The Parliament of the Commonwealth of Australia

Inquiry into the disposal of Defence properties

REPORT OF THE SENATE FOREIGN AFFAIRS, DEFENCE AND TRADE REFERENCES COMMITTEE

September 2001

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TERMS OF REFERENCE

That the following matter be referred to the Senate Foreign Affairs, Defence and Trade References Committee for inquiry and report by the last sitting day in March 2001:

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

CONTENTS

Membership of the Committee *iii*

Secretariat *iv*

Terms of reference *v*

Table of contents *vii*

Recommendations *xi*

CHAPTER 1—Introduction 1

Background 1

Conduct of the inquiry 1

Access to information 2

Acknowledgements 2

CHAPTER 2—The Defence Estate 3

Introduction 3

The Commonwealth Estate 3

The Defence Estate 4

The Defence Estate Organisation 4

Recommendation 9

CHAPTER 3—Rationalisation of Defence properties 11

The property rationalisation policy 11

Current policy guidance 14

The legal environment 17

Sale and lease–back 18

Selling or retaining: the options 18

CHAPTER 4—DEO consultation with stakeholders 19
Introduction 19
The Committee's interim report 19
Sydney Disposal Unit 20
Non–Sydney properties 24
Conclusion 29
Recommendations 31

CHAPTER 5—Development of Defence properties 33
Introduction 33
Defence as a developer 33
Should Defence be a developer? 34
Conclusion 38

CHAPTER 6—Property disposal process 41
Introduction 41
Commonwealth land 41
Exceptions to the rule 44
The planning process 45
Heritage 46
Re–zoning 47
Small properties 57
Market value 60

CHAPTER 7—Other matters 63
Sale and lease–back of Defence properties 63
Maintenance of surplus properties 65
Leasing premises on surplus land 66

APPENDICES

Appendix 1: Submissions authorised for publication by the Committee 71

Appendix 2: Witnesses who appeared before the Committee 75

Appendix 3: Commonwealth Property Principles 79

Appendix 4: Commonwealth property disposal policy 83

RECOMMENDATIONS

Recommendation—Chapter 2, page 9

The Committee recommends that the Department of Defence ensure that DEO staff's personal and business skills/credentials be of the highest order to enable DEO to operate effectively with the business and broader community in this often sensitive area.

Recommendation—Chapter 4, page 31

The Committee notes that DEO is already obliged to consult stakeholders (including residents in the local area) in the disposal of surplus properties and recommends that DEO fulfils its obligations in respect of all properties for which it has responsibility for their disposal.

The Committee also recommends that DEO continues to consult stakeholders throughout the disposal process.

CHAPTER 1

INTRODUCTION

Background

1.1 The Senate referred the matter of the disposal of Defence properties to the Committee on 5 September 2000 for inquiry and report by the last sitting day of March 2001.[1] Subsequently, the Senate gave the Committee extensions of time to 27 September 2001 to present its final report to the Senate. The Committee initially addressed the first four terms of reference, which related to the disposal of the Artillery Barracks, Fremantle. It reported its findings and recommendations on the disposal of that property in an interim report, which was 'tabled' out of session on 3 January 2001.

1.2 Since then, the Committee has been considering the final three terms of reference, involving an examination of the broader issues concerning the disposal of Defence properties. In essence, the Committee has been assessing the performance of the Defence Estate Organisation (DEO) in disposing of Defence properties, mainly through case studies, to try to establish why some properties were disposed of successfully while others created considerable dissension within the local community. Where appropriate, the Committee has also drawn on evidence taken during the first part of the inquiry relating to the disposal of the Artillery Barracks, Fremantle.

1.3 The Committee wishes to emphasise that it has never been its intention to make specific recommendations about the disposal of particular properties. The information gained through submissions, site visits and public hearings has been used primarily to determine the processes used by DEO in the disposal of properties and to identify weaknesses and strengths in those processes. Analysis of this information has enabled the Committee to make recommendations aimed at improving DEO's processes in managing and disposing of surplus Defence properties.

1.4 The Committee notes that during the course of the inquiry, significant progress was made or turning points reached in the disposal of particular properties. The Committee has been following this progress with the help of interested parties.

Conduct of the inquiry

1.5 The Committee advertised the inquiry in the national press on 12 September 2000 calling for written submissions to be lodged with the Committee on all aspects of the inquiry. Initially, most of the submissions received by the Committee focussed on the disposal of the Artillery Barracks, Fremantle. Towards the end of that first part of the inquiry, the Committee reassessed the information contained in the submissions

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1 On 28 March 2001, the Senate extended the reporting date to 24 May 2001

relating to the broader issues of disposal of Defence properties. As a result of that process, the Committee wrote to a number of organisations, which had not up to that time contributed to the inquiry, seeking their input. A number of these organisations, or their constituent bodies, subsequently made submissions to the Committee. A total of 82 written submissions was received during both parts of the inquiry. These are listed in Appendix 1.

1.6 The Committee visited a number of Defence properties at Annerley, Yeronga and Witton Barracks, Indooroopilly in Brisbane; at North Penrith, Werrington, Dunheved, Ermington, Crows Nest, Randwick, Georges Heights and Middle Harbour in Sydney; and at Point Cook in Melbourne. In 2000, the Committee visited the Artillery Barracks, Fremantle and Hobbs Hall, Irwin Barracks, Karrakatta in Perth. The site visits familiarised the Committee with those properties, making evidence given in respect of them more pertinent.

1.7 The Committee conducted public hearings in Brisbane, Sydney, Melbourne and Canberra. Details of those hearings are contained in Appendix 2.

Access to information

1.8 Both of the Committee's reports and written submissions made to the Committee have been placed on the Committee's Internet web site [www.aph.gov.au/senate_fadt].

1.9 The Hansard transcripts of evidence taken at public hearings have been placed on the Hansard web site [www.aph.gov.au/hansard/]. There is also a link from the Committee's web site to the Hansard web site.

1.10 As not everyone has access to the Internet, copies of the Committee's reports, submissions and Hansard transcripts are also available on request from the Committee's secretariat in Parliament House, Canberra.

Acknowledgements

1.11 The Committee wishes to thank everyone who made written submissions, gave evidence at hearings or contributed in some other way to the inquiry. The Committee particularly wishes to thank Defence officers and consultants who assisted with the site inspections in Brisbane, Sydney and Melbourne.

CHAPTER 2

THE DEFENCE ESTATE

Introduction

2.1 In this chapter, the Committee describes the extent and scope of the Defence estate within the context of the overall Commonwealth estate. It also describes the establishment and structure of the Defence Estate Organisation (DEO) and its management of surplus properties in the Defence estate.

The Commonwealth Estate

2.2 The Defence estate needs to be considered in the context of the Commonwealth's overall property portfolio. This enables the size and scope of Defence's land holdings to be fully appreciated.

Scope of the Commonwealth Estate

2.3 The Commonwealth is one of the nation's major property owners. The Commonwealth's non–Defence property portfolio comprises approximately 400 properties in 50 countries valued at $2.4 billion. The portfolio includes Australian embassies and residences overseas, and commercial office buildings, law courts, laboratories and heritage properties within Australia.

2.4 During 1999–2000, 90 properties were divested, which realised revenue of some $295 million. Over the past three years, the divestment program has returned equity of more than $1.3 billion.[1] In addition, the Department of Finance and Administration (DoFA) Property Group has a 2000–2001 Key Performance Indicator of returning equity of $257 million to Government from the proceeds of its ongoing divestment program.[2]

Management of the Commonwealth Estate

2.5 The Property Group within DoFA manages the bulk of the non–Defence component of the Commonwealth estate. Other agencies, such as CSIRO, also manage minor property holdings. In 2000, DoFA contracted out the management of the estate to Price Waterhouse Coopers Pty Ltd while retaining responsibility and accountability for assets within the portfolio.[3]

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1 Department of Finance and Administration website, 'Divestment program' www.DoFA.gov.au/property/divestment.html

2 Department of Finance and Administration website, 'Introduction to Property Group' www.DoFA.gov.au/property/

3 see the Department of Finance and Administration website at www.DoFA.gov.au/property/introduction.html

2.6 Owing to a greater expertise in the conduct of the 'sale and lease back' process, DoFA has assumed responsibility for conducting divestments using this method across the entire Commonwealth estate, including most of the Defence properties subject to 'sale and lease back'.[4]

The Defence Estate

2.7 The Defence estate can be considered as a subset of the Commonwealth estate but, by itself, is a very large property portfolio amounting to a high percentage of the overall Commonwealth estate.

Scope of the Defence Estate

2.8 Unlike most Commonwealth departments, the Department of Defence is responsible for management of its own properties and is a major contributor to the management of the Commonwealth's infrastructure investment. The Defence estate comprises approximately 380 directly–owned properties covering some three million hectares and with a gross replacement value of over $14.5 billion.[5] In addition, the Defence estate includes approximately 300 leased properties and also a further 500 revenue–generating leases, which are managed by DEO.[6] The estate includes training areas, command headquarters, airfields, ship repair facilities, office and living accommodation, warehouses and explosive ordnance storehouses spread across the country. [7] This includes significant properties in capital cities as well as large bases and training areas in the outback and regional Australia.

2.9 Although it is beyond the scope of this inquiry, the Committee also notes the close relationship between the Defence Organisation and the Defence Housing Authority (DHA). DHA provides approximately 20,500 residences in 50 locations across Australia for Defence personnel, of which DHA owns 60 per cent.[8]

The Defence Estate Organisation

Formation of the Defence Estate Organisation

2.10 The way in which Defence has managed its property portfolio has seen considerable change during the past decade. This has been driven in part by changes in the wider Defence environment.

2.11 Prior to 1997, the management and control of the Defence estate was fragmented throughout Defence. While many of the functions in the management of

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4 Ms Kathryn Campbell, First Assistant Secretary, Department of Finance and Administration, *Committee Hansard*, 26 February 2001, p. 488

5 Department of Defence, submission no. 37, p. 259

6 Mr Rod Corey, Head, Defence Estate, Department of Defence, *Committee Hansard*, 16 March 2001, p. 556

7 Defence Estate Organisation homepage, www.defence.gov.au/deo/

8 For details see the Defence Housing Authority Website at http://www.dha.gov.au

the Defence estate were managed centrally within the Facilities and Property Division of the Budget and Management Program, the facilities operations functions were largely devolved to various elements in the three services (ie Army, Navy and Air Force).[9] The Report on Defence Efficiency Review, which was handed to the Minister for Defence on 10 March 1997, noted that managing the Defence estate is 'unambiguously a single coordinated task, which should not be devolved other than for tenant responsibilities such as minor fit out and housekeeping'.[10] The report then went on to recommend the establishment of DEO as follows:

> The present central and devolved functions should be combined in a Defence Estate Organisation responsible for all 'building owner' functions and managed on a national basis. The focus should be on corporate management (based on economic utilisation of assets) regulated by a user pays regime of internal rents. An owner tenant relationship should be established with funding of tenant responsibilities devolved to programs.[11]

2.12 As a consequence of the Defence Efficiency Review and the subsequent restructure of the Defence portfolio, the DEO was formed in July 1997, in order to centralise all planning and management functions of Defence's property portfolio.

Function and focus

2.13 DEO was established to provide Defence with a centralised estate management function. In reality, this is a wide–ranging and extensive brief:

> The DEO manages on a national basis, on behalf of the Defence portfolio, all buildings, infrastructure, and property as corporate assets. It is responsible for all building owner and landlord functions. The DEO manages the estate functions of investment, reinvestment, repair and maintenance, acquisition, leasing and divestment. It develops strategic planning and business policy on estate functions, manages the development and delivery of capital facilities projects, undertakes corporate estate management, provides environmental policy development and monitoring of Defence activities, and provides planning and facilities operation and maintenance support to bases and establishments throughout Australia.[12]

2.14 Mr Corey went on to explain that:

> The business of the estate organisation is an integral element of Defence capability, and is inseparable from key Defence outputs and government requirements. The need to respond to the evolving capability of Defence requires a focus on the following major goals:

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9 Addendum to the Report of the Defence Efficiency Review—Secretariat papers, 1997, p. 221

10 The Report of the Defence Efficiency Review, 1997, p. 40

11 Addendum to the Report of the Defence Efficiency Review—Secretariat papers, 1997, p. 235

12 Mr Rod Corey, Head, Defence Estate, Department of Defence, *Committee Hansard*, 16 March 2001, p. 555

- To optimise Defence Estate outcomes for the government and the portfolio.
- To effectively manage the Defence Estate to meet the capability needs of Defence groups.
- To add value to, and be innovative in the management of the Defence Estate.
- To effectively manage the relationship between DEO, industry and the community.[13]

Structure, staffing and budget

2.15 DEO consists of a central office in Canberra and nine supporting regional offices throughout Australia.

2.16 The central office component has four branches covering the following functions:

a) Resources and policy

b) Project delivery

c) Property management (including disposals), and

d) Estate operations and planning.[14]

2.17 DEO's regional offices administer varying–sized regions, focussing on delivery of the facilities operations program. This includes repairs and maintenance, minor new works, property and environment management, and ensuring a link between the end user/tenants to DEO.

2.18 Capital works are normally developed and managed from the Canberra office.

2.19 DEO has a staff of 355 military and civilian personnel, with approximately 215 located in the nine regional offices. DEO's budget for 2000–01 is approximately $600 million.[15] During 1999–2000, more than 95 per cent of the total cost of managing the Defence estate was provided commercially on a competitively–tendered basis.[16]

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13 Mr Rod Corey, Head, Defence Estate, Department of Defence, *Committee Hansard*, 16 March 2001, p. 556

14 For further detail on these areas see the DEO website at www.defence.gov.au/deo/documents/background.htm

15 Mr Rod Corey, Head, Defence Estate, Department of Defence, *Committee Hansard*, 16 March 2001, p. 556

16 Mr Rod Corey, Head, Defence Estate, Department of Defence, *Committee Hansard*, 16 March 2001, p. 556

The disposal function

2.20 The function of disposing of surplus Defence properties is the responsibility of the two disposal units located within DEO’s Property Management Group. They are:

a) The Canberra Disposal Unit is responsible for the disposal of all surplus Defence property outside the Sydney area, currently managing the disposal of 120 properties.[17] It has a staff of seven personnel, headed by a Director.

b) The Sydney Disposal Unit is responsible for the disposal of all surplus Defence property within the Sydney region, currently managing the disposal of 19 properties.[18] It is staffed with five personnel, comprising a Director, two Assistant Directors, a Financial Controller and an Executive Assistant.

2.21 At the request of the Committee, DEO supplied details of academic qualifications of staff in the two disposal sections. The Committee noted that few staff had qualifications specific to the disposal functions although some qualifications (eg administration and civil engineering) were not inconsistent with such functions. Throughout both areas, staff were studying for various qualifications, mainly related to the commerce/management disciplines.

2.22 DEO emphasised that most of the disposal work of the two sections has been done by consultants, which, in 1999–2000, cost $30 million.

2.23 In response to a question whether DEO had enough expertise among its staff in order to supervise consultants, Mr Corey told the Committee:

> We have established panel arrangements with the consulting industry generally and, in particular, the property consulting industry, and it is based largely on performance. We continue to employ people who perform well and whose performance is proven. That gives us more confidence in the outcome we are getting. We have had pretty much consistency with retaining our people. The jobs are quite interesting and quite challenging.[19]

2.24 Mr Nigel Macdonald, a consultant engaged by the Sydney Disposal Unit, told the Committee about the work of consultants:

> In terms of the freedom of action, looking at sites and the constraints and opportunities, looking at the technical issues that are part of looking at the

17 Mr Rod Corey, Head, Defence Estate, Department of Defence, *Committee Hansard*, 16 March 2001, p. 673

18 Mr Rod Corey, Head, Defence Estate, Department of Defence, *Committee Hansard*, 16 March 2001, p. 673

19 *Committee Hansard*, 2 April 2001, p. 669

> disposal of a site and looking at the community issues and consultation issues is done in a collaborative manner between the consultant team and the relevant manager within the Defence Estate Organisation who manages that team. So the objectives are usually set down quite early in the piece, going through each of those categories of engineering, consultation, planning constraints, opportunities. All of those objectives are laid down quite early.
>
> Briefs are put in place for the various consultants in terms of what they must achieve and what they must do. Then those briefs are then undertaken. Then they come back to the relevant manager in the way of a review, typically in a report. One of the methods that the Defence Estate Organisation use—quite successfully, I think—is that on things that are controversial, tricky, high risk, they tend to get them peer reviewed. So then they will get someone quite separate—a separate consultant who has not been involved in it—to come along and review the results of those reviews. That seems to be quite a powerful process in minimising risk and making sure all the issues are properly dealt with on the table. There is a degree of flexibility for the consultants in doing the role, but it is strictly within the briefs that are laid down by the relevant manager within the Defence Estate Organisation.[20]

2.25 Mr Corey made an additional comment:

> Just to add to Nigel's view of that, we also have a periodic—three-monthly or six-monthly, in some cases—review of all the major properties as to where they are at. I will sit on that. I will chair a review. Bernard and others will sit on it. We will go through each of the properties, understand what the issues are and give some directions as to the way ahead. We continually manage the consultants that are engaged in the process; so we know where they are at, they know where they are at, and we know who is carrying what risk.[21]

2.26 The Committee understands the need to engage a range of consultants to cover the many disciplines required in the disposal of properties, especially those properties with contamination or with heritage or environmental values to be evaluated and, where necessary, protected. It would be impracticable to employ them within DEO. The Committee questioned DEO whether it had expertise within the organisation to supervise fully the work of consultants. Despite DEO's confidence that it had the expertise and experience necessary to supervise consultants, the Committee does not completely share that confidence. The decision in the NSW Land and Environment Court to withhold consent from two development applications in relation to the Bundock Street Defence property only serves to deepen the Committee's concern.

2.27 The question was raised in the inquiry whether DEO should be redeveloping properties to the point of seeking approval for roads and sub–divisions down to

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20 *Committee Hansard*, 2 April 2001, p. 670

21 *Committee Hansard*, 2 April 2001, p. 671

individual blocks of land. The Committee discusses this question later in the report. Suffice to say here, that, if DEO proceeds down the path of redevelopment, it needs some commercial development expertise in–house to ensure that consultant recommendations for redevelopment are, indeed, appropriate. The Committee does not believe that experience alone can compensate for lack of expertise. Moreover, if two or three experienced officers were to leave DEO, it could be left floundering without expertise or experience.

Recommendation

The Committee recommends that the Department of Defence ensure that DEO staff's personal and business skills/credentials be of the highest order to enable DEO to operate effectively with the business and broader community in this often sensitive area.

CHAPTER 3

RATIONALISATION OF DEFENCE PROPERTIES

The property rationalisation policy

3.1 Although there are many reasons for Defence to declare a property surplus and commence disposal action, property rationalisation within Defence has resulted from two main initiatives:

a) an ongoing whole of government policy to reduce its property holdings throughout Australia; and

b) evolving Defence policy that has seen substantial changes in the state and deployment of the Australian Defence Force.

Government property rationalisation

3.2 The rationalisation of the Commonwealth estate has been proceeding for some time. The broad philosophical basis for the ongoing rationalisation was outlined by DoFA officers during their appearance before the Committee:

> But the point is that the Commonwealth is not a property company and this is an opportunity cost of capital and the Commonwealth has determined that there are better things for it to do than be a property holding company.
>
> [Private sector companies] believe that their capital should be focussed on their core business rather than owning property. The government has a similar view—that the ownership of property is not their core business.[1]

Defence driven property rationalisation

3.3 The Defence policy on estate management has seen considerable change during the previous decade, driven by a number of changes in the wider Defence environment.[2] The Defence Efficiency Review noted in 1997:

> While the current disposition [of the Defence estate] is largely historically based, major facilities decisions in recent times have been driven primarily by strategic considerations.[3]

3.4 In its submission, Defence also noted the considerations of Defence's basing policy:

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1 Ms Kathryn Campbell, Department of Finance and Administration, *Committee Hansard,* 26 February 2001, pp. 489–90

2 Much of the following is drawn from Department of Defence, submission no. 37, p. 258

3 Future Directions for the Management of Australia's Defence, addendum, p. 213

> Defence basing policy is predicated on the development and maintenance of Australian Defence Force (ADF) capability to meet operational and strategic requirements. This further influenced by factors that are fundamental to the delivery of capability including support, personnel and training requirements.[4]

3.5 The operational and strategic requirements that have led to changes in the disposition of Defence units include:

a) the move of the 1st Brigade to Darwin as part of the 'Army Presence in the North' policy;

b) the development of a fleet base at *HMAS Stirling* in Western Australia under the Two Ocean Basing policy;

c) the development of a chain of bare air bases in northern Australia;

d) a drive to maximise tri–service functions has also led to the amalgamation of many of the logistics, training and administrative facilities of the individual services; and

e) the Commercial Support Program (CSP) has seen the outsourcing of many Defence support services to private contractors.

3.6 Each of these has resulted in changing property requirements across the Defence Estate, with new facilities being created while older, often single service facilities, became surplus to requirements.

3.7 Defence studies also demonstrated that the costs of facilities and accommodation could be minimised by ensuring that bases are kept beyond a certain minimum size. As the Defence Efficiency Review explained:

> Smaller bases do not provide economies of scale and available data indicates that per capita operating costs increase significantly for bases with less than 1000 personnel.[5]

3.8 In general, Defence also pointed out that, as there is a direct relationship between the Defence estate asset value and operating costs, it will always be important to minimise the overall size of the Defence estate, within the constraints of fulfilling the Defence task. [6]

3.9 Defence's changing strategic and operational posture gives the opportunity to rationalise further property holdings in the capital cities and move from high–value metropolitan sites to lower–value regional sites that fit with Defence's requirements.

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4 Department of Defence, submission no. 37, pp. 258–9

5 Future Directions for the Management of Australia's Defence, addendum, p. 228

6 Department of Defence, submission no. 37, p. 259

Defence said it will continue to pursue such opportunities. During the last few years, for example, Army elements have moved to Puckapunyal and Townsville from Sydney Harbour foreshore sites, the Hydrographic Office has moved from North Sydney to Wollongong, and the major Defence office at 350 St Kilda Rd Melbourne has been sold and significant elements relocated to Laverton.[7]

3.10 In the light of these considerations, a number of Defence studies examined the facilities requirements for the ADF, including the:

- Naval Infrastructure Strategy 2010;
- ADF Airfields Study;
- Review of Army's Long Term Facilities and Training Area Requirements;
- Facilities Rationalisation Study 1992;
- Force Structure Review 1991; and
- Defence Efficiency Review 1997.

3.11 These factors led to the sale of about 170 properties or parts of properties since 1991 with gross receipts of around $450 million. Defence is continuing its rationalisation and consolidation of the Defence estate and proposes to reduce its property portfolio by a further 25 per cent over the next five or six years.[8] In financial year 2000–01, Defence expects to return approximately $97 million to its budget from property disposal, with this figure rising to $173 million in 2001–02.[9] Defence explained that:

> This gives the opportunity to rationalise property holdings further in the capital cities and move from high value metropolitan sites to lower value regional sites that fit with Defence's strategic requirements and Defence will continue to pursue such opportunities. During the last few years, for example, Army elements have moved to Puckapunyal and Townsville from Sydney Harbour foreshore sites, the Hydrographic Office has moved from North Sydney to Wollongong, and the major Defence office at 350 St Kilda Road Melbourne has been sold and significant elements relocated to Laverton.[10]

7 Department of Defence, submission no. 37, p. 259 [see also 169]

8 Department of Defence, submission no. 37, p. 259

9 Mr Rod Corey, Head, Defence Estate, Department of Defence, *Committee Hansard,* 2 April 2001, p. 667

10 Department of Defence, submission no. 37, p. 259 [see also 169]

Current policy guidance

3.12 Defence is guided in the ownership and disposal of properties by both government-wide and Defence–specific policies.

Commonwealth property principles and the Commonwealth property disposals policy

The Commonwealth property principles

3.13 In summary, the Commonwealth property principles set out the circumstances in which the Commonwealth Government should own property. Embedded in the principles is the presumption that, in general, property should not be Commonwealth-owned unless the rates of return exceed a predetermined level. The aim of the property principles is to provide guidance on when the Commonwealth should own property:

> The Commonwealth property principles generally apply to land that Commonwealth is still using and [they guide] whether or not it should remain in [Commonwealth] ownership.[11]

3.14 Mr Stephen Bartos, General Manager, Budget Group, DoFA, told the Committee that a rate of return of 14 to 15 per cent is currently applied throughout the Commonwealth property principles.[12] Ms Kathryn Campbell, First Assistant Secretary, Property Group, DoFA, added:

> The internal rate of return calculations generally look at the property over a ten to fifteen year period and take into consideration the costs that are likely to be invested in the property over that period, as well as the likely income from the property and determine the rate on that aspect.[13]

3.15 In addition, a property may remain in Commonwealth ownership if there are public interest considerations that outweigh economic considerations. Examples listed include symbolic significance, environmental, heritage or security requirements.[14] Importantly, the onus is on each government agency to justify retaining a property in public ownership.[15] The practical operation of these principles is examined in greater detail below.

3.16 The Commonwealth property principles detail a number of measures required to encourage efficient, effective and transparent decision-making and accountability.

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11 Ms Kathryn Campbell, Department of Finance and Administration, *Committee Hansard,* 26 February 2001, p. 477

12 Mr Stephen Bartos, Department of Finance and Administration, *Committee Hansard,* 26 February 2001, p. 474

13 Ms Kathryn Campbell, Department of Finance and Administration, *Committee Hansard*, 26 February 2001, p. 475

14 Commonwealth Property Principles, paragraph 2

15 Commonwealth Property Principles, paragraph 3

However, Mr Stephen Bartos, when questioned about the calculations that determined the sale and lease back of a number of Defence properties, stated:

> In terms of whether or not these properties met the hurdle rate as applied in the property principles, yes that was done. The calculations were done prior to decision by cabinet. … If these form part of a cabinet submission, they are not going to be made available.[16]

3.17 Although the Committee respects Cabinet confidentiality, the withholding of figures in this way is contrary to the policy of transparency and accountability laid down in the Commonwealth property principles. The inclusion of facts and figures in a Cabinet submission does not, of itself, render those facts and figures confidential. Cabinet submissions often contain information, which neither the Government nor anyone else would consider to be confidential. Unless those facts and figures have some inherent reason to be confidential (eg their release would be contrary to our national security interests), they should not be withheld from public release solely on the grounds of having been used in a Cabinet submission. The withholding of such information is not only contrary to principles of public accountability but also fosters the perception that such information would not stand up to scrutiny if released and that the withholding of that information is intended to prevent such scrutiny.

The Commonwealth property disposal policy

3.18 Once a Commonwealth property has been listed as surplus to requirements, the Commonwealth property disposal policy provides the requirements for property disposal. Foremost in this policy is the general principle that 'Commonwealth property to be sold is to be sold on the open market at full market value.' However, exceptions to the rule are provided for in the case of 'priority sales' and 'concessional sales'.

3.19 Priority sales are those made to the purchaser without offering the property on the open market, and may be made in limited circumstances to former owners of the property, Commonwealth–funded organisations, or where the sale to a State or Territory Government would advance Commonwealth policy interest. The sale should still be at full market value. DoFA officers stated that 'priority sales, indeed, are not encouraged'.[17]

3.20 Concessional sales are a type of priority sale where the price is below market value. They also require the permission of the Minister for Finance and Administration to proceed. While specific comment was not made, it can be assumed that these sales are discouraged more than priority sales.

16 Mr Stephen Bartos, Department of Finance and Administration, *Committee Hansard*, 26 February 2001, pp. 474–5

17 Mr Paul Ferrari, Department of Finance and Administration, *Committee Hansard,* 26 February 2001, p. 483

Defence policy

3.21 The plan for disposing of Defence properties across the short, medium and long term is articulated within the Defence Estate strategic plan. This plan is designed as a portfolio–level document to provide the longer–term planning framework for the rationalisation and consolidation of the Defence estate over the next 20 to 30 years. According to DEO:

> The [strategic plan] is to be supported by detailed business case studies and facilitate the executive decision making process. The progressive implementation of the [strategic plan] will be instrumental in meeting DRP targets for property disposals and efficiency savings.[18]

3.22 The Committee sought a copy of the strategic plan from Defence to assist in its inquiry. However, the Minister for Defence declined to release it, owing to the latest revision not having been considered by government.

3.23 The unavailability of the strategic plan makes it difficult for the Committee to address in any meaningful way the first part of term of reference 5 regarding how the ADO decides whether property is surplus to requirements.

3.24 However, during another inquiry into recruitment and retention of ADF personnel, the Committee received evidence that the rationalisation and consolidation of bases in operational areas has had ramifications for recruitment and retention, especially the latter. As the majority of ADF members are recruited in the southern States, which is where most of their families and friends live, the closure of many bases in the southern State capital cities has had the effect of giving fewer serving members, particularly in Army, the opportunity to serve near family and friends and to live in cities, which have good facilities and amenities and better employment opportunities for spouses than in most other areas where there are large bases. As further rationalisation occurs, this will become increasingly a recruitment and retention issue.

Defence Estate Divestment Plan

3.25 In a DEO document entitled *Property Disposals Policy Framework*, there is reference to the Estate Divestment Plan. It states:

> The Estate Divestment Plan (EDP) is the endorsed five-year property disposal program. It is made up of the list of potentially surplus Defence properties, its primary source being the SPDE [Strategic Plan Defence Estate]. It includes estimates of the revenues expected from each disposal and of the costs involved in achieving them. The EDP is reviewed and endorsed annually by the DEE, and plays an important part in development of the DEO's component of the FYDP.

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18 *Defence Estate Organisation—The Way Ahead,* available on http://www.defence.gov.au/deo/documents/deob.pdf

> The EDP is over programmed by 10 per cent as a mechanism for ensuring Defence Estate can meet FYDP guidance for receipts. To achieve the higher revenue target, additional disposal projects are positioned in the FYDP until the cumulative revenue estimate for any year of the FYDP is 10 per cent greater than the guidance figure of that year.
>
> Endorsement of a disposal project as part of the EDP authorises disposal officers to raise purchase orders and expend funds to determine the extent of site constraints and opportunities and how they can best be dealt with. The EDP is reviewed and revised twice each year to reflect the latest revenue and expenditure projections, as information is gathered about the costs of preparing sites for sale, and about changes to valuations.
>
> After analysis of the property constraints and opportunities and before funds can be expended on planning actions, remediation or marketing, a Disposal Strategy must be prepared presenting a business case on the disposal strategy to the appropriate delegate for approval.
>
> The EDP is closely linked to the Green Book. Appreciation of this linkage is particularly important where the timing of a disposal at one location is dependent on the completion of a Green Book project at another. Development and review of the two programs in the same timeframe is an important factor in the coordination and planning of related projects.[19]

The legal environment

3.26 In examining the disposal of Defence properties, it is also important to consider the wider legal context in which these disposals occur. The *Land Acquisition Act 1989* (LAA), which is under the responsibility of the Minister for Finance and Administration, provides the legal framework within which Commonwealth property is administered. Any disposal of Commonwealth property requires authorisation under the LAA.[20]

3.27 As the owner of land, Defence is bound by Commonwealth legislation in relation to issues such as heritage conservation[21] and environmental protection.[22] However, as a Commonwealth agency, it is not bound by State or Territory legislation. In the context of Defence disposals, this is significant in that Defence is not obliged to comply with local planning, environment or heritage laws. Nevertheless, once Defence sells the property, the new owner is bound by these laws, so, in practice, Defence has to take them into account prior to sale.

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19 The DEO document was supplied to the Committee under cover of a letter from Mr Ross Bain, Assistant Secretary, Property Management, dated 30 April 2001

20 Department of Finance and Administration, submission no. 47, p. 94

21 *Australian Heritage Commission Act (Cth) 1976*

22 *Environment Protection & Biodiversity Conservation Act (Cth) 1999*

Sale and lease–back

3.28 Sale and lease–back arrangements apply when a property continues to be required by Defence but the financial benefit of keeping the property does not meet the 'hurdle rate'. When this occurs, the property is sold at market value and then leased back to Defence as part of the sale contract. Under most circumstances, Defence would enter into long-term lease arrangements with options for lease extension to gain security of tenancy.

3.29 During the inquiry, the Committee examined the sale and lease–back of Defence properties in the Melbourne and Sydney CBD and the Defence Headquarters complex at Russell in Canberra. The use of sale and lease–back will be discussed later in the report.

Selling or retaining: the options

The application of the property principles and disposal policy

3.30 The operation of the Commonwealth Property Principles and the Commonwealth Property Disposal Policy leave little room for ambiguity. If the property is declared surplus through lack of requirement or does not meet the 'hurdle rate' for retention under the Property Principles, the property then falls under the Disposal Policy. As previously stated, the disposal policy has the underlying principle of sale at market value. However, according to the policy, when certain other considerations are present, the property may also be disposed of as a priority sale, again at market value, or a concessional sale, at less than market value.

3.31 Evidence given by officials of both the Departments of Defence and Finance and Administration has made it clear that priority and concessional sales are both discouraged. Evidence given to the Committee by Mr Paul Ferrari, Acting Branch Manager, Competitive Tendering and Grants Branch, DoFA, supported this view:

> Priority sales, indeed, are not encouraged. Quite clearly the policy on disposal of surplus property is to sell the property on the open market at full market value. There are some circumstances where priority sales are possible, but they are fairly limited circumstances. Within the Commonwealth they are fairly tightly controlled in the sense that it is the Minister for Finance and Administration who has ultimate responsibility to approve such priority sales, and he would normally do so on the basis of a recommendation from another minister. The case for such consideration would need to be developed and put to the Minister for Finance and Administration by that other Minister.[23]

23 Mr Paul Ferrari, Department of Finance and Administration, *Committee Hansard*, 26 February 2001, p. 483

CHAPTER 4

DEO CONSULTATION WITH STAKEHOLDERS

Introduction

4.1 In its interim report, the Committee reported that one of the three objectives DEO seeks to meet in property disposals is 'To consult with stakeholders'. The Defence submission goes on to say that the 'property disposal process includes … consultation with Federal, State and local government agencies and other appropriate stakeholders …'[1]

Committee's interim report

4.2 In its interim report, the Committee criticised DEO for not beginning the consultation process much earlier than it did in respect of the Artillery Barracks, Fremantle. DEO did not begin its consultation process until after the Minister for Finance and Administration had given approval in principle for a priority sale of the property to Notre Dame University, which was some 18 months after it began investigating a priority sale. When that consultation process began, there was no clean slate; DEO had a very firm view as to what it wanted to do with the site.

4.3 Defence asserted that even though the Minister for Finance had given approval in principle to a priority sale of the site to the University of Notre Dame, that did not preclude other interested parties from making bids for the site. That might have been the case, but there was a public perception that Defence was pursuing its preferred outcome with a single mindedness that was a disincentive to any other body that might have been interested in the property.

4.4 With regard to the Fremantle City Council's interest in the site, the Committee commented in its interim report, as follows:

> Defence told the Committee that 'I do not think anybody twigged that the City of Fremantle would have had an interest. We were dealing with Notre Dame. We were not necessarily dealing with the City of Fremantle. The City of Fremantle had never come forward and expressed any interest.'[2] The fact that the City of Fremantle owns the Cantonment Hill Reserve, which borders on, and is largely surrounded by, the Defence property should have, at the very least, been a signal to Defence that the Council might have had an interest in the rest of the property or part of it. Apart from that factor, the site was originally owned by the Council, before its compulsory acquisition

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1 Department of Defence, submission no. 37, p. 3

2 Mr Rod Corey, Acting Deputy Secretary, Department of Defence, C*ommittee Hansard*, 10 November 2000, p. 220

> by the Commonwealth in 1909 and, moreover, it would obviously have an interest in the future use of the site, even if it did not want to buy it.

4.5 In its interim report, the Committee drew attention to what it regarded were the deficiencies in DEO's consultation process in the disposal of the Artillery Barracks, Fremantle, but made no general recommendations on consultation, preferring to defer them to the final report. In so doing, the Committee did not want to extrapolate from a single case study or prejudge the evidence to be taken during the second part of the inquiry.

4.6 Consultation remained a key and contentious issue throughout the inquiry.

4.7 Inevitably, in an inquiry of this nature, most of the written submissions, which focussed on the disposal of individual properties rather than on disposal processes generally, were critical of DEO's performance. As the Committee was aware that the sale of some Defence properties went through with little or no opposition, it asked the DEO to nominate some such properties. Apart from redressing the balance a little, it gave the Committee an opportunity to assess why some sales aroused passionate opposition to DEO proposals while others did not.

Sydney Disposal Unit

4.8 DEO told the Committee that the Sydney Disposal Unit was responsible for disposing of surplus Defence properties in metropolitan Sydney as well as a couple of other properties. The disposal of Defence properties in other parts of New South Wales as well as the rest of Australia was the responsibility of the Disposal Section based in Canberra.

4.9 Mr Bernard Blackley, Director of the Sydney Disposal Unit, told the Committee that:

> There are, in fact, three objectives of the Property Disposal Unit. The first is to optimise revenue …;and the second is to follow sound and modern planning principles. … The third objective is to engage in wide and proactive consultation with all relevant stakeholders. One of those objectives is not more important than the others. Revenue is not more important than the consultation.[3]

4.10 Mr Blackley said that, initially, he visits the Mayor of the local government area in which the surplus Defence property is subject to disposal. Apart from introducing himself, he said he tries to find out the Mayor's views about the use to which the property might be put after disposal. Another reason for seeing the Mayor is to ask the Mayor and his Council 'how they want us to go about the consultation process'. He went on to say:

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3 *Committee Hansard*, 16 March 2001, p. 563

> Defence does not determine that it will be a widely pro–active consulter. That is determined by council. We follow council rules that have been set up at these initial meetings. So it is important to know where council is coming from because, frankly, some councils do not want you to consult. When we visit some properties there are councils that prefer not to consult. They want to make the decision. When the decision has been made—and I will not refer to actual properties—council will put the property on public exhibition and seek public comment. Other councils, like Randwick, Parramatta and Ermington councils, like to do it more pro–actively. They want to start the process in a public way.[4]

Ermington

4.11 With regard to Ermington, Mr Blackley said that, following an initial meeting with the Lord Mayor of Parramatta, a couple of 'partnership workshops' were held between the Council and DEO and consultants, 'at which an independent facilitator would talk about those lovely fluffy ideas of partnership, trust, commitment, passion, communication and respect'.[5] After these workshops, the Lord Mayor suggested that a public meeting be held at the Ermington Community Centre, which was attended by 400 people. Mr Blackley said that from 'the floor of the public meeting the Lord Mayor called for nominations to form a community reference committee, which subsequently became known as the Ermington Residents Committee'.[6] He went on to say that [t]welve people were elected to this committee. They have been Defence's planning team and planning manager for the last five years and they have added real value to the process. They are used as a forum where information from the community is put into the planning process. The team disseminates that information and sends it back to the community.'[7]

4.12 Mr Kenneth Newman, the Chairman of the Ermington Residents Committee, told the Committee that:

> Initially we were a properly formed, properly constituted committee under the local government act. That is the secret right from the start in any of these processes, instead of just having public meetings and various groups coming in and out doing their thing and disappearing. The key thing is that you have some authority to hold proper consultations. We got all the possible interested groups. We did not wait for them to put up their hands. We invited them to come along individually, even to open days on the site. We had the council, Defence and their planners with our group and we got people to walk the site and talk about it. All these so-called fears and reservations that people had seemed to disappear very quickly. We were open-minded. One of the best communication systems, as well as the local

4 *Committee Hansard*, 16 March 2001, p. 564

5 *Committee Hansard*, 16 March 2001, p. 564

6 *Committee Hansard*, 16 March 2001, pp. 564–65

7 *Committee Hansard*, 16 March 2001, pp. 564–65

> paper, has been a very effective Neighbourhood Watch group. They put out a newsletter to 1,400 residents surrounding the site. We put a column in that of current updates and the phone numbers of the chairman and me. We are well known in the area. People contacted us and hundreds of calls came in to discuss any problems or make suggestions to be considered at our meetings.[8]

4.13 Mr Newman also said that the Residents Committee suggested a number of proposals to enhance the development plan, which DEO adopted.

4.14 Ermington has undoubtedly been a successful venture for DEO in terms of community consultation and achieving a redevelopment plan that has the support of all sides. There was genuine consultation with the community, which has been continuing throughout the life of the project.

Crows Nest

4.15 With regard to small properties, Mr Blackley drew attention to a drill hall in Crows Nest, Sydney, which the Committee had driven past the day before. He said:

> Usually, for a small site like Crows Nest, we just meet with the neighbours. In that instance a drill hall was available and we invited immediate neighbours. We probably had four or five meetings during that process. I cannot be absolutely sure. The plans would have been displayed. The meeting was chaired by the Mayor, Genia McCaffery. She chaired that meeting and the Deputy Mayor chaired another meeting. I went to all those meetings, so I represented defence and Genia represented council. We simply asked the community what they thought of it. Some members of the community did not like it and some members of the community liked it. So you just have to keep working with the community until you get consensus.[9]

4.16 In answer to a question about what he meant by consensus, Mr Blackley said:

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

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8 *Committee Hansard*, 25 January 2001, p. 399

9 *Committee Hansard*, 16 March 2001, p. 569

> residents were invited, by letter, by the council; defence did not do that. So it was orchestrated by council, and it was held in a defence building.[10]

4.17 Unfortunately, not all other sales of Defence land achieved the success of Ermington and Crows Nest.

Randwick

4.18 The proposed redevelopment and sale of part of the Bundock Street Defence property in Randwick, Sydney, was one project that resulted in an acrimonious relationship between DEO and the surrounding community. Mr Blackley told the Committee that the Mayor of Randwick agreed to a partnering workshop but, rather than call a public meeting to form a reference committee, appointed the Community Reference Group for the Bundock Street project. Mr Blackley said 'So that had nothing to do with Defence. All we were prepared to do was to facilitate the process. So it was quite different. It was run along similar lines, independently facilitated by someone, and there were free, open and frank discussions.'[11]

4.19 Mr Anthony Fitzsimmons, the Planning and Development Manager, Fitzwalter & Associates, told the Committee:

> We worked through the community reference group to develop an option for the site. We had the precinct briefings. We also met with the state and federal members on a number of occasions throughout the process. The federal member had his own representative as part of the community reference group. We established workshops with the council. The council had their expert team. We met on a regular basis with our expert team to discuss various issues. A site open day was organised. We held a community workshop over a three-day period. That started on a Saturday morning and went continuously through the night until the following Monday night, when the community presented its brief for the site. Defence presented its brief and the council presented its brief. The community was then sent off in groups to develop what they thought was the most appropriate option for that site. At the conclusion of the workshop, three options were presented. From that, those options were refined into one, which went on public exhibition in December 1996 through to the end of January 1997. During that period we also issued five newsletters. The newsletters detailed the processes that we were going through. One of the newsletters provided a reply–paid option for the community to put forward any comments on the scheme that we had exhibited. The culmination of this process was a briefing with the state member as to what we were about to lodge with council in terms of a rezoning application.[12]

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10 *Committee Hansard*, 16 March 2001, p. 570

11 *Committee Hansard*, 16 March 2001, pp. 564–65

12 *Committee Hansard*, 16 March 2001, p. 607

4.20 Mr Blackley confirmed that briefing took place just prior to the rezoning application, which was lodged in April 1997. Mr Fitzsimmons added:

> The rezoning phase concluded upon the lodgment of our rezoning application. But that was not the end of the community consultation that occurred on the site: during our contamination investigations it was necessary to undertake some remedial works and, prior to any of those works occurring, all the local residents were advised by letter. After the development application was lodged we had a presentation to the Waverley precinct group, the major precinct group that adjoins the site. We have had numerous calls to our office asking questions as to what is going on in the process. But there was no structured program of consultation following the rezoning up till the lodgment of the development application. It was undertaken on an 'as needs' basis.[13]

4.21 In effect, structured consultation stopped in April 1997 and there was no structured consultation during the next two and a half years up to the time that DEO lodged its Development applications in October 1999. In 1998, Defence representatives met the Mayor of Randwick and discussed a development proposal with him. The Randwick Council informed the Committee:

> The proposal discussed with the Mayor, however, proved to be significantly different from the development application submitted to Council almost a year later. The proposal discussed with the Mayor had 18ha of open space. The proposal of October 1998 reduces the amount of open space from 18ha to 12ha with an increase in a number of residential allotments. In addition, one meeting with Mayor, where no documents were transferred for more in depth scrutiny cannot be considered consultation for the purposes of a major development.
>
> Following the receipt of development applications Council organised (at its own cost) a community information session and invited the Department of Defence to explain its proposal to the community. That was the first occasion that the proposal was explained to the community.[14]

4.22 As there had been no community consultation since 1997, this meant that the local community did not have any further opportunity for input in the development of the plans for the site. Although DEO started the consultation process in the right way, it did not finish it.

Non–Sydney properties

4.23 The Sydney Disposal Unit has had a confined geographical area within which to operate, which facilitated consultation with stakeholders in the disposal of Defence

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13 *Committee Hansard*, 16 March 2001, p. 608

14 Randwick City Council, *Department of Defence Land, Bundock Street, Randwick. Additional Information to the Senate Inquiry*, 1 May 2001, p. 8

properties in the Sydney metropolitan area. The Canberra Disposal Unit has had to cover the rest of Australia.

Consultation regarding the Annerley property

4.24 One of the Defence properties up for disposal is the Dudley Street depot in Annerley, Brisbane. Mr Gary Warfield, Chair of a local residents group, Supporters Protecting Annerley's Culture and Environment (SPACE), told the Committee that he and other residents had during 1998–99 what was going to happen to the site but they only received vague answers. Early in 2000, they saw a newspaper report about the site and then shortly afterwards, received a notice from local federal member, Mr Gary Hardgrave. As a result, a residents' group was formed. Mr Hardgrave organised two meetings at the site, the first with an officer of DEO in attendance but not the second.

4.25 Mr Warfield told the Committee:

> It seems that the core issue is that Defence, in their process, have a trigger that says, 'If it's already listed on the National Estate as a heritage listed site, then proceed down this path,' which is consultation with local residents and interested groups. If it is not, or if it is in the process, then that path does not seem to exist. Consultation does not occur. We basically meet a stone wall on that front.
>
> There have been a few small examples of some cooperation. At a meeting in Gary Hardgrave's office, Defence personnel made access to the site available to us and to the groups that are keen to use the site, and we very much appreciate that. But it is one small step in the exercise. Generally, we have been told, 'It's not our issue. Talk to the local government authorities after it's sold.' It is basically a matter of avoiding consultation.[15]

4.26 In summing up, at the end of his opening statement, Mr Warfield said:

> We have, as local residents, put, out of our own time and cost, tremendous effort into organising consultation that should have been organised through the defence department's property section. We have done it and we will keep doing it because we believe we have got a valuable outcome if we can achieve this.[16]

4.27 The local federal member, Mr Hardgrave, told the Committee:

> If there had been consultation, the sorts of aspirations that have developed over the last few months would have become very obvious. Defence could have played a lead role rather than—pardon the pun—a defensive role in the discovery of those ideas. It could have been always remembered as a good

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15 *Committee Hansard*, 23 January 2001, p. 263

16 *Committee Hansard*, 23 January 2001, p. 265

> neighbour, providing for something that was long–lasting and reasonable by the views of those around the site.[17]

4.28 In response, Ms Liz Clark, DEO, said that:

> We have been speaking with Gary Hardgrave on a regular basis and he has been speaking with SPACE. I have spoken to SPACE on a number of occasions, written to them; there has been correspondence on and back.[18]

4.29 In answer to the question, 'Do you see a need to actually liaise yourselves with the individual community groups and organisations that might be raising the difficulties?' Mr Rod Corey, Acting Deputy Secretary, replied:

> We do. In relation to properties in New South Wales, Senator, we do. We can take it through a planning process ourselves, and that is where we have engaged Randwick and a whole range of other site communities in detailed consultation. In the case of Queensland, as Liz was pointing out, we have no control over the future use of the site.
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> …
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> So really the consultative process is post us getting rid of the site, but we want to make sure that the site is positioned in such a way that we can maximise the return to Defence and the Commonwealth. I guess that is probably an issue that needs to be raised at the state government level to get some understanding, to get a process in place that enables us and the Queensland government and the local councils to have a process that does engage the local communities at a much earlier stage.[19]

4.30 The Committee notes Mr Corey's last point and will address that shortly. However, whatever are the legal requirements for rezoning and end use, there is an obligation for DEO to consult with stakeholders. It is not enough, as Ms Clark asserted, to deal with a resident's group (SPACE) through a third party, in this case, a federal member of Parliament. Local residents had sought information about the future of the property for some time before any announcement of its prospective disposal. The vague replies from DEO and other Defence offices are understandable if, at the time, a decision on the future of the site had not been made or, if made, could not be made public for some reason. The fact that questions had been received from residents of the area should have alerted DEO to the need to consult local residents once the decision to dispose of the site was publicly known. Subsequent communication with SPACE and other community organisations was driven by those organisations and not DEO taking the initiative to talk to them.

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17 *Committee Hansard*, 23 January 2001, p. 267

18 *Committee Hansard*, 26 March 2001, p. 673

19 *Committee Hansard*, 26 March 2001, p. 673

4.31 The Committee noted that it had consulted the Brisbane City Council in respect of the Annerley site for some three years. That was quite appropriate but it was not enough to consult only the Council to fulfil its obligations, as set out in its submission, to consult stakeholders. As the Committee found, in respect of several sites that it visited and took evidence on, local residents have an interest in the end use to which a Defence property will be put after disposal. That end use may affect the character of the area, create new problems or affect the value of other properties in the area. Whether DEO is able to influence rezoning of the site is not an argument for not consulting local residents. Even if DEO cannot influence the rezoning of the property, the residents themselves may seek to influence the rezoning authority. They cannot do this without being consulted early in the disposal process.

4.32 As it turned out, SPACE sought and got a Queensland heritage listing for the full site, which was confirmed after formal objections were raised by DEO. As a result of SPACE's activities, three community organisations, including a military museum and a cadet unit, sought to take over the site for their activities, instead of the sale of the site for commercial residential redevelopment.

4.33 These developments may not have been in the interests of DEO, which is seeking to dispose of the property 'for its best value', in accordance with government policy. Nevertheless, the fact that the site is now heritage protected is an important development. In addition, such alternative uses for the site should be considered seriously by Defence in the full context of its interests, and not just by DEO, whose outlook is necessarily narrower.

Yeronga

4.34 SPACE had asserted that DEO had treated the disposal of a Defence property at Yeronga differently from the one at Annerley because the Yeronga site had a heritage listing whereas the one at Annerley did not at the time that the disposal process began. DEO claimed that it engaged in consultation with the community and interested bodies, irrespective of heritage listing.[20] If that were the case, DEO was asked why the outcomes for Yeronga and Annerley so different. Mr Corey replied that the 'Yeronga process and the Annerley process are identical. It is quite amazing'. He went on to say:

> At the time of our conducting the disposal and going through the consultative process for Yeronga, we had exactly the same attitude from the community and the council as we are experiencing with Annerley.[21]

4.35 Mr Corey also said that 'we have a minority group within that community that does not agree … with the rest of the community and it does not agree with us'. He said that the minority group at Yeronga wanted the Yeronga property to be open land and that it still does not agree with the outcome.

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20 *Committee Hansard*, 26 March 2001, p. 669

21 *Committee Hansard*, 26 March 2001, p. 670

4.36 The Committee believes that the development at Yeronga, with its large single dwelling blocks, which were consistent with the residential development around it, appeared to be a good redevelopment of the site. It noted that heritage listed buildings had been preserved.

4.37 The Committee differs with Mr Corey's view that resident attitudes at Yeronga and Annerley were the same. Although the Committee did not take evidence from residents at Yeronga, according to DEO evidence referred to above, there was a minority group at Yeronga who wanted the site to become open land. The proposition that Yeronga become open land was probably untenable from the start. Secondly, it was a minority group.

4.38 The residents' group at Annerley, SPACE, is not a minority group. As far as the Committee can discern, there is no resident or other community group supporting the type of redevelopment that DEO has in mind. Secondly, from the beginning, and on the basis of advice that there was no heritage value in the site, SPACE was not opposed to redevelopment provided that it was low density. It did not opt for open space or other community recreational facilities. When the whole site was given a Queensland heritage listing, it then supported defence–related use of the site, whereby three community organisations, including a military museum and a cadet unit, would be based there. This proposal has the support of many defence-related and other community organisations. It cannot be said, therefore, that there is only minority opposition to DEO plans for the site.

4.39 In a supplementary written statement dated 30 March 2001, SPACE made the following comments:

> In 1996, when the Yeronga property was to be sold, an exhaustive and prolonged consultation with local residents was undertaken. Initially the proposal to sell the land received media publicity, letters were sent out by the local Federal Member, Gary Hardgrave, and a two page newsletter was delivered to 1000 homes to advise of the initial meetings.
>
> The original meetings were notified with a choice of either Saturday 24.8.96 or Thursday, 29.8.96. These two preliminary meetings were held in a hall, with sales consultant representatives, town planning advisers, Defence Department personnel (having come from Canberra), as well as the local Federal and State Members and the local Councillor. All of these addressed the meeting, at which people were seated; and then special discussion groups were set up to discuss separate issues. At the end of the evening all the groups reassembled to hear the decisions. It was decided that further meetings were necessary.
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> The consultative process was drawn out over months with workshops, written reports on results, and much further discussion, before the site was ever offered for sale. A large planning investigation report was prepared by the Town Planning consultants, giving full details of all consultation.

> In comparison, residents around the Annerley site had no consultation with Defence at all. There was some forewarning in the local press, then the Federal Member sent out letters to some local residents advising of a public meeting on site on Saturday 27th May. This meeting was held standing on the parade ground, and we were addressed only by the Federal member. There was a representative there from the Defence Department, whose only contribution was to say that there was no Heritage value on the site.
>
> We had no consultation, beyond the two meetings arranged by the local member, the first standing on the site, the second outside the locked gates. Defence disassociated itself completely from these meetings (as evidenced in the Clayton Utz letter to developers).
>
> …
>
> Yeronga residents had little to fear from the start, because all (or almost all) the surrounding land is Residential A, so they were not faced with the certainty of units and town houses. As we were, and are.
>
> In spite of Mr Corey’s statement (p. 671, foot of page) we understand that most people are happy with the outcome of Yeronga. Yeronga demonstrates that successful outcomes can follow if proper consultation takes place. **The only complaint we have heard, is that there is nothing there to mark the fact that for many years an army hospital existed on the si[t]e: no plaque or memorial—the military history has disappeared from the site.**[22]

4.40 In its evidence to the Committee, DEO was unable to identify any consultation process that it initiated for the Annerley site. The consultation that has taken place since the initial meetings organised by the local federal member was in response to community pressure and not as part of any formal consultation process. Despite DEO comments to the contrary, the Committee can find very little in common between the two sites in relation to consultation processes. It is evident that there was a consultation process for Yeronga and there was none for Annerley.

4.41 In view of the detailed consultation process that was conducted for Yeronga, the fact that rezoning cannot take place until after the sale of Defence land in Queensland is not an argument, as implied by Mr Corey, against having a consultation process for Annerley or any other Defence property subject to disposal in Queensland. Local residents are stakeholders and all stakeholders should be consulted, as required by DEO’s own rules.

Conclusion

4.42 Consultation between DEO and stakeholders should begin as soon as the disposal process has begun and the stakeholders identified. In terms of identifying stakeholders, DEO should draw a wide rather than a narrow net, so that all interested

22 The bolding was added by SPACE.

parties have an opportunity to express their views and contribute to the disposal process, as they have done very successfully in Ermington and Yeronga. Consultation should involve DEO staff and not just consultants. In this way, DEO will learn first hand any views that are likely to be strongly voiced against any preliminary thoughts DEO might have had for the sale of the property. At the same time, stakeholders are able to discuss their views with a ‘principal’ and not just an agent.

4.43 Consultation is a process where the views of stakeholders are obtained and taken into account in the sale process, and as plans are drawn up and developments occur, the stakeholders are not only informed but given an opportunity to provide further input into the sale process. A process whereby there are one or two meetings with some or all of the stakeholders does not constitute consultation.

4.44 When serious differences occur between stakeholders and DEO during the sale process, where possible and unless they are of a technical nature, they should be dealt with by DEO staff and not by agents (ie consultants). Agents can only pass on information to DEO for decision while DEO staff, depending on their position within the organisation, are involved more directly in the decision-making process. If consultation is only undertaken by agents, stakeholders could perceive, rightly or wrongly, a lack of interest by DEO in their views.

4.45 Where DEO has consulted with stakeholders early in the disposal process and where there has been no fundamental difference of opinion between both sides on the nature of the redevelopment, the sale process has appeared to proceed smoothly. In the case of Ermington, the Residents Committee went further by making suggestions to DEO, which were adopted as part of the redevelopment plan. This co–operative approach allows all parties to have some ownership of the redevelopment, which facilitates the disposal process.

4.46 The difficulty for DEO is that it is trying to optimise its return on surplus properties. This is most easily achieved through redevelopment of the properties for residential unit development. Although it has not applied in all cases, it appears that wherever possible, DEO has opted for that type of development and has sought zoning approval accordingly from the local council or State Government, whichever has zoning responsibility.

4.47 Even if DEO begins its consultative process with a clean slate and is prepared to listen to stakeholders, it is likely, in many cases, that the views of the stakeholders are in conflict with DEO's ultimate goal of optimising revenue. As previously mentioned, although there is a distinction in the meaning of the words ‘optimise’ and ‘maximise’, in practical terms, DEO is seeking the best financial result possible from the sale of the property. Where there is a strong difference of opinion between DEO and stakeholders as to the end use of a property once it is no longer owned by the Commonwealth, consultation seems to break down.

4.48 Overall, it is very clear, however, that DEO's consultative processes leave much to be desired, particularly in respect of sites where there is no fundamental

agreement over the planned redevelopment. Inevitably, there will be disagreement over the future of some sites, whether it is the nature of the proposed use to which they are to be put, or for the protection of heritage or environmental values. In such cases, consultation should be increased, not reduced.

Recommendations

- **The Committee notes that DEO is already obliged to consult stakeholders (including residents in the local area) in the disposal of surplus properties and recommends that DEO fulfils its obligations in respect of all properties for which it has responsibility for their disposal.**
- **The Committee also recommends that DEO continues to consult stakeholders throughout the disposal process.**

CHAPTER 5

DEVELOPMENT OF DEFENCE PROPERTIES

Introduction

5.1 In this chapter, the Committee examines the appropriateness of Defence's development of surplus properties prior to their divestment in order to 'optimise' the return to the Defence and Commonwealth budgets.

Defence as a developer

5.2 During the inquiry, the Committee took evidence on the work undertaken by DEO when preparing land for disposal. In many instances, this evidence indicated that DEO undertook a degree of development work during the disposal process.

5.3 DEO reiterated that it does not consider itself a developer. In particular, Mr Corey stated:

> We are not land developers and we do not intend to be land developers but, by the same token, we intend to take whatever action is necessary to maximise the revenue to Defence and to government before we dispose of properties. We have passed on from where we used to just put a 'for sale' sign on a property and hand over substantial revenue gains to the private sector. We actually maximise them for Defence and the government.[1]

5.4 DEO's view of itself as not a developer was not one shared by those outside the Department. Mr Stephen Bartos, General Manager of the Department of Finance and Administration's Budget Group, expressed the view that DEO was involved in development activity:

> At the moment it is getting into some land development activities and the problem with that is that it is not a land developer.[2]

5.5 Mr Blackley, Director of the DEO Sydney Disposal Unit, described the public works that were being proposed for the Ermington site and which have been submitted to the Parliamentary Public Works Committee for scrutiny:

> When I talk about infrastructure I am referring to dividing up a large site like Ermington, which you will remember is 20 hectares along the Parramatta River. We then put in main roads. Underneath those roads we

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1 Mr Rod Corey, Head, Defence Estate, Department of Defence, *Committee Hansard,* 16 March 2001, p. 675

2 Mr Stephen Bartos, Department of Finance and Administration, *Committee Hansard,* 26 February 2001, p. 487

> put in water, power and sewerage. We then sell parts of that site—we often call them super lots—to builders and all they need to do is connect to the services. They then build houses, or whatever the subdivision allows them to build.[3]

5.6 Mr Blackley then told the Committee what Defence does not do:

> Defence does not sub-divide the site into super lots and then build the houses itself. It is not in the business of building houses and selling them to Mums and Dads. It does not do that.[4]

5.7 Mr Blackley also laid out the steps Defence take to improve the return to the Commonwealth on a property disposal:

a) The first objective is to have an approved land use. This is something that Defence considers is tradeable.

b) The next step Defence seeks is to achieve is either a development consent for the subdivision of a site or a development consent for a particular building. In the later case, Defence would actually design the building.

c) The final step in the process is to actually construct the infrastructure required for the approved sub–division.[5]

5.8 It is clear that DEO is acting as a developer. It is playing with semantics to assert otherwise. Although DEO may not develop a site to quite the extent of a commercial developer, it does not mean that DEO is not a developer. The fact that DEO develops a site beyond clearance indicates that DEO is developing that site to some extent. It can therefore be regarded as a developer. In the case of the Ermington proposal it is apparent that Defence are considering development activities similar to that of a number of commercial land developers.

Should Defence be a developer?

5.9 The question was raised during the inquiry whether or not DEO should be involved in development activities.

5.10 Mr Stephen Bartos, General Manager of the Department of Finance and Administration's Budget Group, expressed the view that Defence should not be involved in development activities:

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3 Mr Bernard Blackley, Director, Property Disposal Unit, Department of Defence, *Committee Hansard,* 16 March 2001, p. 561

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

5 Mr Bernard Blackley, Director, Property Disposal Unit, Department of Defence, *Committee Hansard,* 16 March 2001, pp. 559–62

> Our view is that Defence should not be a land developer. In relation to the idea that Defence will be a better land developer when the Defence objective is the prevention or defeat of armed force against Australia, the idea that it will be a better land developer than a lame developer just seems to us to not make sense.[6]

5.11 Mr Bartos explained why the Commonwealth was not well placed to undertake property development:

> In terms of land development, one of the key differences between the Commonwealth department and a commercial land developer is the treatment of risks. There are big risks associated with land development that land developers adopt. There are also returns. They make returns to their shareholders and they pay dividends, or if they are a private company they make good returns to their owners. In the case of Defence, we do not see the Commonwealth as owner receiving dividend cheques from Defence. It is a very different situation. The idea that a Commonwealth department is best set up to be a land developer we think is not actually the case.[7]

5.12 Mr Bartos went on to say:

> Our view is that it should dispose of the land before undertaking any of those sorts of development activities that you have talked about [zoning, infrastructure, facilities]. As you obviously know, and it is worth getting it on the record, the costs of that development are borne by the taxpayers. It seems to us that the price that Defence will get for a piece of land before development will build in the developer's expectations of what they can do with that land, and Defence does not therefore bear the risk of having to undertake that development itself. That will be capitalised into the value of the land, whatever potential future value a developer can see from it. I suppose our view is that Defence is actually likely to get a better return through disposing earlier because the potential developers will have a better idea of what potential they can generate from that land. As I said earlier, Defence is not set up to be a developer.[8]

5.13 The Department of Finance and Administration's view is supported by evidence provided by the Royal Australian Planning Institute:

> In truth experience teaches us that the greatest sum of money probably comes with giving the responsibility to private enterprise to develop the

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6 Mr Stephen Bartos, Department of Finance and Administration, *Committee Hansard,* 26 February 2001, p. 487

7 Mr Stephen Bartos, Department of Finance and Administration, *Committee Hansard,* 26 February 2001, p. 487

8 Mr Stephen Bartos, Department of Finance and Administration, *Committee Hansard,* 26 February 2001, pp. 487–8

land. In other words, the Commonwealth will net the greatest return by letting a private company take the risks of development.[9]

5.14 Ms Lisa Newell, Randwick City Council, expressed the opinion:

> The Department of Defence's major business is not planning and developing new suburbs and planning for new communities. This is a block of land that they are disposing of as an excess asset.[10]

5.15 DEO addressed the question of risk with the Committee, stating that it assumed this risk with the express intent of maximising revenue.

> Because of the risks that he or she perceives in getting the zoning changed through local council planning controls, the value that he or she is prepared to pay for a site is considerably less than its true worth. So it is all related to trying to remove as much risk from the planning process. What we are really about is adding value by reducing risk.[11]

> We have to optimise that revenue for defence. If we sell a property with that risk still there, the property developer or the purchaser will devalue the property to such an extent that the revenue we get for it is insignificant compared with the revenue we would get if the risk were taken out of the equation.[12]

5.16 DEO also noted that that one of the more significant risks in property development is the political risk:

> The political risk is probably one of the more significant risks in Defence land ... Once we have gone through the planning process that Bernard just described the political risk to a purchaser or a future purchaser is basically eliminated.[13]

5.17 DEO replied to DoFA's concern by stating that there were two main reasons for its policy of developing sites before divestment: optimising revenue to Defence and denying developers windfall profits. Defence argued that to dispose of properties without a degree of development would mean discounting the value of the land to such an extent as to provide negligible return to the Defence budget:

> We have to optimise that revenue for defence. If we sell a property with that risk still there, the property developer or the purchaser will devalue the

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9 Mr John McInerney, Royal Australian Planning Institute, *Committee Hansard*, 5 March 2001, p. 553

10 Ms Lisa Newell, Randwick City Council, *Committee Hansard,* 25 January 2001, p. 331

11 Mr Bernard Blackley, Director, Property Disposal Unit, Department of Defence, *Committee Hansard*, 16 March 2001, p. 558

12 Mr Rod Corey, Head, Defence Estate, Department of Defence, *Committee Hansard*, 16 March 2001, p. 559

13 Mr Rod Corey, Head, Defence Estate, Department of Defence, *Committee Hansard*, 16 March 2001, p. 560

> property to such an extent that the revenue we get for it is insignificant compared with the revenue we would get if the risk were taken out of the equation. I refer to the timing that is involved. We have done a business survey on these sorts of properties—and Randwick is a good example—which shows the return to defence, depending on where you sit. If we had sold that property as is, without doing anything, we would have got something less than $20 million; and here I am plucking a figure out of my head. However, if we eliminate the majority of risks, the return to defence would be in excess of $200 million.[14]

5.18 With regard to windfall gains, DEO argued that, by exiting a property disposal too early in the development process, they were, in effect, handing windfall gains to a developer. DEO illustrated this point by referring to two examples: a Melbourne property and the disposal of the Zetland site in Sydney. With regard to the Melbourne property, Mr Corey said that 'we could not get a development approval in place. We got an indicative one from the council and the purchaser subsequently got a different one from the council.'[15] Mr Corey drew particular attention to the Zetland site:

> In Zetland, a major site in South Sydney, we thought we were fairly innovative in what we did. While we have built in provisions in the contract which give us returns in case of windfall properties—in this case to Landcom—Landcom is sitting there smiling and saying, 'Thank you very much, Department of Defence.' We have to balance when we cut off with when we stay in.[16]

5.19 However, Mr Corey was unable to say, yet, the level of gains that the purchaser of the site would achieve. Moreover, he also said 'we have built in provisions in the contract which give us returns in case of windfall [profits]'. The Committee believes that refinement of such contract provisions should be undertaken to safeguard Defence against windfall returns by private companies either in the case of DEO misjudgement or where circumstances are beyond the control of DEO.

5.20 DEO also argued that it is in a position to conduct development work because of the time frame between the initial decision to declare a property surplus and the final divestment. During this period, environmental remediation activities, relocation of military units and other activities provide the opportunity for DEO to undertake concurrent activity to help optimise revenue to Defence. Mr Corey explained:

> While we are going through this process we still have Defence people on the land and we still have to remediate the land. We can do a whole lot of productive activities while we are still holding the land. Even if we took into account holding costs, in commercial terms those costs would be

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14 Mr Rod Corey, Head, Defence Estate, Department of Defence, *Committee Hansard,* 16 March 2001, p. 559

15 *Committee Hansard*, 2 April 2001, p. 675

16 Mr Rod Corey, Head, Defence Estate, Department of Defence, *Committee Hansard,* 16 March 2001, p. 562

> significantly less than the increased revenue we would get from the property.[17]

5.21 There are other factors to be taken into account in DEO's development activities during the disposal process. Unlike most other Commonwealth agencies, Defence may keep revenue from the disposal of properties up to one per cent of its Budget allocation. This is an incentive for Defence to increase revenue from the sale of properties. DEO's Operating Principle 2 ('Disposal strategies will seek to optimise net revenue to Defence'),[18] which drives the developmental approach to disposal of properties to optimise revenue, perhaps explains why DEO has been in disagreement or conflict with stakeholders involved with many Defence properties being divested. The disagreement generally stems from DEO's plans for the properties, which, in accordance with its principles, seek to optimise/maximise revenue but which do not accord with the wishes of one or more stakeholders. The Committee acknowledges that, sometimes, the stakeholders are unrealistic in their demands or politics intrudes into the equation. Nevertheless, there are other times when stakeholders have reasonable grounds for objecting to DEO plans. The prospect of a higher return to Defence appears to make it more difficult for DEO to compromise. The greater the degree of development undertaken by DEO, the greater is the profit and the greater is the opportunity for stakeholders to take issue with DEO on its planned development. Stakeholders may, for example, support early steps taken by DEO to develop a site but then disagree with more detailed plans proposed in later steps in the disposal process.

5.22 As discussed earlier in the report, the Committee is concerned about the DEO's expertise and experience as a developer. It is also concerned about the incentive for DEO to increase revenue at the expense of the community.

Conclusion

5.23 In considering this issue, the Committee noted that pre–sale development of surplus Defence properties is not government policy and did not have the support of the Department of Finance and Administration. It was, however, not inconsistent with government policy. The Committee came to the view that it does not object in principle to DEO adding value to properties and increasing revenue for the Commonwealth and Defence. However, in undertaking development of a property prior to sale, DEO should consider carefully the extent to which it develops a property, the nature of that development and the revenue likely to be obtained from that development. DEO should remember that its function is to sell surplus properties and not to become a community planner. DEO is very dependent on consultants to conduct developmental work and, arguably, does not have the expertise within its own ranks to oversee it, particularly should consultants misjudge the extent or nature of a proposed development. While Mr Corey believed that DEO had sufficient experience

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17 Mr Rod Corey, Head, Defence Estate, Department of Defence, *Committee Hansard,* 16 March 2001, p. 559

18 DEO, *Property Disposals Policy Framework*, p. 2

to manage the development work, DEO is also dependent on retention of that experience, particularly at senior levels.

5.24 The Committee's guarded acquiescence to DEO's development of properties before sale is also based on DEO taking greater cognisance of State government, local government and other community views. The Committee does not believe it is in Defence's interests for DEO to try to secure the last dollar out of a sale when, by doing so, it alienates a lot of people and organisations. That is not to say that DEO should capitulate in the face of differences of opinion on its development strategy in each and every case where such criticism occurs. It should, however, try to be more accommodating of stakeholders, when they have particular concerns about specific DEO proposals, than seems to have been the case. Ultimately, it is the local government and the community that have to live with the decisions made about the end use of a divested Defence property.

5.25 Although Sydney Disposal Unit has only 19 properties while the Canberra Unit has 120, Mr Corey said that:

> So while the revenue generated is principally out of the properties in Sydney—they are high profile; they soak up a lot of expenditure and a lot of time; and they involve a lot of management effort from Bernard and his team and the consultants—on Liz's side you have some 120 properties scattered throughout the country that are only in the noise in large part but they make a lot of noise when something goes wrong with them.

5.26 As much of DEO revenue is being generated from the disposal of large Sydney properties, DEO has an opportunity to be more magnanimous in respect of smaller properties that, in overall budget terms, are small contributors. This issue will be addressed in more detail in Chapter 6.

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),

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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.

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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

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.
>
> 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.
>
> 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.
>
> 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.
>
> 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

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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.
>
> 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.
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> 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

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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.

CHAPTER 7

OTHER MATTERS

Sale and lease–back of Defence properties

7.1 Under term of reference 5, the Committee is required to consider sale and lease–back of properties by the Department of Defence.

7.2 DEO submitted that:

> In the context of the 2000–01 Budget, the Government agreed to the sale and lease–back of a number of Defence office buildings and specific properties and the sale of other properties. The estimated revenue is $480m in 2000–01 worth a further $60m in later years. Properties involved include parts of the Russell Offices, commercial office blocks in Sydney and Melbourne, warehousing facilities in Sydney, Brisbane and Darwin, an office building in Wollongong and a facility outside Melbourne.[1]

7.3 The Department of Finance and Administration advised subsequently that only the four Russell buildings and the Sydney and Melbourne Plaza office buildings were being sold and leased–back.

7.4 DEO was asked what were the commercial imperatives driving the lease–back operations. Mr Corey responded: ‘The Department of Finance and Administration and the Expenditure Review Committee of cabinet agreed to the disposal as a revenue measure for the budget. These funds do not come back to Defence: they go to the budget. It is a method of raising $480 million this year.’[2] Mr Corey added that Defence would get a one–off supplementation of the rent for the Russell Offices but no supplementation for the other buildings.

7.5 The sale and lease–back of Defence buildings was being conducted by the Department of Finance and Administration, as that department had the most experience in that field. Ms Kathryn Campbell, First Assistant Secretary, Property Group, DoFA, said that the three properties did not meet the retention requirements of the Commonwealth property principles, and were therefore designated for sale. Mr Stephen Bartos, General Manager, Budget Group, DoFA, confirmed that a long–term cost analysis had been done and provided to Cabinet in support of the proposal to sell and lease–back the properties. The Committee sought the cost benefit analysis but was denied the information on the grounds that it was included in a Cabinet submission. The Committee does not believe that the inclusion of such information in a Cabinet

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1 DEO, submission, pp. 3–4

2 *Committee Hansard*, 10 November 2000, p. 239

document should be used as a reason for denying the Parliament the opportunity to scrutinise it. The cost benefit analysis is not inherently advice given to government. It is simply supporting information. It should have been released to the Committee.

7.6 Asked about a cross–over point in terms of when a sale and lease–back arrangement is not beneficial, Ms Campbell replied:

> It is difficult to advance the argument of a cross–over point in a simplistic manner. It is not so many years of rent equals the amount that is received in capital value. The calculation in the Commonwealth property principle includes the opportunity cost of the capital—that is, what government can do with that capital once it is freed up on other programs and other government initiatives. It is not just a simple calculation of working out the rent; it is also what the capital would not have been used on if it had not been freed up in the sale.[3]

7.7 Yet, in a recent report, the ANAO was critical of the sale and lease–back arrangements for three other non–Defence Commonwealth properties, referring to a break–even point for one of them after only eight years and 11 years for a second property.[4]

7.8 The Sydney and Melbourne Plaza buildings were being leased back for a ten year term with two five–year extensions. The Committee is not aware of the proposed term of the lease for the Russell offices. Ms Campbell told the Committee:

> The properties are sold with a lease in place. The new owner does not have that choice. The new owner buys a lease for 10 years where those amounts are set with rental escalation factors. All sales and lease–backs of Commonwealth assets have been done in this manner. So the buyer buys the lease and then the agency has that 10 years or whatever period they have negotiated of a set amount and a lease that they know about before they enter into it.[5]

7.9 As Defence will have the head lease for the properties, it will manage the sub–leasing of retail premises in the Sydney and Melbourne Plazas.

7.10 The Committee questioned DoFA about possible other uses of the Russell site after the end of the proposed lease. Ms Campbell replied:

> I would expect that Russell in the future may be able to be used for other Commonwealth purposes. Other Commonwealth agencies could possibly use Russell as an office facility. Given that Canberra will always have in the foreseeable future a number of public servants, it is possible that those

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3 *Committee Hansard*, 26 February 2001, p. 489

4 ANAO, *Commonwealth Estate Property Sales*, Audit Report no. 4, 2001–2002, pp. 18–19

5 *Committee Hansard*, 26 February 2001, p. 486

> public servants could be housed or occupied in Russell offices if Defence were not going to use the facility into the future.[6]

7.11 The Committee considers that the Sydney and Melbourne Defence Plazas, located as they are in the Sydney and Melbourne CBDs, are good long–term commercial propositions for non–government owners as they could be used for commercial purposes after expiry of leases with Defence. It is possible that at the end of the lease period, Defence may not want office accommodation in central Sydney and/or Melbourne.

7.12 The proposed sale and lease–back of the Russell offices is another proposition. There is no prospect of Russell becoming a commercial centre in the foreseeable future. It will most likely remain Defence offices for a long time into the future. Although possible, it is unlikely that other departments might use the Russell offices instead of Defence. Given the likelihood of Defence remaining at Russell for decades to come, the Committee seriously questions the long–term benefits that might accrue to the Commonwealth from this proposal. In the light of ANAO concern about sale and lease–back contracts with three other non–Defence agencies, and the refusal of DoFA to provide cost–benefit analysis of the sale and lease–back of the three Defence properties, the Committee believes that the Government should review the sale of Russell.

Maintenance of surplus properties

7.13 Concerns were raised with the Committee about the continued maintenance of properties once they had been declared surplus and operational units had departed. The Campbelltown Council commented:

> However, the Council has raised concerns on several occasions about Defence's lack of management of the vacated Army camp. The lack of management has resulted in vandalism and destruction, sometimes by fire, of buildings on the site prior to the completion of a heritage study to determine the heritage significance of the buildings.[7]

7.14 The members of Save the Afton Street Hill Group from Melbourne were very critical of the management of the Afton Street Hill property, which is vacant Defence land in located in the Maribyrnong Valley. In particular, the group was concerned about the impact on the natural environment by introduced noxious weeds and the lack of maintenance of a site seen as vacant land:

> I think there is a question of the standard of custodianship of Defence both now and in the past of those lands…I think the standard of custodianship of Defence as the landowner have been remiss in this case to the point of being reprehensible because they have been aware of the quality of the

6 *Committee Hansard*, 26 February 2001, p. 489

7 Campbelltown City Council, submission no. 55, p. 6

> environmental remnants left on the land and they have done nothing to safeguard them.[8]

7.15 The lack of maintenance was put to DEO. Ms Liz Clark responded:

> The defence department has carried out a number of studies on this property, which identified grassland areas, which are remnant areas. We have developed an environmental management plan. That was about to be implemented. We are addressing some of those issues they have raised in relation to noxious weeds, and that is being oversighted by the Defence Estate manager in Victoria. The total environmental management plan has been discussed with the council as well with regard to their council's interest in acquiring the property.[9]

7.16 Ms Clark also told the Committee that the local council was preparing a submission for the land to be provided to the council for use as open land under a priority sale arrangement.[10]

7.17 When questioned on the general matter of maintenance of properties, DEO explained that such maintenance relates to an allocation of resources:

> If there are buildings that have no heritage or other value and we have vacated them, we have no further use for them, then obviously we are not going to put money into them to maintain them. That has happened in the case of a number of sites. Some sites have been vandalised, even though we have security in place. But where there is a future use for the buildings, they are maintained.[11]

7.18 The Committee believes that DEO needs to program regular checks of unoccupied Defence properties to ensure that minimum maintenance is carried out so that they do not become eyesores and that heritage and environmental values are maintained.

Leasing premises on surplus land

Point Cook RAAF Base

7.19 The Committee took evidence from users of leased premises on the Point Cook RAAF Base. It would not be an overstatement to say that the criticism was trenchant and harsh of the management of the leasing arrangements put in place by DEO. The Committee sought responses to those criticisms from DEO officers and

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8 Ms Jennifer Lee, Save Afton Street Hill Group, *Committee Hansard,* 16 February 2001, p. 455

9 *Committee Hansard*, 2 April 2001, p. 663

10 *Committee Hansard*, 2 April 2001, p. 663

11 Mr Rod Corey, Head, Defence Estate, Department of Defence, *Committee Hansard,*2 April 2001, p. 677

agents during public hearings. It also obtained some written information, such as copies of lease contracts, from DEO.

7.20 The Committee does not believe that it is worthwhile to cover the individual claims and responses in this report. That information has been available in the Hansard transcripts of evidence on the Internet from shortly after the hearings in which those matters were aired. It will make, however, some more general comments about the leasing arrangements as they applied to the Point Cook RAAF Base.

7.21 Mr Ross Bain, Assistant Secretary, Property Management, DEO, explained the background to the leasing arrangements put in place at Point Cook:

> Maybe we should go back a little bit. When the Defence Estate Organisation took over the airfield in 1997 the tenure arrangements there were not as they should be; they certainly did not protect the commonwealth and they probably did not protect the tenants either. We went through a process of implementing a structured approach to the occupation and use of the airfield, because the Commonwealth was assessed to be at quite a high risk under the arrangements that existed because it was not a normal airfield; it was a Defence airfield to which there was civilian access. That was the basis of establishing the licences and agreements which I think, at the end of the day, really just covered our costs of establishing them. When you gained access to the airfield it was like joining a club: there was a one-time fee that gave you access from then on to use the airfield. But they had to be a registered user so that they understood what their obligations were and we understood ours. That was the basis of those arrangements being put in place.[12]

7.22 Ms Liz Clark, Director, Canberra Disposal Unit, DEO, added:

> In 1997, when we took over the responsibility for managing it, there were a number of non-Commonwealth entities, which is why we went through the process of putting the arrangements. An option would have been that we actually closed the airfield; the risk was quite substantial to the Commonwealth. Rather than close the airfield—because there was a lot of use: the RAAF museum was there and obviously the airfield still operating encouraged visitors to the museum as well—we thought it prudent to seek advice on how we could best manage the airfield to make sure it was still accessible to the public and to protect our interest as well. So KFPW investigated other arrangements that were in place in other airfields. You must remember that this is an unlicensed airfield as opposed to your Moorabbins, which are licensed airfields. A licensed airfield comes in underneath CASA regulations and it is related to passenger numbers and things like that, whereas Point Cook is unlicensed. It is quite a difference.[13]

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12 *Committee Hansard,* 2 April 2001, pp. 619–20

13 *Committee Hansard,* 2 April 2001, p. 620

7.23 Mr Corey explained that the new arrangements instituted by DEO probably upset existing users of the airfield:

> I think you have to understand some of the history of this: the RAAF operated Point Cook over a long period of time and a whole lot of informal relationships developed. The Royal Victorian Aero Club would have been one of those where they probably flew out of Point Cook on an 'old boy' basis. When we decided to close down the flying operations of the Air Force and this property became surplus and we did not intend to make it a licensed airfield, the 'old boy' relationships no longer existed and we instructed KFPW to put some of these on a more commercial footing.[14]
>
> …
>
> And that is why you are getting the reaction from the Aero Club: for many years they have flown on an informal basis at no cost out of Point Cook, and all of a sudden they are being treated like any other commercial user and they do not like it. Perhaps we have not negotiated or spoken to them enough or consulted with them sufficiently, but our intention has always been to close down Point Cook, to get out of Point Cook and let somebody else take over its operation.
>
> …
>
> I must admit that, from the viewpoint of the Defence Estate, this is a very small issue, and we have delegated this activity to our agents, KFPW, to manage. Had we been aware that it would take us so long to untangle Point Cook, we probably would have paid more attention to it. But, from where we sat up to five years ago, we assumed that we were going to be out of Point Cook and it was going to be managed some other way. But for a whole lot of reasons, which we have heard some of—some political and some not political—it has not happened. I guess all we can do is learn from where we have been and, in the next stage of Point Cook, manage it more actively. And hopefully the other people we invite to play in the game will also participate actively.[15]

7.24 The Committee believes that many of the problems at Point Cook stemmed from the lack of consultation between DEO and users. Some good old–fashioned manners and common courtesies would go a long way to resolving many of the problems created by DEO and its agents. DEO should have explained carefully to the users what it was trying to do and what arrangements were going to be put in place and the type of charges to be instituted to cover the costs of the leasing arrangements. It should also have ensured that DEO officers were available to discuss any problems that occurred between the users and KFPW, the management agents used by DEO to manage the leasing arrangements.

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14 *Committee Hansard*, 26 March 2001, p. 636

15 *Committee Hansard*, 26 March 2001, p. 636

Bundock Street property, Randwick

7.25 The Rudolf Steiner School, which was leasing facilities at the Bundock Street property, made a submission to the Committee regarding its plight, as its lease was due to expire and it had nowhere else to move. A representative of the School, Ms Megan James, explained the background:

> Just a very brief background: the Children's Garden Rudolf Steiner School is an independent school founded on the educational principles of Austrian philosopher Dr Rudolf Steiner. Steiner education is the largest non-denominational independent schooling system in the world. There are more than 600 Steiner schools worldwide, with about 40 in Australia. Each school is autonomous and is the result of individual initiative. The school began, as you have heard, in about 1994, leasing space directly from the Randwick Community Centre. It became the first Steiner primary school south of Sydney's harbour in January 1997, and at that stage offered kindergarten and class 1. This year we will be offering kindergarten to class 5 and we hope to add another class next year which would complete our primary obligations, from kindergarten to class 6.
>
> …
>
> As the school has grown, it has needed more space for more classrooms, quite logically. By 1997 the school had outgrown the space the community centre could provide. We approached the Department of Defence directly. Initially the department's agents refused the school any further premises, but after six months of negotiations the school was allowed to expand into part of a disused Navy printing office known by the department as building 59. The building was very dilapidated.[16]

7.26 Ms James went on to say that the parent spent much time and effort in making the new area habitable. DEO twice significantly raised the rent. The School, however, wanted a long–term lease to allow the School to develop, to which DEO refused to accede. However, in October 1999, a press release from Mr Bernard Blackley, Director of DEO's Sydney Disposal Unit, said:

> The children's garden school, a Rudolf Steiner school, which currently occupies a leased area on the site, will be offered a lease as part of the new development.
>
> …
>
> As the Children's Garden are existing site users, it is proposed to offer the school a site in the development zone located at the eastern end of the site near the proposed new community facility.[17]

16 *Committee Hansard*, 25 January 2001, p. 364

17 *Committee Hansard*, 25 January 2001, p. 365

7.27 Ms James said that:

> the school interpreted these undertakings as a commitment to keep the school on the site long term, indeed as part of the new development. We have presumed that the development itself was not to be a short–term operation and therefore neither was the school's existence on the site—it would follow. This was clearly how the promise was interpreted by the public, by politicians and by the press. In fact, the media were quick to pick up on this good news angle in the development story.[18]

7.28 Mr Blackley explained the intent of the press release:

> I said we would offer them a lease on the site—that is what I said, and I do not resile from that. I was trying to help them by saying that we would offer them a lease elsewhere on the site while they looked around to buy a site, but it way it was written was unintentionally ambiguous. As soon as we realised the ambiguity Tony met with the people from the school and explained it.[19]

7.29 Mr Bain also explained the policy basis that constrained DEO from offering the School a separate lease on the property:

> That statement was perhaps a little ambiguous. The Commonwealth cannot deal one-on-one with organisations like this in offering land, and it must be on a commercial basis. Mr Fitzsimmons explained that in a follow-up on that press release, but there was still that perception that that offer had been made.[20]

7.30 The Committee noted that under its licence, the School had to vacate its premises by January 2002.

7.31 Although the Committee feels sympathetic towards the plight of the School, it is not in a position to make any recommendations regarding the issue of the long–term placement of the School on the Bundock Street property. As DEO lost its legal challenge, the future development of the site is uncertain.

John Hogg

Chair

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18 *Committee Hansard*, 25 January 2001, p. 365

19 *Committee Hansard*, 16 March 2001, p. 604

20 *Committee Hansard*, 16 March 2001, p. 603

APPENDIX 1

SUBMISSIONS AND SUPPLEMENTARY SUBMISSIONS AUTHORISED FOR PUBLICATION BY THE COMMITTEE

Mr Paul Adam (Submission 32)

ADI Resident Action Group (Submission 87)

Army Museum of Western Australia Foundation (Submission 17)

Australian Council of National Trusts (Submission 65)

Australian Heritage Commission (Submission 46)

Australian Property Institute (Submission 68)

Australian Valuation Office (Submission 61)

Mr John G Balmer (Submission 11)

Ms Dina Barros (Submission 54)

Ms Helen Birch (Submission 25)

Bundock Street Project Group (Submission 48)

Mrs G Burgess (Submission 1)

Bush for Wildlife (Submission 71)

Council of the City of Brisbane (Submission 59)

Council of the City of Campbelltown (Submission 55)

Council of the City of Dubbo (Submission 62)

Council of the City of Fremantle (Submission 16)

Council of the City of Hobsons Bay (Submission 79)

Council of the City of Maryborough (Submission 67)

Council of the City of Penrith (Submission 39 and 39B)

Council of the City of Randwick (Submission 49)

Council of the City of Toowoomba (Submission 20)

Council of the City of Wyndham (Submission 76)

Council of the Shire of Cootamundra (Submission 81)

Council of the Shire of Stanthorpe (Submission 66)

Mr Matthew Coffey (Submission 14)

Cultural Heritage Research Centre, University of Canberra (Submission 40)

Defence Reserves Association (WA Branch) (Submission 23)

Department of Defence (Submission 37 and 37B)

Department of Finance and Administration (Submission 47)

Lt Colonel John D Deykin (Retired) (Submission 3)

Mr Peter Dobie (Submission 45)

Mr Graham Donley (Submission 10)

Ermington Naval Stores Re-zoning/Re-development (Submission 56)

Fremantle City Council Precint 3 (Submission 29 and 29A)

Fremantle Society Inc. (Submission 19)

Ms Julia Gillard, MP (Submission 75)

Mr John-Baron Gordon (Submission 36)

Government of the Australian Capital Territory, Chief Minister, Mrs Kate Carnell (Submission 34)

Government of the Northern Territory, Minister for Lands, Planning & Environment, Mr Tim Baldwin (Submission 53)

Government of Queensland, Minister for the Environment (Submission 82)

Government of Tasmania, Premier, Mr Jim Bacon (Submission 51)

Government of Western Australia, Ministry of the Premier and Cabinet (Submission 44)

Mr Kerin Greenwood (Submission 73)

Ms Barbara Harper-Nelson (Submission 13)

Ms Beverly Harrison (Submission 27)

Mr Alaric Hayes ((Submission 35)

Humane Society International (Submission 69)

Dr P E Hurst (Submission 8)

Ms Jackie Kelly, MP (Submission 86)

Ms Paricia Langenbacher (Submission 72)

Mrs Judith Love (Submission 22)

Mrs Dell Luxton (Submission 7B)

Mentone Scout Group (Submission 80)

Military Historical Society of Australia (WA Branch) (Submission 6)

Moverly Precinct Committee (Submission 43)

Mundaring and Hills Historical Society Inc. (Submission 15)

National Capital Authority (Submission 78)

National Environmental Defender's Office Network (Submission 70)

National Parks Association of New South Wales (Submission 63)

Ms Lorna Parr (Submission 83)

Perth Legacy Pensions Section (Submission 30)

Mr Ian and Mrs Jacquie Pittaway (Submission 52)

Point Cook Airfield Preservation Action Group (Submission 26)

Point Cook Operations Limited (Submission 77)

Returned and Services League of Australia Limited (Submission 38)

Returned and Services League of Australia Western Australia Branch (Inc.) (Submission 33)

Royal Australian Planning Institute (Submission 58)

Royal Australian Regiment Association (WA Branch) (Submission 4)

Royal Australian Signals Association WA (Inc.) (Submission 12)

Royal Melbourne Institute of Technology (Submission 74)

Royal Western Australian Historical Society Inc. (Submission 5)

Rudolf Steiner School, Children’s Garden (Submission 60)

Mr Carlos and Mrs Sandy Ruiz-Avila (Submission 50)

Ms Margurite Scott (Submission 84)

Mr Peter Shaw (Submission 18)

Ms Asuncion Silva (Submission 85)

Mr Llewellyn Stephens (Submission 57)

Mr David Storey (Submission 21)

Supporters Protecting Annerley’s Culture and Environment (Submission 7)

Mr John R Sweetman (Submission 24)

Sydney Coastal Councils (Submission 64)

Major General Ken Taylor (Retired) (Submission 42)

University of Notre Dame (Submission 41)

Vaucluse Progress Association (Submission 2)

Major K M Weir (Retired) (Submission 9)

Western Metropolitan Regional Council (Submission 28)

Major General John Whitelaw (Retired) (Submission 31)

APPENDIX 2

WITNESSES WHO APPEARED BEFORE THE COMMITTEE

Wednesday, 18 October 2000—Fremantle

City of Fremantle

Ms Jill Gaynor, Land Use Planner

Mr Ray Glickman, Chief Executive Officer

Mr David Johnston, Councillor

Ms Agnieshka Kiera, Heritage Architect Planner

Mr Richard Utting, Mayor, City of Fremantle

University of Notre Dame

Mr Terry Craig, Campus Services Manager

Dr Peter Tannock, Vice-Chancellor

Thursday, 19 October 2000—Fremantle

Army Museum of Western Australia Foundation

Mr Paul Bridges, Deputy Curator

Mr James Dalton, Board Member

Mr John Deykin, Board Chairman

Mrs Dale Olson, Secretary, Board of Management

Mr John Sweetman, Board Member

City precinct of the City of Fremantle

Mr John-Baron Gordon, Precinct Convenor

Fremantle Society

Mr John Dowson, President

Mr Trevor Knowles, Secretary

Military Historical Society of Australia (WA Branch)

Mr Peter Bamworth, Secretary and Treasurer

Mr Malcolm Higham, Member

Mr John Sweetman, Member

Mundaring and Hills Historical Society

Mrs Judith Love, Vice President

Residents Action Group and Precinct 3, City of Fremantle

Mr Stephen Anstey, Spokesperson

Mr Patrick Howard, Member

Returned and Services League of Australia, Western Australian Branch

Mr Ken Bladen, State President

Mr Don Hall, Member, State Executive

Mr Geoff Hourne, Member, State Executive

Royal Western Australian Historical Society (Inc.)

Mr Ronald Bodycoat, Member of Council and Honorary Architect

Private capacity

Dr Ian Alexander

Mr Paul Bridges

Mr Peter Dobie

Mr John-Baron Gordon

Mr Ian Handcock

Mr William Haskell

Mr Royce Kerridge

Mr Anthony Lloyd

Mr Brian Lockwood

Mr Douglas McPherson

Major General Ken Taylor

Mr Allan Henry Taylor

Mr Norman Wells

Friday, 10 November 2000—Canberra

Department of Defence

Mr Ross Kenneth Bain, Acting Head, Defence Estate

Ms Liz Clark, Acting Assistant Secretary, Property Management

Mr Rodney Corey, Acting Deputy Secretary, Corporate Services

Mr Roger Lee, Head, Army History Unit

Mr Brian Manns, Deputy Head, Army History Unit

Brigadier George Yacoub, Director, General Preparedness and Plans, Army

Australian Heritage Commission

Dr Ken Heffernan, Assistant Director, Historic Environment Advice Section

Mr Bruce Herbert, Executive Director, Australian Heritage Review

Western Australia Army Museum Foundation

Mr Paul Bridges, Deputy Curator

Friday, 16 February 2001—Melbourne

City of Wyndham

Mr Greg Malcomson, Director, Economic Development and Asset Management

Hobsons Bay City Council

Mr Kenneth McNamara, Chief Executive Officer

Point Cook Airfield Preservation Action Group

Mr Colin Grey, Chairman

Mr Ian Leslie, Member

Mr Mark Pilkington, Secretary

Point Cook Operations Limited

Air Vice Marshal Peter Scully (RAAF retired), Chairman

RMIT University

Mr Martyn Hayes, Program Director, Aviation Service

Royal Victorian Aero Club

Mr Kerin Brice, Past Vice–President

Save Afton Street Hill Group

Mrs Patricia Langenbacher, GroupMember

Ms Jennifer Lee, Member

Mr Pol McMahon, Member, also member of Friends of the Maribyrnong Valley

Ms Julia Gillard, Federal Member for Lalor

Monday, 26 February 2001—Canberra

Department of Finance and Administration

Mr Stephen Bartos, General Manager, Budget Group

Ms Kathryn Campbell, First Assistant Secretary, Property Group

Mr Paul Ferrari, Acting Branch Manager, Competitive Tendering and Grants Branch

National Capital Authority

Mr Shamsul Huda, Senior Town Planner

Mr David Wright, Director, (Development Approval)

Returned and Services League of Australia

Brigadier Grahame Hellyer (retired), Member, National Defence Committee

Monday, 5 March 2001—Canberra

Humane Society International

Ms Sophie Chapple, Environmental Legislation Coordinator

Ms Sally Stephens, 'Bush for Wildlife' National Coordinator

Australian Council of National Trusts

Mr Alan Graham, Executive Officer

Dr Susan Marsden, National Conservation Manager

Royal Australian Planning Institute

Mr Neil Head, National Executive Director

Mr John McInerney, National Honorary Treasurer and President Elect

Friday, 16 March 2001—Canberra

Department of Defence

Mr Ross Bain, Assistant Secretary, Property Management

Mr Bernard Blackley, Director, Defence Estate

Mr Rodney Corey, Head Defence Estate

Ms Liz Clarke, Director, Property Disposals, Defence Estate

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Mr Craig Kelly, Partner

Monday, 2 April 2001—Canberra

Department of Defence

Mr Ross Bain, Assistant Secretary, Property Management

Mr Bernard Blackley, Director, Defence Estate

Mr Rodney Corey, Head Defence Estate

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APPENDIX 3

COMMONWEALTH PROPERTY PRINCIPLES

1. As a general rule, Government should own property where the long-term yield rate exceeds the social opportunity cost of capital or where it is otherwise in the public interest to do so.

Over the medium term, rates of return of 14–15 per cent (nominal) would seem the appropriate figure for decisions about retention or divestment of existing property holdings, taking into account past achievement of those rates of return.

The full social opportunity cost of capital should apply to any new property development. While this will vary over time, the existing rate is much higher than the medium term property hurdle rate previously used.

Given the competitive nature of the property market, it would be unusual for the long–term yield rate for office and other commercial accommodation requirements to exceed the social opportunity cost of capital (ie generally, government could make better use of its scarce capital than property investment).

2. Public interest considerations which may influence the decision as to whether government should own property include circumstances where:

(a) the property has:

- symbolic significance—eg Parliament House, the High Court;
- security requirements;
- strategic significance to future government use—eg land required for future airport use;
- highly specialised uses that would significantly inhibit commercial provision;
- significant heritage and environmental requirements;
- significant public usage;

- characteristics such that the nature of the use or development of the property would give a potential lessor excessive future negotiation power (eg. where government needs to make a large investment in specialised fit out);

(b) there exists clear evidence of market failure. This could include properties such as:

- small regional offices in isolated locations where there would be no other tenants should the property become vacant or where private investors would demand excessive rates of return to recover their investment over the life of the lease; and

- those in markets where there is a predominance of government ownership. (An example is unique areas of the ACT property market, in particular the Parliamentary Triangle, where there is no competitive market.

3. The onus should rest with the proposing agency to clearly demonstrate the characteristics of the property that warrant government ownership:

(a) where market failure is claimed, the market circumstances for the property should be adequately tested, including consideration of offering lease terms or conditions that might allow private investors or developers to convert a 'government guarantee' of rental income into the capital necessary to provide the accommodation and earn a market return; and

(b) where market failure is established, the relevant Minister should take the proposal to Cabinet in the Budget context.

4. To encourage efficient, effective and transparent decision-making and accountability:

(a) the costs of property use (whether owned or leased, domestic or overseas) should be fully reported by the using agency or program;

(b) property costs should be measured (and wherever practical, charged) on the basis of competitive neutrality - ie. costs to government should be measured on the same basis as the private sector; and

(c) property costs should recognise the costs of holding unused land in reserve for possible future use, except for certain land with environmental, heritage or cultural significance and where disposal is not an option.

5. When seeking the provision of accommodation to meet government needs, a pro-active approach should be taken to inform the market well in

advance of the project so that the market has time to develop solutions to meet those needs.

6. Where ownership is decided upon, the property should be managed so as to retain the maximum long-term economic advantage to the taxpayer. Financial and/or organisational arrangements should be made to ensure the effective maintenance and refurbishment of the facility are to agreed standards. Failure to do so risks exposure to high property vacancy rates, additional costs and failure to meet legal obligations under Occupational Health and Safety legislation.

7. For agencies occupying property owned by another part of the government, occupancy agreements (as a substitute for private sector leases) should be formalised between the property owner and the occupying agency. Conditions and rentals should be market-based. All agreements between arms of government should be binding, and transferable on sale of properties. Where such properties are identified for sale, the occupancy agreements should be placed in a form that facilitates completion of the sale.

8. Property management services provided within government bodies should be fully market tested, including the option of in-house bids consistent with the principles established in the Competitive Neutrality Principle.

9. Where property is being provided on an internal market basis, there should be a clear separation of responsibility between the area responsible for maximising the performance of government owned property and any area responsible for tenant advocacy.

APPENDIX 4

COMMONWEALTH PROPERTY DISPOSAL POLICY

General policy

Commonwealth Property having no alternative efficient use is to be sold on the open market at full market value.

Exceptions to this general policy are outlined below.

A. Priority sales

Priority sales are those made direct to a purchaser without the property having first been offered for sale on the open market. A priority sale may be arranged in the following circumstances:

(i) where there is a former owner entitlement as defined under the Lands Acquisition Act—the owner is to be given the right of first refusal at full market value;

(ii) where sale to State or local Governments would facilitate other Commonwealth or co–operative policy initiatives, or would protect other Commonwealth property interests—sale to be negotiated on the basis of the highest price possible given the intended end use; and

(iii) where Commonwealth funded organisations seek special consideration in the disposal of surplus property and have the support of the relevant portfolio Minister—sale to be negotiated on the basis of intended use.

** The following categories of priority sales may be approved by the relevant delegate of the Minister for Finance and Administration:

- Disposal to State or local Government for road and/or railway casements, road widening, or other minor access purposes;

- Disposal under a legal obligation, eg where there is a former owner entitlement as defined in the Lands Acquisition Act.

All other priority sakes including those in the above categories which have a potential or social sensitivity, heritage or environmental significance, or which are likely to arouse State or local Government or community protest, require the personal approval of the Minister for Finance and Administration.

B. Concessional sales

Concessional sales are those priority sales concluded at a purchase price below the market value. Such sales require the approval of the Minister for Finance and Administration.

In the case of Commonwealth statutory authorities, the agreement of the relevant portfolio Minister is also required to any concessional sale.

Notes:

(a) Disposals policy agreed by Government Decision 7174 of 17 February 1986.

(b) Priority sales exceptions marked with an asterisk were agreed by Minister Bolkus in June 1990—previously all priority sales required the Minister's personal approval.

(c) Amendments to reflect changes in administrative arrangements in October 1997 agreed by the Minister for Finance and Administration, the Honourable John Fahey MP, in November 1997