CHAPTER 6

PROPERTY DISPOSAL PROCESS

Introduction

6.1 In Chapter 4, the Committee considered the way DEO consulted stakeholders during the disposal process of a surplus property and, in Chapter 5, we considered DEO's development activities prior to sale. In this chapter, the Committee examines the way in which DEO disposes of surplus Defence properties.

Commonwealth land

6.2 Throughout the inquiry, the Committee received a variety of views about the nature of Commonwealth land and what should be done with it once it was no longer needed by the Commonwealth.

6.3 Defence land is Commonwealth land and is managed by the Department of Defence on behalf of the Commonwealth. In general, the view of the Commonwealth officers who appeared before the Committee was that Commonwealth land was a government asset to be dealt with on an opportunity cost basis. In the Commonwealth property principles and the Commonwealth property disposal policy, emphasis is given to owning property only when it makes commercial sense and to dispose of surplus property at the current market value. Mr Paul Ferrari, Acting Branch Manager, Competitive Tendering and Grants Branch, DoFA, told the Committee:

> …the focus is on achieving market value for the sale of surplus property. So it would be in rather extraordinary circumstances where property of significant value would be sold on a priority basis that did not obtain for the Commonwealth a market level of income from the sale.[1]

6.4 Defence confirmed this view on a number of occasions during evidence. In relation to one particular property, Mr Rod Corey stated:

> The government policy is that we dispose of Commonwealth property for its best value. If we wanted to do a priority sale or gift it to the community, the decision rests with the delegate under the Land Acquisitions Act, which is the Minister for Finance and Administration…From Defence's point of view, [this property] will give us revenue and it will give the Commonwealth revenue.[2]

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1 Mr Paul Ferrari, Department of Finance and Administration, *Committee Hansard*, 26 February 2001, p. 484

2 Mr Rod Corey, Head, Defence Estate, Department of Defence, *Committee Hansard*, 26 March 2001, p. 672

6.5 It should not be forgotten, however, that Defence acquired many of its properties in the early part of the twentieth century. In many instances, they were compulsorily acquired for valid defence purposes. Not unreasonably, many of the acquired sites were in or close to major urban centres. Through the passage of time, many of these sites have become valuable assets, some of which have considerable heritage and environmental attributes. As many of these prime sites are now being declared surplus to Defence needs, Defence has a responsibility to ensure that their disposal is handled sensitively and in the interests of the community, and are not divested in a way dependant only on the revenue gained from their sale.

6.6 In a 1996 report entitled *A presence for the past*, the Committee of Review of Commonwealth Owned Heritage Properties wrote:

> The real owners of these properties are the past, present and future generations of Australians who have paid for their construction, and upkeep through the taxation system.[3]

6.7 Non–government witnesses expressed similar views in submissions and in oral evidence during the inquiry. In a letter to the Committee, Dr Paul Adam wrote:

> It would be my view that Defence land (and the land of other agencies such as Finance and Administration) is a public asset and not the private property of a single agency.[4]

6.8 Submitters asserted that, once a Defence property became surplus, it should not necessarily follow that it should be sold on the open market but rather that the best use be made of the land in the interests of the wider community. The Moverly Precinct Committee, Randwick, submitted:

> While the matter of whether the land is surplus to requirement or not is clearly an operational matter for the Department of Defence, it still remains public land. It remains to be addressed whether the land should remain in public ownership…It simply cannot be left to the Department of Defence to dispose of the land to meet some perceived budgetary target.[5]

6.9 Dr Paul Adam submitted:

> [T]he land is not the private property of the Department, nor is it the private property of the Government. It is public land managed on behalf of all of us for the public good. If the land is no longer required for Defence operations

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3 *A presence for the past*, A Report by the Committee of Review—Commonwealth Owned Heritage Properties, 1996, p. 16

4 Dr Paul Adam, Letter to Committee Secretary, 3 April 2001, p. 2

5 Moverly Precinct Committee, submission no. 43, p. 41

> then an important matter to be addressed is whether there is some public good to be served by all or part of remaining in public ownership.[6]

6.10 Although generally more understanding of the budgetary requirements faced by the Commonwealth, local government also expressed concern at implementation of the disposal policy. Councillor David Bradbury, Mayor of Penrith, submitted:

> In Council's view, the government's consideration of how surplus Defence properties will be managed and utilised in the future must always be fundamentally based on the premise that the land is held in public ownership and that the government has a duty of care to the public in terms of its dealings with that land.[7]

6.11 Councillor Patricia Harvey, Mayor of Mosman Council and Chair of the Sydney Coastal Councils Group, supported these thoughts and was explicit in the view of the Sydney Coastal Councils Group:

> The group considers that the Commonwealth should hand back all surplus foreshore land and significant Defence areas to the people of Australia for conservation, heritage and recreational purposes.[8]

6.12 From another perspective, the President Elect of the Royal Australian Planning Institute, the peak professional body of town planners within Australia, agreed strongly with these sentiments:

> The land is in fact owned by the people of Australia, from whatever state. All of us ultimately own that particular piece of land. I think the government, as the representative of all those people, has a right and a responsibility to ensure that the interests of the whole are taken into account when the land is disposed of.[9]

6.13 Reference to Commonwealth land being owned by the people of Australia is probably another way of saying that the Government or its agencies should not dispose of land for purposes inconsistent with the area in which they are located and against the wishes of the local community and local and state governments. When people dislike or have serious reservations about plans for redevelopment of former Defence properties and their views are either not sought or not treated with due respect, they become resentful and frustrated. In a number of areas, we have seen people mobilise public and political support in opposition to DEO redevelopment and sale plans. A prime example of this was the successful public and political campaign to keep the Artillery Barracks, Fremantle, in public ownership to ensure the long-term protection of its significant heritage values.

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6 Dr Paul Adam, submission no. 32, p. 226

7 Penrith City Council, submission no. 39, p. 8

8 Councillor Patricia Harvey, Mayor, Mosman Council, *Committee Hansard,* 25 January 2001, p. 351

9 Mr John McInerney, Royal Australian Planning Institute, *Committee Hansard*, 5 March 2001, p. 549

6.14 The Committee believes that Commonwealth land is owned by the people of Australia and is managed by the Commonwealth Government, as the people's elected representatives. As a responsible manager, the Commonwealth Government, through its departments and agencies, should try to get due value for land sold in the same way as it has to pay due value for land it buys to meet its operational needs. The Committee also notes existing provisions for priority and concessional sales of land.

Exceptions to the rule

6.15 Some people argue that the Commonwealth Government should, as a matter of course, transfer surplus land to the community at little or no cost for open space or other recreational purposes. The Committee believes that such a view is quite unrealistic. However, there might be occasions when such a course of action would be appropriate. For example, if specific Commonwealth land had long been available for community use, there would be an argument for its transfer to state or local government for a continuation of such community use when subject to divestment from Commonwealth ownership.

6.16 Similarly, if the land had important heritage or environmental values, which would, in many cases, reduce its market value and constrain subsequent use, consideration should be given to its transfer to state or local government at a negotiated price or for a nominal amount. A case in point was the transfer of Sydney Harbour foreshore lands from the Department of Defence to the Interim Sydney Harbour Federation Trust under arrangements agreed to by the Commonwealth and New South Wales Governments. The Trust was established by the Commonwealth Government to act as an advisory body to the Minister for the Environment and Heritage and to commence the preparation of plans of management for the lands.

> The intention of the Trust is to ensure that the plans will result in a lasting legacy for the people of Australia by enhancing the amenity of the Sydney Harbour Region, conserving the environmental and heritage values of the lands and maximising public access to them.[10]

6.17 Similarly, the Commonwealth Government offered the Artillery Barracks, Fremantle, to the Western Australian Government, except for Gun House, which will be retained by Defence as the residence of the senior Defence officer in Western Australia. This sensible offer, which allows the retention of the property in public ownership, should go a long way towards the long–term preservation of the very important heritage values of the site. The Committee is pleased that the Commonwealth Government made this offer, which was in line with the Committee's recommendations contained in its interim report of January 2001.

6.18 Where a property has or is proposed to have a function associated with the military, such as a military museum or a cadet depot, the Australian Defence Organisation, including the new Defence Cadet Directorate (and not just DEO),

10 Interim Sydney Harbour Federation Trust, *Reflections on a Maritime City*, October 2000, p. 5

should give special consideration to the continuation or commencement of such functions through priority or concessional sales. With the move away from capital and regional cities, the ADF needs other means to have a presence in those cities, so that for purposes of general support or recruitment, the ADF is not removed entirely from community consciousness. What might be revenue foregone in the short term might be more than compensated for in less tangible ways in the longer term. The housing of military–related activities in heritage-listed former Defence buildings provides a link to our military heritage.

6.19 There is, at the moment, a resurgence of interest, particularly among young people, in Australia's fine military heritage, exemplified by attendances at dawn services at Gallipoli and in Australia on Anzac Day. Defence should build on this increased interest in our military heritage by encouraging organisations, especially those with strong ex-service involvement, to foster and maintain that interest.

The planning process

6.20 Once the hurdle of deciding a property is surplus and that the principles of the disposal policy apply has been overcome, DEO move into their planning process for property disposal. In general, the process can be broken down into four stages: planning and preparation; consultation; development; and divestment. Consultation has already been addressed in Chapter 4 and the extent of development in Chapter 5.

6.21 As previously discussed, the broad planning for the disposal of Defence properties occurs in the DEO strategic plan. This document forecasts the properties that Defence intend to dispose of in coming years and allows for forward planning by Defence's property management and force disposition staff. As a broad planning tool the strategic plan categorised properties as sites which have a long–term future, sites that have a medium–term future and sites which only have a short–term future.[11]

6.22 During the initial planning process, DEO considers a number of issues about the property that will influence the way it is prepared for disposal. During this phase, the following actions occur:

a) Planning for remediation. Defence properties have been occupied under a variety of regimes, all of which disregarded environmental protection. As a result, most Defence properties have some contamination requiring remediation. The extent of the contamination and the scope of necessary remediation work are assessed early in the planning stages.

b) Assessment of Heritage aspects. Defence contends that the Department has a comprehensive heritage assessment of all Defence properties.[12] During the planning stages this assessment is taken into

11 Mr Rod Corey, Head, Defence Estate, Department of Defence, *Committee Hansard*, 2 April 2001, p. 640

12 Mr Rod Corey, Head, Defence Estate, Department of Defence, *Committee Hansard*, 2 April 2001, p. 678

account when considering the future uses of the surplus land. Whether this has been completed only recently is uncertain but there was no heritage assessment of the Annerley property prior to the commencement of its disposal process.

c) Initial discussions with local authorities. During the initial planning stages Defence stated that they will have initial consultation with the local council. The aim of this is to establish a relationship with the council and to ascertain the councils views on the future of the site. A further objective at this time is to discuss with the council how they wish consultation with the local community to proceed.[13]

d) The final important aspect of the initial planning stage is the future disposition of Defence units currently occupying the site. A number of properties declared surplus have operational Defence units on them. These units need to be relocated and, in some cases, new facilities prepared in their new location.

6.23 Once initial planning is complete, the process of preparing a surplus site for disposal commences. The physical work of conducting the site remediation is undertaken and, where required, existing buildings and site works are removed. Defence conducts the physical preparation of the site and employs independent auditors to provide local government with certification of the appropriateness of remediation work completed.

6.24 It is during the initial planning and preparation stage that the foundations for a successful disposal or otherwise are established. Defence is aware of a degree of community mistrust with regard to the development of any property and attempts to mitigate this mistrust at an early stage.[14] It is at this time that early negotiations with council and consultation with the community are vital.

Heritage

6.25 In response to a statement made by the Australian Council of national Trusts, that 'no general program of identifying places of heritage significance has been instituted by ADO', Mr Corey said:

> This is nonsense …but along with Heritage Commission, we did a heritage study of all our properties. We documented them, listed them and got a pat on the back from the Heritage Commission because of the work we had done.

13 Mr Bernard Blackley, Director, Property Disposal Unit, DEO, Department of Defence, *Committee Hansard*, 16 March 2001, p. 564

14 Mr Bernard Blackley, Director, Property Disposal Unit, DEO, Department of Defence, *Committee Hansard*, 16 March 2001, p. 564

6.26 Asked whether the information was available to interested people, Mr Corey replied:

> Probably not. It is probably not in a digestible form for the community at large. If someone had a particular interest in a particular property, we could provide it for them, but we do not have it in a compendium that is available in that sort of format, no.[15]

6.27 However, the Committee notes that until the Dudley Street, Annerley, property was listed provisionally by the Queensland Cultural Council on 22 September 2000, as a result of a nomination by the Annerley resident's group, SPACE, it did not previously have a heritage listing. That provisional listing has now been confirmed. DEO had a heritage assessment done as part of the disposal process.

6.28 The Committee also notes that assessing heritage values on a surplus property is part of DEO's disposal process and is normally done.

Re–zoning

6.29 As discussed previously, the main planning issue for all tiers of government are that surplus land in question is Crown land and therefore not subject to local and State Government planning laws. As a result the zoning of Defence land as 'Special Uses—Defence/Military' produces a number of problems for local councils and State authorities.

6.30 Disposing of property in a number of jurisdictions, each with different planning requirements, provides problems for DEO. This means that DEO has to adopt different procedures for disposing of properties in different States. This problem was explained in the Royal Australian Planing Institute submission:

> It is basically up to State and local governments to determine what the future use of land will be once it is surplus to Defence (Commonwealth) requirements. Most land is zoned Special Uses–Defence. While Defence can rezone land in NSW prior to disposal it cannot in Vic and Qld. Therefore dealings with local and state governments are essential…In Victoria the approach is one which is characterised by acceptance that no planning instrument can effectively bind any Defence land or other Commonwealth place acquired for a public purpose, while it remains a Commonwealth place…The NSW position is different…the NSW position is purely based on the argument that a state law can be effectively made affecting a Commonwealth and that it can lie dormant until the land is no longer a Commonwealth place.[16]

6.31 Once a property is no longer in Commonwealth hands, its use has to conform to state and local government zoning and other regulations. It is, therefore, incumbent

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15 *Committee Hansard*, 2 April 2001, p. 678.

16 Royal Australian Planning Institute, submission no. 58, pp. 7–8

on DEO to take into account the views of State Governments, local government and local communities when deciding the use to which surplus land will be put after divestment and the nature and scope of redevelopment undertaken prior to disposal. Where DEO does not agree with the proposed zoning for a property after divestment, it seeks to persuade the relevant authority to accede to DEO's proposed zoning requirement.

6.32 DEO had been negotiating for a long time with the Penrith City Council regarding rezoning of surplus lands at North Penrith and Werrington. Ultimately, DEO and the Council reached agreement in respect of both properties, where the plan for each property includes a mix of land uses.

6.33 The Mayor of Penrith, Councillor David Bradbury, told the Committee:

> We have five major sites within our local government boundaries totalling approximately 3,000 hectares of land and, if developed with a maximum yield for housing, they could deliver somewhere in excess of 45,000 homes across our city. The existing dwelling total throughout the city is about 50,000, so you can clearly see that Defence properties are really quite significant to the local community in Penrith. They have the capacity, if it were the view of successive governments to proceed that way, to double the size of our city. So we believe we have a real stake in expressing our concerns.[17]

6.34 Councillor Bradbury later explained the basis of the Council's position regarding the redevelopment of Defence sites:

> Another key issue for the local community which needs to be advanced is the fact that many of these sites were key employment generators within the community. I think that is a factor that is often not given sufficient consideration when decisions are made in terms of what the future use of the land is going to be and what the future outcomes for the land are. If you look at some of those sites, as a local community not only have we seen the number of jobs decrease and ultimately disappear, but we have found in many cases that the Department of Defence, through the Commonwealth, have proceeded with a development in those areas which does not bring in jobs in excess of the number of people that are brought into that area. That is a constant concern for us because it means that there is a net loss of jobs from our local government area as a result of those sorts of policies.
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> This is something that we are very cognisant of when we sit down and try and influence the planning outcome of certain sites. I think the signal site [Werrington], which you visited yesterday, is a good example of that, where we have sought very hard to try and achieve the best balance of residential and employment zoning within the site. Given the fact that the closing down of the particular site has meant a loss of jobs in the first instance, we are

17 *Committee Hansard*, 25 January 2001, p. 379

> then very concerned about making sure that we are able to achieve that mix and increase the number of jobs that are provided on the site.[18]

6.35 Mr Roger Nethercote, Environmental Planning Manager, Penrith City Council, wrote to the Committee on 27 April 2001 to set out the history of the planning for the redevelopment of the Werrington signals site once it was divested by DEO. After several earlier proposals that were all discarded, DEO approached the Council on 19 April 1999 with a proposal to divide the site between residential and employment uses and with land set aside for a railway station. Since then, the urban Design Advisory Service, a unit of the Department of Urban Affairs and Planning, provided a plan for medium to high–density residential development across much of the site. The Council was concerned by the viability of this approach and, ultimately, the Council and Defence went back to a variation of the 1999 proposal.

6.36 DEO consultant, Mr Trevor Sier, told the Committee that the difference in revenue from a mixed development at North Penrith and that from all residential development was not significant:

> The order of difference, say, might be $100,000 a hectare in globo. The order of magnitude is minimal for the site. The difference between the two, while there is a difference, is marginal.

6.37 In Queensland, the Lord Mayor of Brisbane, Councillor Soorley, told the Committee, in respect of land being sold by Defence at Wacol, that;

> We have said very clearly to the defence department that there are environmental constraints on the land at Wacol, and the environmental constraints on that land are clearly enunciated in the city plan. It is part of a green corridor. We have spent millions of dollars purchasing part of the green corridor. But the defence department thinks that they can mislead and convince developers that they can do whatever they like on that site and they will not have to wear the consequences.[19]

6.38 Councillor Soorley had previously said that:

> So if the Commonwealth sells a piece of land that has no zoning on it, the council then has to apply zoning. The zoning we have to apply must conform with the city plan.[20]

6.39 However, Councillor Soorley said that, if a site had a heritage listing, the Environmental Protection Agency 'basically has overriding activity in terms of any development that takes place'.[21]

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18 *Committee Hansard*, 25 January 2001, p. 381

19 *Committee Hansard*, 23 January 2001, p. 279

20 *Committee Hansard*, 23 January 2001, p. 279

21 *Committee Hansard*, 23 January 2001, p. 291

Bundock Street property, Randwick

6.40 In 1996, DEO began the process of disposing of the majority part (about 50 hectares) of the Bundock Street property (about 70 hectares). An Army base will continue to occupy the remaining 20 hectares of the site. It conducted a consultative program with the Randwick City Council and the local community with respect to its application to rezone the land.

6.41 The property is currently zoned 'Special Uses'. Until 1998, that zoning permitted Defence to build accommodation and other structures for its purposes. It did not allow the type of residential development that DEO sought approval for in its two Development Applications in October 1999.

6.42 Randwick council informed the Committee that:

> The changes allowing residential development in 'Special Uses' land happened in 1998, through the introduction of a new local environment plan for the City of Randwick. The purpose of this plan was to allow small scale infill residential development to take place without a need for a rezoning process. The provisions of the 98 plan were never designed to accommodate wholesale developments of the magnitude proposed by the Department of Defence.
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> In fact in less than 8 months after the introduction of the 98 plan, Council realised the 1998 plan's implication for the major sites and prepared and exhibited an amending draft plan in July/August 1999. The amended draft plan aimed to limit residential development of 'Special Uses' land to the underlying zoning (eg. Defence housing for Defence Land). This is because the aim throughout has always been to ensure that large scale redevelopment of 'Special Uses' land took place as an strategic planning exercise, not as an 'infill' and ad hoc exercise.
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> The amending LEP process took place well in advance of the lodgement of the development application by the Department of Defence in October 1999. In addition, Council had not been informed by the Department that it was preparing two development applications for the 36ha of the site. consequently, Council was of course unaware of any potential or impending inconsistency with the amending LEP and the Department's plans.[22]

6.43 DEO informed the Committee about the differences, in practical terms, between zoning applications and development applications in New South Wales. DEO said that a council was under no obligation to process a zoning application within a specific time. DEO said that 'Defence is of the view that most delays from most councils and most demands from most councils concerning rezoning do have justification in planning terms'. It claimed that, as a result of a lack of legal redress, a

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22 Randwick City Council, *Department of Defence–Land Bundock Street, Randwick*. Additional Information to the Senate Inquiry, 1 May 2001

contrary view was more widely held, although there was no empirical evidence to support that view.[23]

6.44 DEO went on to say that:

> In contrast, all councils are constrained by planning legislation in New South Wales to deal with development applications objectively according to their planning merits and reasonably. This constraint arises out of the express terms of the legislation and is available to be enforced by an applicant to the Land and Environment Court.[24]

6.45 In effect, prior to the new local environment plan of 1998, DEO had to seek a rezoning of the land subject of disposal and that there was no legal redress if the Randwick City Council delayed rezoning or made unjustifiable demands from a planning point of view. The 1998 LEP had the unintentional effect of allowing DEO to submit development applications for the Bundock Street property under its current 'Special Uses' zoning and not have to seek a prior rezoning of the land. Whereas there was no legal redress regarding the rezoning application, there was for the development applications. For the latter, if a council has not determined an application within 40 days, it can be deemed that the council has refused determination and the landowner may appeal to the Land and Environment Court to consider the application on its merits.

6.46 On 18 October 1999, DEO lodged two development applications with the Randwick City Council. The Council advertised the applications in local papers on 16 and 18 November 1999. A public information session was held on 15 November 1999, which was attended by more than 150 people. The Council notified DEO that, as a result of the interest in the applications, it was keeping the exhibit open to 31 December 1999. More than 1,000 submissions were received against the DEO proposals. On 29 January 2000, DEO lodged an appeal in the Land and Environment Court and, on 2 February 2000, advised the Council accordingly.

6.47 The Committee received detailed additional material from both the Randwick City Council and DEO concerning the project, each from its own perspective. The Committee does not intend to report claim and counter–claim in this report. Needless to say, each side vigorously questioned the motives of the other.

6.48 In essence, DEO formed the view that the Council was deliberately delaying the rezoning of the property and believed that the Council would not approve its development applications in the form that it proposed. It took advantage of the new local environment plan introduced in 1998, which had not been intended to cover the Bundock Street property, to lodge development applications, which were subject to

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23 DEO, Defence response to Additional Information, dated 1 May 2001, provided by Randwick Council to the Senate Inquiry, p. 4

24 DEO, Defence response to Additional Information, dated 1 May 2001, Provided by Randwick Council to the Senate Inquiry, p. 4

appeal in the Land and Environment Court. Those applications were lodged before the amendment to the LEP was gazetted, which would have closed that fortuitous gap.

6.49 It is obvious that that DEO planned early in its preparations of the development applications to take the matter to the Land and Environment Court, as the applications were structured in a way to give maximum advantage to DEO in the event an appeal was considered by the Court. DEO had previously successfully used the Court where it could not persuade relevant councils to support its applications.

6.50 Mr Craig Kelly, solicitor for DEO, told the Committee that the development applications were structured with a view to winning a court case:

> Except for lot 4 in the south–eastern corner and lot 1, on which the Army is presently operating, the development applications deal with the whole of the site. However, by virtue of my legal advice so as to increase the chances that we would succeed in this litigation, the development applications do not seek development consent in respect of lots 5, 6 and 7. What they do is to invite the council to impose a condition upon us that we will carry out embellishment of that land so it can be used for the public benefit. When that work has been completed, lots 6 and 7 will be dedicated to the public in right of Randwick Council.
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> In respect of lot 5, the development application invites the imposition of a condition that will require us to construct a community facilities building in accordance with the plan that is in the development application. When that building has been built, it will be dedicated to the council at no cost. Both of those propositions are costed in the development applications. The open space one, on our costings, will cost $1.08 million, and the community facilities building will cost $1.1 million. It is in that sense that I say that, except for lot 4 and lot 1, our application deals with the whole of the site, but we have a significant legal advantage in structuring it as I have outlined.

6.51 Following lengthy court proceedings, the Court finally decided, on 27 April 2001, that it refused consent for the two development applications. It addressed seven major issues, some of which the Court supported the DEO position and others of which it did not. The Court's key comment was:

> At the conceptual or planning level, however, the deficiency is of a more fundamental nature. The proposal is almost entirely based on small allotments, a form of development that has proved successful in the past in areas of semi–detached and terrace housing. Given the current desire of the public for large dwellings, small allotment subdivisions without any planning guidelines or controls on built form, have the potential to turn into residential environments with uncoordinated building form and discordant materials dominating over insufficient landscaping. In the final analysis, the conclusion that without adequate controls the proposed subdivision could lead to disastrous aesthetic results is a major factor in the Court's decision to refuse the applications.

6.52 The disposal of part of the Bundock Street property was by no means straight–forward. There is enough evidence to suggest that the Council's role was influenced by local politics and that DEO sought to gain maximum revenue from the sale of land, without sufficient consideration being given to community interests. It pursued its applications through the Court despite a thousand objections being lodged against it from the community. It is perhaps no wonder that Mr O'Brien was quoted at a meeting on 5 April 2000 between the Council and DEO (in notes prepared by a DEO consultant) as saying that the Council would do everything to fight DEO's development applications. The notes of the meeting record that he ended his comments with, 'Such action has been sought by the community'.

6.53 The Committee takes issue with DEO over what is regarded as adequate consultation. The Committee agrees with DEO that the consultation that took place in 1995–96 was not irrelevant to the development applications. One could reasonably characterise the consultation as referring to the future development of the property. However, the Committee believes that consultation is not something that just happens at the beginning of the project but should continue to occur through the life of the project. Consultation at Ermington and Yeronga did not stop after the initial planning was done; they continued through the project. That was one of the reasons for their success. DEO was remiss in not continuing consultation with the community in respect to the Bundock Street project. The Council gained succour through the support it achieved from the community. DEO should have sought to persuade the community that its plans were better than those put forward by the Council.

6.54 The Bundock project made it clear to the Committee that, despite the wording of the disposal policy and the assertion of DEO that 'revenue is not more important than consultation',[25] that the contrary is true, that revenue is more important than consultation. In this case, it is evident to the Committee that consultation, after the initial burst in 1995–96, took second place to the potential revenue stream from the development and sale of the property.

6.55 The Committee believes that DEO should only use litigation as a last resort, when every avenue of negotiation has been closed off. Even at that point, it should stand back and reconsider the strength of the case put by the local or state government or local community against the wishes of DEO. It should have considered, for example, in this case, the depth of community opposition to the two development applications reflected in about 1,000 formal objections received by the Council. It should be noted that litigation cost Defence $1.5 million and the Randwick City Council $1.3 million.

6.56 The Committee notes that Defence uses some Defence 'brand name' advertising to attract recruits to the ADF. The effect of such advertising will be reduced if the Defence name becomes tainted in some communities through serious

25 Mr Bernard Blackley, Director, Property Disposal Unit, DEO, Department of Defence, *Committee Hansard*, 16 March 2001, p. 563

disputes over the disposal of Defence lands. It is difficult to quantify damage done to Defence's image through negative perceptions generated by reports of such things as bashing in the Army, sexual harassment and disputes over use of former Defence sites. However, Defence cannot afford to continue to attract bad publicity as it will affect ADF recruitment and general public support for Defence.

6.57 If one part of Defence sees merit in using Defence's good name to achieve its goals, other parts of the organisation should exercise care to ensure that the name does not become tarnished through its operations.

6.58 Inevitably, at times, Defence may have to be firm where opponents to DEO plans for the disposal of a property are outrageously unreasonable. In most cases, however, where there is a difference of opinion on the future use of Defence land, DEO should strive to reach agreement with state or local government or with the local communities, which might involve a compromise in respect of plans for the site.

Point Cook RAAF Base

6.59 Mr Corey gave the Committee information about the recent history of the base:

> As background to this, Point Cook has been an issue of contention politically at both state and commonwealth levels since probably before 1990. It was the focus of a study as to its future use in the Melbourne basin airfield study in 1989, and the debate has been ongoing since then as to what its future use should be. Defence is determined that its long-term requirement for Point Cook, in an operational sense, is that there is not one. We moved the flying school out of there some years back and we are in the process of relocating the operational units—the training units, the RAAF college. That has been approved by government and it will happen over the next two or three years. So the only Air Force presence, as such, will be the RAAF museum in the longer term.
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> We have been dealing with state and commonwealth governments to develop a strategy for easing ourselves out of Point Cook for 10 years. But it has been brought into a whole range of issues—like the National Aerospace Museum of Australia, NASMA. The previous Premier of Victoria, Premier Kennett, had some agreement to develop an option for a space museum or an aerospace museum at Point Cook, and it was going to attracthalf a million to a million visitors a year. That did not happen. Premier Kennett withdrew funding from that project, so it died. A number of other options have been developed by the Air Force, principally encouraged by the RAAF museum, for future use at Point Cook. We have been attempting to come to grips with a strategy, at the political level, for 10 years—with very limited success, I might add.

6.60 The committee took evidence from people who were seeking to preserve the RAAF Base as an operation airfield and as a heritage precinct. Mr Mark Pilkington, Secretary, Point Cook Airfield Preservation Action Group, told the Committee:

> Certainly our view is that there have been ample efforts in the past to resolve the future of Point Cook. The consultative committee in 1993 headed by Mr Jones, the local Werribee member of parliament, examined the issue and had public consultation. There has been acknowledgment by the Australian Heritage Commission and Heritage Victoria of the site's national significance. DEO, or the defence department, has undertaken conservation studies in the past, such as the Alan Lovell report in 1993. Its conservation and heritage status seem to be more than well documented and understood. We really believe that there should be a long-term management plan for this site, rather than the uncertainty that has sat over it since 1993.
>
> We think it is an important state asset not only because of the heritage tourism opportunity and operating airfield assets that it provides to the state of Victoria but also because of its national significance as the location of the first military flight and a number of national flights of significance. The first east-west crossing by Kingsford–Smith left from Point Cook; the first north-south crossing of the continent left from Point Cook; the first international flight to the Solomon Islands by Sir Dickie Williams left from Point Cook; the first attempt for air–sea rescue left from Point Cook and the first circumnavigation of the continent left from Point Cook—so there is a number of important national flights. It was also the birth of army flying and naval flying in 1921 with the Naval Air Service.
>
> We think there should be a plan to retain it in government or public ownership in some form. We support the proposal put forward by the Point Cook Operations Ltd company to take over the site and run it as a not-for-profit heritage tourism park with commercial compatible tenants operating in various buildings.[26]

6.61 Ms Julia Gillard, the local federal member, said that she fully supported the preservation of the property on heritage grounds but also argued in terms of the needs of the local community. She told the Committee:

> The one thing the community does not lack for is new housing estates. The growth out in the Point Cook corridor and the Wyndham corridor generally is very intensive housing development. But what we do lack for is other sorts of infrastructure. And it seems to me that one of the great advantages of the Point Cook site is that it gives us an opportunity to provide something to a region which has historically been a disadvantaged region and which still faces great challenges, particularly the challenge of urban growth. We are faced with an opportunity to give a region like that a real asset, and in particular a real asset that would strengthen our tourism potential through the further development of the RAAF museum. That has the possibility of strengthening our educational infrastructure, because one of the proposals in terms of the PCOL plan is that RMIT, which runs flight training out of Point

26 *Committee Hansard*, 16 February 2001, pp. 409–10

> Cook, might deepen its involvement in Point Cook if it could get security for the long term.[27]

6.62 Air Vice Marshal Peter Scully (retired), Chairman, Point Cook Operations Limited, also argued for the preservation of the whole site:

> following the previous Minister for Defence's statement that Point Cook was surplus to requirements and was going to be disposed of, the present Chief of Air Force established a museum advisory committee to examine how the museum might best be managed in light of these new circumstances. That committee was very broadly based. It had museum professionals, an Air Force historian, the Australian Government Solicitor, Defence Estate Organisation, retired Air Force people, serving Air Force people and business people on board. That committee very quickly came to the view that the museum was just not viable when faced with unrestricted commercial development of the surrounding area at Point Cook. Firstly, the requirement for an airfield was absolutely essential; furthermore, the museum could not be developed adequately on the basis of just entry fees and sponsorship alone. That committee then very quickly turned its attention to the entire site, which we have now preferred to call the Point Cook heritage site. For all the reasons that the Point Cook Action Group and Julia have mentioned, the museum advisory committee very quickly realised that the first object was to preserve the entire site.
>
> So the conclusion was really to establish a not for profit company which would endeavour to obtain a long-term lease of the site from the Commonwealth and a long–term loan of the collection from the Air Force, which would enable it to conduct commercial and entrepreneurial activities, which would in their turn continue to fund the maintenance and development of the site and the ongoing further development of the Air Force museum. During the Museum Advisory Board deliberations, the constitution of that company was drawn up by the Australian Government Solicitor, as was a draft lease arrangement and also a draft loan arrangement. The Museum Advisory Board agreed to those three documents before the board wound up; the company was then formed in October 1999.
>
> The board, during its deliberations, also commissioned various studies by external experts into the viability of the proposals of the company acting in a commercial way to fund the site. These studies indicated that in fact the proposal was viable and that the proposal should proceed. Furthermore, because Defence Estate Organisation had maintained that they saw the value of the site at about $20 million, that Museum Advisory Board also engaged external valuers to give an independent assessment of the value of the Point Cook site. That valuation came to between $2 million and $4 million, taking

27 *Committee Hansard*, 16 February 2001, p. 435

> into consideration the difficulties with the agreed excising of heritage areas and also the contamination of various aspects of the site.[28]

6.63 The Committee also noted that other users of the site included a professional pilot training school run by RMIT International Pty Ltd, a commercial company founded by RMIT University; and the Point Cook Aero Club, all the flying operations of which are managed by the Royal Victorian Aero Club. Both were seeking long–term secure tenure at Point Cook.

6.64 On 8 May 2001, Dr Brendan Nelson MP, Parliamentary Secretary to the Minister for Defence, announced that a Steering Committee would be formed to determine the future of the RAAF Base. At the same time, he confirmed that Point Cook would remain an operational airfield. In a further announcement in September 2001, Dr Nelson announced the appointment of the Hon Don Hayward as the Chair of the Steering Committee. He went on to say that the Steering Committee would also comprise representatives from the Wyndham City Council, the Victorian Department of Premier and Cabinet, the Victorian Department of State and Regional Development, Heritage Victoria, the Department of Transport and Regional Services and the Department of Defence. He envisaged the task would take up to two years. The Steering Committee would also set up a Reference Group comprising of organisations and local community groups who use or have an interest in the facilities at Point Cook.

6.65 The Committee welcomes the appointment of the Steering Committee and the proposed appointment of the Reference Group. There is, at last, a co–operative effort under way to resolve the future use of the RAAF Base. The confirmation that the airfield will continue to be operational is important for the aviation museum, which is located on site. It has airworthy aircraft and needs an operational airfield on site to use such aircraft.

Small properties

6.66 In chapter 5, we have already referred to the fact that many of the properties subject to disposal are small properties, which contribute little to net revenue but provide DEO with many headaches.

6.67 The Cootamundra Shire Council sent the Committee copies of correspondence between it and DEO and other Council documents in relation to the disposal of the Cootamundra Drill Hall. Negotiations had been underway from late 1997 until they broke down in February 2000, when DEO informed the Council that, as a result of irreconcilable differences, DEO was going to put the property on the open market. In May 2001, when the Council sent the correspondence to the Committee, the property remained unsold.

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28 *Committee Hansard*, 16 February 2001, p. 437

6.68 From the correspondence, the sticking point seemed to be the different valuations placed on the property. The Australian Valuation Office (AVO), on behalf of DEO, valued the property at $85,000 while a local professional valuer provided a valuation of $40,000. The hall is being used by a cadet unit, which draws members not only from Cootamundra, but also from Young, Temora, Harden and Tumut. DEO first offered the property to the Council for $85,000 or the hall by itself for $15,000. This was rejected by the Council. The property was then offered to the Council for $30,000 plus legal costs, provided that the Council retained the property and allowed the cadet unit continuing access to the hall free of charge. The Council rejected the offer on two grounds. First, it was normal for Defence to pay for the lease of premises used by cadet units. If another site could be found, it was estimated that a lease would be in the region of $12,000 to $15,000 a year. Second, the property was suffering from years of inadequate maintenance. The Council considered that the property would be a drain on their finances in the future.

6.69 It is understandable why the Council rejected DEO's offers. If it had acceded to the compromise offer, the condition that the Council allow the cadet unit free access to the hall would, within several years, probably cost the Council more than if it had bought the property at the DEO valuation of $85,000.

6.70 In a letter dated 20 January 1999 to Mr Alby Schultz, MP, who had made representations on behalf of the Council, the then Parliamentary Secretary to the Minister for Defence, Senator Eric Abetz, wrote:

> While the amount of money involved may seem relatively small, the financial implications would be far more significant if the same approach was adopted nation wide. To the extent that the Commonwealth policy on disposal of assets permits, Defence has endeavoured to be fair and reasonable in dealing with rural Councils. The sale of similar properties has been negotiated successfully between other Councils and Defence on terms and conditions satisfactory to both parties. Furthermore, I believe Defence should be able to buy and sell property like any other organisation. In this regard, whenever Defence acquires training areas, communications sites or buffer areas around bases, it is expected to pay full market value for those properties.[29]

6.71 Senator Abetz asserted that 'While the amount of money involved may seem relatively small, the financial implications would be far more significant if the same approach was adopted nation wide'. The general principle is that DEO disposes of properties at market value, except for priority or concessional sales, which have to be approved by the Minister for Finance and Administration on a case by case basis. If a concessional sale is approved for a particular property, it does not follow that that approach will be used nation-wide. Each property has a different set of circumstances

29 A copy of the letter was supplied to the Committee by the Cootamundra Shire Council, among other documents relevant to this matter.

to be considered on its merits. In this case, the main difference of opinion is the market value of the property.

6.72 The difference in the valuations of the property is marked—the AVO valuation being double that obtained by the Council. Even though the Council obtained its professional valuation at the specific request of Defence, it was disregarded. Of course, a valuation is meaningless unless it reflects real market value.

6.73 While DEO and the Cootamundra Council could not agree on a valuation for the property, there remained the question of future accommodation for the cadet unit. The Committee understands that there is a lack of other suitable sites in Cootamundra. For the cadet unit to continue operating on the site after its disposal, the site would have to be bought by the Council or the community, as it would be unlikely that commercial interests would make space available to the cadet unit. It is clear from the documents supplied to the Committee that the Council would not buy the property for what it regards as an inflated value/price, especially as it would also have to renovate the buildings, which Defence had allowed to deteriorate through minimal maintenance.

6.74 Fortunately, common sense finally prevailed. On 7 August 2001, Dr Brendan Nelson, Senator Abetz's successor as Parliamentary Secretary to the Minister for Defence, wrote to the Mayor of the Shire of Cootamundra saying that:

> After due consideration, it has been determined, in keeping with the Government's recent commitment to cadets, to retain the drill hall, together with an appropriate area surrounding the hall. It is also intended to undertake maintenance and repairs to some of the facilities on site in the near future. The balance of the site will be placed on the open market following discussions with Council with regard to possible future use options.

6.75 The Council subsequently considered Dr Nelson's letter and the General Manager replied that 'councillors expressed satisfaction and relief that this matter has been resolved in a way that guarantees the future of the Cootamundra Cadet Unit'.

6.76 Mr Corey told the Committee that 'We devote a lot of time to resolve some of the issues relating to low–value properties'.[30] This, in the view of the Committee, is one of the problems of Defence's own making. With few staff allocated to the disposal function, too much time is spent trying to cope with disputes with local communities over relatively small amounts of money. Although DEO is trying to act in a commercial way in some respects, it often seems to become entangled in non-commercial bureaucratic procedures, which create and exacerbate difficulties with local communities. For example, no large commercial organisation would spend years haggling over $50,000 with the Cootamundra Shire Council for the drill hall. There is a lost opportunity cost for the capital tied up in the property in lengthy disposal

30 *Committee Hansard*, 16 March 2001, p. 571

processes as well as the costs associated with the process itself. Such haggling, too, only serves to tarnish Defence's image in the region and, ultimately, becomes a political issue, which is not usually in the interests of the government of the day.

6.77 Although DEO should, where possible, seek to get market value for properties, there is a strong argument in support of concessional sales for relatively low value properties where protracted sales, as a result of disputes with councils or residents, are not in the interests of Defence. This applies particularly to sites where there might be Defence–related activities but not restricted to those sites. The DEO disposal units are not staffed sufficiently to deal with protracted sales and, even from a financial point of view, an early settlement avoids all the staff, consultant and ancillary costs of a long and drawn out sale.

6.78 The Committee also believes that Defence cannot afford to alienate communities by trying to sell small properties for an end use incompatible with the interests of those communities. Defence depends on positive perceptions of Defence, particularly in order to reach recruiting targets. Once Defence alienates a community, it may have longer–term ramifications for Defence, such as for Defence recruiting. The dogged pursuit of the dollar at community expense may, therefore, be false economy.

Market value

6.79 The *Commonwealth Property Disposal Policy* provides that 'Commonwealth Property having no alternative efficient use is to be sold on the open market at full market value'. The question is: what is market value?

6.80 According to the Australian Valuation Office, the definition of 'market value', expressed in International Valuation Standards 2000, compiled by the International Valuation Standards Committee is:

> Market Value is the estimated amount for which a property should exchange on the date of valuation, between a willing buyer and a willing seller in an arm's length transaction after proper marketing wherein the parties had each acted knowledgeably, prudently, and without compulsion.[31]

6.81 The AVO also said that the API Professional Practice 2000 handbook defines 'market value' in identical terms, except for the substitution of 'asset' for 'property'.

6.82 The question remains, however, as to whether 'market value' in Commonwealth Government terms refers to the value of the property 'as is', with or without remediation; or with the land cleared, except for anything with heritage or environmental values requiring protection; or with some level of redevelopment? As the Department of Finance and Administration, which is the agency responsible for Commonwealth property matters, does not regard development beyond a clear site as

31 Australian Valuation Office, submission no. 61, p. 4

desirable, market value in Commonwealth terms would be the value of cleared and, where necessary, remediated land.

6.83 It follows logically that, if DEO carries out any development of a site beyond clearance and remediation, it is exceeding the nominal market value for which it has an obligation to secure under Commonwealth policy. Where considerable development is done before sale, DEO has ample leeway to compromise, if necessary, and still be in compliance with Commonwealth requirements.

6.84 The Committee is aware of DEO's Defence revenue targets, which are set by Defence based on DEO's revenue expectations for the ensuing year. If DEO is concerned that any compromise on revenue might in turn compromise its return for the year, this should be factored into its targets.

6.85 In two cases before the Committee, the valuation DEO received from the Australian Valuation Office (AVO) was significantly higher than valuations obtained by the local councils. In the case of the drill hall at Cootamundra, the AVO valuation was about double that of the local professional valuer. In the case of the former Dubbo RAAF Base, the AVO valued the property at $4.8 million while the NSW Valuation Office valued it at $1.9 million. As in both cases, the AVO valuation is about double that of alternative valuations, the Committee is concerned that one party, at least, in each case has been given a valuation not reflecting true market value. If the DEO valuation is too high, it will have difficulty selling the property. If the other party's valuation is too low, it will be unlikely to pay much more for the property.

6.86 The Committee believes that DEO should take greater cognisance of community and local government considerations in the development and sale of surplus Defence properties and, where necessary, act in a more flexible way to achieve successful outcomes for all concerned. It does not mean, however, that DEO should compromise in each and every case. Each case should be treated on its merits.