used. Is that paragraph reflected in the tender document?

Mr Yuile—Mr Snowdon, again I would have to check the documentation, but I assume so.

Mr SNOWDON—There was never any change in instruction by the Commonwealth to the liquidator, either then or since, regarding how that land might be used?

Mr Yuile—I am not aware of any such instruction.

Mr SNOWDON—Can we assume that the land on which the casino sits was to be, through the liquidation process, for the establishment of a casino-resort in similar terms to the original lease?

Mr Mrdak—Certainly for a resort, which provided the opportunity then for a casino should the operator wish to pursue that. It permitted what was permissible under the original lease, that is correct.

Mr SNOWDON—Can we just clarify that? Can you go back and read that paragraph relating to the original lease, please?

Mr Mrdak—It says, ‘The lessee shall use the premises only for the purpose of a hotel-casino and, ancillary thereto, for personal services, retail and non-retail shops, recreation, accommodation and entertainment facilities or such other purpose as may be approved in writing by the Commonwealth.’

Mr SNOWDON—The primary purpose was a casino, clearly, in those terms. Were those terms reflected in the liquidator’s documents?

Mr Yuile—As far as we are aware. We will check in detail, but we are not aware of any change. Again, I am not aware; but this is permissive, not prescriptive.

Mr SNOWDON—Let me be very clear about it. The Commonwealth granted that lease for the purpose of the casino originally—casino-resort. One assumes that the tender documents contained a provision that this casino-resort be built under this lease. There was never going to be any change in conditions for the lease in the tender documents?

Mr Yuile—Not that I am aware of, Mr Snowdon.

Mr SNOWDON—Can you establish whether or not there has been any communication between the department and/or the minister and the liquidator in relation to that matter?

Mr Yuile—Yes, I will have to check that. Mr Mrdak gave the clarification about, obviously, the ability to establish a casino and take out a licence. I think one of the discussions about the expressions of interest was that it needed to be quite clear that that was a separate application process.

Mr SNOWDON—I understand that, but the premise was, I presume, that here we have a property which is operated as a casino and resort and we are putting it out to tender for operation as a casino-resort. Am I right?

Mr Yuile—That is permitted in the lease, yes.

Mr SNOWDON—No. The lease was given prescriptively for that purpose in the original. There would have been no lease given had there not been an agreement to build the casino-resort. I can tell you that because I was present.

Mr Yuile—I was not.

Mr SNOWDON—Therefore I am interested to know what developments, if any, have taken place since that time over the purpose for which the lease can be used.

Mr Yuile—Yes.

Mr SNOWDON—Could you indicate to me what took place in terms of information from the government in relation to this matter of the tender process to the residents and businesses on Christmas Island, both in terms of the original tender process, which Mr Herbert headed into, and its progress and implementation in terms of what decisions may have been made and where the discussions were at any particular time.

Mr Yuile—You are talking about press releases or something of that kind?

Mr SNOWDON—I am assuming it was through the normal course of communication between the minister; his office on Christmas Island, through the administrator; and community consultations.

Mr Yuile—The issues of the receivership and liquidation, as I said, and the liquidation process were the responsibility of the liquidator. I am not aware that the department was involved in any communication separate from the liquidator himself to the residents and others, but I can check that. I think that separation of that process was quite clear.

Mr SNOWDON—Can you clarify for me that, in terms of the liquidator's process, the only instruction the liquidator would have had in terms of the Commonwealth would have been in relation to the terms of the lease?

Mr Yuile—That is correct.

Ms Thompson—The issue was not raised. As far as I am aware, the discussion was about the casino licence, not about the terms of the lease. The leases were listed in the tender documents as being available.

CHAIRMAN—Are you a lawyer?

Ms Thompson—Yes, I am.

CHAIRMAN—Thank you. Please proceed.

Ms Thompson—The consultation with the Commonwealth over the tender documents was to do with the casino licence. I do not remember anything being raised about the terms of the lease. We wanted it clarified in the tender documents that the casino licence was a separate issue, that it had been cancelled and that if any purchaser wished to run a casino they would have to apply to the Commonwealth separately. It was something outside the tender process. There was not a licence for sale.

Mr SNOWDON—I understand that but, at the same time, the lease required that this piece of land be used as a casino-resort.

Ms Thompson—No, it did not require it. The clause in the lease is permissive. It can be used as a resort-casino and, if anyone wants to change the use, they need the Commonwealth's approval.

Mr SNOWDON—What was the Commonwealth's intention in relation to its participation as a creditor in the liquidation process? Was it for the resort to be opened again as a casino-resort?

Ms Thompson—That was the best outcome, yes.

Mr SNOWDON—What did the Commonwealth communicate to the people of Christmas Island?

Ms Thompson—I do not remember any communication with Christmas Island.

Mr Mrdak—The general position of the Commonwealth is, obviously, that we are looking to advance the economic interests of the island. Clearly, the closure of the resort-casino was a major setback for the island, and we are looking for every available opportunity to see whether the economic activity can be restarted as quickly as possible. Beyond that, as I said, the Commonwealth simply had to observe the liquidation process which was being undertaken through the normal legal process, but the general statement would be that the Commonwealth is very supportive of anything which could restart this type of activity.

Mr SNOWDON—Let me clarify that, because that is very important. Are you telling me that the Commonwealth did not have at the forefront of its mind that this resort be reopened as a casino?

Mr Mrdak—I think it is important, as has been stated, that we clearly have a statutory process in relation to the casino licence; but we had to see where the liquidation process was going. I am not aware that our involvement expressly went beyond, as I say, making it clear what the lease entitlements were and the permissiveness of the lease.

Mr SNOWDON—Let me ask you another question. What do you think the expectations were of the community of Christmas Island?

Mr Yuile—I am sorry, I am not in a position to answer that directly, but I would assume that the island, as Mr Mrdak said, and the Commonwealth, the minister and the government were keen to see economic activity. The closure of the casino was clearly disappointing to everyone. Once the liquidation process began, it had to be completed and, desirably, the lease be taken up by someone who was going to reactivate the site and, I assume, the casino as well. But, as has been said, it is a permissive lease and I think the key thing was to try and get investment flowing and economic activity reactivated. The casino was part of that, desirably, but I cannot interpret further than that at this stage in terms of what might have been in ministers' minds.

Mr SNOWDON—I can assure you that the people of Christmas Island will be very interested in those comments, because it was a very clear understanding of the people of Christmas Island that we were selling a casino, its purpose being to be reopened as a casino and resort. If that was not the intention of the Commonwealth, then the Commonwealth has misled the people of Christmas Island.

Mr Yuile—As I said, I presumed that it was certainly the desire of the minister to see the lease taken up and the resort reopened.

Mr SNOWDON—I am fully aware of the process to get a casino licence, so that is not an issue for me. The issue is that anyone who participated in this tender was presumably under the impression—was expected to believe—that they should be tendering to operate a casino on Christmas Island. Would I be correct in assuming that?

Mr Yuile—As I understand it, the question of the lease and the casino licence are two different things.

Mr SNOWDON—The casino operates on the lease; it operates on the land. Without the land you cannot have the casino. Forgive my naivete, but there was a 99-year lease, as I understand it, granted for the purpose of running a casino-resort. Now you are saying that, because the resort went bankrupt or broke or was sent to the liquidator, the Commonwealth did not have as its primary intention the fact that this place should open as a resort-casino.

Mr NEHL—Chairman, could I just interrupt for a second?

CHAIRMAN—Yes.

Mr NEHL—I do not think that the conclusions that my colleague is drawing are necessarily correct. We should be mindful of the fact that, shortly after the purchase of the resort, Mr David Kwon issued a statement stating that the company intended refurbishing and reopening the resort-casino over a period of 18 months. It is quite clear that it was their original intention and

that the purpose of getting the lease transferred was to do that. However, while reiterating that intention, in a letter to the minister dated 24 November 2000 he did suggest it would be financially irresponsible to provide such services for the resort and casino when there were relatively few people interested in visiting and when air links were not good. I do not think you can necessarily draw the conclusion that the Commonwealth was not willing and wanting the casino to reopen, because that was obviously the basis of the lease being issued.

Mr SNOWDON—One assumes so, but that is not what we are hearing here. The other thing is that we want to go through a process here and understand what communications, if any, took place between the Commonwealth and the liquidator during the process of liquidation up until Mr Kwon's offer.

Mr Yuile—What I have seen certainly indicates that that was the hope. The intention was to, as I say, reactivate the infrastructure that was clearly purpose-built for a resort with capacity for a casino. That is certainly the desire of the Commonwealth. All I am saying is that the provisions are there whereby there was a two-stage process and the minister could not be a hostage to fortune in terms of the due process for assessing a casino licensee.

Mr SNOWDON—Can we just go back to the liquidator? In the original process, there were a number of people who put in expressions of interest. How many were there?

Mr Yuile—I believe there were seven expressions of interest.

Mr SNOWDON—What took place in relation to those seven expressions of interest?

Mr Yuile—I assume that the liquidator has reviewed all of those expressions of interest and my understanding is that, as our submission says, they were not deemed suitable in terms of the conditions, presumably, that people were applying.

Mr SNOWDON—Perhaps you could clarify that. When we get through to the tender process, what happens then?

Mr Mrdak—The Commonwealth was not directly involved in the tender process or the evaluation of expressions of interest.

Mr SNOWDON—I understand that.

Mr Mrdak—We were kept informed by the liquidator of what was happening with the process, but the tender process itself was not something that the Commonwealth was involved in.

Mr SNOWDON—When there were negotiations with one of the parties or two of the parties in the tender process, there was no discussion with the Commonwealth about the terms of those negotiations and discussions?

Mr Mrdak—As I understand it, once the expressions of interest and the tender process had closed, the liquidator then undertook negotiations with two parties in relation to that, because at

the close of the tender process there were no conforming bids. At that time, the liquidator and those parties did come to the Commonwealth raising various issues in relation to the lease and seeking clarification on certain matters, and the Commonwealth provided advice on solely those matters.

Mr SNOWDON—In detail, what were the conditions of the tender submitted by Coms21 Winfair, which was subject to the negotiations you just spoke of?

Mr Mrdak—There was a range of matters on which advice from the Commonwealth was sought, such as the rate of the casino licence fee and the tax payable, the future of the water supply on the site, the condition of the local roads on the site and some matters relating to the sewerage plant on the site. They were the principal matters raised.

Mr SNOWDON—Are you aware of the quantum of Coms21 Winfair's bid?

Mr Mrdak—I am not, Mr Snowdon.

Mr SNOWDON—The Commonwealth was never informed that this was the primary bidder that the liquidator was negotiating with and approximately what the bid was worth?

Ms Thompson—We were not told.

Mr SNOWDON—Apart from the liquidator, who would have known the value of the tender put in by Coms21 Winfair?

Mr Mrdak—I am not aware of whether the Commonwealth would have been aware of that.

Mr SNOWDON—What caused Coms21 Winfair not to be proceeded with?

Mr Mrdak—I think that is a matter you would have to ask the liquidator about, Mr Snowdon.

Mr SNOWDON—It had nothing to do with the Commonwealth?

Mr Mrdak—Not that I am aware.

Mr SNOWDON—There were no discussions between the Commonwealth and the liquidator in relation to Coms21 Winfair's bid and what the Commonwealth thought was appropriate or not appropriate in relation to that bid?

Mr Mrdak—As I said, there were certain matters clarified in respect of those matters I have raised in relation to the Commonwealth's position on tax and the like but, beyond that, I am not aware that there were any discussions which actually went to the nature of the commercial transaction.

CHAIRMAN—Did you wish to add something to that, Ms Thompson?

Ms Thompson—There was discussion about issues that Coms21 Winfair raised with the minister and he wrote to the liquidator clarifying those things which Mr Mrdak just mentioned.

Senator CROSSIN—Perhaps we could have the dates of those letters and copies of those letters.

Mr Mrdak—Certainly. I will take that on notice, if I may.

Senator CROSSIN—You said that in fact there were seven tenders. Is this by the closing date of 26 March 1999?

Mr Mrdak—Expressions of interest.

Senator CROSSIN—We have a briefing note that says there were six formal and three informal expressions of interest. So that we are clear that we are talking about the same amount, exactly how many expressions of interest are we talking about here?

Ms Thompson—The Commonwealth was given copies of five written expressions of interest and was told that two other organisations had put in verbal expressions of interest.

Senator CROSSIN—Who told the Commonwealth that?

Ms Thompson—The liquidator.

Senator CROSSIN—Is that in writing?

Ms Thompson—Yes.

Senator CROSSIN—Are we able to have a copy of that letter from the liquidator to the Commonwealth in respect of that matter?

Mr Mrdak—We could take that on notice, just to check what matters were outlined in the letter and to see if there were any commercial-in-confidence matters. The department will take it on notice, if that is okay.

Senator CROSSIN—All right. Was the Commonwealth advised at any time by the liquidator as to why those seven original tenders or expressions of interest did not conform?

Mr Mrdak—After the seven expressions of interest, the liquidator then proceeded to a formal tender process. My understanding is that, as a result of that, not all of those parties pursued to the tender stage. At that point, after the tender process, he found that there were no compliant tenders.

Senator CROSSIN—How many moved on to the tender process?

Mr Mrdak—I do not think we were told. I do not think I have seen that, Senator.

Senator CROSSIN—The Commonwealth was never informed as to how many actually tendered for this contract?

Mr Mrdak—Not that I am aware.

Senator CROSSIN—Was the Commonwealth aware that the closing date was extended to 15 December?

Mr Mrdak—Yes.

Senator CROSSIN—For what reasons and who advised you that there was a need to extend that date?

Mr Mrdak—The liquidator advised the Commonwealth that, owing to the non-compliance with the original tender, he was then extending the tender process to a further date. He kept us informed on the process but I am not aware of any advice as to which parties were involved in the tender or what the nature of their tenders was.

Senator CROSSIN—At any time did the Commonwealth ask the liquidator why the tenders were not able to conform?

Mr Mrdak—I do not know the answer to that.

Ms Thompson—No, I do not think so.

Mr Mrdak—I can take that on notice, Senator.

Senator CROSSIN—I am trying to build up a logical sequence of events here. At this stage a liquidator simply says to you, 'I've now received a number of tenders. None of them conformed. I just have to extend the date,' and the Commonwealth or the minister does not ask who they are, why they did not conform and why there is a need to extend the date. This is done without any detailed knowledge being provided to the department or the minister. Is that correct?

Mr Mrdak—Certainly, as I said, the liquidator was keeping the Commonwealth informed on issues of process, but not of the actual details of companies involved or of the positions he was reaching with companies. They were really commercial matters as part of his tender process.

Mr SNOWDON—There was no discussion between the liquidator and any Commonwealth official or agent over those issues?

Mr Mrdak—I would need to check the records. As far as I am aware, certainly the details of the tender process to the degree of the commercial nature of them was not something that the Commonwealth was involved in, but I will check our records, if I may, Mr Snowdon.

Mr SNOWDON—You will affirm there were no discussions between the administrator of Christmas Island or any of his staff in relation to these matters with the liquidator?

Mr Yuile—Again, we will have to check.

Mr Mrdak—I will have to check that, if I could. To be definitive, I will need to check.

Senator CROSSIN—My understanding is, then, that around the middle of January 2000 the liquidator advised that the only acceptable bid to emerge from the tender process was in fact Coms21 Winfair. Was the Commonwealth advised of that view of the liquidator?

Mr Mrdak—I am not aware of that. I would need to check again. Certainly, the position, as I understood, was that at the end of that tender process the liquidator did advise that he still had no bids which were fully compliant and unconditional.

Senator CROSSIN—Did the Commonwealth attend the meeting of creditors that actually decided to proceed with talks between the liquidator and Coms21?

Ms Thompson—Not to our knowledge, unless it perhaps happened on Christmas Island. We may not be fully aware of what talks happened on the island.

Senator CROSSIN—I find it fairly amazing that if such a meeting of creditors occurred, even if it was on the island, the Commonwealth would have shown no interest in having somebody attend that.

Ms Thompson—The Commonwealth attended a meeting of creditors in Perth that I am aware of.

Senator CROSSIN—What date was that?

Ms Thompson—It would have been in 1999 sometime. I can check the date. That is the only one I am aware of.

Mr Yuile—Senator, if there was another meeting of creditors, given that the Commonwealth was a creditor I would have expected a Commonwealth presence.

Senator CROSSIN—Could you take that on notice for me?

Mr Yuile—Certainly.

Senator CROSSIN—We are looking for a meeting of creditors that would have happened after 11 January 2000, according to our briefing notes. I would like to know where that meeting of creditors occurred and whether anybody from the Commonwealth attended that meeting.

Mr Mrdak—Certainly.

Senator CROSSIN—On 11 January we have the liquidator saying that he believes that Coms21 Winfair is the only acceptable bid. I understand there is a meeting of creditors. Then we move to April 2000 and the liquidator states that in fact the Coms21 Winfair bid is

acceptable. Was that decision conveyed to you in writing and were reasons given as to why it was acceptable?

Ms Thompson—No, I do not remember seeing any statement to that effect.

Mr SNOWDON—Perhaps you could refer to ‘The casino staff cheer payout’ in the *West Australian* of 29 April 2000.

Mr Mrdak—Yes, we will check that and clarify it.

Mr NEHL—What Senator Crossin just said about an agreement being reached with Coms21 Winfair in April seemed slightly confusing. According to the department’s submission, Mr Herbert advised the Commonwealth on 21 February 2000 that they had reached a confidential heads of agreement with Asia Pacific. There seems to be some inconsistency in that.

Senator CROSSIN—That is right. We know that there are inconsistencies in terms of who met whom, what was agreed and what tenders were acceptable. For some reason I do not believe we are getting much assistance here with trying to unravel those inconsistencies.

Mr NEHL—And Mr Herbert and representatives from Asia Pacific met with the minister on 5 April 2000. Where did the information about the other tenderer come from that has just been quoted?

Mr Mrdak—From the *West Australian*.

Mr SNOWDON—The brief from the secretariat says the *West Australian*. Could you tell us about the committee of inspection?

Ms Thompson—We have not had any involvement with that. There is someone from the Christmas Island administration.

Mr Mrdak—I will just check with some of our other officers, if I may. I am sorry, Mr Snowdon, I do not have any knowledge of that. I can take that on notice, if I can come back to you. I am not sure of any Commonwealth involvement in that committee.

Mr SNOWDON—Can you perhaps, in light of that, also seek advice to ensure that no Commonwealth officer, or person in the minister’s office, or the minister, was aware of the price being offered by the tenderer Coms21 Winfair?

Mr Mrdak—I will check that.

Senator CROSSIN—I want to question you about the time line here. I think it is really important that we clarify this. We have, on 11 January in the year 2000, the liquidator advising that ‘this was the only acceptable bid to emerge from the tender process and at a meeting of creditors decided to proceed with talks’—with Coms21 Winfair. That is on 11 January in the

year 2000. I understand that on 20 January the liquidator advises of difficulties in getting to see the minister to discuss the Coms21 Winfair bid. Is that correct?

Mr Mrdak—I am advised that on 24 January there was a telephone conference, which involved the minister, about the outstanding issues that Coms21 Winfair had raised with the Commonwealth in relation to their bid. The minister then wrote to the liquidator on 27 January, confirming the Commonwealth's position on a range of matters which Coms21 Winfair had raised as conditions of their bid, which I outlined earlier to Mr Snowdon, in relation to the casino licence fee, the roads and the water supply and the like. There were a whole range of matters which were dealt with, as I said, with the minister writing back on 27 January to the liquidator, setting out the Commonwealth's position on those matters. As far as I am aware, there was no further contact from the liquidator to the Commonwealth in relation to Coms21 Winfair beyond that which was sent by the minister on 27 January.

Senator CROSSIN—Presumably the letter of 27 January would have addressed, in some way, concerns that Coms21 had raised. Is that correct?

Mr Mrdak—It certainly set out the Commonwealth's position in relation to the casino licence fee, the tax rate to apply, and all of those other matters which we felt needed to be addressed, and our position on certain other matters. It was quite an extensive letter, really setting out the Commonwealth's position, much of which had constantly been the Commonwealth's position, in relation to things such as air services and the like. That really set out or clarified for those parties what our position was.

Senator CROSSIN—What response did Coms21 give to that letter?

Mr Yuile—It was not a letter to Coms21 Winfair. It was a letter to the liquidator.

Senator CROSSIN—One would assume, then, that the liquidator would have passed on the views of the Commonwealth. Did that in fact happen?

Mr Mrdak—I am advised that there was no further contact with Coms21 Winfair or no further matters coming back on that letter from that party through the liquidator to us.

Senator CROSSIN—Are you aware, though, from the liquidator as to whether or not the matters you addressed in the letter satisfied Coms21's concerns? Are you aware of which matters were then outstanding, which they were not happy with or that they agreed to?

Mr Mrdak—No, we are not aware of any reaction to that letter from that party through the liquidator.

Senator CROSSIN—Then we go to February 2000, when another tender is submitted and accepted after the tender date has closed. Why did that occur?

Mr Mrdak—As I said, the advice to us was that, at the completion of the formal tender process, the liquidator found that he did not have any bids which he believed were compliant. He then proceeded to negotiate with two parties that I am aware of and the advice came to the Commonwealth on 8 February. The liquidator wrote to the minister advising that he had a party

which was prepared to make an unconditional offer for the resort. Then he confirmed that in a further letter to the minister on 21 February, setting out that he had reached an agreement with Asia Pacific for the sale of the lease.

Mr SNOWDON—At what price?

Mr Mrdak—I do not have any information in relation to that, I am sorry.

Mr SNOWDON—Could you tell us what the price was and how it differed from the price being offered by Coms21 Winfair?

Ms Thompson—We do not know what Coms21 Winfair were offering.

Mr Mrdak—We could certainly try to ascertain that but, as Mr Yuile has indicated, they are probably questions that are more appropriately asked of the liquidator.

Mr SNOWDON—I know, but I want to make sure that there was no person employed by the Commonwealth who was aware of that tender price and could have passed that information on to anyone.

Mr Yuile—I will certainly check that. Clearly, it is commercially sensitive.

Senator CROSSIN—The Commonwealth is not aware of Coms21's response to the letter from the minister of 27 January and suddenly on 8 February, which would have been less than two weeks after the receipt of that letter, there is a request by the liquidator to enter into discussions with Soft Star. Is that correct?

Mr Mrdak—It appears to be.

Mr Yuile—That is certainly the sequence of letters.

Senator CROSSIN—Are you aware of what date the liquidator began discussions with Soft Star?

Mr Mrdak—No, I am not, I am sorry.

Mr Yuile—Not the precise date. I assume it was sometime after the advice that the tender was closing on 15 December. He still did not have any conforming tenders.

Senator CROSSIN—Let us get that correct. Our briefing notes say contrary to that. Our notes say that on 11 January the liquidator advised that, in fact, Coms21 Winfair was the only acceptable bid to emerge from the tender process and a meeting of creditors decided to proceed with talks. You are telling me that on 15 December there were no acceptable bids but, on 11 January, the liquidator decides to have a meeting of creditors because there is one acceptable bid. Who is correct in this instance?

Mr Yuile—I can only go on the advice I have. Janet, do you have any comment on those other dates?

Ms Thompson—No.

Mr Yuile—Perhaps we can have a copy of the secretariat's briefing notes. We are trying to be helpful in terms of unravelling that time scale but we do not have those notes.

Senator CROSSIN—Yes. If on 11 January the liquidator does advise that Coms21 Winfair is the only acceptable tender, who would that advice have gone to? The Commonwealth as well as the creditors?

Mr SNOWDON—The Commonwealth was a creditor.

Mr Yuile—You are asking who would the liquidator have advised?

Senator CROSSIN—Yes.

Mr Yuile—I assume he would have advised the Commonwealth and other creditors.

Senator CROSSIN—Can you check the correspondence to see if there is such a letter?

Mr Yuile—Yes, but I have no record of such a letter. I am not aware of such a letter.

Mr SNOWDON—Can you also advise, in that vein, as to what discussions may have been had with Mr Woodmore at the time the resort was closed in 1998 and, subsequently, what further discussions took place with creditors up until the negotiations took place with Soft Star.

Mr Yuile—Can you say that again slowly, Mr Snowdon. I just want to check that again.

Mr SNOWDON—At the time of the resort closing in April 1998, what discussions took place between Mr Woodmore and any Commonwealth official or agent, if any, in relation to his intentions in terms of the resort or the future of the resort? What discussions have taken place subsequently with Mr Woodmore and any other creditor in relation to these matters?

Mr Yuile—Could we receive a copy of the secretariat's notes? We will obviously be looking at the dates you have and the dates we have with respect to some of those advices. Is that acceptable, Chairman?

CHAIRMAN—Yes.

Mr SNOWDON—Did the department provide any advice to the minister on the issue of the Coms21 Winfair tender?

Ms Thompson—Yes, a brief was provided so that he could reply to the liquidator's letter.

Mr SNOWDON—Can you get a copy of that brief?

Mr Yuile—Can I take that one on notice. I am sorry, but usually a briefing to the minister is a confidential matter.

Mr SNOWDON—That is fine. What was the department's advice to the minister regarding the offer from Soft Star?

Mr Yuile—Again, I think that is a matter for confidence between the department and the minister.

CHAIRMAN—I have a few very brief questions, Mr Yuile. Was the highest bid accepted in the tender process?

Mr Mrdak—I do not think we are in a position to answer that, Senator.

CHAIRMAN—That is commercial-in-confidence?

Mr Mrdak—As I say, we would need to check.

CHAIRMAN—You are not aware of it or you think it is commercial-in-confidence?

Mr Mrdak—I think we are not aware of the prices, but I will check.

CHAIRMAN—Insofar as you are.

Mr Mrdak—Yes.

CHAIRMAN—I would like you to come back to the committee on that. With respect to the 37 acres or thereabouts that comprise the 99-year lease—not 99 years now, of course—did the second process, which involved the successful tenderer, involve the entire lease? In other words, was there any deviation from that area?

Mr Mrdak—No. As far as I am aware, the lease was transferred in total.

CHAIRMAN—When you say 'Commonwealth' as it has been used this morning, was there any other department involved, other than the Department of Transport and Regional Services? When you refer to 'Commonwealth', do you refer to other departments and, if so, what are those departments?

Mr Yuile—I do not think there were any other departments involved. Correct me if I am wrong, but the Casino Authority is also an authority under the Commonwealth ordinance. Certainly we would usually identify the Casino Authority separately.

CHAIRMAN—Was any advice ever received or sought from the Attorney-General's Department, Ms Thompson?

Ms Thompson—Advice was sought on some issues concerning the cancellation of the casino licence and the lease, yes, at some stage. I cannot recall exactly at the moment.

CHAIRMAN—Would you be kind enough to seek that information out or, when you do recall it, give that information in more specific detail to the committee. My last question is: were any requests received, formally or informally, to extend the closing of the tender date?

Mr Yuile—Do you mean requests from tenderers?

CHAIRMAN—From any source.

Mr Yuile—I would need to check that, Chairman. The dates were extended, as I understand it, because there had not been any conforming bids received. Whether that was as a result of a question or a request to extend, I am not sure. The liquidator would obviously be the person who would know that.

CHAIRMAN—Would you be able to obtain that information from the liquidator?

Mr Yuile—We can make a request and we can ask him.

CHAIRMAN—Could you make a request for that?

Mr Yuile—Yes.

CHAIRMAN—I do not have any more questions.

Mr SNOWDON—Subsequent to the negotiations with Soft Star, have there been any negotiations with Soft Star over the future nature of the lease?

Mr Mrdak—Since the transfer of the lease, Soft Star has written to the minister seeking to have the lease changed to freehold title, and the minister has responded to that in relation to the way in which the Commonwealth takes a view on that matter, principally that the Commonwealth is prepared to consider freehold title to the area on the basis of certain conditions relating to a number of aspects of the site and commercial negotiations on the value and the like.

Mr SNOWDON—You are saying the Commonwealth now has a view that the conditions which underwrote the original tender no longer apply to Soft Star?

Mr Yuile—No, sorry. What I was raising was that Soft Star have raised, since that transfer of the lease to them, the issue of whether title should be changed from leasehold to freehold.

Mr SNOWDON—No, let us make it very clear. One of the very first questions I asked you was about the original nature and purpose of the lease and the use to which that land was being put. I would like you to investigate the negotiations and the discussions undertaken with the Christmas Island community about the nature of that lease. I would like you to inform us of any subsequent discussions and negotiations taking place with the Christmas Island community in relation to that lease and the nature of that lease. I would like you to inform us as to what discussions have taken place with the Christmas Island community about transferring that lease

to freehold. I would like you to inform us as to why the Commonwealth would not retender the lease as a freehold lease.

Mr Mrdak—They are matters we will come back to you on.

Mr Yuile—To pick up a point made earlier, one of the things Mr Snowden was asking about in terms of intention, the minister's clear intention in the discussion about any changes from the current lease to a freehold arrangement included an expectation that the casino operations would recommence, so it is quite clear that that is in the minister's mind.

Mr SNOWDON—Now we have, to use your words, a permissive lease being changed, where the terms under which the lease were given were, effectively, to run a casino-resort. We have now had that tendered as a casino-resort; no successful tenderer; negotiation after the event with Soft Star; Soft Star go through a successful negotiation and take up the tender and lease on the basis that they will reopen a resort-casino, and now the government is offering them freehold.

Mr Yuile—No. The successful tenderer in this case, Soft Star, has certainly raised the question of conversion to freehold.

Mr SNOWDON—And the government have said that they are prepared to do it.

Mr Yuile—No, I think the minister has indicated that he is prepared to look at it in the context of a range of conditions about that, one of which would be that it be operated as a casino.

Mr SNOWDON—And what about acceptability to the Christmas Island community?

Mr Yuile—You said earlier that the Christmas Island community was expecting a casino.

Mr SNOWDON—That is right, but not as freehold land. Could you tell us where we are with the land use plan for Christmas Island?

Mr Yuile—Yes.

Mr SNOWDON—And the history of the land use planning process for Christmas Island, and what has given the government the prerogative to determine that this particular block of land should be freehold and not leasehold in relation to its particular purpose.

Mr Yuile—I could take that on notice.

Mr ROSS CAMERON—I want to understand the status of the change from leasehold to freehold and the question of whether that has eroded the capacity for the Commonwealth to impose conditions. If you are giving a freehold title, you lose your capacity to hold people to conditions, so how does the Commonwealth manage that difficulty?

Mr Mrdak—There are various avenues whereby the Commonwealth could consider that. As Mr Yuile has indicated, the position is that Soft Star raised this with the minister. The minister has not agreed to this and has raised with them a number of issues which will need to be explored further. Those issues include the continued operation of the casino, the future of the infrastructure on the site, areas such as water supply and the like. Were it to be pursued, there are various avenues available, through contracts or through covenants on title and the like, which give some comfort for what you want to see done. I do not think we have reached consideration of this point in discussions at all. We are very much at the preliminary stage. The company has indicated a desire to go that way and the minister has certainly responded that he is prepared to look at it, but in the context of all these other issues, one of which is the future of the casino.

Mr Yuile—Is there any particular point in terms of management—crown land management, leasehold management—that would relate to this?

Ms Thompson—A freehold title can be issued with conditions and covenants attached. That is always a possibility. The local government and town planning legislation applies equally to freehold and leasehold land.

Ms ELLIS—Is there any freehold land on Christmas Island now?

Ms Thompson—Yes.

Mr SNOWDON—Largely not commercial.

Mr ROSS CAMERON—The committee did not ask for this inquiry, we got sent it by the Senate, and I certainly come to it without any presuppositions about what took place, but clearly there has been public apprehension about it. As the department reflects on this process, what are the aspects of it that you think should have been done differently to avoid this sort of situation we are in now?

Mr Yuile—The issue is that a going concern ceased to be a going concern and was closed. Subsequently, there was a file from a shareholder to wind it up and to liquidate, and the processes have been pursued according to Corporations Law, as I understand it. Clearly, there are a range of things that need to be done there. When you say ‘the concern now’, is it the concern that there will not be a casino, or what are you saying?

Mr ROSS CAMERON—There seems to be a range of concerns. One is the apparent reopening of a tender process, after it had closed, to a new entrant, who was subsequently awarded the contract and who made a bid which appears to be just marginally above the highest bidder in the closed tender process. I think that would create a need to discharge an onus of proof that the tender process had integrity, that it was a pure coincidence that the new bid came in some small fraction above the highest previous bid and that the new bidder had no knowledge of the previous bid. But are you saying to us that you do not have any concerns about the way the thing has been run?

Mr Yuile—No, I am saying we would like to reflect a bit further on your question. There were certain things that were being done according to Corporations Law which were at arm’s

length from the department or from the Commonwealth. The Commonwealth obviously had an interest in the lease and is responsible in terms of awarding a licence and there is a due process there. I would like to reflect a bit further on your question rather than answer it just now.

Mr ROSS CAMERON—There clearly is a strong desire in the community for a casino to continue. There has been one casino there which has gone into liquidation. The alternative use that seems to have been considered is the use of the land asset in a satellite launching process. Is it your view that there is a mismatch between the community's expectation and the commercial viability of a casino-resort on this site?

Mr Yuile—My understanding—and these people at this table here know more about it than I do—is that the casino was largely driven by interests from Indonesia and elsewhere. That dried up and, as a result, I assume economically the casino did not remain viable. The community were finding that that facility was delivering an economic benefit, employment, all of those associated things, and suddenly it closed. Clearly, people anywhere, but particularly on a remote island, would be wanting to see that restarted and would want to see that pick up again.

Mr ROSS CAMERON—Does the government have the same view as the community? That is my question. Does the government, as landowner, have the same view as the community about use of the land?

Mr Yuile—In other words, does the government want a casino there?

Mr ROSS CAMERON—Yes.

Mr Yuile—As I said, the minister's particular interest is to generate economic activity and welfare for the community. He has indicated in discussions, for example, with Soft Star in relation to any proposal for changes from leasehold to freehold that one of the issues for him would be that the casino would need to have commenced operation and to be working. I am not sure that I can answer, for the minister, whether that is the best option for the community or whether he would prefer a casino to some other facility. I am just not in a position to make that judgment.

Mr SNOWDON—There has been no investigation of that issue by your department on behalf of the minister or on behalf of the government?

Mr Yuile—About alternative economic—

Mr SNOWDON—You have just read or indicated what the minister's view is. Has there been any discussion by the government or, through you, the department or the administration on Christmas Island with the community about that issue?

Mr Yuile—I am not aware of it.

Mr Mrdak—A number of elements of the community have certainly written to the minister, making known their views in relation to this matter.

Mr SNOWDON—Let me make it very specific. Have there been any formal discussions with the council on Christmas Island about this issue?

Mr Mrdak—There has certainly been correspondence with them. As to whether there have been discussions, I would need to check with our people on the island in relation to this specifically.

Mr SNOWDON—What I am trying to get at here is: has the minister actually gone out there, or has the government gone out there, and said, ‘This is our view, what we think should happen. What’s your view?’

Mr Yuile—I do not know whether that has taken place.

Ms Thompson—The minister has visited the territory.

Mr Yuile—He has certainly been out to the territory.

Mr SNOWDON—That is not the question.

Mr Yuile—Explicitly, I will need to ask him that or check if there have been any discussions.

Senator WATSON—Were you obliged to accept the highest price or were there other issues that could be taken into consideration?

Mr Mrdak—Senator, as I say, the liquidator really ran that process, not us. The Commonwealth has certain tendering guidelines and processes that we would follow. The processes that would be followed by the liquidator would be those that he is required to under Corporations Law, and how he best meets the needs of those.

Senator WATSON—The Commonwealth did not lay down a guideline that the highest figure had to be accepted?

Mr Mrdak—No.

Senator WATSON—Just to update us, what is the state of negotiation of the sale of the Phosphate land to the satellite company now?

Mr Mrdak—Negotiations are continuing. We understand that the companies, Asia Pacific and Phosphate Resources, are very close to reaching an in-principle agreement in relation to how that would happen, but that is still continuing.

Senator WATSON—There is still a desire by the satellite company to proceed with the satellite launching activity?

Mr Mrdak—Yes.

Ms ELLIS—I am not as conversant with the history of this as other members, so forgive me if I get this a bit messed up. My understanding is that the original arrangement was that a lease and a licence be issued to operate a casino-resort on the island. Ms Thompson mentioned before that the tender we are talking about was for the lease only, not for the licence, so I am a little bit, in my unlearned way, stumped. How can you then even wish, as a minister or a government or a department, that a casino may occur, when there is no guarantee in your head that the person who gets the lease is going to qualify for a licence?

It seems to me that that is the beginning of a doubtful process in terms of a casino-resort being the outcome. If the original proposal put out, that began this whole thing, was operating a casino-resort on a lease/licence granted through a process and then the subsequent process is granting or tendering for a lease only, isn't that on a wish and a prayer that the person who gets that lease will in fact be able to operate and be approved to operate a casino-resort? How questionable is it to tender for a lease where it may be questionable whether that second part of the process is achievable?

Mr Mrdak—It comes back to the question that Mr Cameron put. There is a commercial judgment that needs to be made by the parties tendering for the lease as to the viability of a casino licence.

Ms ELLIS—But is there not also a requirement that they cannot automatically assume they will get a licence to operate a casino?

Mr Mrdak—That is true.

Ms ELLIS—They could make the greatest commercial judgment in the world and not be approved.

Mr Mrdak—That is correct.

Ms ELLIS—That is the point I am making.

Mr Mrdak—We were at pains to make the point to people, in the expression of interest process and the tender process, that they would need to satisfy certain requirements in relation to the licence.

Ms ELLIS—I understand that, Mr Mrdak, and with the greatest of respect to what you are saying, that is correct. But that is purely from their perspective. I am reflecting upon the evidence here today that the government and the minister and the department have declared all along their sincere hope that it will be a casino-resort. I am looking at it from that angle, not from the tenderer's angle. How can you possibly have that wish when there is no guarantee that, by offering a lease, a licence is going to automatically come? Therefore, is that not the beginning of the unravelling, be it purposefully or otherwise, of that process? It throws it into doubt.

Mr Yuile—I am not sure what the process was of the original lease and licence, whether they were separate or whether they were put together. Obviously, people on the other side of the table know that better than I do, so I will have to check that out. But I do not think there is a

presumption that, because you are successful at taking a lease, you have to be the one to operate the casino. It could be somebody else.

Ms ELLIS—I understand that. My question is really—and maybe you can confirm this for us—as to the status of how it originally started and how that compares to the proposal of tendering for a lease.

Mr Yuile—I will do that.

Ms ELLIS—Because I find that a fascinating question.

Mr Yuile—I can only assume that the lease and licence were separated at the beginning. I do not know what the circumstances of that were.

Mr SNOWDON—As I understand it, Coms21 Winfair had at least two expeditions to the community to discuss their proposals with the islanders and they were proposing to set up a tourism resort with a boutique casino. Presumably, the other tenderers participated in that sort of process. They informed the community of their intentions to tender and participated in that process, did they?

Mr Yuile—I would have to check that, Mr Snowdon. It is like your question about consultations with the community. I am not trying to be—

Mr SNOWDON—No, I understand.

Mr Yuile—I just do not know and I do not want to tell the committee anything I do not know. But there is an administrator on the island who is obviously in constant discussion with the community and is aware of community expectations and so on, so I assume that a lot of those things that you have said would have happened.

CHAIRMAN—I am going to close this session, because I know that the committee is interested in asking Soft Star Pty Ltd some questions. Could I, on behalf of the committee, thank the witnesses Mr Peter Yuile, Mr Michael Mrdak and Ms Janet Thompson for their attendance here today. If there are any matters on which you might need additional information, the secretary of the committee will write to you. I thank you again for your attendance here today.

Mr SNOWDON—Mr Chairman, could I suggest that there may be a need for us to seek further clarification once we have had further witnesses.

CHAIRMAN—Yes.

Mr Yuile—Chairman, if we can get a copy of the briefing—

CHAIRMAN—We have formally got that request.

Mr Yuile—Sorry. Also, I think the transcript will be pretty important, to get your questions right.

CHAIRMAN—Yes. Thank you again.

[12.47 p.m.]

KWON, Mr David, Managing Director, Soft Star Pty Ltd, and Managing Director, Asia Pacific Space Centre Pty Ltd

NICHOLLS, Mr Graham, Director, Government Relations and Christmas Island Management

CHAIRMAN—I welcome Mr David Kwon and Mr Graham Nicholls from Soft Star Pty Ltd. Although the committee does not require witnesses to give evidence under oath, you should understand that these hearings are legal proceedings of parliament and warrant the same respect as proceedings of the parliament itself. Giving false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. Are there any corrections or amendments you would like to make to your submission?

Mr Kwon—No.

CHAIRMAN—The committee prefers that evidence be taken in public but, if you wish to give confidential evidence to the committee, you may request that the hearings be held in camera, and the committee would consider your particular request. Before I ask you some questions, do you wish to make an opening statement?

Mr Kwon—No.

Mr SNOWDON—Mr Nicholls, you are an employee of which company?

Mr Nicholls—Asia Pacific Space Centre.

Mr SNOWDON—Not of Soft Star?

Mr Nicholls—No.

CHAIRMAN—For the record, what is the relationship between the companies that you represent or are employed by and Soft Star?

Mr Nicholls—Mr Kwon is the managing director and major shareholder of both companies.

CHAIRMAN—Both companies being?

Mr Nicholls—Asia Pacific Space Centre and Soft Star.

CHAIRMAN—Now for your opening statement.

Mr Nicholls—I do not have an opening statement.

CHAIRMAN—We will proceed into questions.

Mr SNOWDON—Mr Kwon, what experience does Soft Star have in operating a luxury resort and/or casino?

Mr Kwon—No experience.

Mr SNOWDON—What led you to put in a bid for the resort-casino at the time you did?

Mr Kwon—We thought it was a good-value possibility. That is why we bought it.

Mr SNOWDON—But what led you to put in a bid to the liquidator after the liquidator's process had closed and what led you to determine the price at which you put in the bid?

Mr Kwon—We calculated, ourselves, the construction value, and then that is why we calculated and put a price to the liquidator.

Mr SNOWDON—You can tell us that you had no discussions with any official of the Commonwealth, with any officer of the minister, or the minister, or any agent of the Commonwealth in relation to the price that might have been involved in the tender process for this resort?

Mr Kwon—No.

Mr SNOWDON—None?

Mr Kwon—No.

Mr SNOWDON—What led you to time your proposal when you did? How did you become aware that the tender was—

Mr Kwon—We heard.

Mr SNOWDON—How did you hear?

Mr Kwon—Through the island. We have an office on Christmas Island. Also, we were interested in whether or not to put a tender. We were confused. Because of the nature of Asia Pacific Space Centre, we think it is very important for us to secure that our people, our guests, our clients, come to stay over there when we are operating a local launch facility. We did expect the tender to successfully close and be won by other people and we had a plan to try to negotiate with the winner of the tender but, unfortunately, no-one won the tender. That is what we knew. That lease is most important to us, because also we expect that when the space port is operating, the resort might be a very prosperous business. That is what we expect.

Mr SNOWDON—What discussions did your person on Christmas Island have with officers of the Commonwealth or the administration of Christmas Island about the casino tender process?

Mr Kwon—We had access to the liquidator, but we did not put the tender. And when we knew, we thought: is it possible to negotiate or has it gone? We did not know what is going on.

Mr SNOWDON—You did not have any discussion with the minister or his staff, or departmental officers, or people from the administration of Christmas Island regarding the liquidation of the resort at around that time?

Mr Kwon—Fortunately, no.

Mr SNOWDON—Did you ever mention to them that the facility was of interest to you?

Mr Kwon—No.

Mr SNOWDON—Did you have any discussions with Mr Frank Woodmore about the liquidation process and the casino?

Mr Kwon—Yes.

Mr SNOWDON—Did you have those discussions during the course of the liquidation process?

Mr Kwon—He said it was going to tender, but he did not want to give us detail. I was interested to find out.

Mr SNOWDON—Prior to you buying the resort, had you ever had any discussions with Mr Herbert, the liquidator, about your desire to purchase the resort?

Mr Kwon—I do not have a good memory at the moment—it is a long time ago. When I start to think about the time when I started negotiating. I recall that I did not have a meeting or see his face until I started negotiating.

Mr SNOWDON—Your decision to purchase the resort came after the tenders were closed but upon the failing of the tender process?

Mr Kwon—Yes, at the close of the tender.

Mr SNOWDON—Do you currently have an application in for a casino licence?

Mr Kwon—No, not for the licence.

Mr SNOWDON—In your discussions with the liquidator, what was your understanding of the purpose to which the lease was to be put?

Mr Kwon—The lease?

Mr SNOWDON—The casino is on a lease.

Mr Kwon—Land lease.

Mr SNOWDON—Yes. What was your understanding of the relationship between the casino and the lease?

Mr Kwon—That it was potentially possible that it could be a freeholding sometime in the future.

Mr SNOWDON—What gave you to believe that?

Mr Kwon—That is what I thought, but what we were interested in was the building itself.

Mr SNOWDON—But you were aware of the discussion we have just had with the department. The casino was built on a lease, which was a permissive lease, which required the operation of a casino and resort. It was for 99 years.

Mr Kwon—Yes.

Mr SNOWDON—Did you have any discussions with anyone in the Commonwealth or with the liquidator in relation to your desire for freehold in the lease?

Mr Kwon—Yes.

Mr SNOWDON—Who did you have those discussions with?

Mr Kwon—We talked to the department and with the minister.

Mr SNOWDON—At that time? Let us be clear upon this. You did not have these discussions prior to you finalising your agreement with the liquidator?

Mr Kwon—We did talk with the liquidator but we did not discuss it with the minister.

Mr SNOWDON—Are you aware if the liquidator passed on your interest to the minister? Did he provide any feedback to you as to what the Commonwealth's view might be about this position?

Mr Kwon—That it was a possibility that it would be freehold.

Mr SNOWDON—I beg your pardon?

Mr Kwon—Possibility to be freehold.

Mr SNOWDON—Do you conclude from that that there were discussions between the liquidator and the Commonwealth at that time about the potential for freeholding this property?

Mr Kwon—Potential, but we emphasised the buildings at the time.

Mr SNOWDON—But you have just said to us that you saw a value in this property partly because of its potential for freeholding.

Mr Kwon—That helped.

Mr SNOWDON—I am not a commercial person. Could you explain what the additional value would be to you to have a property which is freeholded as opposed to a property which was, then, probably an 80-year lease and a permissive lease designed for a casino resort.

Mr Kwon—It is a lot more value.

Mr SNOWDON—Can you see how any other tenderer who might have had discussions with the liquidator might also have been interested in having the potential freeholding of this lease as part of their negotiations?

Mr Kwon—I do not know what the discussion was between the liquidator and other people.

Mr SNOWDON—No, but you understand my point?

Mr Kwon—Yes.

Mr SNOWDON—If you say there is added commercial value with a freehold property over a leasehold property, then presumably you have made a judgment that you will get more money for it if you flog it.

Mr Kwon—That is commercial sense. It depends on what the other companies do.

Mr SNOWDON—But, at the time, you had every intention, and still have every intention, of opening the casino?

Mr Kwon—I wish.

Mr SNOWDON—What are the limiting factors in relation to that wish? What is preventing you from opening the casino currently?

Mr Kwon—At the moment it is very difficult to operate a casino over there. There is a very limited number of aeroplanes to go to Christmas Island. We have already opened the resort. There is a very small number of people staying as guests. We are losing big money at the moment.

Mr SNOWDON—Does Soft Star have a marketing arm?

Mr Kwon—We have a manager on the resort at the moment.

Mr SNOWDON—What promotions are Soft Star involved in in promoting the resort nationally and internally?

Mr Kwon—Regardless of promotion, there is a very unstable aeroplane service coming to Christmas Island. Some of the guests wait a week to get to Christmas Island. It is very difficult at the moment.

Mr SNOWDON—I appreciate your difficulties there, but I am interested in what you are in fact doing to advance the commercial operations of the casino and resort on Christmas Island. It appears to me that you have a manager at Soft Star, you have a manager on Christmas Island, but that is all. You are doing nothing to advantage or market the casino.

Mr Kwon—We are not the aeroplane operator. Christmas Island without proper aeroplanes is nearly impossible to operate. It does not matter how many arms we have in marketing, even if we have marketing branches in other countries, it will not work.

Mr SNOWDON—You do not own an airline, do you?

Mr Kwon—No.

Mr SNOWDON—Are you aware if any of the other tenderers had access to airlines, nationally or internationally?

Mr Kwon—We do not know.

Mr SNOWDON—You are not aware of Coms21 Winfair or who made up that company?

Mr Kwon—Not at that time, but I know now. They approached us.

Mr SNOWDON—You would be aware of their experience in running airlines?

Mr Kwon—Yes.

Mr SNOWDON—Have you sought a partnership with any airline to develop infrastructure on the island?

Mr Kwon—We have talked and it depends on the terms and conditions.

Mr SNOWDON—What discussions have you or any of your agents had with people in the community of Christmas Island about the nature of your purchase and your intentions in relation to the resort casino and its current status?

Mr Kwon—For the community itself, I think our decision is very welcome. The community, I think, is very excited. We get lots of phone calls from the community, saying, ‘When we go over there—great spot. ‘If we had not bought the resort at the time, there might be still nothing on the market, no success. That is what I see now.

Mr SNOWDON—That may be the case, but I just make the observation that there was no concerted effort by the Commonwealth to discuss with the previous higher tenderer what their concerns were. We have had that evidence this morning.

Mr Kwon—That is the Commonwealth's situation.

Mr SNOWDON—You had no discussions with anyone from the Commonwealth about their attitude to Coms21 Winfair?

Mr Kwon—No.

Mr SNOWDON—No information from the Commonwealth?

Mr Kwon—No.

Mr SNOWDON—Or from the minister or his office?

Mr Kwon—No.

Mr SNOWDON—So you just, out of the blue, decided to purchase this property?

Mr Kwon—Yes, we heard the tender had failed, and then tendered again, and it failed. We thought, 'What is going on and who do we have to talk to?'

Mr SNOWDON—You can understand the scepticism, can you not, that your bid for the tender is marginally higher—marginally higher—than the highest tenderer previously?

Mr Kwon—I do not know.

Mr SNOWDON—Well, you do know. It would be of interest to us, or at least to me, to know how you calculated that the price should be \$5.7 million, given that you had no previous experience in running a resort or a casino.

Mr Kwon—I know, I think, about the construction, and we did calculate that if we build it ourselves in a different way, and when we build the space port, maybe we could build it even cheaper. We calculated that the building structure would rust because it is very close to the ocean—the salt effect—so I think we paid a bit more than we had to pay. Still we think that.

Mr SNOWDON—But did you undertake or have undertaken on your behalf any feasibility studies of how the casino-resort might operate as a casino-resort?

Mr Kwon—We had access to information from the liquidator about—

Mr SNOWDON—You are saying you based your judgment on the purchase price on access to information from the liquidator?

Mr Kwon—Not only that. I had a professional construction team working under me.

Mr SNOWDON—Yes, I appreciate that, but you have admitted you had no experience in running a casino—

Mr Kwon—No.

Mr SNOWDON—or a resort of this nature. Obviously, in running a resort—if I were going to put in a bid to run a resort, I would want to know how a resort operated and what it would cost me. What factors in relation to your bid were determined by what you evaluated as being the commercial viability of the casino and resort and who did you get that information from?

Mr Kwon—Actually, we did not calculate the casino too much at the time. There was not much interest in the casino operating at the time.

Mr SNOWDON—If you are not much interested, you can see why this interests us, because this was a resort which was to be run as a casino.

Mr Kwon—Even now, if we were to operate the casino, I understand that the government processes are very restrictive and to qualify is very hard, so we do not know how long it will take to get the licence, so we calculated its value as a building.

Mr SNOWDON—You did not give any undertakings to the Commonwealth or the liquidator about your intentions in relation to reopening the resort?

Mr Kwon—I do not have any experience. I never even play at a casino.

Mr SNOWDON—I don't either!

Mr Kwon—We were more interested in the resort and the building.

Mr SNOWDON—When you communicated with Mr Herbert, did you do it directly?

Mr Kwon—Yes.

Mr SNOWDON—Did you do it in writing?

Mr Kwon—Most of the time we did a phone call, yes.

Mr SNOWDON—Had Mr Herbert indicated to you that the tenders had closed?

Mr Kwon—Yes.

Mr SNOWDON—What led him to accept your tender?

Mr Kwon—I think he followed the by-law that, after a tender has closed twice, he is qualified to sell privately. That is what we heard from him.

Mr SNOWDON—What were the terms and conditions of the sale contract for the casino?

Mr Kwon—The casino?

Mr SNOWDON—Yes, for the resort, the casino-resort, your deal with the liquidator.

Mr Kwon—It mainly concentrated on money, how much.

Mr SNOWDON—Nothing in terms of the operation of the resort?

Mr Kwon—We more emphasised the building itself and the contents of the building. That was that we emphasised more.

Mr SNOWDON—Nothing in it to determine that you should operate the resort in line with the lease conditions?

Mr Kwon—We were interested in the lease, but we knew that the liquidator did not have the power to give to us the freehold.

Mr SNOWDON—And since that time you have been seeking to change it to freehold?

Mr Kwon—After we purchased.

Mr SNOWDON—In addition to the listed buildings and other itemised assets, were there any other conditions or requirements placed on the settlement by you—for example, vacant possession?

Mr Kwon—We wanted vacant possession of the whole building, yes.

Mr SNOWDON—Any other extra conditions outside of the initial terms of the tender?

Mr Kwon—No conditions, I understand.

Mr SNOWDON—Your contract has sought no additional variation to the tender which had failed?

Mr Kwon—I do not know what the tender was. We put straight how much we wanted—that when we bought the premises had to be vacant, empty. That is what we want.

Mr SNOWDON—Because you knew it was to be a resort or a casino, what action did you then take to immediately seek to reopen the resort as a resort or a casino?

Mr Kwon—As a resort, yes, we wanted to open immediately, and we are considering the casino.

Mr SNOWDON—What do you understand to be the community's current attitude towards the fact that the casino is not operating and the resort is not operating to its full potential?

Mr Kwon—I think that the community understands. Even if we were fully open, no guests could come, and there are not many people. After the resort closed, many hundreds of people left the island. The Christmas Island community itself is not a big enough market.

Mr SNOWDON—Is Soft Star's involvement in this arrangement solely because of your involvement with the other company?

Mr Kwon—That helps.

Mr SNOWDON—So without the other involvement, you would not be there?

Mr Kwon—Possibly it would severely affect the decision.

Mr SNOWDON—On the basis that the space activities commence in the near future, is it your expectation that you will move more rapidly to do more work on the resort?

Mr Kwon—I do expect that.

Mr SNOWDON—I do not want to ask you what money you have spent, particularly, but what work has been done to upgrade the resort buildings since you have been the owner?

Mr Kwon—We are spending big enough money at the moment to upgrade the resort.

Mr SNOWDON—How many people are employed currently at the resort?

Mr Kwon—Four people.

Mr SNOWDON—How many rooms are open?

Mr Kwon—We could open more than half at the moment, if there are guests there.

CHAIRMAN—Is that about 80 rooms?

Mr Kwon—In all, there are 156 rooms. That is what I understand. Even more than half we could open, but there are no guests coming. I wish more guests were coming.

Ms ELLIS—Mr Kwon, can you explain the difference between your understanding of the air services to Christmas Island at the time that you accepted the lease and now.

Mr Kwon—The difference?

Ms ELLIS—Yes. What were they like then and what are they like now?

Mr Kwon—There were more airlines before. Now there are fewer airlines.

Ms ELLIS—How many people were coming to Christmas Island, or how many flights, at the time that you accepted the lease, compared with now?

Mr Kwon—It is dramatically down at the moment.

Ms ELLIS—Did you know that was going to happen?

Mr Kwon—It is very hard to predict, because the island is a very small community, but at that time National Jet and a community airline were starting, and at the beginning when it started, the regular flight from Jakarta was there.

Ms ELLIS—What about from Australia's mainland?

Mr Kwon—Only from Perth twice a week. That is what I understand.

Ms ELLIS—I understand that the Commonwealth is still negotiating in relation to air services to Christmas and Cocos. Is that correct?

Mr Kwon—I am not fully aware.

Mr Nicholls—We saw a press release put out by Senator Macdonald a couple of weeks ago, and I gather he has extended National Jet until sometime next year.

Ms ELLIS—I have not seen that. I was unaware of that.

Mr Kwon—Mainly, our clients can only come from the north side.

Ms ELLIS—From Jakarta?

Mr Kwon—Jakarta or Singapore. It does not help. That is what we see.

Ms ELLIS—I think Mr Snowdon asked this question before but, if he did, could you please elaborate. What negotiations have you or your company had with airline carriers to improve the situation coming into Christmas Island?

Mr Kwon—We did talk with the airlines.

Ms ELLIS—How many airlines have you approached?

Mr Kwon—Two or three companies.

Ms ELLIS—And what is the outcome?

Mr Kwon—It is too expensive, and I do not see that it is economical at the moment.

Ms ELLIS—Given what was said a moment ago about the connection that you see between the resort and the space facility, what do you honestly see is the future of the resort until or when the space facility, should it occur, occurs? What are you going to do with the resort in the meantime?

Mr Kwon—At the moment we are talking with the potential operator.

Ms ELLIS—Of the resort?

Mr Kwon—Of the resort and the casino. We expect a good result. Also, we are very keen to have freehold of the resort land and then, once we get the freehold, it will be speeded up and a lot easier.

Ms ELLIS—Are you saying, then, that the success of the discussions you are having with the potential operator of the casino-resort will depend upon your gaining freehold?

Mr Kwon—That would help.

Ms ELLIS—What if freehold does not come?

Mr Kwon—Very difficult.

Mr SNOWDON—Could you explain why?

Mr Kwon—Because the operator also seeks a commercial deal. Sometime he wants to own the facility or equity of the property. I think that that helps the asset of the property. It would be very helpful in a commercial sense.

Ms ELLIS—Could you clarify that. Does that mean that you are actually talking with a view to selling the property to this other person?

Mr Kwon—I see many different options. Some want to be not only the commercial operator or contractor; some want to be a shareholder of the company, a part shareholder, together.

Mr SNOWDON—You are saying that this deal is contingent upon whether there is a freehold lease?

Mr Kwon—That is what we are seeking from the government.

Mr SNOWDON—Let us get it clear. Are you telling us that, unless there is freehold title, it is unlikely that you would be able to proceed with any negotiations with the man who is operating the casino?

Mr Kwon—That is very difficult at the moment without us getting freehold. It would speed it up for us. At the same time, it would progress the space port for us. At least we could secure some rooms for our people or our guests or clients.

Mr SNOWDON—But that has nothing to do with whether it is freehold or leasehold. If you own the property, you can secure the rents.

Mr NEVILLE—What would prevent you from having a number of rooms set aside, even if you were in a leasehold possession of the property? Why would you be any less committed to a casino on a leased property than you would on a freehold property?

Mr Kwon—We can operate as a leaseholder but we prefer to be a freeholder.

Mr SNOWDON—Can we clarify that. Whether or not it is freehold is a preference but it is not going to be a make or break decision as to whether or not you run the resort?

Mr Kwon—No. I said it is difficult; I did not say it is impossible. I said it is very difficult.

Mr NEVILLE—What does ‘difficult’ mean? Does ‘difficult’ mean you intend to walk away from the project if you do not get freehold?

Mr Kwon—No. For us, we would be in a better position and the negotiations would be speeded up with the potential operator.

Ms ELLIS—Does the potential operator have a connection with an airline?

Mr Kwon—Some have.

Ms ELLIS—No, the one you are speaking with specifically.

Mr Kwon—Some, yes.

Mr SNOWDON—Do they already operate casinos?

Mr Kwon—Some potential operators, yes.

Mr SNOWDON—They do operate casinos?

Mr Kwon—At the moment.

Mr SNOWDON—In Australia?

Mr Kwon—Some, yes.

Ms ELLIS—With a connection to airlines?

Mr Kwon—No, that is a different one.

Ms ELLIS—You are talking to more than one?

Mr Kwon—Yes.

Senator CROSSIN—Mr Kwon, is it your intention, if you were given the land freehold, that you would sell off the casino operation side of it?

Mr Kwon—Some operators are interested in that way—not all. For us, we would be in a better position to speed things up. Some operators are only interested in operating. Some are linked with an airline.

Mr NEVILLE—Could you clarify that point for me. Are you saying that you have an operator who wishes to purchase, in part or whole, the freehold as part of the deal and they are not prepared to do it in a leasehold situation?

Mr Kwon—Some, yes, but some do not care.

Mr SNOWDON—You may or may not be aware, of course, that the casino in Canberra is leasehold.

Mr Kwon—Yes.

Mr SNOWDON—It operates successfully.

CHAIRMAN—Mr Kwon, we would like detailed plans, but it may be commercial, so I am talking of your plans in a generic sense for the further development of the 37 acres, and we would like to know whether that development is dependent on freehold. Freehold would obviously give you a better collateral to borrow from banks, which is a far more attractive interest rate, and banks like freehold as opposed to leasehold. What are your plans for the future development of the 37 acres?

Mr Kwon—We gathered some advice from experts on how to make this resort profitable. The advice I got from the consultancy company was that, for the Christmas Island resort to be profitable, it needs several conditions. First, there were not enough rooms on the island and, because there were not enough rooms, it was not profitable for the airlines to go over there. For a travel agency to get involved, it has to handle 100 people. With 100 people the travel agents can make a profit. The facility itself, to handle 100 people per day, requires at least 500 rooms on the island. It is not only the resort; other facilities will also be required for tourists or some other purpose.

CHAIRMAN—That is 500 rooms on the entire island, not at the resort?

Mr Kwon—No, not only the resort, but there is less than that number. At the moment, the resort has the greatest number of rooms over there. There are some very small motels and some small apartments in not very good condition. What I see is that, to make this resort profitable, we require at least 300 more rooms over there. And to do that, no-one will put up the money unless it is freehold. Not many people want to put money in, especially with the difficult logistics at Christmas Island. It is very difficult to bring further investment. That is why I want to talk more with the government. I am interested in the rooms over there.

Mr SNOWDON—What discussions have you had with the local community about your desire to freehold?

Mr Kwon—They think it is a very good idea. They support it.

Mr SNOWDON—The council supports it?

Mr Kwon—I think it depends on who is the council but I think the general members of council support it.

Mr SNOWDON—We will be talking to the council, so we will ask them that question.

Mr Kwon—Yes.

CHAIRMAN—Mr Kwon, with regard to the 300 rooms that you believe the island needs, what proportion of those do you propose to build on the casino-resort ground?

Mr Kwon—APSC has to put it further. Strategically, it has to talk to the government, and that has to be on that land or some other land, I think. It has to be our company or some other company. That has to be discussed.

CHAIRMAN—Mr Nicholls, perhaps I could ask you a technical question. With respect to the freehold, would you expect a Torrens system fee simple title?

Mr Nicholls—I do not know about Torrens and fee simple, so I cannot answer the technical aspects of your question. Certainly we would want freehold and, if it is the Torrens or whatever system in Christmas Island, we would want that system.

CHAIRMAN—You would want the best system available on Christmas Island.

Mr Nicholls—Absolutely, yes, so that it is freehold—and freehold 100 per cent owned. I do not know if there are different sorts of freehold. Freehold is freehold.

Mr SNOWDON—Leasehold works quite well in the ACT.

Ms ELLIS—Capital Property Trust became the biggest trust company in Australia at one point, basing its property in Canberra on leasehold land.

Mr Nicholls—Leasehold works well in the ACT. There is a perception elsewhere that the ACT is not necessarily representative of other places.

Ms ELLIS—It works in Washington. It works in other parts of the world. It works in Singapore, does it not?

Mr Kwon—I think that Christmas Island is discouraging business. For instance, our investment can be used as a mortgage with the bank. It is impossible to do that. We can increase the value of the property—the whole island—I think. Rather than encouragement, all we get is discouragement.

Mr SNOWDON—But, with respect, Mr Kwon, it is simply not true to say that banks will not mortgage on the basis of leasehold. They do it all the time.

Mr Kwon—Okay. That is my view only.

Mr SNOWDON—Do you understand why the Commonwealth and the community of Christmas Island might have an interest in which land is freehold and which land is not?

Mr Kwon—I do not know.

Mr SNOWDON—You do not think there might be some strategic interest from the Commonwealth? Given that almost 70 per cent of the island is national park, there is a limited amount of potentially freehold land.

Mr Kwon—Yes.

Mr SNOWDON—Do you think the Commonwealth and the community might have an interest in ensuring that particular activities take place in certain parts of the island, as the community wants?

Mr Kwon—I understand.

Mr SNOWDON—Are you aware that there have been a number of draft land plans?

Mr Kwon—Yes.

Mr SNOWDON—I am not aware of one that puts the casino region as freehold land.

Mr Kwon—In your view it is not proper for us to have freehold?

Mr SNOWDON—No, I am not saying that at all; I am saying that there are a whole range of interests which have to be safeguarded.

Mr Kwon—I understand.

Mr SNOWDON—They are largely community interests. The Commonwealth has an interest. I can tell you from my own experience that, when that property was leased in the first instance, it was the Commonwealth's interest that ensured that it was leasehold. I would like to know why the Commonwealth's interest might change, frankly.

Senator WATSON—I would like to ask you the same questions I asked the previous witness. What is the stage of negotiations of the sale of the Phosphate land to the satellite company?

Mr Kwon—We have a principal agreement between APSC and the Phosphate mine region. We signed it yesterday.

Senator WATSON—That has to be concluded in what sort of time frame?

Mr Kwon—The contract, from my memory, we have to finalise sometime in March.

Senator WATSON—Is there any other impediment that may stand in the way of your satellite company proceeding with its launching activity? Are there any other impediments or

restrictions, other than the purchase of the land, that may prevent you going ahead with your launching facility?

Mr Nicholls—Senator, APSC has made it clear throughout its discussions with the Commonwealth that there are two key issues for Australia to worry about in terms of whether this project goes ahead on Christmas Island or not. The first is the negotiation of a satisfactory land deal with the Commonwealth and the second is negotiation of satisfactory arrangements between APSC and the Commonwealth. That first one, the land deal, is progressing.

Senator WATSON—Is the land deal in two parts, one being as far as where the casino is? Do you require freehold on both titles?

Mr Nicholls—No. The issue of land for the casino is being kept separate from the issue of negotiations with the space port.

Senator WATSON—You are not seeking freehold title in terms of the launching area?

Mr Nicholls—We have not made acquisition of freehold a condition of progress for the space port.

Senator WATSON—What about the other impediments?

Mr Nicholls—They are not impediments. There are those two conditions: the conclusion of a satisfactory arrangement with the mining company on land and the conclusion of arrangements with the Commonwealth to do with strategic investment.

Senator WATSON—Does that involve concerns about the security of the landing of the rockets, et cetera? Has that been an issue?

Mr Kwon—There are many conditions of the Commonwealth with the issue of the licence, and there is some legislature. We are talking with the Commonwealth.

Mr NEVILLE—You are also seeking Commonwealth subsidy on that aspect of the project?

Mr Nicholls—No, not subsidy. The Commonwealth has in place a strategic investment process. We will pursue that strategic investment process.

Mr NEVILLE—Which particular one are we talking about?

CHAIRMAN—Had you finished, Senator Watson?

Mr NEVILLE—Sorry.

Senator WATSON—What is the earliest date on which you could commence construction of your satellite launching facility if your plans to acquire go ahead in March?

Mr Kwon—We have to finalise that contract and current agreement with the mine by the end of March.

Senator WATSON—Assuming that goes ahead, what is the earliest date you can proceed with your construction?

Mr Kwon—If the early conditions go all right, we want to start construction in the early second half of this year.

CHAIRMAN—And you will need the resort as accommodation, will you not, for those construction workers?

Mr Kwon—If the construction goes ahead, we will have to accommodate them.

Senator WATSON—That was going to be my next question. If that goes ahead, you will need the accommodation provided by the casino site to house the construction workers, including the visiting industrial experts.

Mr Kwon—Yes.

Senator WATSON—Engineers, architects and so on.

Mr Kwon—Yes.

Mr SNOWDON—That is in a sense your conflict with opening your resort as a resort.

Mr Kwon—No, I do not think so.

Mr SNOWDON—You just said you need 500 rooms.

Mr Kwon—That 500 rooms is without the space port. For an airline company to come over there—

CHAIRMAN—You want 500 rooms altogether on the island.

Mr Kwon—That is to properly operate the island with a travel agency.

Mr SNOWDON—I appreciate that.

Senator WATSON—But you will set aside some of your rooms for your construction workers and you will set aside some of your rooms for hotel guests.

Mr Kwon—Yes, some at the beginning. But with the space port we have a plan for another 350 rooms for our workers' accommodation.

Senator CROSSIN—Mr Kwon, you said earlier in your submission that you did not know what the tender was. I want to take you back to those initial discussions you may have had with the liquidator. We had a tender process that closed and then the date was extended.

Mr Kwon—Yes.

Senator CROSSIN—You obviously did not bother to tender in the first round or the extended round. What was it that then made you decide that you would put in a bid for this lease?

Mr Kwon—I understand that it was not an extended tender to us. I understand the tender was extended and the second tender was also not successful. I understand that, at that time, when I discussed it with Jeff Herbert, the liquidator, it was only a private negotiation. What I thought was that, if we do not get involved, this might go a long time without an owner.

When we had a tender process over there, during the tender process we had difficulty—that is, our people, including myself. When we went over there, to stay in the resort was very difficult. Sometimes they say yes; sometimes it had to be cancelled. So, for us, it was difficult to take people from outside—very high-profile people, sometimes foreign country government people and sometimes very senior company people. Even if we chartered an aeroplane to get there, it was difficult. In terms of the strategic purpose, it might be secure and the resort might be not bad. Also, I was interested that it was still available. But, for instance, they said the tender closed twice and it was possible that it could be negotiated.

Senator CROSSIN—You had a discussion with the liquidator, is that right?

Mr Kwon—Yes.

Senator CROSSIN—Were you ever given tender documents to look at?

Mr Kwon—Never.

Senator CROSSIN—Were you ever asked to fill in tender documents?

Mr Kwon—No.

Senator CROSSIN—Other bidders would have had to put in tender documents. Never?

Mr Kwon—Never.

Senator CROSSIN—In what way, then, did you communicate with the liquidator? Did you simply write a proposal yourself without completing a tender document? Is that right?

Mr Kwon—No. We had a telephone conversation: ‘What’s the situation at the moment? We are not talking small money. What do you want to do?’ They said that legally the tender was open twice. It was not successful, so now it was up to the liquidator to make a private negotiation, and we start negotiating.

Senator CROSSIN—Was your proposal then put down on paper and given to the liquidator? Or were the negotiations only verbal and across the table?

Mr Kwon—We had to go into a very lengthy negotiation with the liquidator.

Senator CROSSIN—Will there be, to your knowledge, any impact from the Christmas Island resort now challenging the appointment of the liquidator? What impact will that have on your situation—or will it have any, to your knowledge?

Mr Kwon—I do not know the correct answer to your question, Senator. Maybe if the tender was successful before ours came, it might be better for us, because we would not have our money sitting there.

Senator CROSSIN—Have you had any legal opinion that might say, for example, if the challenge to the liquidator's appointment is successful, that invalidates your deal with the liquidator? Have you had any legal advice about the impact of that challenge on the agreement you have?

Mr Kwon—I understand that, when the contract was done, we used the legal form. The liquidator was appointed by the government and we thought everything would go properly. I was very surprised to be called here, because this deal between the liquidator and Soft Star was very properly done. An office building or hotel in Sydney is nothing different. I was very surprised.

Senator CROSSIN—You do not have any legal advice? You have not sought legal advice at all?

Mr Kwon—We thought it was all right and our lawyer would proceed with the process.

Mr NEVILLE—In your negotiation with the liquidator, how did you arrive at the price? Did he suggest a price to you, or did you pluck this price of \$5.8 million out of the air?

Mr Kwon—No, actually, we started much smaller than this, with the whole confusion about going ahead or not going ahead. Now I just hear that the other competitive price was very close. I do not know how much it was.

CHAIRMAN—Who did you hear that from, Mr Kwon?

Mr Kwon—In here, from Mr Snowdon.

Mr NEVILLE—When you got to \$5.8 million, the liquidator said, 'Yes, I would be prepared to settle on that'?

Mr Kwon—Actually, we started at less than \$5 million.

Mr NEVILLE—The second part is: do you understand in Australia that, when a person purchases leasehold land, before they can freehold it, it is generally the case in all states and

territories that you have to demonstrate that you are prepared to fulfil conditions to do with development and that nowhere in Australia are you just taken on trust? What plans have you put to the Commonwealth that would lead them to believe that you have firm development plans?

Mr Nicholls—At this point in time we have approached the Commonwealth saying that we would like the resort to be freehold. We have not put firm plans. The Commonwealth has responded and said—

Mr NEVILLE—You have not answered my question.

Mr Nicholls—I am coming to that. We understand that the lease has conditions. It is a lease that says, ‘You will operate a casino and a resort.’ That is the intention. Our view is that it would be easier to operate a hotel, a resort and a casino were we to be given freehold. We have made that request. The minister has come back and said no, he will not consider the granting of freehold until there is a casino up and running. We will go back and we will negotiate and, in the course of negotiations, he will ask us for firm plans and we will go through a process and develop firm plans. There are a whole bunch of issues that are contingent to do that, in terms of our ability to or our preparedness to do firm plans, but we understand that process.

Mr NEVILLE—Finally, you obviously negotiated with your associate company on the number of employees who would be required at any given point in the development of the space port. If the resort is not viable at the current level of rooms, how is it going to be viable if you take a certain number of those rooms for employees of the space port?

Mr Nicholls—There would be some employees. We will also provide employee accommodation. The great bulk of the visitors would be various other company people involved in the space industry who would be paying.

Mr NEVILLE—You would only put the senior executives into the resort?

Mr Nicholls—On a permanent basis, no. On a permanent basis there would be housing provided but, obviously, right up-front there has to be some accommodation so they would stay there. But that would be few because, as part of the development of the space port, we will build—

Mr NEVILLE—I suppose the question I am asking is: would it be of such an order that you could not start the resort anyhow?

Mr Nicholls—No, not at all. It is not in our interest to do that. Our interest is to get money out.

CHAIRMAN—I bring to the end the proceedings with the present witnesses. I thank Mr Graham Nicholls and Mr David Kwon, on behalf of the committee, for their appearance here today. If there are any matters on which you might need some additional information, the secretary will provide that to you. You will be sent a copy of the transcript of your evidence, to which you can make editorial corrections.

Committee adjourned at 1.49 p.m.

