

SALE OF STATE OWNED LAND AT GILLMAN

A REPORT BY

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INDEPENDENT COMMISSIONER AGAINST CORRUPTION

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PUBLICATION

I publish this report in accordance with section 26(3) of the *Ombudsman Act 1972* having formed the opinion that it is in the public interest to do so.

INTRODUCTION

Complaints were made to the Office for Public Integrity ('OPI') in relation to the sale of land at Gillman as early as 30 January 2014.

I was aware, at the time of those complaints, that proceedings had been commenced by Acquista Investments Pty Ltd ('Acquista') and another company against the Urban Renewal Authority ('URA') relating to the transaction.¹

I was also aware that a Legislative Council Select Committee ('the Select Committee') was inquiring into the same transaction.

I kept a close eye on the evidence taken by the Select Committee and became acquainted with the Supreme Court proceedings when Blue J published his Reasons for Judgment on 24 December 2014.

I thought it appropriate for the Supreme Court proceedings to run their course, especially where the plaintiffs were asking to quash the decision made by Cabinet to enter into this transaction. However, the plaintiffs failed in their proceedings to obtain the relief that was sought.

I also thought that the Select Committee's inquiry might provide an answer to the questions that had been raised but that inquiry is still continuing.

I also became aware that the Auditor-General had provided Parliament with a Supplementary Report for the year ended 30 June 2014 in which he addressed the same transaction.

The sale of Government land at Gillman was a significant transaction in this State. In light of a number of issues raised in the complaints made about the sale, I considered it appropriate that an investigation should take place.

I am authorised by section 25 of the *Independent Commissioner Against Corruption Act 2012* ('the ICAC Act') to make public statements after having regard to the criteria identified in that section. On 22 January 2015 I made a public statement in connection with the sale of Government land at Gillman, which I said was under investigation by my office.

I thought it necessary to make a public statement because there had been considerable speculation in the media about the transaction and whether I was investigating it in accordance with any powers given to me by the ICAC Act.

I did not think that making a public statement could affect the reputation of any person, having regard to the pre-existing media speculation, the hearings conducted by the Select Committee and Blue J's Reasons for Judgment.

It is important at the outset to identify the statutory basis for my investigation; what it is that I am doing; and what it is that I am not doing.

¹ *Acquista Investments Pty Ltd and Anor v The Urban Renewal Authority and Ors* [2014] SASC 206.

The ICAC Act identifies as one of its primary objects the establishment of the Independent Commissioner Against Corruption with functions designed to further:

- (i) *the identification and investigation of corruption in public administration; and*
- (ii) *the prevention or minimisation of corruption, misconduct and maladministration in public administration, including through referral of potential issues, education and evaluation of practices, policies and procedures.*²

The primary objects of the ICAC Act recognise that I may perform functions under the ICAC Act in relation to potential issues of corruption, misconduct or maladministration in public administration, and can do so by investigating corruption in public administration, or referring misconduct or maladministration in public administration to the relevant body, or exercising the powers of an inquiry agency in respect of potential misconduct or maladministration as I consider appropriate.

The three types of conduct with which the ICAC Act is concerned, corruption, misconduct and maladministration in public administration, are defined in section 5 of the ICAC Act.

A public officer will not have engaged in corruption unless that public officer has committed a criminal offence of the kind referred to in section 5(1) of the ICAC Act.

I said in my public statement that I had not embarked upon an investigation into corruption but that if I found any evidence to suggest that there had been conduct that fell within the ICAC Act's definition of corruption, I would pursue it.

There are two matters I should mention immediately.

First, there is no evidence that anyone, whether a public officer or otherwise, has committed a criminal offence of any kind and thus there is no evidence of corruption.

Secondly, as the evidence which I will address shows Adelaide Capital Partners Pty Ltd ('ACP'), which initiated the events that led to this transaction by making an unsolicited offer to the Premier on 18 June 2013 and its directors, office holders and advisers, cannot be criticised for their conduct.

In my public statement I said that I was investigating maladministration. In this report when I make reference to maladministration, I am referring to maladministration in public administration as defined in the ICAC Act.

'Maladministration' in public administration is defined in the ICAC Act:

- (4) ***Maladministration in public administration—***
 - (a) *means—*
 - (i) *conduct of a public officer, or a practice, policy or procedure of a public authority, that results in an irregular and unauthorised use of public money or substantial mismanagement of public resources; or*
 - (ii) *conduct of a public officer involving substantial mismanagement in or in relation to the performance of official functions; and*
 - (b) *includes conduct resulting from impropriety, incompetence or negligence; and*
 - (c) *is to be assessed having regard to relevant statutory provisions and administrative instructions and directions.*

Some of the conduct relating to the Gillman land occurred before the commencement of the ICAC Act and some of the conduct relates to conduct of persons who were public officers at the time the

² *Independent Commissioner Against Corruption Act 2012*, section 3(1).

conduct occurred but who are no longer public officers, but that does not mean that that conduct cannot be investigated.³

My power to investigate maladministration arises in this way.

When a complaint or report is made to the OPI it must assess the complaint or report to determine whether it raises a potential issue of corruption, misconduct or maladministration in public administration and make recommendations to me as to whether, and by whom, action should be taken.

If a matter is assessed as raising a potential issue of maladministration it may be dealt with in one of the ways mentioned in section 24(2) of the ICAC Act.

The matter may be referred to an inquiry agency with or without directions or guidance to the agency in respect of the matter. An inquiry agency in matters unconnected with SA Police is the Ombudsman or the Commissioner for Public Sector Employment.

Alternatively, I may exercise the powers of an inquiry agency in respect of the matter.⁴

As a further alternative, I may refer the matter to the public authority concerned, with directions or guidance to the authority in respect of the matter.

In this case the matter complained of was assessed as raising a potential issue of maladministration.

After seeking the views of the Ombudsman, I elected under section 24(2)(a) of the ICAC Act to exercise the powers of the Ombudsman in respect of the matter. Following amendments to the ICAC Act in November 2014 that power now resides in section 24(2)(ab). The powers that I am exercising in relation to this inquiry are given to me by the exercise of the Ombudsman's powers.

Whilst my jurisdiction to carry out the investigation is enlivened by the ICAC Act, I am not exercising any of the powers of investigation given by the ICAC Act, but powers given to the Ombudsman by the *Ombudsman Act 1972* ('the Ombudsman Act').

Part 3 of the Ombudsman Act deals with investigations. In particular, section 19 gives the Ombudsman the powers of a Commission as defined in the *Royal Commissions Act 1917* ('the Royal Commissions Act') and provides that the Royal Commissions Act applies as if the Ombudsman were a commission and the 'subject matter of the investigation were set out in a commission of inquiry issued by the Governor under the Act'⁵.

The Ombudsman Act requires that every investigation under the Ombudsman Act must be conducted in private

Section 18 of the Ombudsman Act provides for the procedure to be adopted for an investigation under that Act:

18—Procedure on investigations

- (1) *Notwithstanding any other provision of this Part, the Ombudsman may make a preliminary investigation of an administrative act to determine whether to proceed with a full investigation of that act.*
- (1a) *The Ombudsman must, before proceeding with a full investigation of an administrative act, inform the principal officer of the relevant agency of the decision to proceed with such an investigation.*
- (2) *Every investigation under this Act must be conducted in private.*

³ ICAC Act, section 5(5).

⁴ ICAC Act, section 24(2)(a) and since November 2014, section 24(2)(ab).

⁵ *Ombudsman Act 1972*, section 19(b).

- (3) *The Ombudsman—*
- (a) *is not required to hold a hearing for the purposes of an investigation;*
 - (b) *may obtain information from such persons and in such manner as the Ombudsman thinks fit;*
 - (c) *may determine whether any person to whom an investigation relates may have legal or other representation.*
- (4) *Before making a report affecting an agency to which this Act applies the Ombudsman must allow the principal officer of the agency a reasonable opportunity to comment on the subject matter of the report.*
- (5) *The Ombudsman must report any evidence of breach of duty or misconduct on the part of a member, officer or employee of an agency to which this Act applies to the principal officer of the agency.*
- (6) *Subject to this Act, the procedure to be adopted in relation to an investigation will be as determined by the Ombudsman.*

I conducted a preliminary investigation to determine whether to proceed with a full investigation. On 21 January 2015 I wrote to the Premier, the Treasurer and Mr John Hanlon, the now Chief Executive of the URA, advising them that I intended to proceed with a full investigation.

Section 18(6) provides that the procedure in an investigation is as determined by the person exercising the powers.

My investigation has been focused on whether the conduct that has been complained of and reported to the OPI is conduct of a kind that is maladministration in public administration as defined in the ICAC Act.

I do not have the power to carry out a general inquiry. I am empowered to investigate a potential issue of corruption in public administration and I am empowered to exercise the powers of an inquiry agency, such as the Ombudsman, in respect of a potential issue of misconduct or maladministration.

Thus the Ombudsman's powers are not being exercised by me in respect of an administrative act but in respect of a potential issue of maladministration.

The Royal Commissions Act does not specifically provide for the Royal Commissioner to report. Ordinarily the Commission appointing the Royal Commissioner identifies the question the Executive requires to be investigated and the manner in which the Royal Commissioner should report.

This report is made in accordance with section 25 of the Ombudsman Act. That Act requires a report if section 25(2) of the Ombudsman Act is engaged.

Section 25(2) provides:

- (2) *In the case of an investigation to which this section applies in which the Ombudsman is of the opinion—*
- (a) *that the subject matter of the investigation should be referred back to the appropriate agency for further consideration; or*
 - (b) *that action can be, and should be, taken to rectify, or mitigate or alter the effects of, the administrative act to which the investigation related; or*
 - (c) *that the practice in accordance with which the administrative act was done should be varied; or*
 - (d) *that any law in accordance with which or on the basis of which the action was taken should be amended or repealed; or*
 - (e) *that the reason for any administrative act should be given; or*

(f) that any other steps should be taken,

the Ombudsman must report that opinion and the reasons for it to the principal officer of the relevant agency and may make such recommendations as the Ombudsman thinks fit.

I am not carrying out the kind of inquiry that Blue J embarked upon in response to the application for judicial review made by Acquista.⁶ His inquiry was to determine whether any decision made by any person who was subject to judicial review should be quashed and whether the parties to the Option Deed should be restrained from performing the contract.

In carrying out that inquiry, his Honour assessed the conduct against the criterion whether the decision that was made was unreasonable in the sense described in the English decision *Associated Provincial Picture Houses Ltd v Wednesbury Corp*⁷.

His Honour found that the decision to enter into the transaction with ACP was made by Mr Fred Hansen, who was at the time the Chief Executive of the URA, and was a decision that no reasonable person in the position of the Chief Executive could have made.

That is not the inquiry upon which I have embarked.

Like Blue J, I have to make findings in order to arrive at a conclusion. However the conclusion I must make is whether or not there has been maladministration. There are some findings that I have made that are different from those made by Blue J. For example, his Honour found as I have said, that Mr Hansen, the Chief Executive of the URA, made the decision to enter into the transaction with ACP.

I have reached a different conclusion. Whilst it is clear that Mr Hansen signed the Option Deed on behalf of the URA he did so at the direction of Cabinet which had made the decision to have the URA enter into the transaction.

I have made other findings different from those made by Blue J.

The Full Court of the Supreme Court of South Australia has heard and determined Acquista's appeal against Blue J's order dismissing the plaintiffs' application for judicial review.⁸ The respondents to the appeal filed notices of contention contending that his Honour's order ought to stand but for reasons other than those relied upon by Blue J. The Court by a majority (Vanstone and Lovell JJ) dismissed the appeal but upheld the respondents' notices of contention. In other words, the majority were of the opinion that Blue J was correct to dismiss the plaintiffs' application for judicial review but not for the reasons he gave, but for the reasons advanced by the respondents. In doing so the majority disagreed with Blue J's finding that Mr Hansen was the decision maker.

The minority (Debelle AJ) would have allowed the appeal and declared that the Option Deed was invalid and of no effect and issued an injunction to restrain ACP from taking any steps to effect that Option Deed.

My findings are based upon different evidence to that which was both before Blue J and the Full Court. I have had access to documents and heard the evidence of witnesses that was not available to the Court.

My findings have no legal consequence in that they cannot impact upon the validity or enforceability of the Option Deed. That question is for the Courts.

I have considered as a discrete issue the suggestion that there was a connection between the entry into the Option Deed by the URA and the Minister for State Development (Mr Weatherill) and the

⁶ *Acquista Investments Pty Ltd and Anor v The Urban Renewal Authority and Ors* [2014] SASC 206.

⁷ [1948] 1 KB 223.

⁸ *Acquista Investments Pty Ltd and Anor v The Urban Renewal Authority and Ors* [2015] SASFC 91.

settlement of the State Government and the URA's dispute with the Newport Quays Consortium ('the Consortium'). I have dealt with that discrete issue in Appendix 1 to this Report.

For all of those reasons, the reader of the report that follows must understand that:

1. I have the statutory authority to investigate maladministration as defined in the ICAC Act;
2. In carrying out that investigation I exercised the powers of the Ombudsman under the Ombudsman Act;
3. The principal power given to the Ombudsman in relation to investigations is to exercise the powers under the Royal Commissions Act;
4. I have, as a matter of procedural fairness, adopted the processes that are applied by the Ombudsman in an investigation under the Ombudsman Act;
5. I have not investigated the conduct to determine whether the decision was irrational but to determine whether the conduct of any public officer or any practice, policy or procedure of a public authority has resulted in an irregular and unauthorised use of public money or substantial mismanagement of public resources or involves substantial mismanagement in or in relation to the performance of official functions;
6. The question of whether there was a connection between the settlement of the Consortium's claim against the State Government and the Option Deed with ACP is considered separately; and
7. The findings that I have made do not impact upon the validity or the enforceability of the Option Deed.

In this Report I have made extensive reference to the evidence that might be relevant to the way in which the events unfolded in 2013 so as to assure the reader that I have given consideration to all matters of detail.

A Royal Commission is not bound by the rules of practice of any court or tribunal as to procedural matters but may conduct their proceedings in and inform their minds on any matter in such manner as they think proper when exercising any of their functions or powers⁹.

However in an investigation of this kind where evidence is taken the rules of evidence that have been developed in the common law world and which are presently applicable in this State and in Australia should not be lightly disregarded, especially where the decision maker considers it necessary to be satisfied to the *Briginshaw*¹⁰ standard before making a decision. I shall explain the *Briginshaw* standard shortly.

The purpose of the rules of evidence is to develop a coherent structure and procedure to determine the admissibility of evidence in the decision making process. Some rules of evidence only have application in relation to criminal proceedings but most of the rules of evidence are common to both criminal and civil proceedings.

Evidence must be relevant before it can be admitted but not all relevant evidence will be admitted.

Relevant evidence has been defined to be evidence that could rationally affect the assessment of the probability of the existence of a fact in issue in the proceeding.¹¹

Relevance means that the evidence must be probative of a fact in issue.

In an investigation such as this relevance must be determined by reference to the findings that are to be made.

⁹ *Royal Commissions Act 1917*, section 7.

¹⁰ *Briginshaw v Briginshaw* (1938) 60 CLR 336.

¹¹ *Evidence Act 1995* (Cth), section 55.

The relevance of any evidence that is proffered to me must therefore be determined by whether the evidence is logically probative of a fact in issue in relation to that investigation.

The principles of administrative law require me to have regard to any relevant matter and to disregard any irrelevant matter.

It seems to me therefore that although I could apparently dispense with the rules of evidence in a consideration of this matter I could still not have regard to irrelevant evidence and not consider relevant evidence.

I proceeded on the basis that the only evidence that I should consider in my investigation is relevant evidence and that I should consider all of that evidence.

As I have said some relevant evidence is inadmissible in a court because the courts have developed principles that exclude relevant evidence that may either be unreliable or cannot be tested to determine its reliability.

An example is hearsay evidence which has the effect of excluding evidence that may be relevant to a fact in issue but which is not admitted by the courts because if it is tendered to a court for the purpose of proving the fact contained in the hearsay evidence the reliability of the evidence cannot be tested.

Opinion evidence is ordinarily not admitted to prove the existence of a fact unless it be provided by a person with specialised knowledge based on that person's training, study or experience and is evidence of an opinion that is based on that knowledge.

I have gathered evidence in a way in which a court would not.

I have relied upon section 7 of the Royal Commissions Act. I have not, as a court would in a legal proceeding, required a person to tender evidence before receiving it. I have obtained evidence on my own initiative because there are no parties in this investigation.

That relevant evidence informs the findings that I have made.

I have made my findings separately from the evidence, which I have discussed, so the reader can understand the evidence I have accepted or rejected.

In making these findings and arriving at my conclusion I have had regard to the serious consequences that flow from a finding that a public authority or a public officer has engaged in conduct that can be described as maladministration.

I have therefore had regard to the gravity of the consequences that flow from particular findings when determining whether an issue has been established.¹²

¹² *Briginshaw v Briginshaw* (1938) 60 CLR 336 per Dixon J at 361 and 362.

PROCEDURAL FAIRNESS

A decision maker (which I am) has an obligation to be fair to those who might be affected by his or her decision. In an investigation such as this, that requires the decision maker to adhere to the principles of procedural fairness. The principle is also sometimes referred to as natural justice.

There are two aspects to that principle. First, it requires the decision maker to act with fairness, impartiality and the absence of any prejudice.

The second aspect requires that a person who might be affected by the decision be given notice of the decision that might be made and the reasons for it in order to afford the person an opportunity to be heard on the matter, including making submissions and bringing to the decision maker's attention any other relevant matter that should be considered.

The content of the duty to afford procedural fairness will vary upon the statutory and factual circumstances. The Ombudsman's practice, with which I agree, is to provide a draft of his report to the agency which is the subject of the report and to anyone who may be affected by any finding made in the report, to allow the agency or that person to make any submissions that are relevant to the content of the report. I refer to the draft report as a preliminary report.

An agency or person who is provided the opportunity to consider a preliminary report then has the opportunity to identify any relevant material that has been overlooked; argue that material that has been considered is irrelevant; argue that the findings as proposed in the preliminary report are wrong or not open on the material; argue that other findings should be made; and argue for some other decision other than that proposed in the preliminary report. The agency or person can also point to or provide further evidence and argue that that further evidence ought to be considered.

The decision maker must have regard to any submissions of that kind, including submissions as to further evidence and, if considered relevant, the evidence itself, made as a consequence of the provision of the preliminary report in order to provide procedural fairness to the agency or person who might be affected.

The exercise is one of fairness.

In this inquiry I provided a preliminary report to those who I considered might be affected by the report. I did so in accordance with the principles mentioned above. Having provided that preliminary report I received a number of submissions and I received a range of further evidence. It was necessary to consider closely the submissions made and the further evidence received. The process led to the recall of witnesses and hearing from new witnesses.

I have considered all of the submissions received. I have also considered all of the additional evidence that I have received. My final report differs in many respects from my preliminary report. Those who made submissions will be able to discern from the content of this report which of the submissions I have accepted and which of the submissions I have rejected.

I do not intend to refer to the submissions because to do so would disclose some of my preliminary findings that are not part of this final report. That would be unfair to those who persuaded me to a different outcome.

The process took longer than I had first anticipated. It has delayed the publication of this report. However, the process was necessary and appropriate.

In the end result I am satisfied that I, as an administrative decision maker, have discharged my obligation to afford procedural fairness.

Later in this report I will offer some views as to how inquiries of this type might be conducted differently in the future.

COMMERCIAL-IN-CONFIDENCE, LEGAL PROFESSIONAL PRIVILEGE AND PUBLIC INTEREST IMMUNITY

I consider that in an investigation of this kind, commercial-in-confidence material should not lightly be disclosed publicly if to do so would prejudice the State and relevant commercial entities. Accordingly, I have redacted material that ACP or the State has claimed is commercial-in-confidence where the material is of that character and I think that it would not be in the public interest to publish that material.

I also have to respect a claim by a person who is entitled to have communications between a person and the person's lawyer kept confidential because of legal professional privilege.

In this matter the State claimed legal professional privilege in relation to communications between relevant persons and the CSO. It was entirely proper for the State to do so and I have respected those claims.

In respect of draft Cabinet submissions and Cabinet submissions, the State requested that I maintain their confidentiality to the extent that I was able to do so consistently with the fulfillment of my functions.

The State also claimed public interest immunity in respect of those portions of my report that might reveal the actual deliberations of Cabinet. Information that identifies the deliberations of Cabinet has long been recognised as attracting public interest immunity.

I have decided not to redact those portions of Cabinet submissions and draft Cabinet submissions that I refer to in this report. That is because that material in my view is essential to understanding the matters being investigated and the findings at which I have arrived, and because I consider it necessary in the public interest to set out the evidence which I have relied on to that extent.

I have respected the State's claim of public interest immunity in respect of Cabinet deliberations and have made the necessary redactions.

In the end result there are some parts of the published report that have been redacted. That is unfortunate but, for the reasons outlined above, unavoidable.

THE URBAN RENEWAL AUTHORITY

The *Housing and Urban Development (Administrative Arrangements) Act 1995* ('the HUDA') commenced on 1 July 1995. It has been amended from time-to-time. Significant amendments were made by the *Housing and Urban Development (Administrative Arrangements) (Urban Renewal) Amendment Act 2013* which commenced on 18 September 2014. Those amendments are not relevant and I will address the HUDA as it was at the relevant time in 2013.

The HUDA provides for the administration of housing and urban development in South Australia and for the creation by regulation of statutory bodies to facilitate development within this State. Section 8 of the HUDA which is contained in Part 3 of the HUDA empowers the Governor to make regulations establishing a statutory corporation under the HUDA and providing for the constitution of a board of management as its governing body and specifying the corporation's functions: section 8(2).

A statutory corporation established by regulation has all the powers of a natural person together with the powers specifically conferred upon it by the HUDA or any other Act: section 8(3).

A statutory corporation is subject to the control and direction of the Minister: section 9.

The Governor has the power to appoint the members of the board (section 10(1)) and appoint the board's presiding member: section 10(2).

The board of a statutory corporation is responsible for overseeing its operation with the goal of securing continuing improvements in its performance and protecting its long term viability and the Crown's financial and other interests in the statutory corporation: section 16(1). The Board's particular responsibilities are identified in section 16(2).

On 1 March 2012 the *Housing and Urban Development (Administrative Arrangements) (Urban Renewal Authority) Regulations 2012* ('the Regulations') were promulgated.

Regulation 4 established the URA as a statutory corporation under the HUDA. It trades under the name 'Renewal SA'.¹³

Regulation 5 establishes a board of management constituted of seven persons.

The URA's functions are provided for in regulation 6 and include the initiation, undertaking, support and promotion of the development of land and housing in the public interest, particularly for urban renewal purposes; to acquire, hold, manage, lease and dispose of land, improvements and property; and to give advice to the Government on issues related to housing and urban development in the State.

Regulation 7 identifies specific powers of the URA which include the power to dispose of land for the purpose of carrying out URA's functions.

Section 19 of the HUDA empowers the board to delegate a function or power to a specified person or body or to a person occupying a specified office or position and that delegation may be subject to conditions and limitations specified in the instrument of delegation.

Section 21 of the HUDA invests the statutory corporation created under section 8 of the HUDA, and in this case the URA, with specific powers which include the power to acquire, hold and deal with and dispose of real and personal property and grant or hold a lease or licence; enter into any kind of contract or arrangement; exercise other powers conferred by regulation; and exercise other powers that are necessary, expedient or incidental to the functions of the statutory corporation.

¹³ Sometimes it is referred to in this report as the URA and other times Renewal SA.

The Minister has the power, after consultation with the Chief Executive of the URA and the statutory corporation, of determining the staffing arrangements of the statutory body. Although the HUDA does not say so expressly, the HUDA and the Regulations ensure the Chief Executive of the statutory authority is answerable to the Minister. The Chief Executive is probably also responsible to the Board but again, the HUDA is unclear in that respect.

The URA, which was created by the regulations to which I have referred, was the successor to the Land Management Corporation ('LMC'), which itself had been established as a statutory authority under the *Public Corporations (Land Management Corporation) Regulations 1997*.

On 1 March 2012 the LMC was dissolved and its assets and liabilities transferred to the URA by the *Public Corporations (Land Management Corporation) (Dissolution and Revocation) Regulations 2012*.

The assets that were transferred from the LMC to the URA included the Gillman land.

THE MINISTERS

Premier

21 October 2011 to the present – The Hon. Jay Weatherill MP

Treasurer

21 January 2013 to 26 March 2014 – The Hon. Jay Weatherill MP
26 March 2014 to the present – The Hon. Tom Koutsantonis MP¹⁴

Minister for Mineral Resources and Energy

21 October 2011 to the present – The Hon. Tom Koutsantonis MP

Minister for Housing and Urban Development

21 October 2011 to 21 January 2013 – The Hon. Patrick Conlon MP
21 January 2013 to 26 March 2014 – The Hon. Tom Koutsantonis MP
26 March 2014 to the present – The Hon. John Rau MP

Minister for State Development

21 October 2011 – 26 March 2014 – The Hon. Jay Weatherill MP
26 March 2014 to the present – The Hon. Tom Koutsantonis MP

¹⁴ In this Report I shall refer to the Premier as 'the Premier' and the Minister for Housing and Urban Development at the time, The Hon. Tom Koutsantonis MP, as 'Minister Koutsantonis'. The reason for describing Minister Koutsantonis by name rather than by title is to avoid any confusion with any other Minister.

THE CORPORATIONS INVOLVED

ACP was registered with the Australian Securities and Investments Commission ('ASIC') on 20 September 2012. Its Director on incorporation was Benjamin David Ziesing, who was the Company Secretary.

On 28 March 2013 Mr Ziesing resigned and Dale John Ryan and Grant Lewis Kelley were appointed Directors. Dale John Ryan was also appointed Secretary.

On 20 June 2013 Mr Kelley and Mr Ryan resigned and Simon John Kingsley Brown, Andrew Luke Gerlach, Stephen Gerlach and Andrew Bruce Watson were appointed as Directors.

On 28 March 2014 David John McMahon was appointed a Director.

The original sole shareholder was Grant Lewis Kelley.

The current shareholders are Gerlach Asset Development Pty Ltd and ResourceCo Holdings Pty Ltd, which each own 5 shares.

Gerlach Asset Development Pty Ltd, which is one of the two shareholders in ACP, was registered with ASIC on 18 June 2013.

Its Directors on incorporation were Andrew Luke Gerlach and Stephen Gerlach and they remain the Directors of the company.

Gerlach Asset Development Pty Ltd has two shareholders, S Gerlach Pty Ltd which holds 4,999 shares; and Wilga Investments Pty Ltd which owns 5,001 shares.

Wilga Investments Pty Ltd, was registered with ASIC on 18 June 2013. On incorporation it had only one Director, Andrew Luke Gerlach, who remains the sole Director of the company. He is also the Secretary of the company.

Only 2 shares have been issued, both of which are held by Andrew Luke Gerlach.

S Gerlach Pty Ltd, the minority shareholder of Gerlach Asset Development Pty Ltd was registered with ASIC on 4 January 1993.

At the time it was registered it had two Directors, both of whom remain Directors, being Stephen Gerlach and Virginia Ruth Gerlach. Stephen Gerlach is the Company Secretary.

The two shareholders are Stephen Gerlach who holds 2 shares and Virginia Ruth Gerlach, who holds 1 share.

ResourceCo Holdings Pty Ltd was registered on 10 December 2003. On incorporation its Directors were David John McMahon and Simon John Brown, both of whom were also appointed as Company Secretary. They still hold those offices.

Two alternate Directors, Kenneth John Brown and Andrew Glen McMahon, were appointed on 23 June 2004.

The company has issued 40 shares, 20 of which are held by SJK Brown Investments Pty Ltd and 20 of which are held by D&A McMahon Investments Pty Ltd. SJK Brown Investments Pty Ltd was incorporated on 10 May 1995. At incorporation, Todd Hamish Brown was appointed a Director but resigned on 5 August 2004. He was also appointed the Company Secretary but resigned on the same day.

The current Directors are Kenneth John Brown and Simon John Brown. Simon Brown is the Company Secretary.

At incorporation the two shareholders were Todd Brown and Simon Brown, who each held 1 share. Simon Brown is now the sole shareholder.

D&A McMahon Investments Pty Ltd was incorporated on 20 December 1991. Its current Directors, who have been the Directors of the Company since its incorporation, are David John McMahon and Andrew Glen McMahon, who is also the Secretary of the Company.

Shareholding in the Company is equally divided between D McMahon Nominees Pty Ltd and A McMahon Nominees Pty Ltd, which each hold 10 shares.

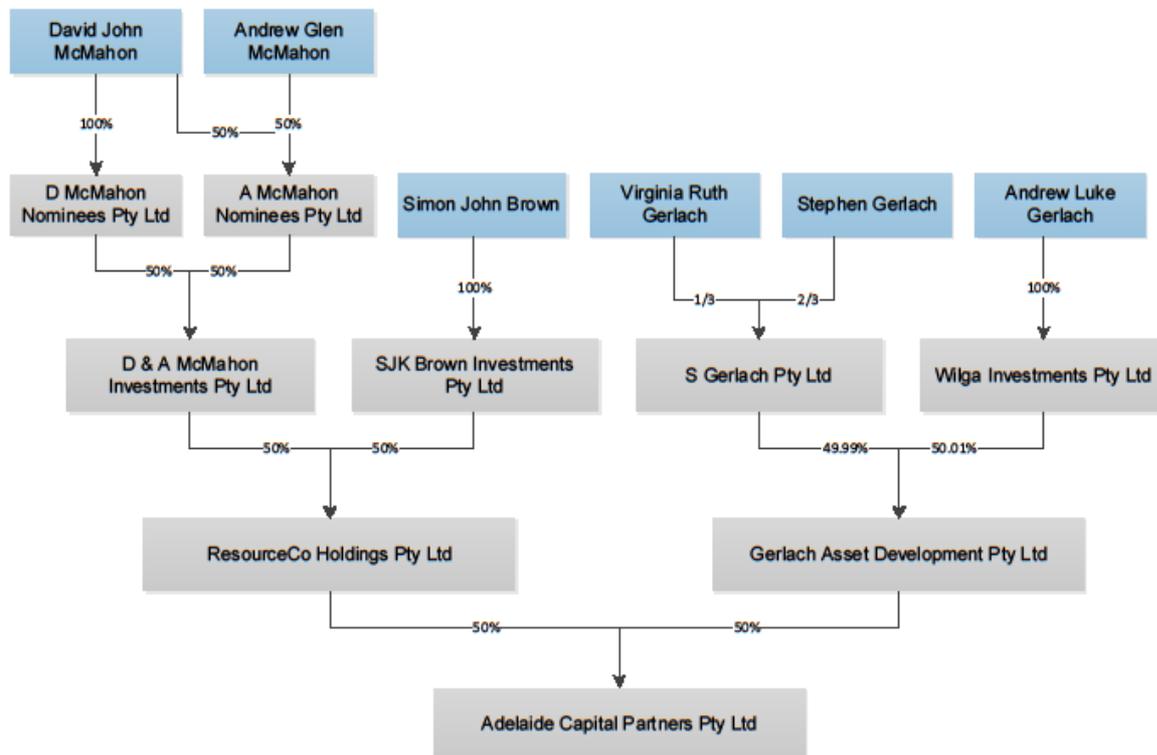
D McMahon Nominees Pty Ltd was registered on 20 December 1991. David John McMahon and Andrew Glen McMahon were appointed Directors and remain the Directors of the Company.

Jane Merrie McMahon and Daniel McMahon were appointed Company Secretary on that date.

The shareholders in that Company have always been David McMahon and Jane McMahon, who each hold 10 shares.

A McMahon Nominees Pty Ltd was registered on 20 December 1991 and David John McMahon and Andrew Glen McMahon were appointed Directors at the date of registration, and remain so. Andrew McMahon was also appointed Company Secretary on that day and remains a Company Secretary.

The shareholding in that Company is divided equally between David McMahon and Andrew McMahon, who each hold 10 shares.



Newport Quays Pty Ltd ('NQPL') was registered with ASIC on 30 July 2004. David Anthony Rice was appointed a Director of the Company on that day, and he remains a Director.

Also appointed Directors at registration were Jonathon James Rice, who resigned his directorship on 20 December 2013, Ross Arnold McDiven, who resigned his directorship on 16 January 2007, Anthony David Floreani, who resigned his directorship on 20 December 2007 and Bruce Phillip Rippin, who resigned his directorship on 13 August 2004. He was reappointed a Director on 6 October 2004, but resigned for a second time on 31 July 2007.

The other past Directors of NQPL are Eden Parry Skyring (28 September to 2 May 2014), Joseph Kenneth Bennett (22 September 2011 to 28 September 2012), Christopher John Palandri (31 July 2007 to 22 September 2011), Trent James Edwards (4 August 2010 to 1 August 2011), George Kostas (31 July 2007 to 4 August 2010), Dennis Christopher O'Regan (16 January 2007 to 31 July 2007) and John Aidan Kavanagh, (20 December 2007 to 25 May 2011).

The past alternate Directors for NQPL are Todd Hamish Brown, (6 February 2007 to 20 December 2013), Derek Wilfred Klau (4 August 2010 to 22 September 2011), John Raymond Curry (1 August 2011 to 22 September 2011), and Mark James Pivovarov, (31 July 2007 to 4 August 2010).

NQPL has issued 10 shares, 5 of which are each held by Multiplex Port Adelaide Pty Ltd and UCPA Waterfront Development Pty Ltd.

Multiplex Port Adelaide Pty Ltd was registered with ASIC on 2 July 2004. Its current Company officers are John Raymond Curry, who was appointed Director on 21 March 2011, Kathleen Mary Searle, who was appointed a Director on 2 May 2014, and Neil David Olofsson, who was appointed Company Secretary on 27 January 2010.

Multiplex Port Adelaide Holdings Pty Ltd owns all 10 shares issued by Multiplex Port Adelaide Pty Ltd. The ultimate holding company of Multiplex Port Adelaide Pty Ltd is Brookfield Asset Management Inc, which is a Company incorporated outside Australia.

UCPA Waterfront Development Pty Ltd was registered with ASIC on 7 January 2004. At the time of incorporation David Anthony Rice was appointed a Director, and he remains a Director.

Jonathon James Rice was also appointed a Director on incorporation but resigned on 20 December 2013. Finley Stuart Rice was appointed a Director on 20 December 2013. Yvonne Rice was appointed an alternate Director on 21 January 2014.

Anthony David Floreani was appointed Company Secretary on incorporation but resigned as Company Secretary on 20 December 2007. John Aidan Kavanagh was Company Secretary between 20 December 2007 and 25 March 2011. David John Pfitzner was Company Secretary between 23 January 2013 and 20 December 2013.

UCPA Waterfront Development Pty Ltd's shares are owned by Urban Construct Pty Ltd.

Urban Construct Pty Ltd was registered with ASIC on 24 February 2000.

At the date of registration David Anthony Rice was appointed Company Secretary and Director. He remains in those positions. Jonathon James Rice was appointed Director and Secretary at the date of registration but he ceased to hold those positions on 20 December 2013. At the date of registration Janet Rice was also appointed Director. She resigned as a Director on 30 December 2000.

Finley Stuart Rice was appointed as a Director on 20 December 2013 and remains in that role. Yvonne Rice was appointed as an alternate Director on 21 January 2014.

The other past office holders are Todd Hamish Brown as Director (1 September 2002 to 20 December 2013), Roger Anthony Cook as Director (1 September 2002 to 31 March 2008), John Aidan Kavanagh as Secretary (20 December 2007 to 25 March 2011), Anthony David Floreani as

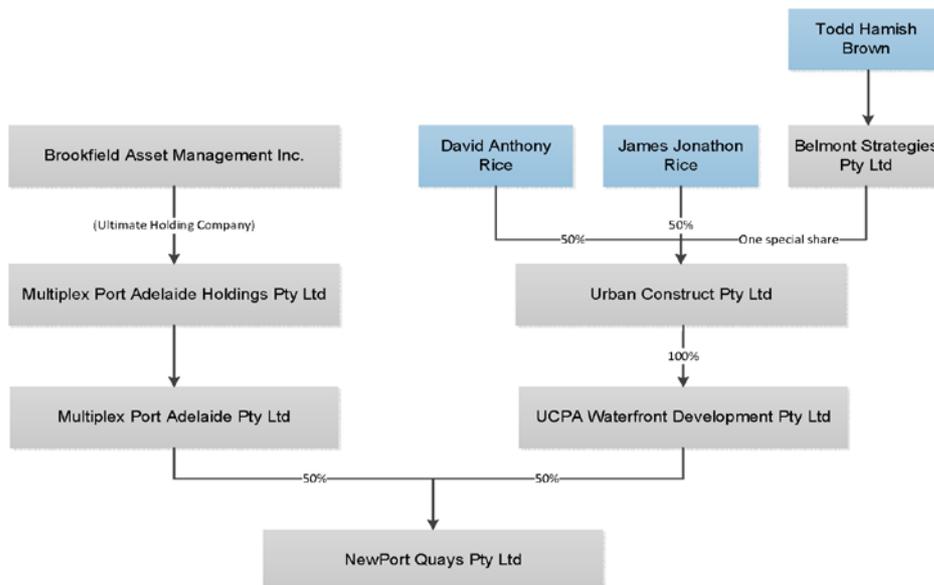
Secretary (19 February 2004 to 20 December 2007), Andrew Simon Nairn as Secretary (22 January 2001 to 19 February 2004) and Todd Hamish Brown as alternate Director (3 August 2001 to 31 August 2001).

The share capital of Urban Construct Pty Ltd consists of 100 ordinary shares and one special dividend share. David Anthony Rice and James Jonathon Rice each hold 50 shares. The special dividend share is held by Belmont Strategies Pty Ltd. Janet Rice is a former shareholder of Urban Construct Pty Ltd. She held one share jointly with Jonathon James Rice.

Belmont Strategies Pty Ltd was registered with ASIC on 2 April 2003. Todd Hamish Brown and Arabella Rose Brown were each appointed Directors at the date of registration and remain Directors.

On the date of registration Shirley Hiatt was appointed Company Director and Secretary but resigned those positions the same day and Edward William Taylor was appointed Company Secretary. He resigned as Company Secretary on 6 September 2013.

Todd Hamish Brown is the sole shareholder of Belmont Strategies Pty Ltd.



THE OTHER ACTORS

Adelaide Resource Recovery Pty Ltd ('Adelaide Resource Recovery') – registered on 30 November 1999 and according to its web site a 'South Australian Company committed to the comprehensive recycling of construction and demolition materials into valuable resources'. Petar Jurkovic is the sole Director and shareholder.

Lidio Andreotti – a solicitor with the Crown Solicitor's Office ('CSO').

Simon Blewett – Chief of Staff to the Premier during the relevant period.

Joseph Borrelli – Director and Chief Executive Officer of Acquista which together with Veolia Environmental Services (Aust) Pty Ltd trade as Integrated Waste Services ('IWS').

Paul Bowden – General Manager of IWS.

Simon Brown – a non-executive director of ACP and the founder of the ResourceCo Group. ResourceCo group is a leading environmental resource recovery group operating in both Australia and Asia.¹⁵

Michael Buchan – Chief Operating Officer and Acting Chief Executive of URA in the absence of Fred Hansen.

Julie Durand – formerly Executive Director of Marketing and Corporate Relations, URA.

James Frearson-Lea – a Solicitor with Kain Corporate + Commercial Lawyers, Solicitors for ACP.

Andrew Gerlach – ACP's Chief Executive Officer. He was employed as the Director of Industrial Property for Collier's International in Adelaide up until 2013. He served on the Industrial Committee of the Property Council (SA).¹⁶

Stephen Gerlach – ACP's Chairman.¹⁷

Sarah Goodchild – Ministerial Adviser to Minister Koutsantonis between 1 August 2011 and 10 January 2014. Thereafter, Office Manager for Minister Koutsantonis. Previously employed as a Ministerial Liaison Officer and Parliamentary Officer for Minister Koutsantonis between 3 March 2009 and February 2011. She has been employed for more than ten years by different Commonwealth and State ALP politicians in their offices. Currently Ministerial Liaison Officer for Minister Stephen Mullighan.¹⁸

John Hanlon – Chief Executive of the URA who was appointed on 21 July 2014.

Fred Hansen – Chief Executive of the URA during the period April 2012 to 30 June 2014. Prior to that appointment he had served the State as a Thinker in Residence during the period 2010 to 2011. He is a national of the United States, and was General Manager of Trimet, the Public Transport provider for Portland, Oregon for 11 years before coming to South Australia.

Ian Hodgen – formerly the General Manager, Industrial Project Delivery, at the URA. He was the line manager responsible for the development of the Gillman lands. Jason Rollison reported to him.

Jensen Planning + Design – according to its website, Jensen Planning + Design is an Adelaide based firm of consultant planners, urban designers and landscape architects. Jensen Planning + Design were the lead consultants commissioned by the URA to produce the Gillman Masterplan.

¹⁵ RC8.

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ RC32.

John Kain – the proprietor of Kain Corporate + Commercial Lawyers.

David McMahon – a non-executive director of ACP, who has been responsible for establishing McMahon Services as the leading organisation in the fields of demolition, asbestos removal, site remediation and earthmoving.¹⁹

(Ian) Richard McLachlan – a General Manager employed by the URA who attended meetings with Minister Koutsantonis at which Mr Hansen and Mr Buchan were sometimes present.

Robert Malinauskas – Chief of Staff to Minister Koutsantonis between 2010 and 2014.

Elizabeth Pashalidis – an Executive Assistant with the URA.

Paul Piovesan – a solicitor with the CSO.

Royal Park Salvage Logistics Pty Ltd ('Royal Park Salvage') – registered on 20 January 2009. Petar Jurkovic is the sole shareholder and Director.

Jason Rollison – Director, Industrial Projects, URA, the officer with the day-to-day management of the response to the ACP offer who was responsible for drafting the Board papers and the Cabinet submissions relating to the offer.

Warren Smith – the Secretary of the Board of Management of the URA.

Kyffin Thompson – a Certified Practising Accountant since 1985; a member of BDO Accountants and formerly a member of PKF (with which BDO merged) who was appointed Probity Officer.

Andrew Watson – the Executive Finance Director of ACP, and the current Managing Director of ResourceCo Energy Pty Ltd, a subsidiary of the ResourceCo Group.²⁰

¹⁹ Above n 16.

²⁰ Above n 16.

DOCUMENTS

Documents were sourced from:

- publically accessible documents on websites including but not limited to:
 - documents forming a part of the Auditor-General’s Supplementary Report for 2014 relating to the audit of the Gillman site transaction;
 - annual reports of the URA;
 - reports derived from searches of the Australian Securities and Investment Commission’s database, provided by SAI Global Property;
- the URA;
- the Department of the Premier and Cabinet;
- the Department of Finance and Treasury;
- the Economic Development Board;
- the former Minister for Housing and Urban Development, the Hon. Tom Koutsantonis;
- ACP, by means of a summons;
- Todd Brown through his lawyers Iles Selley; and
- The Supreme Court, specifically, transcript in the matter *Acquista Investments Pty Ltd & Anor v The Urban Renewal Authority & Ors* File No SCCIV – 14-623.

During the hearings which I conducted I received a number of the more relevant documents which I had obtained from the sources mentioned above which I marked for the purposes of having a complete record. I also marked statutory declarations and other documents that I received from Minister Koutsantonis’ legal representatives. The documents were:

RC 1	Affidavit of Mr Borrelli sworn on 17 September 2014 and exhibits
RC 2	Affidavit of Mr Borrelli sworn on 24 October 2014
RC 3	Plan of Lipson Estate
RC 4	Minutes and Board Papers of Urban Renewal Authority
RC 5	Emails between Mr Raymond Spencer and Mr Stephen Gerlach
RC 6	Email from Ms Amanda Fahey (Urban Renewal Authority) to Minister Koutsantonis’ Office with a Minute dated 5 July 2013 from Mr Hansen
RC 7	Bundle of documents for Mr Hodgen
RC 8	Cabinet submissions and associated documents
RC 9	Renewal SA’s Real Property Marketing Policy
RC 10	Renewal SA’s Lipson Industrial Estate Evaluation Plan – Option Deed Conditions Precedent dated 11 June 2014 (version 1)
RC 11	Renewal SA Gillman Masterplan – Consultant Brief – 2012/13
RC 12	Savills’ Evaluation Reports
RC 13	Annexure A – Project Objectives – Option Deed Lipson Industrial Estate
RC 14	Annexure F – Concept Plan – Option Deed Lipson Industrial Estate
RC 15	Adelaide Capital Partners – Lipson Industrial Estate – Gillman – Project Plan – 24 June 2014
RC 16	Urban Renewal Authority Board Management Policy – effective 24 September 2012
RC 17	Mr Michael Terlet Curriculum Vitae
RC 18	Submission of Mr Michael Terlet
RC 19	Emails between Dr Amanda Rischbieth and Ms Bronwyn Pike 17 December 2013 – 19 December 2013
RC 20	Mr Stephen Gerlach Curriculum Vitae
RC 21	Option Deed for Lipson Industrial Estate (executed in counterparts)

RC 22	Bundle of documents starting with executed Option Notice including Conditions Precedent Verification Pack
RC 23	Letter dated 30 June 2014 from Mr Andrew Gerlach to Mr Ian Hodgen attaching PFAL Letter
RC 24	Email chain dated 27 May 2014 between Mr Jason Rollison and Mr Robert Taylor
RC 25	Auditor-General's Supplementary Report for the year ended 30 June 2014
RC 26	Email dated 22 October 2013 from Mr Kyffin Thompson to Mr Mark Labaz
RC 27	Department of the Premier and Cabinet Guidelines for Assessment of Unsolicited Proposals – November 2014
RC 28	Email dated 13 November 2013 from Mr Michael Buchan to Mr Paul Piovesan, Mr Jason Rollison and Mr Lidio Andreotti re Lipson – Option Deed v6
RC 29	'Lipson Industrial Estate' Booklet (31 pages)
RC 30	Folder of Documents provided by Adelaide Capital Partners, folder 1 of 3
RC 31	Minute to the Treasurer from the Executive Director, Budget Branch, dated 29 November 2013 for Cabinet Meeting 2 December 2013
RC32	Ms Sarah Goodchild Curriculum Vitae
RC33	Agendas for the meetings with Minister Koutsantonis between 4 July and 3 December 2013
RC34	Ms Goodchild's handwritten notes and typed notes
RC35	Precis of Ms Goodchild's evidence supplied to Ms Kleinig on 24 July ²¹
RC36	Affidavit of Ian Richard Harrison McLachlan dated 6 August 2015
RC37	Statement of Ian Richard Harrison McLachlan dated 10 September 2015
RC38	Affidavit of Robert James Malinauskas dated 14 September 2015
RC39	Statutory Declaration of Tom Carrick-Smith dated 14 September 2015
RC40	Statutory Declaration of Michael Buchan dated 17 September 2015
RC41	Statutory Declaration of Geoffrey Ronald Knight dated 17 September 2015
RC42	Statutory Declaration of 'T' dated 16 September 2015
RC43	Statutory Declaration of Andrew James Cadd dated 16 September 2015
RC44	Statutory Declaration of Andrew Charles Blaskett dated 16 September 2015
RC45	Statutory Declaration of Robert Ian Thomas dated 18 September 2015
RC46	Acceptance List for Meeting scheduled for 23 July 2013
RC47	Unredacted copy of notes of Ms Goodchild dated 30 August 2013
RC48	Unredacted copy of notes of Ms Goodchild dated 21 October 2013
RC49	Unredacted copy of notes of Ms Goodchild dated 7 November 2013
RC50	Speech by the Honourable Tom Koutsantonis to the URA Board of Management dated 4 February 2013
RC51	Agenda for Staff Presentation – Wednesday 18 September 2013
RC52	Diary Note – Minister Koutsantonis – 19 November 2013
RC53	Copy of Article from Advertiser – 23 September 2013
RC54	Joint Media Statement – 3 October 2013
RC55	Statutory Declaration of Owen George Brown dated 1 October 2015

The agendas for the meetings between Minister Koutsantonis and the URA show who was expected to be present at meetings and the agenda items. They do not throw any light on who was in fact present and what was said and for that reason I will not refer to these agendas while discussing the evidence, except where Ms Goodchild's handwritten notes give context to the meetings.

Further witness statements were received from other witnesses after the provision of my preliminary report to interested persons.

²¹ RC32, RC33, RC34 and RC35 were supplied to me by Ms Goodchild at the time that she gave her evidence on 24 July 2013.

On 7 October 2015 a request was made by Minister Koutsantonis' solicitor that I redact the name of the public officer who made the statutory declaration marked RC42. I was told that that public officer did not want her name to appear, nor did she want to be identified in any published report, because she was a career public servant and not a member of any political party.

I do not know the circumstances in which that public officer signed the statutory declaration. The nature of her evidence is not critical to my inquiry. I have therefore acceded to the request and will refer to her as 'T'.

WITNESSES

Having assembled and reviewed a large volume of relevant documents, I thought it necessary to invite witnesses to give oral evidence as part of my investigation.

I was mindful of the fact that the events that I would be asking the witnesses to recall were over a year old. I also knew that a number of the witnesses had already given evidence before the Select Committee of the Legislative Council which has been enquiring into the Gillman land sale.

For that reason I wrote to the President of the Legislative Council, The Hon. Russell Wortley MLC on 28 April 2015, seeking the Legislative Council's permission to rely on some of the uncontroversial evidence given by witnesses before the Select Committee. I sought the Legislative Council's permission pursuant to Parliament's Standing Order 398 to publish the evidence of witnesses which had been published to the Parliament's website but not yet formally reported to the Legislative Council.

Standing Order 437 provides that Parliamentary Privilege applies to protect witnesses before a Select Committee in relation to the evidence given before that Select Committee. For that reason I could not impeach or question anything that the witnesses called before the Select Committee had said in any findings that I might make. However I did contemplate using factually uncontroversial parts of their evidence to give detail to the relevant events.

On 13 May 2015, the President of the Legislative Council replied, indicating that he and the Council were unable to give the permission that I had sought. It was implicit in what he wrote that his advice was that even to use the evidence of the witnesses who had given evidence before the Select Committee in the limited manner proposed by me might amount to a breach of Parliamentary Privilege. He wrote:

It has been determined that Parliamentary Privilege cannot be waived individually or by the Legislative Council and therefore it is not for the Council to consider waiving its privileges in this instance.

Section 6 of the ICAC Act provides:

Nothing in this Act affects the privileges, immunities or powers of the Legislative Council or House of Assembly or their committees or members.

I therefore decided that I should hear evidence from the relevant witnesses myself using the powers under the Royal Commissions Act. This meant some witnesses would have to give evidence twice about the same events, but that was unavoidable.

The persons mentioned below gave evidence over a course of several months. All of them responded to my request to give evidence without requiring me to issue a summons under the Royal Commissions Act.

Their evidence was given in private as required by s18(2) of the Ombudsman Act. However, I told all of them that I might reproduce some of their evidence in my report. None of the witnesses objected to that course. Some of the witnesses were represented by legal practitioners. No legal practitioner sought to ask any questions of their client. At the hearings I was assisted by Ms Louise Kleinig and later by Mr Michael Riches, legal practitioners employed in my office. I questioned each of the witnesses and Ms Kleinig asked some supplementary questions. The witnesses, whose evidence was both recorded and transcribed, were:

- Mr Joe Borrelli, Integrated Waste Services;
- Mr Craig Holden, Board Member, URA;
- Mr Raymond Spencer, Chair, Economic Development Board;
- Mr Ian Hodgen, formerly General Manager, Industrial Project Delivery, URA;

- Mr Jason Rollison, Director Industrial Projects, URA;
- Mr Michael Buchan, Chief Operating Officer, URA;
- Mr Peter Jensen, Jensen Planning + Design, author of the Gillman Masterplan;
- The Hon. Bronwyn Pike, Chair, Board of Management, URA;
- Mr Michael Terlet AO, Board Member, URA;
- Mr Rob Taylor, Savills Valuers;
- Mr Theo Maras AM, Board Member, URA;
- Dr Amanda Rischbieth, Board Member, URA;
- Mr Stephen Gerlach, Chairman, ACP;
- Mr Andrew Gerlach, Director and Chief Executive Officer, ACP;
- Mr Simon Brown, Director, ACP;
- Mr John Hanlon, Chief Executive Officer, URA;
- The Hon. Jay Weatherill MP, Premier;
- Ms Julie Durand, formerly Executive Director, Marketing and Corporate Relations, URA;
- Ms Helen Fulcher, Board Member, URA;
- The Hon. Tom Koutsantonis MP, Treasurer;
- Ms Sarah Goodchild, Ministerial Advisor;
- Mr Richard McLachlan; and
- Mr Robert Malinauskas.

I took a deliberate decision to schedule the Premier's and Minister Koutsantonis' evidence after all other witnesses had given evidence. I had intended to hear the Premier as the penultimate witness and then to take Minister Koutsantonis' evidence. I thought that course was appropriate to enable the Premier and Minister Koutsantonis to respond to any evidence given by any other person.

As it happened there was an unavoidable delay in taking Minister Koutsantonis' evidence. Between hearing the Premier and Minister Koutsantonis I took evidence from Ms Julie Durand whose name had been mentioned in Mr Buchan's second session of evidence, and from Ms Helen Fulcher, who had then recently returned from overseas.

I did not think that put the Premier at any disadvantage because Ms Fulcher's and Ms Durand's evidence did not relate in any way to his conduct.

I provided the Premier and Minister Koutsantonis with draft transcripts of the evidence that had been transcribed before they gave their evidence.²² I thought that was appropriate as a matter of fairness.

Ms Sarah Goodchild was called to give evidence following a request from Minister Koutsantonis' solicitor, Mr Tisato, who informed me that she could give relevant evidence. The transcript of her evidence was provided to the Premier and Minister Koutsantonis at the time they were provided with my preliminary report.

I also received two statements from Mr McLachlan, one of which was drafted in affidavit form.

Subsequently I called Mr McLachlan and Mr Malinauskas in circumstances that are described later.

I also recalled Ms Pike on a discrete issue.

The transcripts of those witnesses' evidence were provided to the Premier, Minister Koutsantonis, Mr Hansen and Mr Buchan.

²² The Premier received the draft transcript of the evidence of witnesses other than Ms Durand, Ms Fulcher and Mr Hanlon and the second sessions of evidence from Mr Rollison and Mr Buchan prior to giving his evidence. I provided Minister Koutsantonis with the transcript, either draft or final, of the evidence of witnesses other than that of the Premier and Ms Fulcher prior to him giving evidence.

I also received a statutory declaration from Mr Buchan²³.

On 16 September 2015 Mr Abbott QC who appeared for Minister Koutsantonis requested that Mr Buchan and Ms Durand be recalled for further examination. On 1 October 2015 Mr Buchan was questioned by Mr Abbott. Ms Durand was to be examined on 2 October 2015 but for reasons mentioned later Mr Abbott did not persist with his request for her further examination.

I received, through Minister Koutsantonis' legal representatives, statutory declarations from:

- Mr Tom Carrick-Smith, Chief of Staff to Minister Koutsantonis since September 2014;²⁴
- Mr Andrew Cadd, Director, Account Management, Budget Branch, Department of Treasury and Finance;²⁵
- 'T';²⁶
- Mr Geoffrey Knight, former Chief Executive for Department of Manufacturing, Innovation, Trade, Resources and Energy;²⁷
- Mr Andrew Blaskett, Executive Director, Public Finance Branch, Department of Treasury and Finance;²⁸ and
- Mr Owen Brown, Media Adviser to Minister Koutsantonis between 2011 to 2014.²⁹

I have had regard to all of the evidence provided by those witnesses.

²³ RC40.

²⁴ RC39.

²⁵ RC43.

²⁶ RC42.

²⁷ RC41.

²⁸ RC44.

²⁹ RC55.

DISCLOSURE

I have previously met four of the witnesses who gave evidence.

I have known Mr Stephen Gerlach for many years. He was at the Law School at University the same time as myself, but a year ahead. I had little or nothing to do with Mr Gerlach until 2013 when he was Chancellor of the Flinders University and that University bestowed upon me an Honorary Doctorate of Laws. I had lunch with him and senior academics of the University that day. I also had lunch with him and academics on a later occasion when I was asked to speak at a Graduation Ceremony.

I have met Mr Hanlon on a number of occasions since my appointment as the Independent Commissioner Against Corruption ('ICAC'). I have spoken to him about other matters which have been reported to the OPI. I spoke to him in relation to this issue before he gave evidence and as a result of that second meeting I asked him to give evidence.

After he gave evidence I met with him on two occasions. On the first occasion he provided me with some information concerning this matter. On the second occasion he discussed with me the URA's response to the information I had provided to the URA upon which I sought his comment.

I met the Premier on two occasions before I was appointed. The first meeting was when I was a Supreme Court Judge sometime before 2003 and I think he had recently either been elected as a Member of Parliament or appointed as a Minister, at a reception to which we had both been invited. I met him on a second occasion at his instigation, shortly before I was appointed the ICAC I think so that he could assess my suitability for the appointment. He telephoned me the day after I was appointed to thank me for accepting the appointment. These are the only meetings I can remember having with the Premier. I have not met him since I was appointed the ICAC.

I had not met Minister Koutsantonis before I was appointed the ICAC. I have met him on five occasions since my appointment. The first was briefly, at a reception to which I was invited, when we were introduced to each other and exchanged pleasantries. That meeting lasted a couple of minutes. The second was in the office of the Deputy Premier at Parliament House when I discussed with him a funding issue for my office. The third was when I was asked to address Cabinet about my role as Commissioner and Minister Koutsantonis was present. The Premier was ill and could not be present. The fourth was in the corridor at Parliament House after I had had a meeting with the Deputy Premier. That meeting was even briefer than the first and again only amounted to an exchange of pleasantries. I also spoke to him briefly during the course of this inquiry when he approached me in a building in Victoria Square.

None of the other witnesses were previously known to me.

THE WITNESSES' EVIDENCE

Whilst from time-to-time some of the evidence of the witnesses who I have identified will be disclosed in this Report, the evidence generally will not be made public because of the provisions of section 18(2) of the Ombudsman Act. The reader must not assume that because I have not referred to certain evidence in this report I have not considered it.

I found the evidence of most of the witnesses helpful. Curiously, a number of witnesses said that they looked forward to giving their evidence. In particular, all the members of the Board said that they relished the opportunity to explain their position.

The same was so of management employed by the URA who also said that they wanted the opportunity to give evidence.

I think most of the witnesses did their best to assist me.

Mr Rollison was not inclined to answer questions directly. I do not think that was because he was trying to avoid answering but rather because he thought his answers needed to be put in context and with an explanation. He might be described as defensive but that does not mean his evidence should be rejected. In my view it just needs more careful scrutiny.

Mr Buchan gave evidence on three separate occasions. I asked him to attend for a second time because of something Mr Hanlon said in his evidence about Mr Buchan being directed to come to the result that was achieved. On the second occasion he was pressed to give evidence about Mr Hanlon's comment and therefore the direction to which he was submitted. He gave the evidence that followed, reluctantly, and he appeared to be both embarrassed and upset with what he said. He was recalled to give evidence for a third time at the request of Mr Abbott.

I thought Mr Buchan was a very good witness, who in my opinion was telling me the truth. I accept his evidence.

His evidence was supported in a material way by the evidence of Ms Durand, who was at the relevant time but is no longer, employed in the public sector. She was also a very good witness who I have no doubt was telling me the truth. I accept her evidence in its entirety.

Because the evidence of Mr Buchan and Ms Durand is so important to one of the more important issues I have reproduced parts of it so that the reader can understand the manner in which the evidence was elicited and given.

I have set out some of Minister Koutsantonis' evidence. I found that Minister Koutsantonis was inclined not to answer direct questions directly. His evidence in relation to whether the 2 December 2013 Cabinet submission should have included particular information is but an example. Witnesses who do not answer questions directly do not assist. A witness should assume that the purpose of an examiner asking a question is to obtain a precise answer to that question.

The evidence of Ms Durand and Mr Buchan was vigorously disputed by Minister Koutsantonis. I will deal with his evidence when I discuss the evidence of Mr Buchan and Ms Durand.

As I have said, Mr Tisato asked me to take evidence from Ms Goodchild who was, at the relevant time, a Ministerial Adviser to Minister Koutsantonis and had been since 1 August 2011.

She remained in that position until 13 January 2014 when she became Minister Koutsantonis' Office Manager.

She is now a Ministerial Liaison Officer to the Hon. Stephen Mullighan MP.

She has been a staffer to various Ministers since February 2003.

Part of her role was to attend meetings with Minister Koutsantonis when he met with the URA.

She provided me with agendas for meetings between Minister Koutsantonis and the URA between 4 July 2013 and 3 December 2013.

She also provided me with her handwritten notes, made at those meetings. Those handwritten notes were very useful in my inquiry.

I thought Ms Goodchild was a good witness who gave her evidence in a straight forward manner and I am satisfied that she was trying to assist me in giving that evidence.

I will discuss her evidence in some detail when I deal with Minister Koutsantonis' interactions with management of the URA.

Ms Goodchild's oral evidence was not entirely consistent with the précis of evidence provided to Ms Kleinig on 24 July.³⁰ The précis was prepared by Mr Tisato during and after two telephone conversations with Ms Goodchild. Although Ms Goodchild verified the truthfulness of the contents of the précis, I think it would be fairer to her to treat her oral evidence as her best recollection of the events upon which she was asked to comment. However, I have taken into account her written statement.

I have mentioned elsewhere the circumstances in which Mr McLachlan came to give evidence.

After I published my preliminary report I was provided with an affidavit sworn by Mr McLachlan which I subsequently marked³¹.

As part of the procedural fairness process the parties were entitled to request me to call further evidence if it was relevant. The decision to call the evidence was for me.

Ms Kleinig took a statement from Mr McLachlan which I also marked³².

Mr McLachlan later gave oral evidence notwithstanding Minister Koutsantonis' counsel had submitted that having sought to tender Mr McLachlan's affidavit there was no need for him to give evidence. Unfortunately because the audio system which records evidence malfunctioned Mr McLachlan had to give his evidence twice. He gave his evidence twice on 11 September 2015. I have only relied on his oral evidence that was recorded.

I called Mr McLachlan because I did not think I could simply accept the evidence contained in his affidavit some of which would not be admissible in a Court and some of which, in the absence of oral evidence, could be given little weight.

He was also a very good witness who gave his evidence in a straight forward manner. He and Mr Buchan are not close either personally or professionally. That much is clear from his affidavit but I think he was honest and trying to help me. I accept his evidence.

His evidence however does not cause me to question Mr Buchan's evidence or Ms Durand's evidence. Indeed his evidence was to the same effect as Ms Durand's evidence. He only differed in a few respects with Mr Buchan's evidence which I shall later mention. The differences are not such that the evidence of the two men is irreconcilable.

Mr Malinauskas, who was formerly Chief of Staff to Minister Koutsantonis, made himself available to give evidence.

³⁰ RC35.

³¹ RC36.

³² RC37.

Prior to him giving evidence I was provided with a copy of an affidavit which like other affidavits was marked 'to be provided to the Independent Commissioner Against Corruption for South Australia, on a confidential basis'. An affidavit is, of course, only to be used in judicial proceedings. Nevertheless I have received and had regard to Mr Malinauskas' affidavit.³³

Mr Malinauskas was provided with a copy of the evidence of Mr Buchan, Ms Durand and Ms Goodchild before he gave his evidence.

He was given that evidence because Ms Durand had been critical of him and in particular his conduct in dealing with the URA and I thought as a matter of fairness he ought to be aware of all of the evidence which might impact upon his reputation.

I advised Mr Malinauskas as I had every other witness who has given evidence that although his evidence would be taken in private it may be that some of it would be reproduced verbatim in the final report and some of the evidence might be referred to and commented upon.

I got the impression that Mr Malinauskas was trying to paint Minister Koutsantonis in the best possible light.

For example he said that Minister Koutsantonis was not impatient. That evidence is contradicted by Minister Koutsantonis' own evidence. Minister Koutsantonis admitted he was impatient. Mr Malinauskas did say Minister Koutsantonis was demanding.

I asked him why to his knowledge the Cabinet submission of 2 December 2013 did not contain the information that the Board had agreed to recommend that the Government reject ACP's proposal.

I then asked him whether it was his evidence that the Cabinet did not need to know that the Board had not revoked the resolution that the ACP proposal be rejected.

I asked him the same question nine times but he never gave a straight forward answer to the question.

Mr Malinauskas' evidence needs to be considered in that light.

I recalled Ms Pike after I was told that Ms Pike had told two persons that in November 2013 she had been telephoned by Minister Koutsantonis who told her to get the transaction across the line otherwise it would cost her her job as Chair.

Ms Pike denied that she had said that to anyone and denied that a telephone conversation occurred in which Minister Koutsantonis said those things.

I treated her denial as I would if a witness denied a matter relating to credit in a court.

When a witness is cross examined as to credit and denies an allegation that goes to credit, the party who is cross examining that witness is not entitled to call evidence to contradict the first witness' denial. It is only during cross examination that a witness's credit worthiness can be examined. That rule is called the collateral evidence rule.

I thought it appropriate in the circumstance to adopt that rule in relation to this matter and not to enquire further.

Mr Fred Hansen did not give evidence. He has returned to his home in Oregon in the United States. I wrote to him on 19 May 2015 and on 25 June 2015 asking him whether he was prepared to give evidence. The letters are reproduced as Annexure 2.

³³ RC38.

He replied to both letters. I have annexed his replies as Annexure 3.

He did not wish to give evidence and because he was living in the United States of America I could not compel him to do so.

THE GILLMAN LAND

The land the subject of the transaction between the URA and ACP lies to the northwest of Adelaide, adjacent to important road infrastructure namely the Port River Expressway, and proximate to freight rail infrastructure at Regency Park and Dry Creek and to shipping infrastructure at Outer Harbour.

It forms a part of the Gillman Employment Lands Precinct identified in the '30-year Plan for Greater Adelaide', of which approximately 450 ha was owned and managed by the URA.

The land the subject of the Option Deed ('the Option Deed Land') has an area of 407 ha, is low-lying and prone to flooding. It lies downstream from two wetlands which process stormwater from the 2322 ha Torrens Road Catchment area. Parts of the Option Deed Land are currently used as ponding basins to store water that has been through the two wetlands pending a low tide when it can flow out to sea. The stormwater system of which the Option Deed Land forms a part protects the upstream built environment by reducing the risk of flooding and the downstream marine environment by improving water quality in the outflows to the Port River/Barker Inlet system.³⁴ About 200 ha of the land covered by the Option Deed is said to be necessary for stormwater management.³⁵

According to the Gillman Masterplan prepared by Jensen Planning + Design, the Gillman Employment Lands Precinct forms 'an integral part of the State's economic development strategy as it provides important land for future employment growth and investment.'³⁶

Of the Option Deed Land, 276 ha was formerly jointly owned by the Corporation of the City of Adelaide ('ACC') and LMC. This parcel of land comprised part of the former Dean Rifle Range.

The Dean Rifle Range land had been identified in the Metropolitan Adelaide Industrial Land Strategy as a strategic future industrial land bank for the State.³⁷

³⁴ RC22.

³⁵ RC8.

³⁶ RC11.

³⁷ Above n 35.

EARLIER VALUATIONS OF THE GILLMAN LANDS

The compulsory acquisition by LMC of the Dean Rifle Range lands in 2010 led to a need for the valuation of that land.

In late 2008, Robert Taylor of Savills received instructions from the LMC via the Valuer-General's Office to provide a valuation of the Dean Rifle Range land for the purpose of anticipated litigation.

Prior to the acquisition, on 19 December 2008 he valued the land at \$11 per square metre ('psm') for the developable area of the Dean Rifle Range land, or \$7.06 psm across the total area.

In that valuation report, Mr Taylor referred to two ways in which land can be valued: the 'direct comparison' model, where the value of the land is ascertained by reference to previous comparable sales, or the 'residual land value/ hypothetical development' model where financial modelling is undertaken in relation to a hypothetical development of the land, incorporating an internal rate of investment return suitable to the risks associated with the project, and anticipated costs and revenue over time:

This approach deducts from a gross realisation of end sale of hypothetically developed allotments over a hypothetical development of the land, estimated development costs and a development margin utilising a number of key assumptions, inputs and considerations to provide a residual land value.³⁸

The residual land value is the hypothetical purchase price for the land to achieve a net present value of zero.³⁹

The December 2008 valuation modelled a hypothetical development of the Dean Rifle Range land upon the assumptions that:

- of the total land, about 199 ha was developable as industrial land;
- two 16 ha blocks which required no or minimal fill would be sold early in the development project to provide early cash flow;
- the remainder of the developable land not required for roads and other areas that do not generate sale revenue, which would amount to 139 ha, would be filled and sold in 1 ha blocks;
- the land would need to be filled to a height of 3.3m, requiring over 5 million cubic metres of fill;
- it was appropriate to have varying estimates about the cost of fill but it was assumed that fill could be obtained at an average cost of \$15 psm;
- head works would cost \$5 million and servicing the land would cost approximately \$300,000 per ha;
- all of the capital for the development would need to be borrowed at an assumed interest rate of 7.5% per annum;
- an internal rate of return of 30% was applied having regard to the risks involved in the project;
- there would be a 15 year development program;
- in keeping with valuation practice, neither costs nor industrial land sale yields were escalated over the 15 year hypothetical development period; and
- a single private purchaser would not wish to take on the land and its development, and the likely hypothetical purchaser would be a government entity.

³⁸ RC12.

³⁹ Ibid.

Mr Taylor authored a second valuation report for the URA in relation to the Dean Rifle Range land as at 11 February 2010, the date of the compulsory acquisition.

His second report was based on different assumptions because one 15.68 ha parcel within the land was discovered to have been contaminated as a consequence of the deposit of contaminated fill upon it.

In his second report Mr Taylor took into account the estimated cost of remediation of the contaminated parcel of land, which effectively negated the anticipated early cash-flows from the anticipated early sale of that parcel.

As a consequence of those new assumptions, he valued the Dean Rifle Range land at \$0.97 psm.

The February 2010 valuation was not used to assess the ACP offer, as the contaminated area was not included in the proposed Option Land.⁴⁰

A third valuation of the Dean Rifle Range land was prepared by Mr Taylor dated 9 August 2013 at the request of the CSO on behalf of the State. It again valued the land as at 11 February 2010 for the purposes of the compulsory acquisition proceedings.

The assumptions in that valuation were changed to reflect an approved plan to deal with the contamination issue which, if executed, would result in a cost of remediation of the contaminated parcel that was less than the estimated cost assumed in Mr Taylor's February 2010 valuation.

Mr Taylor's third valuation valued the Dean Rifle Range land at the equivalent of \$4.27 psm across the site.

On 15 May 2009 the ACC's solicitors, Cowell Clarke, instructed Southwick Goodyear Pty Ltd ('Southwick Goodyear') to value the Dean Rifle Range land as a consequence of the Government's intended compulsory acquisition of the ACC's share in the Dean Rifle Range land.

As at 20 May 2009, Mr Peter Southwick of Southwick Goodyear valued the Dean Rifle Range land at \$9.31 psm.

In the course of preparing his May 2009 valuation Mr Southwick relied on a number of assumptions similar to those assumptions in Mr Taylor's first valuation. Mr Southwick assumed development of the land where:

- development took place over approximately 20 years in seven stages;
- there was an internal rate of return of 27.5%;
- a total of 169 ha of land would be sold as 273 developed allotments of varying size;
- there was no escalation of costs and finished allotment prices;
- the costs of development were assumed to be those put forward by Ruan Consulting in a document entitled 'Gillman Industrial Project – Preliminary Estimation of Development Costs', which was annexed to the valuation; and
- the non-developable land was given a value at 60% of the market value of the developable land.

On 27 February 2012 Southwick Goodyear prepared a further valuation (the second Southwick Goodyear valuation) in which it valued the Dean Rifle Range land at \$13.49 psm across the site.

⁴⁰ RC8.

The second Southwick Goodyear valuation assumed:

- 800,000 cubic metres of fill could be delivered annually at no charge to the developer;
- a high internal rate of return should not be applied to the two 16 ha land parcels to be sold early in the development, as there was little risk associated with those sales; instead, a 15% developer's margin was appropriate;
- a lower internal rate of return set at 12.5% be applied to the project until the project was due to commence; and
- the site would only require fill to a height of 3.1m because the stormwater authority/State Government would raise the height of a levy bank.

The second Southwick Goodyear valuation also addressed the direct comparison methodology separately to each of the land parcels comprising the holding, and arrived at a valuation of \$41,500,000.

Apart from valuations obtained for the compulsory acquisition proceedings, the whole of the Option Land was valued for URA's internal accounting purposes, and by the Valuer-General pursuant to the *Valuation of Land Act 1971* ('the Valuation of Land Act') for ratings and taxation purposes.

In August 2013, Maloney Field Services valued the URA's Port Adelaide and LeFevre Peninsula Property Portfolio for accounting purposes.

Each allotment that formed part of that portfolio was given a valuation. The relevant valuations are summarised below:

ALLOTMENT DESCRIPTION	LAND AREA	ADOPTED VALUE JUNE 2013
Lot 101 DP 41796 Gillman Levy Bank	2.7 ha	\$205,000
Lot 204 D48102 Gillman (Levy bank, gravel road, Adelaide Speedboat Club)	3.5 ha	\$520,000
Lot 107 Eastern Parade Gillman (Levy bank)	3.2 ha	\$80,000
Lot 3 Grand Trunkway	52.97 ha	\$5,300,000 (\$10 psm)
Lot 5 North Arm Road (Magazine Creek ponding basins lie within this allotment)	97.5 ha	\$3,900,000 (\$4 psm)
Lot 203 North Arm Road (The Dean Rifle Range overshoot allotment, less lots 201 and 202)	234 ha	\$16,400,000 (\$7 psm)
Lot 3 Eastern Parade (The Dean Rifle Range range-head allotment)	39.38 ha	\$7,875,000 (\$20 psm)

Lot 201 North Arm Road was valued by Maloney Field Services as at 8 May 2013 at \$4,875,000, being approximately \$31 psm. Lot 201 was also valued by Knight Frank as at 17 May 2013 at \$5.46 million, being approximately \$35 psm, and the Knight Frank valuation formed the basis for a contract for the sale of Lot 201 from the URA to Royal Park Salvage.

The statutory land value for the Option Land for the 2013/14 period, as determined by the Valuer-General under the *Valuation of Land Act 1971* was said to be \$23,140,000, which was equivalent to \$5.69 psm.⁴¹

⁴¹ RC8.

PRE 2012

In 2009 Cabinet authorised the compulsory acquisition of the ACC's joint interest in the Dean Rifle Range land⁴² and on 11 February 2010 the Government compulsorily acquired the ACC's share in that land.⁴³

In June 2008, Lot 202, part of the former Dean Rifle Range land, was valued by Opteon (formerly Southwick Goodyear). The market value equated to \$40.18 psm. In December 2010, LMC settled on the sale of Lot 202 to MCB Gillman Pty Ltd for \$40.18 psm.⁴⁴ MCB Gillman Pty Ltd is owned equally by SJK Brown Investments Pty Ltd and D & A McMahon Investments Pty Ltd who were also equal shareholders in ResourceCo.

In May 2010, the larger of the two lots which made up the former Dean Rifle Range land, Lot 31, was subdivided into Lot 201 (15.68 ha), Lot 202 (also 15.68 ha) and Lot 203 (234 ha).⁴⁵

On or about 5 July 2010, the LMC received a proposal from Adelaide Resource Recovery to acquire a 15 ha site.⁴⁶

In October 2010, at the instigation of the LMC, its representatives met with Incitec Pivot Limited to explore a possible relocation of Incitec's Port Adelaide Distribution Centre to a 5 – 10 ha site in Gillman.

In February 2011, Harmony Group wrote to the LMC expressing interest in acquiring a 10 – 20 hectare parcel of Gillman land for possible development.⁴⁷

In May 2011, ResourceCo made a presentation to the LMC expressing an interest in undertaking a filling trial on a 20 hectare allotment.⁴⁸

On 27 May 2011, the Archean Group wrote to the LMC expressing an interest in acquiring approximately 100 hectares to establish an ammonia/urea plant, without identifying a specific parcel of land.⁴⁹

⁴² Renewal SA Annual Report 2013/14.

⁴³ South Australian Government Gazette, 11 February 2010, 706.

⁴⁴ RC8.

⁴⁵ Search results from propertyassist.sa.gov.au.

⁴⁶ Jason Rollison, First Defendant's Answers to Written Questions, filed in *Acquista v URA*, appended to the Supplementary Report of the Auditor-General 2014 as tabled in the House of Assembly on 10 February 2015.

⁴⁷ *Ibid.* It is not entirely clear who Harmony group is but it may be Harmony Property Syndication Pty Ltd which describes itself as an Adelaide based business whose major activity is establishing and managing commercial real estate syndicates on behalf of like minded investors.

⁴⁸ Above n 46.

⁴⁹ *Ibid.* The Archean group describes itself as being an Indian business conglomeration involved internationally in industrial salts, chemicals, fertilisers and minerals, and building materials.

YEAR 2012

On 1 March 2012 the URA commenced and acquired all of the assets of the LMC.

Fred Hansen was appointed Chief Executive of URA in April 2012.⁵⁰ The Minister then was the Hon. Patrick Conlon MP.

On 16 April 2012, the ACC brought proceedings under section 23 of the *Land Acquisition Act 1969* against the Minister for Sustainability, Environment and Conservation in the Land Valuation Division of the Supreme Court of South Australia in relation to the compensation to be paid following the compulsory acquisition of the Dean Rifle Range land.⁵¹ That dispute remains unresolved.

On 29 April 2012 the Transitional Chief Operating Officer of the URA approved the Real Property Marketing and Pricing Policy (RPMP Policy).⁵² That policy applied throughout 2012 and 2013 and was relevant to the transaction involving the Gillman land. There was no other policy within the URA, or indeed Government, that was relevant to that transaction.

On 7 June 2012 Samaras Structural Engineers, based near Gillman, submitted a written proposal to Minister Conlon seeking to buy 5 ha of land to support an expansion of their existing premises.⁵³ A copy of the letter was provided to the URA.⁵⁴

On 31 July 2012 Minister Conlon announced the constitution of the seven-member Board of the URA, which had been established earlier that year on 1 March.

The members of the URA Board, who were appointed to a three year term (from 1 August 2012), were:

- The Hon. Bronwyn Pike (Chair) – former Victorian Government Minister with portfolio responsibilities and experience across health, housing, education and community services;
- Mr Michael Terlet AO (Vice Chair) – who has had extensive private sector experience in international trading, investment and corporate governance;
- Ms Jennifer Westacott (Member) – who has a background at senior levels in public and private sector administration and is currently the Chief Executive of the Business Council of Australia;
- Mr Theo Maras AM (Member) – founder and Chairman of the Maras Group who has extensive property investment and development experience;
- Ms Helen Fulcher (Member) – former Chief Executive of the Environmental Protection Authority (EPA) who has extensive experience in the development and delivery of social housing in South Australia, New Zealand and Western Australia;
- Dr Amanda Rischbieth (Member) – Chief Executive of the Heart Foundation (SA) who has over 30 years' experience in health, clinical, education, research, executive management and corporate governance roles; and
- Mr Craig Holden (Member) – who has had extensive property development expertise and experience and is a Director of Forme Projex and Common Ground Ltd.

⁵⁰ Urban Renewal Authority, *Annual Report 2011-2012*.

⁵¹ Supreme Court Proceedings; Action No 518 of 2012.

⁵² RC9.

⁵³ Samaras Structural Engineers is a registered business name owned by M&I Samaras (No1) Pty Ltd, M&I Samaras (No2) Pty Ltd and M&I Samaras (No3) Pty Ltd in partnership.

⁵⁴ Above n 46.

Shortly after its appointment on 24 September 2012, the Board approved a Board of Management Policy ('the BOM Policy') which addressed a number of matters relevant to the board of management of a statutory authority including the proceedings of the meetings of the Board of Management.⁵⁵

⁵⁵ RC16.

THE RPMP POLICY AND THE BOM POLICY

Before addressing the events in 2013 it is worthwhile addressing the two policies to which I have referred because they are both relevant to those events.

The BOM Policy identified the role and function of the Board of Management which it said was 'responsible to the Minister for overseeing the operations of the URA'.

The Board was charged with responsibilities including:

- ensuring the Minister received regular reports on the performance of the URA and initiatives of the Board;
- supporting the Chief Executive in the execution of the Chief Executive's duties; and
- ensuring there was a proper separation of responsibilities between the Chief Executive and the Board.

The BOM Policy required the Board to 'typically' meet monthly. It addressed the agenda for the Board's meetings which was to be circulated at least two clear business days before the Board meeting. It addressed in detail the proceedings, votes, decisions and resolutions of the Board and the Notes of Meeting of the Board.⁵⁶

The BOM Policy envisaged that the Board might consider a proposed resolution other than at a meeting of the members of the Board if notice of the proposed resolution were given to all members of the Board in writing in an Out-of-Session Decision Paper (Flying Minute) and a majority of the members agreed in writing, including by email.

Part 4 of the BOM Policy deals with the 'Relationship between Board and Chief Executive'. It recognised that management and control of the URA's business and affairs was vested in the Board but the Board had delegated the day-to-day management of the URA to the Chief Executive.

The BOM Policy recognised that the Chief Executive was responsible to the Minister who appointed him (or the Premier) and that the Chief Executive reported directly to the Minister. The relationship of the Board with the Chief Executive was based on 'the spirit of openness, honesty and mutual trust'.⁵⁷

The Board's general responsibilities are recognised, including how Board members should deal with a conflict of interest. In that case the Board member was obliged to disclose the conflict in writing to the Board by providing full and accurate details of the interest.⁵⁸

The RPMP Policy was 'to provide guidance to ensure that the appropriate method of sale and pricing methodology is applied to each class of the URA trading as Renewal SA (Renewal SA) real property assets'.⁵⁹ It provided:

3. PURPOSE

To ensure that staff responsible for the release and sale of real property adopt the correct sale process and pricing procedure.

4. SCOPE

This Policy applies to all real property sale transactions undertaken in respect of Renewal SA's real property assets.

⁵⁶ I shall refer to the Notes of Meeting of the Board of Management of the URA as the Board Minutes.

⁵⁷ RC16.

⁵⁸ Ibid.

⁵⁹ RC9.

5. OBJECTIVES

To ensure that prices for all Renewal SA real property sales are properly benchmarked where appropriate and have a sound and consistent basis and that appropriate sales process are undertaken.

6. POLICY DETAILS

6.1. Method of sale

As a general principle and in order to achieve competitive neutrality, wherever practical to do so, a competitive sales process should be applied to sales of Renewal SA's real property assets.

...

6.4 Off-market transactions – valuation requirements

As a general rule, off-market transactions (ie sale of Renewal SA real property which has not been offered to the open market) to the private sector must be supported by two independent valuations. The higher of the two valuations will apply as the minimum acceptable price unless the Chief Executive determines otherwise.

This requirement does not apply to real property which has been offered to the market but failed to sell.

NOTE: *Appendix 1 contains a table setting out requirements for a range of transactions, including approval authorities.*

Delegations to approve the sale of real property are set out in the Renewal SA Delegation Schedule and associated Renewal SA Delegations Guidelines.

6.5 Valuations

Normally, approval for a sale requires an up-to-date current market valuation (see definition below) to ensure that an adequate value is being received for the property being sold.

The Australian Property Institute's definition of Market Value is 'the estimated amount for which an asset should exchange on the date of valuation between a willing buyer and willing seller in an arm's length transaction after proper marketing wherein the parties had each acted knowledgeably, prudently and without compulsion'. A current market valuation that is based on this definition is the appropriate form of valuation to support the sale of any real property assets.

It is preferable for the valuation to be less than six months old to ensure its currency, although in a highly volatile market it may be appropriate to have the valuation updated. If warranted by market conditions, an older valuation may be adopted at the discretion of the Chief Executive.

Criteria which will be considered by the Chief Executive in exercising the above discretion include:

- o there has been little movement in the market since the date of the valuation;*
- o later sales evidence supports the valuation;*
- o the sale price is less than \$100,000 (excluding GST);*
- o an option or exclusive arrangement was negotiated committing Renewal SA to a set price for a defined period.*

Valuations are not required where:

- o a price list for developed allotments has been approved by the Chief Executive or the appropriate Joint Venture Board (refer to Appendix 1); or*
- o transfer at nominal or zero value has been approved by the Chief Executive or Renewal SA Board of Management.*

Valuations should be procured from an independent licensed valuer using a brief that clearly sets out the approach required.

Standard briefs for use as templates are available the Renewal SA intranet, under Forms, Templates and Checklists [sic].

Valuation reports should be received as a draft, assessed and agreed by Renewal SA before acceptance as a final report. Land Acquisition and Sales staff can provide assistance in tailoring briefs to specific needs, instructing valuers and assessing draft reports before acceptance.

6.6 Sales below valuation

The Chief Executive has delegation to approve a sale price below valuation; generally where a property has been on the market for some time or several allotments are sold in one line.

Clause 4 makes it clear that the RPMP Policy applied to a transaction of the kind relating to the Gillman land. The objectives were to ensure that prices were properly benchmarked and appropriate processes were undertaken. There should be a competitive sales process.⁶⁰ The RPMP recognised that the URA might sell an asset in an off-market transaction.⁶¹ In that case the transaction must (emphasis added) as a general rule be supported by two independent valuations, the higher of which will prevail unless the Chief Executive determines otherwise.

The discretion that is given the Chief Executive in Clause 6.4 only allows the Chief Executive to apply the lower of the two valuations that must be obtained. There is no discretion given to the Chief Executive not to obtain two independent valuations. That obligation is mandatory.

The valuations that the URA must obtain are identified in Clause 6.5. A discretion is given to the Chief Executive to adopt a valuation older than six months (if warranted by market conditions). The criteria which should inform the exercise of that discretion are identified in the Clause.

None of those criteria which might support the Chief Executive adopting an older valuation apply with the possible exception of the first, which relates to market movement. The criteria are not intended to justify a decision to proceed without any current and relevant market valuations.

Clause 6.6 allows for sales below valuations but that Clause also has no application to this transaction.

The policy does not give the Chief Executive discretion to adopt any more than one older valuation for the purposes of assessing a potential off-market transaction.

Further, the policy assumes that the valuation that is to be relied upon, whether current or older, is a relevant valuation. It cannot be otherwise, or else the policy would be of little use.

Relevance in the context of a land valuation would have at least two elements: first, geographic relevance, that is, the valuation should cover the same land that is proposed to be sold off-market; secondly, commercial relevance, that is, the valuation should be based on assumptions that are appropriate having regard to the nature and proposed conditions of purchase.

The responsibility for monitoring the URA's compliance with the RPMP when recommending the sale of major real property assets was imposed upon 'Renewal SA Officers (responsible for the sale of real property)'.

⁶⁰ RC9.

⁶¹ Ibid.

MARCH 2013 – AN EARLY APPROACH

Mr Joseph Borrelli, who is the Director and Chief Executive Officer of Acquista which has entered into a joint venture agreement with Veolia Environmental Services (Aust) Pty Limited ('Veolia') and conducts the business which trades as Integrated Waste Services ('IWS'), gave evidence.

The joint venturers were the plaintiffs in the proceedings before Blue J in which they sought orders quashing the decisions made and in particular the decision made to enter into the Option Deed with ACP.⁶²

I received as part of Mr Borrelli's evidence two affidavits which he had sworn in the Supreme Court proceedings dated 17 September 2014 and 24 October 2014.⁶³

Mr Borrelli gave evidence in relation to two relevant matters.

He said that on 6 March 2013 he and Mr Bowden, the General Manager of IWS, met with Mr Terlet who was a consultant to Veolia and Mr Hodgen and Mr Rollison of the URA to discuss a proposal that IWS put at that meeting for IWS to fill an area of land of about 39 ha on the Gillman site.

Mr Terlet, who was then a member of the Board of the URA, was instrumental in arranging the meeting of 6 March between the IWS officers and Mr Hodgen and Mr Rollison.

Mr Terlet said that he attended that meeting at which the remediation of the Gillman land was discussed because IWS was of the opinion that the major value in the land was in remediating the land.

Mr Borrelli said that he told Messrs Hodgen and Rollison that he had previously met with Mr Hanlon who was then the Deputy Chief Executive of the Department of Planning and Local Government in relation to filling that site.

Mr Borrelli and Mr Bowden provided Messrs Rollison and Hodgen with a written proposal for a joint venture between Acquista/Integrated Waste Services and the URA in relation to the remediation of part of the Gillman land.⁶⁴ He said that he handed a copy of the Joint Venture Proposal to the URA representatives. He said that during the discussion in relation to that proposal he was told, either by Mr Hodgen or Mr Rollison, that the land at Gillman needed to be re-zoned as industrial and that the URA could not consider the Joint Venture Proposal until such time as the zoning went through and after the URA Masterplan for Gillman was released.

He said he was also told that there would be a tender process in respect of the Gillman site.

Mr Hodgen said in his evidence that his recollection was that Mr Borrelli and Mr Bowden were told that the URA was intending to subdivide the land and there would be a request for tender process and that when this process came about IWS was welcome to tender.

Mr Rollison said that with the exception of the Hanson Road Extension land (which is part of the Gillman land) Messrs Borrelli and Bowden could have left the meeting with the impression the URA would not consider a proposal of the kind suggested until the URA had developed the Masterplan and put a process in place for proposals of that type.

Mr Terlet said the meeting finished with the parties agreeing to have further discussions about the opportunity that Mr Borrelli presented to the meeting.

⁶² *Acquista Investments Pty Ltd & Anor v The Urban Renewal Authority & Ors* [2014] SASC 206.

⁶³ RC1 and RC2.

⁶⁴ RC1.

APRIL 2013

On 2 April 2013 Adelaide Resource Recovery wrote to the URA expressing an interest in acquiring the whole of the 311 hectares comprising the Dean Rifle Range.⁶⁵ On 12 April 2013, URA responded to ARR's sole Director, Mr Petar Jurkovic:

... The Government views the Dean Rifle Range land as a 'key industry area' that will be developed over a the [sic] next 20 years to satisfy both the demand for industrial land in that area and to support the attainment of employment targets which have been established for the western Adelaide region.

In this context, Renewal SA will not be pursuing speculative interest in the Dean Rifle Range land, however [if] there are any specific development outcomes you wish to progress, then I would welcome you raising these directly with our Industrial Project Delivery team.⁶⁶

On 16 April 2013 the URA released a Consultant Brief for a Gillman Masterplan in which it was proposed that a master plan for the Gillman land would be developed with the key objectives:

- an implementable master plan to guide future delivery of employment land at Gillman/Dry Creek;
- to identify land that is developable for employment uses and other uses;
- to provide a process to engage with the community and key stakeholders; and
- to provide an information base that can be easily translated into a planning policy.

It was proposed that the master plan should support:

- the timed delivery of affordable industrial land to the market;
- creation of a mix of industrial allotments suitable for a range of businesses;
- effective environmental management; and
- facilitation of private investment.

The closing date for submission of tenders for a consultant team to prepare the Gillman Masterplan was 7 May 2013.

⁶⁵ Above n 46.

⁶⁶ RC8.

MAY 2013

In May 2013, Allotment 201, part of the former Dean Rifle Range land, was valued for the URA by Knight Frank at \$34.82 psm. The valuation was to form the basis of a contract for sale to Royal Park Salvage.⁶⁷

⁶⁷ RC8.

JUNE 2013

On 6 June Jensen Planning + Design executed a Consultancy Agreement with the URA to provide the Gillman Masterplan, by the week of 16 December 2013, with a Progress Plan in four phases.

In the first half of June 2013 Mr Stephen Gerlach, who a week later was appointed a Director and Chairman of ACP,⁶⁸ approached Mr Spencer, Chair of the Economic Development Board ('EDB') with a proposal to purchase and develop the URA's Gillman land.

Mr Spencer knew Mr Stephen Gerlach, Mr Andrew Gerlach less well, Mr Simon Brown and Mr David McMahon. He knew of ResourceCo and its business.

Mr Spencer said in his evidence that he met with Mr Stephen Gerlach, Mr Andrew Gerlach and he thinks Mr Simon Brown who collectively gave a very detailed and sophisticated presentation.

Mr Spencer said that he was quite frankly impressed by the sophistication of the proposal and the amount of money which must have been invested in putting the proposal together.

He thought the proposal met a need that the EDB had established was necessary for the State, being to expand the logistics and distribution capacity for the resources industry, and to build a place that would create a services hub for that industry.

Mr Spencer was also impressed that ACP was not asking for Government money to support its proposal.

Mr Spencer referred Mr Stephen Gerlach's approach to the Premier, who at that time was also the Minister for State Development.

On 13 June 2013 Mr Gerlach met with the Premier. At that meeting Mr Gerlach showed the Premier a document entitled 'Investment Opportunity Australia Lipson Industrial Estate' that had been prepared by ACP. It painted a very positive picture for the development of the Gillman land. It contemplated that ACP would conduct a three stage development of the land over a 12 year development period with a total capital value of A\$2.10 billion. In the three separate stages 34 ha per year would be developed. The document contained a Financial Analysis of the Project which was a snap shot of the financial modelling which had been undertaken for ACP by Ernst & Young.

It identified the entities and persons which comprised ACP and said of ResourceCo:

The most practical example of ResourceCo's capacity to deliver the Lipson Industrial Estate is outlined in the following pilot project:

PILOT PROJECT – GILLMAN PRECINCT

In 2010, ResourceCo purchased a 16 ha site immediately to the north of the Lipson Industrial Estate development. This undeveloped parcel of land had the same topography and development requirements as the proposed Lipson Industrial Estate project. This land was reclaimed and developed with fill materials sourced and supplied by ResourceCo.

ResourceCo sourced and placed nearly one million tonnes of fill material onto the site and developed the land into a completed industrial facility for use as a multipurpose recycling precinct.

⁶⁸ RC20.

The cornerstone of the sites development was ResourceCo's unique ability to deliver the required development process including sourcing, placing and sign off of fill materials as follows;

1. PRELOAD LAYER OF FILL MATERIAL

The preload material is set to surcharge the underlying natural formation and achieve a required density upon compaction. ResourceCo sourced the preload material from the civil and construction markets in the Adelaide area as well as internal sources. All materials are tested for conformity with specification and were placed in 500mm layers using track dozer compaction to achieve the specified density requirements.

2. SELECT FILL MATERIAL

The select fill material was again sourced by ResourceCo and placed and compacted on 200mm layers to 95% modified compaction. A maximum particle size of 40mm with plasticity limits to reduce the potential for groundswell.

3. SUB BASE MATERIALS

The sub base layer is placed in 150mm layers and compacted to 98% Standard Compaction. The material is known under DPTI specifications as a class 2 PMZ(20RG), comprising a 20mm minus recycled material 100% supplied by ResourceCo.

*The volume and project management skills required in the sourcing and handling of fill material presented the project with significant cost, logistical and design challenges and this is a key driver in the Lipson Precinct project.*⁶⁹

The ACP's Directors' evidence was that the fill that ResourceCo would supply to the site would not principally be waste derived fill but mainly sand fill derived from quarries owned by ResourceCo. Recycled crushed concrete would be used as a road base and as a topping layer and Adelaide clay soils from excavations would be mixed in with the sand before deposit on the land. The land would not be used to dispose of waste.

The Premier's evidence was that he was excited about the proposal, particularly because the private sector was proposing to use its money for this project. Mr Brown said that the Premier appeared excited at that meeting.

In his evidence Mr Stephen Gerlach spoke enthusiastically of the opportunities that a project of this kind could deliver.

On 14 June 2013 Mr Gerlach emailed Mr Raymond Spencer attaching a draft letter 'as promised' to be written to the Premier.⁷⁰

On Sunday 16 June 2013 Mr Spencer responded by email to Mr Stephen Gerlach saying:

Stephen,

I think this looks fine. I would change the sentence around extending the six month option to read something like:

For the opening sentence of the para on the option period I would say '... seeks an exclusive development option for a period of six months to reach a final investment decision.'

then later in the para I would say:

'It is expected that the six month option period could if needed be extended by an additional six months assuming certain milestones had been reached.'

*I would get it to him and see if it is all that he wants. Feel free to ignore the above if you think it tis [sic] too aggressive. However, clearly it is in line with his 'political' needs.*⁷¹

⁶⁹ RC29.

⁷⁰ RC5.

Mr Stephen Gerlach responded on 17 June 2013:

Raymond, thank you. The suggested amendment will be made and the letter delivered tomorrow when I am back in Adelaide and can sign it.

Interested in any other feed back [sic] on your dinner with Jay that you can pass on.

*Best wishes
Stephen.⁷²*

Later that night Mr Spencer emailed Mr Stephen Gerlach saying:

Hi Stephen,

Call me and I will give you an update.

Raymond.⁷³

Mr Spencer's involvement in the ACP proposal ended at that time although he did speak to Mr Stephen Gerlach a couple of times later about progress.

On 18 June 2013, Mr Gerlach wrote to the Premier on behalf of ACP proposing that ACP acquire the URA's land at Gillman for up to \$135 million, equating to \$30psm, in three instalments.⁷⁴ ACP referred to the land as the Lipson Industrial Estate, a term which I shall also use.

Although, as I have said, Mr Gerlach was not an officer of ACP at that time he styled himself as 'Chairman'. He was not appointed to that position until two days later. Presumably he wrote as ACP's agent. In any event he clearly had authority to write the letter.

He wrote:

Further to our meeting on Thursday 13th June regarding the proposed development of the Lipson Industrial Estate by Adelaide Capital Partners we are pleased to provide the following letter of explanation regarding the project development process. This international standard industrial development is expected to deliver over \$2bn to the South Australian economy. It has been widely acknowledged that the Gillman precinct is a prime piece of industrial land earmarked for development as part of The Greater 30 Year Plan for Adelaide.

...

Adelaide Capital Partners is a South Australian based company with specialist property and land remediation expertise targeting large scale industrial land holdings that face remediation or environmental challenges. The commercial opportunity is to apply our specialist knowledge and expertise to unlock the sites potential. Adelaide Capital Partners comprises a group of very experienced South Australian and international directors and significant management depth and are the only South Australian group with the reputation, capacity and experience to deliver a project on this scale.

Adelaide Capital Partners have modelled the Lipson Industrial Estate based on a land sale receipts to the South Australian Government totalling \$135 million over the development period. It is proposed receipt of these funds will accumulate as follows; FY14 – \$45m, FY18 – \$45m and FY22 – \$45m. This equates to \$30 per square meter over the entire site or \$67.50 per sqm for anticipated actual developed area. The project is to be staged to match the required timeline for accessing filling materials, Adelaide Capital Partners will be required to deliver over 2 million tonnes per year of fill materials to the site. That timeline will be expedited as quickly as possible to also match market take up demand. That demand profile will be

⁷¹ Ibid.

⁷² Ibid.

⁷³ Ibid.

⁷⁴ RCG.

accentuated by the early requirements of the need to establish a service hub for the resources industry and in particular the development of the shale gas opportunity in the north of the State. We refer to our discussions at our meeting in that regard and its importance to State developments.

...

Adelaide Capital Partners are also aware of a range of large scale industrial end users including Toll IPEC, Metcash, ALDI and Linfox.

...

In order to realise this opportunity, Adelaide Capital Partners requests the support of the South Australian Government and seeks an exclusive development option for a period of 6 months to reach a Final Investment Decision. The exclusive option period will enable Adelaide Capital Partners to complete funding arrangements with international investors and the completion of a fully approved master plan for site. It is expected that the initial 6 months option period could if needed be extended by an additional six months assuming certain milestones had been reached.

In granting this exclusive option to Adelaide Capital Partners, there is the potential for comment regarding probity related matters and a possible expectation of putting the development out to formal tender. Adelaide Capital Partners have the only economically viable development solution and require the full support of the Government to secure potential international investment. Significant international investors to a project of this scale will not participate in such a broad tender and it would inevitably lead to excessive delays and complications with little or no realistic appetite to invest in such a project from the local market.

In discussions with our funding advisers and our potential funding partners it has been specifically stated to us that international investors will not participate in a generic tender process without the required certainty of being able to proceed if the planning process is successful. We have forecast that the development work required to be funded by the investor during the option period will be in the order of A\$5–\$10m and thus investors require a secure development outcome. As indicated above from a local investor perspective, it is our strong view that that A-REIT sector firstly will not have the filling/project capability to deliver a project solution for the site and secondly the project timetable and associated cash flows will not fit the traditional investment A-REIT profile.

As stated, the development of the Lipson Industrial Estate is a \$2 billion project creating a range of possible outcome for South Australia. Adelaide Capital Partners seeks government support, (without financial cost to Government) in order to secure new international investment dollars for South Australia and the ability to develop the project for the benefit of the State.

We look forward to your early response.⁷⁵

Mr Gerlach's letter, of course, speaks for itself. However, it is useful to summarise the important features addressed:

- The international standard industrial development is expected to deliver \$2bn to the South Australian economy.
- The Gillman precinct is a prime piece of industrial land.
- ACP is a South Australian based company with specialist land remediation expertise targeting large scale industrial land holdings.
- ACP comprises a group of very experienced South Australian and international directors.
- ACP offers \$135m over the development period payable: financial year 2014 – \$45m; financial year 2018 – \$45m; and financial year 2022 – \$45m; which equates to \$30 per sqm over the entire site or \$67.50 per sqm for anticipated actual developed area.
- The project is timed to match the required timeline for filling materials.

⁷⁵ RC6.

- The need to establish a service hub for the resources industry and the development of the shale gas opportunity.
- ACP seeks an exclusive development opportunity for a period of 6 months to complete funding arrangements with international investors and the completion of a fully approved master plan. That six months could be extended to 12 months.
- ACP has the only economically viable development solution and requires the full support of the Government to secure potential international investment.
- Significant international investors will not participate in a broad tender.
- International investors will not participate in a generic tender process.
- Development work will be in the order of A\$5m – \$10m and investors require a secure development outcome.
- A-REIT sector does not have the filling/project capability to deliver a project solution and the project timetable and associated cash flows will not fit the traditional investment A-REIT profile.

Mr Stephen Gerlach gave evidence that ACP had received financial advice that if funding were to be obtained for the ACP project with international or substantial investors the project would need to proceed other than by a tender.

I asked Mr Stephen Gerlach whether he would be concerned that ACP would need to disclose its business plan in a tender process. He replied 'well, certainly that's part of it'.

Jensen Planning + Design was not advised of ACP's unsolicited proposal until the end of the year and Mr Jensen was not sure whether it was before or after the completion of the Gillman Masterplan.

Mr Gerlach's letter of 18 June 2013 was provided by the Premier to Minister Koutsantonis who was the Minister for Housing and Urban Development, the responsible Minister.

Ms Goodchild has recorded in a handwritten note that at a meeting on 25 June 2013 at which Minister Koutsantonis and Mr Malinauskas, she, Mr Hansen, Mr Buchan, Ms Durand, Mrs Linda South and Mr Warren Smith were present, Minister Koutsantonis asked the URA to look into the letter received by the Premier.⁷⁶

⁷⁶ RC34.

On 4 July 2013 Minister Koutsantonis met with Mr Hansen, Mr Buchan and Ms Durand but it is unclear whether the Gillman matter was discussed.⁷⁷

On the same day Mr Hansen signed a Minute drafted by Mr Rollison to Minister Koutsantonis providing advice on the ACP proposal. Mr Rollison had the day-to-day responsibility for drafting Minutes, Board papers and draft Cabinet submissions. His work was reviewed by Mr Hodgen before it was presented to Mr Hansen or Mr Buchan. The Minute was emailed to Minister Koutsantonis' office on 5 July.⁷⁸ In that Minute Mr Hansen said that the Premier had received a letter dated 18 June 2013 from Mr Stephen Gerlach of ACP proposing the development of the Lipson Industrial Estate. He said ACP's proposal outlines a possible offer to purchase or secure development rights over the URA's Gillman/Dry Creek Holdings for \$135 million through three equal payments of \$45 million in FY 2014, FY 2018 and FY 2022. Mr Hansen analysed anticipated costs associated with the development in order to assess the commercial viability of the ACP offer.

Mr Hansen wrote:

The offer from ACP appears to place a value on the (Dean Rifle Range) land of between \$93.3 million and \$121.5 million based on the rates provided for the 'usable' and 'developable' areas. The ACP's offer exceeds the ACC estimate for the value of the Dean Rifle Range which, based on independent expert advice and Renewal SA, already overvalues the holding by a significant margin.

A substantial amount of expert advice on the future development of the DRR has been received by Renewal SA as a result of the compulsory acquisition process. This work identified a number of fixed costs associated with developing the land and a review of those costs (setting aside any cost savings which could be delivered through innovative development methods) suggests that the land cannot be commercially developed if it is acquired for \$135 million unless:

[REDACTED]

3. *The future sale price for developed allotments will be significantly higher than \$200/m²(...)*
4. *The purchaser is reliant on profits associated with built-form development, which it can secure through controlling the release of land in the area.*
5. *The purchaser reserves the right to develop land for industrial use which is required to support ongoing stormwater management function; or*
6. *A combination of the above.*

He said in the Minute that proceeding with an exclusive arrangement with ACP for the entire Gillman Dry Creek landholdings may restrict government's ability to make land available for strategic purposes.

Attached to the Minute was a separate Minute addressed to the Premier which Mr Hansen recommended Minister Koutsantonis provide to the Premier. Also attached was a draft of a letter from the Premier to Mr Stephen Gerlach which included:

Renewal SA has the capability and expertise to deliver the current projects and implement the master plan over the Gillman/Dry Creek land. However, once this work has been finalised, the government welcomes interest from the private sector in projects such as this. The government also acknowledges that specialist knowledge and expertise is located within the private sector and is interested in exploring avenues for this privately held knowledge and expertise to be harnessed (if possible) to achieve the government's objectives.

⁷⁷ RC33

⁷⁸ RC8.

Other than the two project areas identified above (which are already appropriately zoned for industrial use), I advise that the government is not in a position to offer exclusive development rights over other land until at least the completion of the current master planning work. This position has been has been [sic] articulated to other parties who have expressed interest in the land and will be the consistent position for any other party who may approach the government in the near future with an alternate proposal.

I trust that the current master planning work will not only inform government, but will also provide greater certainty for proponents, including yourself, seeking to assess the future development potential of the land and to complete their own feasibility assessments in order to firm-up possible development proposals.

I note that your current proposal includes a high-level assessment of the value for the property, which I assume is underpinned by a number of assumptions regarding the nature of potential development proposed and the timeframes for development. To ensure these assumptions (even at the high level) are consistent with the government's objectives for the land, and to allow the government to better understand your proposal I have asked Fred Hansen (Chief Executive, Renewal SA) to contact you during the course of your master planning work.

The reference to the current master planning work was a reference to the Jensen Planning + Design commission to produce the Gillman Masterplan.

That letter was never sent because although the Minute suggested it be sent to the Premier, Minister Koutsantonis did not provide the Minute to the Premier.

Initially the URA recommended against proceeding with the proposal because, as Mr Hodgen said, its size and scale meant it was such a big transaction to do off-market.

Mr Buchan said that at a meeting shortly after 4 July 2013 Minister Koutsantonis indicated he was reluctant to accept the advice in the Minute of 4 July.

Minister Koutsantonis did not have a clear memory of seeing Mr Hansen's Minute of 4 July 2013, around the time it was written, although he said he would have noted it.

I asked him about his view of the ACP proposal as at 5 July:

- Q. *Do you remember, for now, whether you had formed a position as at the 5th of July as to whether or not this unsolicited proposal ought to be encouraged or discouraged?*
- A. *My view on all unsolicited proposals or any proposal is that we should consider it. I – I think that when people come to us with ideas we should give them the courtesy of the evaluation rather than the immediate no. So that would be my view about any proposal.*

On 10 July 2013 Bardavcol Pty Ltd, which is a South Australian civil engineering and construction company, submitted a written proposal expressing an interest in being commissioned to fill and geotechnically improve an undisclosed area of low-lying land comprising of part of the Gillman land.⁷⁹

⁷⁹ Above n 46.

AUGUST 2013

On 1 August 2013 Metcash Ltd, a food and grocery marketing company, met with representatives of the URA to discuss acquiring a 12 – 14 ha site to accommodate a new grocery distribution facility. The approach to the URA initially came from the Department of Manufacturing, Innovation, Trade, Resources and Energy ('DMITRE') and did not specify a location.⁸⁰

The ACP Directors said in their evidence that after the initial approach to the EDB and then the Premier they heard nothing from Government until early August 2013. They found the silence emanating from Government frustrating.

ACP first heard from the URA in early August and between 6 and 26 August 2013 ACP's representatives met with URA staff to discuss the ACP proposal.⁸¹

On 13 August 2013, Mr Kain of Kain Corporate + Commercial Lawyers, emailed 'Michael' and 'Simon' referring to direct talks between ACP and each of the recipients, and with the Premier.⁸² 'Michael' is Michael Buchan of URA. 'Simon' is Simon Blewett, who was then Chief of Staff to the Premier.

Mr Kain's email attached a draft Option Deed, which was said 'to reflect the terms we understand have been agreed between ACP and the Premier'. He also said, 'I understand that the parties wish the Deed to be agreed this week.'

Mr Blewett replied on the same day telling Mr Kain that:

The appropriate process was for Mr Kain to deal with Renewal SA over the Deed and any other elements it requires in order to be able to advise Government. This will ensure there is no confusion.

Mr Buchan acknowledged receipt of his copy of the draft Deed which he said he had requested but stated that 'no terms had been agreed' and the purpose of the draft Deed was to better understand ACP's proposal. He also said that it 'would be premature to indicate a date when this process will be finalised'.⁸³

On 14 August 2013 Mr Kain responded, agreeing that no terms had been agreed, saying ACP had discussed 'a broad commercial proposal with Government representatives but reached no agreement'. Shortly after, Mr Andrew Gerlach confirmed that no terms had been agreed and that the Deed was provided to allow ACP's proposal to be better understood.⁸⁴

On 22 August 2013 Mr Rollison provided Mr Andrew Gerlach with a marked up version of the recitals for the Deed which he said reflected his 'thoughts/comments'. He noted that the document would be provided to the ACP Board at its meeting the next day. He said:

I have also reviewed the likely Government approvals process. It is evident that the matter will need to be considered by Cabinet as the proposed arrangements are materially different from a Cabinet-approved position with respect to the land. I will take further advice in relation to this matter, however I suspect that the most appropriate way to proceed would be for a two-stage process to be adopted whereby the deliverables identified for ACP (under the current Clause 2.1.2, as amended to provide further clarification) together with other Renewal SA requirements (including those which address the bullet-points above) are by Cabinet as a condition precedent to both the Extended Period and the Exercise of the Option.⁸⁵

⁸⁰ Above n 46.

⁸¹ RC7.

⁸² RC30.

⁸³ Ibid.

⁸⁴ Ibid.

⁸⁵ Ibid.

On 26 August Ms Pike met with Minister Koutsantonis. Mr Malinauskas and Ms Goodchild were present. None of the witnesses gave evidence of this meeting but Ms Goodchild made a note of what was said.⁸⁶

On 26 August 2013 the URA Board met. Jennifer Westacott had ceased to be a member of the Board on 31 July 2013 and was not in attendance.

The Board Minutes record that Mr Buchan gave a report entitled 'Proposal received for the purchase of URA owned land at Gillman. This to be subject of Cabinet consideration.'⁸⁷ The Board Minutes do not record the proposed purchaser or the proposed purchase price.

Mr Buchan said that when he addressed the Board he said that the Premier had received a proposal for the Gillman land and that it was unusual in that it was an off-market offer and involved a substantial amount of money. He told the Board that the URA had met with the proponents and that they were expecting further detail.

On 29 August 2013 Mr Kain wrote to the Premier with a more detailed proposal and a draft deed to which ACP, the URA and the Minister for State Development were proposed to be parties⁸⁸.

Mr Kain wrote:

This proposal is submitted on behalf of Adelaide Capital Partners Pty Limited ('ACP'). ACP is an Independent Australian property development and land remediation company based in Adelaide.

ACP proposes to buy from Renewal SA approximately 450 hectares of vacant land at Gillman (at an estimated value of up to \$135 million) and develop it into an international standard industrial development with estimated economic benefits to the South Australian economy of over \$2 billion. This proposal follows an unsolicited approach by ACP to Government on 18 June 2013. It includes:

- 1. A letter dated 18 June 2013 from Stephen Gerlach (Chairman of ACP) to you (Annexure A);*
- 2. An explanatory memorandum summarising the terms of this proposal (Annexure B);*
- 3. An explanation of the site (Annexure C);*
- 4. An explanation of the proposed corporate structure for the project (Annexure D);*
- 5. An explanation of ACP and its directors (Annexure E);*
- 6. An explanation of ACP's project partners (Annexure F); and*
- 7. A deed which ACP proposed that ACP, Renewal SA and the Minister for State Development enter to give effect to the proposal (Annexure G) ('Deed').*

Upon advice from ACP's corporate advisers, who are managing the international capital raising to fund the Project, the optimum window to secure the capital for this Project is the months of October and November. In that order that the [sic] necessary preparatory work can be undertaken and the capital raising pursued during this window, we seek your response to this proposal by Wednesday 18 September 2013, with the aim of signing the Deed by 30 September 2013.⁸⁹

Mr Kain did not expand upon the reasons why the 'optimum window' for raising capital would be in October or November.

⁸⁶ RC34 - '26/08/13. Bronwyn Pike, Tom, Rob & me. Going ok. Master Builders – Fred wasn't there, some staff were. Use other Board members more to communicate with business and industry. Send someone from Renewal SA to each function. Board vacancy – investigate. Web site needs work. Renewal SA needs to be more visible and engaged. Fred to rep Minister at events. ASER valuation. Review – delegate to Chair to do.'

⁸⁷ RC4.

⁸⁸ RC30.

⁸⁹ Ibid.

The 'Proposed Corporate Structure for ACP and the Project's Equity Investors' that was included with Mr Kain's letter stated:

It is proposed that the Lipson Estate Industrial development will be undertaken by an Australian domiciled development company and ACP shall act as Project Managers via an existing management company.

It is proposed that the investor will fund the capital costs of the project on a stage by stage basis.

It is also proposed that ACP will invest directly into the development company via funding an agreed percentage of the peak equity value required. ACP will be paid an annual management fee to deliver the project on behalf of the investor and development company.

The development company will establish a separate Board of Directors ('Lipson Development Board or LBD') comprising representatives from both the investor group and ACP. The LBD shall have responsibility for all strategic and investment decision [sic] for the project.

DEVELOPMENT PATH

Upon reaching agreement on terms the LBD shall execute the agreed development plan for the first stage of Lipson Industrial Estate.

For the life of the project, the development company shall employ a project team including specialist service providers such as planners, engineers and external consultants.

ACP shall work with LBD in providing traditional project management service including funding advice and execution and key relationship co-ordination with the South Australian State Government.

The purchase and settlement of the land will be on a stage by stage basis under agreement with the vendor the South Australian State Government.

The development functions including filling and remediation, placement and delivery will be undertaken via formal contracts between the development company and project partner ResourceCo.

Services & infrastructure planning and delivery will be executed by the project team and in co-ordination with planning authorities and the State Government.

ACP will lead the appointment, marketing and sales process for the development site.

Design & Construct development opportunities will be signed off by the LBD, it is expected that there will be a range of development outcomes pending specific end user requirements. Wherever possible LBD will seek to retain and develop in-house expertise to maximise project returns.

All direct property services and responsibilities will be outsourced to external providers under the management of ACP.

The Explanatory Statement gave ACP a different role to that which it had suggested it would perform when the proposal was first put. It was now proposed that it become a Project Manager.

The Explanatory Statement described ACP:

*ACP is a joint venture of two unique groups, Gerlach Asset Development Pty Ltd is a specialist property and financial services group and ResourceCo Pty Ltd is a leading Australian environmental services company with direct development expertise in land and soil management and infill projects.*⁹⁰

The August draft deed, if it had been executed, would have granted ACP a single option for a period of six months (which could be extended) to purchase 418 ha of land subject to certain conditions precedent. Upon exercise of the option by ACP, the URA and ACP would have been deemed to have entered into a Land Sale Contract which included a term for the purchase price of \$30 per square metre of 'usable land'. The land sale was to settle on the date on which the last of the regulatory approvals required for the project had been obtained to the satisfaction of the purchaser, and when at least 230 hectares of the option land was rezoned 'General Industry'.

The Deed assumed that ResourceCo, which was a shareholder in ACP, could provide 2 million tonnes of fill per annum.

On the same day a solicitor in Mr Kain's firm emailed a copy of the proposal that had been sent to the Premier to Messrs Buchan, Blewett and Rollison, and further copies to Messrs Kain, Andrew Gerlach, Simon Brown, Watson and Frearson-Lea.

Mr Blewett forwarded the 29 August 2013 ACP proposal to Mr Buchan that same day, and copied the message to Mr Robert Malinauskas, Chief of Staff to Minister Koutsantonis. Mr Blewett requested that the URA review the proposal and provide advice to Minister Koutsantonis, including advice as to whether the proposal should be considered by Cabinet.⁹¹

On 29 August 2013 Mr Hansen provided a Minute (again drafted by Mr Rollison) to Minister Koutsantonis in similar terms to the Minute of 4 July 2013. This Minute contained recommendations that:

1. *Renewal SA continue with its current sub-projects in relation to the land;*
2. *Renewal SA maintain contact with ACP to further discuss its proposal but not offer ACP an exclusivity period in relation to the land; and*
3. *You forward the attached Minute and response (which is provided in draft for consideration) to the Premier.*

The attached Minute to the Premier was in similar terms to that to Minister Koutsantonis. The attached draft letter to ACP, which the Minute contemplated would be provided to the Premier, was in non-committal terms simply acknowledging ACP's interest in the Gillman/Dry Creek areas.

Mr Buchan said that he and Mr Hansen met with Minister Koutsantonis shortly after the Minute was provided to Minister Koutsantonis, probably on 30 August, when Minister Koutsantonis indicated he accepted that advice. Ms Goodchild's notes refer to a meeting that day.⁹²

Mr Buchan said that Minister Koutsantonis was quite interested in the proposal but not excited.

Mr Buchan told Minister Koutsantonis that because it was an off-market proposal it carried with it significant issues but Mr Buchan told me that Minister Koutsantonis said it was a matter for Government to decide whether the URA would enter into the transaction.

⁹⁰ Ibid.

⁹¹ Ibid.

⁹² RC34.

In Ms Goodchild's handwritten notes she has recorded:

Needs to happen quickly. Want to get to Cabinet mid-September. Contact the office. Meet next week.

It may be assumed those notes record Minister Koutsantonis' observations and instructions.⁹³

Ms Pike has had considerable experience in Government having been a Minister in the Victorian Government.

Ms Pike said that she was never shown Mr Hansen's Minute to the Minister of 29 August. She said she would have expected to have been given a detailed briefing about the action that the URA was taking.

She said it was only much later in November that any detail about the proposal other than a couple of sentences was provided by URA's management to the Board.

Mr Buchan began annual leave on 29 August and did not resume his duties until 13 October. Prior to beginning that leave he and Mr Hansen discussed the issues that needed to be addressed while he was absent.

⁹³ RC34.

SEPTEMBER 2013

Ms Goodchild's handwritten notes disclose a meeting between Minister Koutsantonis and Messrs Hansen and Buchan on 5 September:

*Expect to have submission here tomorrow.
Barry Goldstein has been very helpful and is going to add in a paragraph.*⁹⁴

On 6 September 2013, Mr Jason Rollison emailed the CSO and provided the CSO with a draft of a Cabinet submission that was then being prepared by the URA relating to the ACP proposal. He requested advice on the draft.

Fred Hansen, in his written response to my preliminary report, said that Minister Koutsantonis did not apply any undue pressure on the Board or the agency but that the Minister encouraged the URA to contact Mr Barry Goldstein (then of DMITRE, now DSD) for confirmation of the significance of the ACP proposal to build an oil and gas hub, which Mr Hansen said the agency did:⁹⁵

We sought, as was suggested by the Minister, the advice of Mr. Goldstein. It was he who is recognized as the leading expert in SA government regarding such matters. He bore out the Minister's view that SA was in a race with Queensland to position ourselves as a credible alternative to provide a mining hub and thereby compete against Queensland. This is a role, I was told, that they or their predecessor had played in similar land sales in the past.

In this regard, the role of the Board of Management of the Urban Renewal Authority was to determine whether the proposal was an appropriate land use and whether it represented fair and reasonable value for the land.

Only one communication between the agency and Mr Goldstein has been provided to me by the URA. In response to a draft proposed Cabinet submission circulated by Jason Rollison on 6 September 2013, Mr Goldstein wrote via email on 7 September 2013:⁹⁶

Ex Chairman of Santos (Stephen Gerlach) is leading a proposal from Adelaide Capital (Mark Lindh, et al) to create an industrial park that can house mineral and energy resource supply chain enterprises.

This comes from credible local people with insights into the Cooper Basin.

...

This is an outcome sought by the upstream petroleum industry (as articulated in recommendations in the Roadmap for Unconventional Gas).

I wrote to Mr Goldstein on 6 July 2015:

Would you please provide to me details of any such request for advice and the timing, mode and content of any advice that you provided to Mr Hansen or to the staff of the URA about the ACP proposal or the strategic value to the State, of an oil and gas hub?

I also asked whether Mr Goldstein could provide any insight into what Mr Hansen meant by the last sentence in the first paragraph quoted above.

Mr Goldstein replied that he had not provided written advice to Mr Hansen but recalled meeting and discussing issues with him, although he could not recall specific conversations. Mr Goldstein also recalled that he had corresponded with Mr Rollison in relation to the Lipson Estate proposal and that he had electronic records of that correspondence.

⁹⁴ RC34.

⁹⁵ See Annexure 3 to this report.

⁹⁶ Barry Goldstein, email, *FW: Sensitive: SA Cabinet – Lipson Industrial Estate (Gillman)*, 7 September 2013.

He wrote:

The information that was related to Jason Rollison covered DMITRE's assessments of gas supply: demand (that was the subject of a Cabinet Submission) and the Roundtable for Unconventional Gas Projects in South Australia formed in 2011. That Roundtable informed the Roadmap for Unconventional Gas Projects that was released in Dec 2012. That Roadmap specified 125 ranked recommendations including recommendations to attract competent, capable and competitive supply-chain services, equipment suppliers and infrastructure. Supply-chain depots were a sought-after outcome from the implementation of the Roadmap recommendations. This was not specifically to compete with Queensland, but to enable globally competitive supply chains for emerging oil and gas projects in South Australia, and in the Cooper-Eromanga basins (that straddle SA and Qld) in particular.'

At my request Ms Kleinig asked him to provide copies of the electronic records of his communications with URA mentioned above.

Mr Goldstein supplied me with material in response to my request but none of it detailed communications with URA officers during the relevant period in 2013. He supplied me with diary entries recording scheduled meetings in February 2014 with Steve Ward of DSD to discuss the ACP proposal. The bulk of the material he provided was concerned with the gas exploration licence bid process in South Australia, including in the Cooper Basin.

The documents provided evidence that there is gas field exploration activity taking place in the State that might one day lead to a need for an oil and gas hub if exploration turns into production and that the existence of an oil and gas hub might contribute to the State's international competitiveness in the oil and gas sector.

On 11 September the CSO responded to Mr Rollison's request in an advice [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁹⁷ RC4.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

That advice was not provided to the Board or any of its members until much later on 17 December 2013 and after the Option Deed had been executed.

Mr Hansen has said that the advice given by the CSO was 'just that, advice'.⁹⁸

On 13 September 2013 Mr Hansen provided another Minute (dated 12 September 2013) again drafted by Mr Rollison to Minister Koutsantonis that provided Minister Koutsantonis with more recent information relating to ACP's proposal.⁹⁹ Mr Hansen said in the Minute:

Prior to ACP formally submitting its proposal, Renewal SA identified a number of key points which would need to be considered as part of a submission, and identified these as matters which Cabinet would take an interest in. These were:

- *Supply of land and buildings arising from development*
- *Mechanisms to ensure competitiveness of process for suppliers to the development and for purchasers of allotments/buildings*
- *Mechanisms to ensure employment creation*
- *The ability of the government to accommodate strategic uses (including stormwater requirements); and*
- *Mechanisms to ensure that development of the land would not impact adjacent strategic land holdings (including adjacent saltfields).*

The ACP proposal recognises these elements however it has not expressly taken these in to account. Renewal SA has reviewed the proposal and is in the process of preparing a submission for consideration by Cabinet in September, noting the target date for consideration by Cabinet is 16 September 2013. Renewal SA has started to receive comments from relevant agencies (including DMITRE in relation to the above) and these will be incorporated into the final Cabinet submission.

⁹⁸ See Annexure 3 to this report.

⁹⁹ RC8.

He identified the key points:

- On 29 August 2013 the Premier received a proposal from ACP outlining an option for ACP to purchase up to 450 hectares of Renewal SA's Gillman/Dry Creek holdings for a sum of \$135 million (comprising three staged payments of \$45 million per payment).
- The ACP offer included specific reference to 417.89 hectares and this would result in a total payment of \$125.367 million provided that all of the available land met ACP's definition of 'usable land'.
- The ACP offer is not the only proposal that Renewal SA has received for its Gillman/Dry Creek holdings, however it is the most significant in terms of the purchase price proposed.
- Renewal SA provided ACP with a series of high-level objectives in relation to the land for ACP to address as part of its proposal – the ACP proposal does not address these in any substantive way.
- The majority of the land (approximately 65%) is contained within the former Dean Rifle Range, which was the subject of a compulsory acquisition process to acquire Adelaide City Council's (ACC) half interest.
- The level of compensation payable to ACC has not been resolved however ACC is seeking further compensation of \$27.12 million plus interest and expenses.
- Renewal SA's intention for the Gillman /Dry Creek land had been to finalise the compensation claim with ACC, develop the East Grand Trunkway (EGT) and Hanson Road projects and complete the master planning exercise.
- The ACP proposal contemplates that Renewal SA will continue with the EGT project and with the master planning to facilitate the land being re-zoned accommodate [sic] industrial development.
- Proceeding with an exclusive arrangement with ACP for the entire Renewal SA Gillman/Dry Creek land holdings will restrict Government's ability to use the land to further its broader objectives.
- Renewal SA is preparing a Cabinet submission to facilitate consideration by Cabinet of the ACP proposal.
- The timeframe expected by ACP (that is that the proposal would be considered by Cabinet on 16 September 2013) is tight and may not be achievable noting that Renewal SA is yet to receive comments from all relevant agencies.

He recommended:

1. Renewal SA continue preparing the Cabinet submission in relation to the ACP proposal, incorporating agency comments as they become available;
2. Renewal SA continue with its current sub-projects in relation to the land; and
3. You sign the attached response to John Kain on behalf of the Premier (which is provided as a draft for your consideration).

The draft letter referred to in Recommendation numbered 3 which was proposed would be signed by Minister Koutsantonis and sent to Mr Kain was in the following terms:

Dear Mr Kain

Thank you for your proposal (on behalf of Adelaide Capital Partners (ACP)) to the Government of South Australia dated 29 August 2013 regarding the proposed Lipson Industrial Estate at Gillman. I also acknowledge the earlier letter to the Premier from Mr Stephen Gerlach AM, Chairman, ACP. Given the land in question is held on behalf of the State of South Australia by the Urban Renewal Authority, which trades as Renewal SA, the Premier has requested that I respond directly to you on his behalf.

I welcome ACP's interest in potentially acquiring up to 450 hectares of State-owned land at Gillman. This land (and the area more generally) is an important area for South Australia, the development of which will be a significant contributor to South Australia's economy. It is expected that the area will be a major focus for future employment outcomes, thereby supporting Adelaide's growing population.

With such a strategic land parcel, you will appreciate that a number of factors will need to be considered in relation to the ACP proposal, with these matters affecting a number of agencies and Ministerial portfolios.

I am advised that Renewal SA, and other agencies who will be providing advice, are considering the ACP proposal as a high priority, however I believe that a more realistic timeframe for a formal response from Government is by 30 September 2013. Subject to deliberations of the Cabinet, this should facilitate the parties entering into formal agreements by 31 October 2013.

Whilst I cannot pre-empt the outcomes of Cabinet's deliberation on the proposal, I trust that the above timeframe will still allow ACP to exploit the nominated optimum window to secure international capital for the proposal. Thank you again for your proposal.

No-one has said that the letter was ever sent and it seems it was not because ACP would have been required to produce the letter in accordance with the summons I issued under section 10 of the Royal Commissions Act directed to it, but no such letter was produced.

The Minute described the Gillman land as a key land asset for the State, which is how it had been identified in the 30 Year Plan for Greater Adelaide.

The September draft Cabinet submission represented the view of management of the URA, not the Board of the URA, which had not been briefed on the detail of the proposal and accordingly had not had an opportunity to assess the proposal. Indeed, the only information of which the Board was aware was that given to them by Mr Buchan in his short report to the Board on 26 August. Jason Rollison said that in retrospect he would have asked that the September Cabinet submission be shown to the Board because of the way that Cabinet submission was structured and in particular because the 10 parameters later dictated the assessment of the proposal.

The URA recommended that Cabinet reject the ACP proposal but authorise the URA to negotiate with ACP to reach an in-principle agreement in relation to 10 specified matters.

A further draft was forwarded by Mr Smith to Minister Koutsantonis' office on 17 September 2013.¹⁰⁰

On 18 September 2013 Ms Goodchild recorded in her handwritten notes:

[REDACTED]

That may indicate that Cabinet was acquainted with the Gillman transaction ahead of the Cabinet submission but there is no other evidence on that topic.

On 19 September the Department of Treasury and Finance ('DTF') provided a Costing Comment.¹⁰²

On 19 and 20 September 2013 the Premier and Minister Koutsantonis, as the responsible Minister, signed a submission to Cabinet attaching the August ACP proposal and most attachments. The submission was presented to Cabinet on 23 September 2013.¹⁰³

The Synopsis to the Cabinet submission stated:

A number of the key elements and implications of the ACP proposal require further consideration and clarification before it can be fully assessed. These include:

- *The proposal does not provide an opportunity for market testing demand or pricing for the land, either in a single holding (as ACP proposes) or developed into individual allotments or superlots.*
- *Consideration regarding whether acceptance of the proposal would result in the creation of an effective monopoly private land supplier within the Gillman-Dry Creek area, which may lead to significant competition implications.*
- *The financial model for the proposal is understood to be based on development of the entire 417.89 hectares over a 12-year period. However, the proposal references*

¹⁰⁰ Ibid.

¹⁰¹ RC34.

¹⁰² RC8.

¹⁰³ Ibid.

'usable land' defined as land capable of being developed for industrial purposes. The proposal contemplates that the purchase price might be reduced if the land is not deemed to be 'usable'. A structure plan for the area undertaken in 2009 identified up to 200 hectares as not supporting industrial development, and the Department for Environment, Water and Natural Resources' (DEWNR) assessment is that it would only support development in line with that structure plan. This has the potential to significantly affect the financial aspects of the proposal.

- *The ACP proposal does not provide the government with any substantive form of security over monies that would be due and payable under the proposed land sale contract (even once the quantum has been agreed), or for the performance of ACP in undertaking the development which it proposes.*
- *The proposal contemplates that ACP would be granted an exclusivity period of up to 12 months in relation to the land, with no option fee payable. Advice from the Crown Solicitor's Office is that the granting of an option at no cost to the proponent is unusual in this sort of commercial offering. In addition, Renewal SA is currently negotiating with Incitec Pivot Fertilisers (IPF) for the potential relocation of its Port Adelaide Distribution Centre, which include consideration of either a 5,239 hectare Renewal SA owned site outside of the proposed ACP land development or a 10.09 hectare site within it. Renewal SA is also in negotiation with Metcash Food and Grocery (Metcash) in relation to establishing its new Adelaide Distribution Centre on a 12-14 hectare site within the land identified by ACP.*
- *An exclusivity period to ACP would limit the ability of Renewal SA to deal with these parties or impose limitations, or both, on how those strategic uses might be accommodated.*

It is recommended that Cabinet does not accept the ACP proposal as presented in their document of 29 August 2013 and that Renewal SA enter into direct negotiations with ACP regarding their proposal with a view to the proponent preparing a revised proposal that addresses these and other key matters.

The Cabinet submission and advice reflected the advice given by Mr Rollison on 13 September 2013.

The formal recommendations that were sought from Cabinet were:¹⁰⁴

1. *Reject the Adelaide Capital Partners offer as presented.*
2. *Approve Renewal SA (on behalf of the Premier, the Minister for Housing and Urban Development and Renewal SA) entering direct negotiations with Adelaide Capital Partners regarding the acquisition of up to 417.89 hectares of its Gillman/Dry Creek land holding, to seek to reach in-principle agreement incorporating the following matters:*
 - 2.1. *The first land payment is not less than \$41.789 million.*
 - 2.2. *Security over the remaining payments for the land be either a first ranking mortgage (preferred) or in the form of bank guarantees or similar instruments.*
 - 2.3. *Adelaide Capital Partners to propose measureable and enforceable targets and competition obligations which are acceptable to Renewal SA to ensure that potential South Australian suppliers are provided reasonable access to works arising from the development and that potential purchasers and occupiers of the precinct will be provided reasonable access.*
 - 2.4. *Adelaide Capital Partners to propose measureable and enforceable targets which are acceptable to Renewal SA for the orderly development, release and use of the land.*
 - 2.5. *Adelaide Capital Partners to demonstrate to the satisfaction of Renewal SA how the development (and in particular that portion of the development which is focussed on the mining and resources industry) will complement the Tonsley development.*
 - 2.6. *Adelaide Capital Partners to be given a period of exclusivity in relation to a coordinated development over the whole of the land, but not exclusivity over individual land parcels (including those potentially required for Incitec Pivot Fertilisers or Metcash) which might be created within the land.*

¹⁰⁴ Ibid.

- 2.7. *The transfer of land from Renewal SA to Adelaide Capital Partners (or nominee) will only take place once the current master planning work has been completed and the land has been re-zoned to remove references to the Multi-Function Polis.*
- 2.8. *Adelaide Capital Partners to propose a framework which is acceptable to Renewal SA that provides for the State to gain priority access to land within the development to accommodate public infrastructure, private-sector projects, or both which are deemed to be of State significance.*
- 2.9. *Adelaide Capital Partners to propose a governance structure which is acceptable to Renewal SA that will give the State Government a decision-making role in relation to the development, particularly in relation to the enforceable obligations identified above.*
- 2.10. *Adelaide Capital Partners and Renewal SA to jointly prepare a media release outlining the agreement reached for the purposes of informing the market.*
3. *Note that in assessing the acceptability of targets, frameworks and structures proposed by Adelaide Capital Partners, Renewal SA will consult with the agency that has responsibility for the particular policy area and ensure that the revised Adelaide Capital Partners proposal provides for obligations to be secure in an acceptable manner.*
4. *Approve, subject to Renewal SA's assessment confirming the suitability of Adelaide Capital Partners' revised proposal against all of the elements above, a delegation to Renewal SA's Chief Executive (on behalf of Renewal SA and the Premier) to enter into binding agreements to sell up to 417.89 hectares of Renewal SA's land at Gillman-Dry Creek to Adelaide Capital Partners (or nominee).*
5. *Note, that if the revised Adelaide Capital Partners proposal is accepted, Renewal SA will seek Cabinet approval for a budget appropriation of up to \$5 million (if required) to undertake additional works within the public realm areas of the development, in order to manage stakeholder expectations arising from the master planning which would not be explicitly required of the private sector developer.*
6. *Note, that if Renewal SA's assessment finds that Adelaide Capital Partners' revised proposal is not suitable, a further submission, including the revised proposal, will be provided to Cabinet for consideration and direction.*

On 23 September Cabinet decided as recommended, [REDACTED]

That amendment meant that Cabinet retained for itself the right to approve or reject the transaction.

The Premier said that the orthodox position would have been to go out to tender. He said that the orthodox position was discussed at length in the September Cabinet submission.

According to a Minute of Mr Hansen to the Minister,¹⁰⁵ on 23 September 2013 URA and ACP representatives met to advise ACP of Cabinet's decision.

The State asserts that the reference in that Minute to 23 September as the date of a meeting between ACP and the URA was incorrect, and that the correct date of the meeting was 2 October.

At the first meeting between ACP and the URA subsequent to the September Cabinet meeting, ACP indicated that it was keen to submit a further proposal to address Cabinet's concerns. Two more meetings followed between then and 11 October 2013.¹⁰⁶

¹⁰⁵ Hansen, Minute to Minister for Housing and Urban Development, *Lipson Industrial Estate (Progress Update)*, attaching Draft Cabinet submission, 24 October 2013;

¹⁰⁶ Hansen, Minute to Minister for Housing and Urban Development, *Lipson Industrial Estate (Progress Update)*, attaching Draft Cabinet submission, 24 October 2013; RC7 - Negotiation Plan.

On 24 September Mr Hansen and Ms Durand met with Minister Koutsantonis and Cabinet's decision was discussed. Mr Hansen told Minister Koutsantonis that ACP was not 'concerned about taking out the parts for IPF and Metcash.'¹⁰⁷

Mr Hansen prepared a Report for the Board meeting to be held on 30 September 2013, which stated:

*I will provide a verbal report at the Board meeting on a proposal received by the State Government to purchase a significant Renewal SA landholding at Gillman. The proposal is the subject of current Cabinet considerations.*¹⁰⁸

The URA Board met on that day as planned.¹⁰⁹ Notwithstanding the Chief Executive's written report, the notes of the meeting of the Board held on 30 September 2013 do not contain a reference to this topic.¹¹⁰

Mr Maras' evidence was that the report to the Board of 30 September was short and vague and lacked detail.

There is no evidence that the Board was provided with Cabinet's decision of 23 September or indeed was told that Cabinet had considered the transaction.

¹⁰⁷ RC34.

¹⁰⁸ RC4.

¹⁰⁹ Ibid.

¹¹⁰ Ibid.

OCTOBER 2013

In response to the summons that I issued ACP produced a document authored by the URA and under its logo headed 'Lipson Industrial Estate (Proposal)' which was dated 2 October 2013 and styled 'For Discussion'.¹¹¹ The URA did not produce any such document from its records in response to a request for its documents.

The document represents itself as a 'Summary of Cabinet Decisions (23rd September 2013)' and states:

	Approved	Rejected
Recommendation 1: <i>Accept the current proposal</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Recommendation 2: <i>Invite further proposal with emphasis on:</i> 2.1 <i>Initial Land payment</i> 2.2 <i>Security over future payments</i> 2.3 <i>Competition provisions (suppliers/future occupiers)</i> 2.4 <i>Development timeframes (Land release/use targets)</i> 2.5 <i>Alignment with Government objectives/initiatives</i> 2.6 <i>Exclusivity provisions (Land required for strategic purposes (current))</i> 2.7 <i>Certainty of Land uses/zoning (status of non-usable Land)</i> 2.8 <i>Land to accommodate strategic purposes (future)</i> 2.9 <i>Governance structure (role for GVT)</i> 2.10 <i>Announcements</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Recommendation 3: <i>Further Agency consultation</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Recommendation 4: <i>Make final determination without referral to Cabinet</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

The document produced has handwriting on it which suggests there was a meeting on 2nd October.

The URA supplied a copy of handwritten notes of the 2 October 2013 meeting, which indicate that Mr Andrew Gerlach was present and that Mr Hansen spoke at the meeting.¹¹² The initials 'JR' suggest that Jason Rollison was also present.

An email from Mr Kain of 4 October 2013 to Mr Rollison, which was copied to Mr Watson, confirms that there was such a meeting. He wrote:

*Jason,
Andrew has passed on your notes from your meeting with him on 2 October. I have prepared the attached table to summarise those points, what I understand to be Renewal SA's objective in respect of each of them and my proposed solution. These are my thoughts and have not been approved by ACP.¹¹³*

It is not necessary to set out the Table to which Mr Kain referred in his email in full. However, in that document Mr Kain said that rezoning 230 ha of the land from Multi-Function Polis to general industrial was a condition of settlement and ACP would not settle unless that were to happen.

That document was also not provided by the URA.

¹¹¹ RC30.

¹¹² RC7.

¹¹³ RC30.

On 8 October 2013 Mr Kain emailed Mr Hodgen with copies for Mr Rollison and Mr Andrew Gerlach attaching the latest version of the discussion paper.¹¹⁴

That document was a later version of the Table that had been circulated by Mr Kain on 4 October 2013. The document suggested ways of resolving issues that had been discussed.

On 11 October 2013 Mr Kain emailed Mr Hodgen and copied the email to Mr Andrew Gerlach:

As promised I will send the submission to you today. In the meantime, I have attached the following documents to help you see what changes have been made to the submission made on 29 August 2013:

- *Summary of points for discuss, cross referenced to relevant clause changes;*
- *Explanatory Memo, with tracked changes to 29 August version; and*
- *Deed, with tracked changes to 29 August version.*

These documents are drafts to help you understand the changes to our proposal. They will not form part of today's submission.

*Please call me if you have any questions.*¹¹⁵

On 11 October 2013, Mr Kain wrote on behalf of ACP to the Premier, a copy of which was sent to Mr Hodgen and Mr Andrew Gerlach providing a 'Proposal to the Government of South Australia'. Mr Kain wrote:

This proposal is submitted on behalf of Adelaide Capital Partners Pty Limited ('ACP'). ACP is an independent Australian property development and land remediation company based in Adelaide.

ACP proposes to buy from Renewal SA approximately 450 hectares of vacant land at Gilman (at an estimated value of up to \$135 million) and develop it into an international standard industrial development with estimated economic benefits to the South Australian economy of over \$2 billion. This proposal follows an unsolicited approach by ACP to GVT on 18 June 2013. It includes:

1. *A letter dated 18 June 2013 from Stephen Gerlach (Chairman of ACP) to you (Annexure A);*
2. *An explanatory memorandum summarising the terms of this proposal (Annexure B);*
3. *An explanation of the site (Annexure C);*
4. *An explanation of the proposed corporate structure for the project (Annexure D);*
5. *An explanation of ACP and its directors (Annexure E);*
6. *An explanation of ACP's project partners (Annexure F); and*
7. *A deed which ACP proposes that ACP, Renewal SA and the Minister for State Development enter to give effect to the proposal (Annexure G) ('Deed').*

*Upon advice from ACP's corporate advisers, who are managing the international capital raising to fund the Project, the optimum window to secure the capital for his Project is the months of October and November. In order that the necessary preparatory work can be undertaken and the capital raising pursued during this window, we seek your response to this proposal by Wednesday 23 October 2013, with the aim of signing the Deed by 31 October 2013.*¹¹⁶

The only difference between that letter and the previous letter written to the Premier on 29 August 2013 were the dates appearing in the final paragraph.

The documents referred to by Mr Kain accompanied the proposal.

¹¹⁴ Ibid.

¹¹⁵ Ibid.

¹¹⁶ Ibid.

The Option Deed provided that the Government and the URA would be obliged to deal exclusively with ACP in relation to the land for a period of 6 months, a period which could be extended for a further 6 months if ACP met certain conditions precedent. On settlement, the purchaser would pay one third of the purchase price, with the remaining two thirds of the purchase price being payable in two instalments, four years and eight years after the settlement date. The purchaser would be obliged to grant the URA a second-ranking mortgage over the land as security for any unpaid portion of the purchase price.

On 22 October 2013, Mr Hodgen emailed Mr Thompson of BDO, a firm of chartered accountants practising in Adelaide, seeking to engage him to provide probity advice to the URA in relation to URA's negotiations with ACP.¹¹⁷ In that email Mr Hodgen said:

no negotiations have occurred or, indeed, will occur until we have a probity adviser on board, hence reason for my call.

Mr Buchan's evidence was that the engagement of Mr Thompson was a genuine attempt to ensure probity in the transaction.

At 4.35pm on the same day Mr Thompson emailed Mr Mark Labaz, URA's Corporate Procurement Manager, asking whether the URA had an unsolicited proposal policy or whether he was aware of such a policy within the SA Government. Mr Labaz replied that 'unfortunately' there was not such a policy in the URA and that he was not aware of one within Government.¹¹⁸ In particular he did not refer to the RPMP Policy. The RPMP is not an 'unsolicited proposal policy' and does not only address unsolicited proposals. However, it was the URA policy applicable to an unsolicited proposal to purchase land of the kind put forward by ACP.

At 4.37pm Mr Thompson emailed Mr Hodgen:

My previous concern related to how to treat an 'Unsolicited Proposal' fairly/equitably in the market but since Cabinet have approved 'Renewal SA entering into negotiations with the proponent' then it'll be more to do with the process going forward being appropriate.

Mr Buchan had been on leave until 14 October 2013 but he did not become involved again with this transaction until about 23 October 2013 when he received a briefing from Mr Hansen. At about the same time he received the Cabinet submission dated 20 September 2013 from Mr Hodgen.

I asked Mr Buchan about his involvement in the Gillman matter after his return from leave in October:

Q: *When you resumed your duties on the 14th of October were you briefed as to what had transpired in the meantime?*

A: *No.*

Q: *When did you become involved again in the transaction?*

A: *Just prior to the Board meeting, so it would have been around 23^d or thereabouts of October.*

Q: *And at that time did someone brief you in relation to the events?*

A: *At that stage, as I recall, Mr Hansen called me into his office and asked me to become involved in the Gillman process and that by way of his briefing it was at a very high level, and it was a very high level briefing, that essentially we had formed the view, as an agency, that the original proposal from Adelaide Capital Partners, that*

¹¹⁷ RC7.

¹¹⁸ RC26.

I had seen on the 29th of August was significant and that it had merit significant merit in working through.

However, there were numerous shortcomings in the proposal that had been put forward and that in working with Crown Law we had put together a Cabinet submission which identified a number of matters that were not acceptable to the government, in the proposal, and that we had suggested that it be rejected.

However, rejected, but sought the approval from Cabinet and received the approval from Cabinet to, essentially, negotiate with Adelaide Capital Partners.

On 24 October 2013 Mr Hansen provided a Minute (authored by Mr Rollison) to Minister Koutsantonis, in which the 11 October ACP revised proposal was detailed. The Minute said that the revised submission was not considered by URA management to be of sufficient merit to warrant presenting to Cabinet. The Minute foreshadowed that the URA intended to engage in direct negotiations with ACP once external probity advice had been received. The Minute attached a draft Cabinet note informing Cabinet of progress with the ACP proposal.¹¹⁹

The draft Cabinet Noting Paper did not ever become a Cabinet Noting Paper and was not presented to Cabinet.

On 24 October 2013, Andrew Gerlach emailed Michael Buchan:

Thank you for your time in recent days. I thought it would be worthwhile explaining what I understand to be the major sticking point and how we propose to resolve it. My thoughts are below.

Issue

You remained concerned that RSA does not have adequate security for financial and project delivery performance.

Solution

As explained, the solution which RSA has applied in the past (that is step in rights at sale price less 10%) such as with Edinburgh Parks, will not be practicable in this instance. Primarily this is because it will materially and adversely affect ACP's ability to secure the required capital for the project, given the attendant commercial risks to ACP's funders. Further, RSA reserving their right to pose what is, in effect, a financial penalty will be inconsistent with the message we have been giving to potential funders, that is, that we are working closely and collaboratively with State Government on this project.

To deliver RSA greater financial security, we propose to change the structure of the option:

- 1. From a 100% sale, with 66 % vendor finance; to*
- 2. A series of options for staged sales with:*
- 3. The full purchase price for each stage payable on each settlement (thus removing financial counter party risk); and*
- 4. The exercise of each option contingent upon substantial compliance with the Project Plan (thus mitigating development risk).*

This will achieve the same commercial outcome as would be achieved with step in rights, save for the 10% financial penalty.

¹¹⁹ Fred Hansen, *Minute to the Minister for Housing and Urban Development re Lipson Industrial Estate (Progress Update)*, 24 October 2013.

Procedure

Assuming that this solution satisfies your concerns, we will work up a new submission to reflect this.

...

Timetable

I will call you tomorrow to discuss this. It may then be worth meeting (perhaps with John and Lidio) on Monday to flesh out the detail before we get the submission to you by Wednesday for consideration at Cabinet on Monday 4 November.¹²⁰

On 28 October 2013 the URA Board met. Agenda Item 2.1 for the meeting on 28 October 2013 referred to the URA landholding at Gillman which the Chief Executive addressed in his Report.¹²¹

SUBJECT: CHIEF EXECUTIVE'S REPORT

AGENDA ITEM: 2.1

- **RENEWAL SA LANDHOLDING AT GILLMAN**

As advised at the Board meeting on 30 September, work is being undertaken by Renewal SA staff in relation to a formal revised proposal received by government from a private sector entity to acquire 417.89 hectares of Renewal SA's 450-hectare Gillman / Dry Creek land holding.

The formal revised proposal was received from the proponents in mid-October 2013 and this followed an earlier proposal received by the Premier (dated 29 August 2013 and considered by Cabinet on 23 September 2013), and an earlier unsolicited letter to the Premier of 18 June 2013 which included a proposal, among other things, to establish a 'Resources sector hub' with strong linkages to potential future activity in the Cooper Basin.

The revised proposal responds to matters identified during Cabinet's consideration of the 29 August 2013 proposal which had been discussed with representatives of the proponent and Renewal SA staff on 2 October 2013.

I will give a further update on progress at the Board meeting on 28 October.

The Board Minutes record the following in the Chief Executive's report:

Renewal SA is working with the proponent in relation to the proposal to purchase a significant portion of Renewal SA's land holding at Gillman, with advice to go to Cabinet shortly.¹²²

Mr Buchan said that there was very little discussion about this matter at the Board meeting.

Ms Pike said at this meeting of the Board, members asked for more information. She said there were some members of the Board who had quite an intimate knowledge of landfill and the potential of the Gillman land for landfill. She was referring to Mr Terlet and Mr Maras in particular.

Up until this time she had not received any more information from Mr Hansen outside of the two Board meetings.

Mr Maras said that the Report to the Board of 28 October included more detail than the Board had been previously provided but the Board was not made aware of Cabinet's approval for the URA to negotiate with ACP or indeed the identity of ACP, until 13 November.

¹²⁰ RC7.

¹²¹ RC4.

¹²² Ibid.

On 28 October 2013 Mr Kain emailed Mr Rollison (copied to Mr Buchan and Mr Andrew Gerlach) attaching the 'latest draft submission for discussion'. The documents included a revised Explanatory Memorandum and a revised Deed.

On the same day Mr Hodgen emailed Mr Thompson with a Request for Offer accompanied by a draft Consultancy Agreement ('CA') in relation to the provision of 'Probity services – off market land transaction'.¹²³

The draft CA, which was apparently a standard form document, proposed that BDO be a party and that BDO perform the services by the provision of Mr Thompson as the Nominated Staff.

The services were identified in Annexure 1 to the draft CA:

Annexure 1

The Brief

The principal objectives of this consultancy are to observe, advise and to report on all probity issues associated with an off market land transaction with the proponent.

Scope of Works

It is anticipated that the Probity Auditor will hold an initial workshop with Renewal SA representatives in order to define matters for negotiation, into the following categories:

- *Commercial matters; and*
- *Process/Compliance matters.*

In relation to Commercial matters, it is anticipated that the Probity Auditor will undertake the following activities:

- *Ensure that fairness and impartiality are observed throughout the transaction process; and*
- *Provide comment and advice on compliance/probity issues as required.*

In relation to Process/Compliance matters, it is anticipated that the Probity Auditor will undertake the following activities:

- *Review and provide probity advice in respect of the transaction process;*
- *Ensure that fairness and impartiality are observed throughout the transaction process;*
- *Provide comment and advice on compliance/probity issues as required; and*
- *Review and confirm compliance with any applicable Renewal SA and/or Government policies.*

It is envisaged that the Probity Auditor will:

- *Attend meetings(s);*
- *Provide written confirmation (via a probity report) of compliance with transaction process.*

Services provided throughout the engagement are to be charged on an hourly basis at the contracted rates.

On the same day Mr Hodgen provided Mr Thompson with ACP's formal proposal of 29 August 2013 (which included Mr Gerlach's letter of 18 June 2013), the Cabinet submission of 19/20 September 2013 which had been approved by Cabinet on 23 September 2013 with the amendment to Recommendation 4, and ACP's revised formal proposal of 11 October 2013.

¹²³ RC7.

On 29 October 2013, URA and ACP representatives met. In attendance from the URA were Messrs Buchan, Hodgen, and Rollison. ACP was represented by Mr Kain and Mr Andrew Gerlach. Also present at the meeting were Messrs Andreotti and Piovesan of the CSO and Mr Thompson of BDO.¹²⁴

It was announced at that meeting that Mr Thompson had been engaged as Probity Adviser to support the internal processes of the evaluation. It was also announced that the URA had implemented a series of formal plans which would dictate its conduct in its role.

Mr Thompson's terms of engagement must have been agreed in the previous 24 hours. It is not clear how familiar Mr Thompson was, or could have been, with the proposal and the negotiations to that point of time.

Mr Thompson assumed that the URA had assessed the value of the land before his appointment.

Mr Thompson described his perception of his role:

A. *My -- my role was totally focused on, after the decision had been made, let's go down -- (inaudible) -- this proposal, and to make sure that we say -- I particularly focused on confidentiality, conflict of interest, no collusion, that the evaluation criteria was set and then prior to it -- and then the discussion that was to be able to make sure that those ones were achieved and were considered in the evaluations, all going forward with the negotiations.*

Q. *Would it be fair to say this: That your role as Probity Adviser was to ensure that the negotiations that took place, after you were engaged, were at arm's length?*

A. Yes.

Q. *And that was really all your role?*

A. Yes.

Q. *As to whether or not the transaction was value for money that was for Renewal SA to determine for itself?*

A. *Basically, pretty much prior to this -- to me starting and determining what that dollar value was.*

Q. *And you were reinforced in that, I suppose, because the negotiations did not assume negotiations about the price?*

A. *That's correct.*

Q. *The matters that had been identified in the Cabinet submission of the 20th of September to which I referred and the ten matters of which you were aware, did not assume there would be a negotiation about the actual price per square metre?*

A. *That's correct, yes.*

Q. *So those matters were a given at the time you were engaged?*

A. Yes.

Q. *And your role was to ensure that Renewal SA conducted its negotiations at arm's length from Adelaide Capital Partners and in the interests of itself and the State?*

A. *That's correct.*

¹²⁴ RC7.

Later that afternoon Mr Hodgen emailed Mr Thompson attaching Mr Andrew Gerlach's email to Mr Buchan of 24 October 2013 and the Cabinet Noting Paper that had been sent to Minister Koutsantonis' office on 24 October 2013.

At the same time as Mr Thompson's appointment was being effected the URA was preparing a Negotiation Plan and an Evaluation Plan. Mr Thompson said he had some input into the Negotiation Plan and the Evaluation Plan.

In the afternoon of 30 October Ms Pashalidis sent Mr Thompson updated Negotiation and Evaluation Plans for review and comment.¹²⁵

On 31 October 2013 Mr Piovesan emailed Mr Kain (copied to Messrs Buchan, Rollison, Andreotti, Hodgen and Frearson-Lea) attaching the CSO's mark-up of the Option Deed for discussion purposes.

On 31 October at a meeting between Minister Koutsantonis and Messrs Hansen, Buchan and McLachlan, Minister Koutsantonis was advised:

*Made good progress. Engaged a probity adviser, building a framework. \$45m payment in 12-18 months.*¹²⁶

¹²⁵ RC7.

¹²⁶ RC34.

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The Negotiation Plan which had been prepared by Mr Rollison on 30 October 2013 was endorsed by Messrs Buchan, Hodgen, Rollison, Andreotti, Piovesan and Thompson on 1 November 2013.¹²⁷ It was approved by Mr Hansen on the same day. It was not submitted to ACP for approval. Indeed, there is no evidence that ACP was aware of the contents of the document.

The Negotiation Plan identified URA's 'selected team':

- *Michael Buchan (Chief Operating Officer – Lead. Specialist expertise in financial assessment, financial modelling and government processes).*
- *Ian Hodgen (General Manager, Industrial Project Delivery – Executive responsible for Renewal SA's Industrial Portfolio from which the land in question is to be sourced).*
- *Jason Rollison (Director, Industrial Projects – Technical specialist in relation to engineering and environmental constraints of the land and its future development potential).*

The Negotiation Plan observed that the URA had obtained the services of external advisers for negotiation:

- *Lidio Andreotti (Crown Solicitor's Office) – Legal/risk.*
- *Paul Piovesan (Crown Solicitor's Office) – Legal/risk.*
- *Kyffin Thompson (BDO) – Probity.*

Part 5 dealt with 'The Negotiation'. It provided:

5. THE NEGOTIATION

Negotiations will be conducted in the following manner:

1. *All negotiation between the parties will be recorded through Minutes of the meeting (taken by Renewal SA) and confirmed by both parties to be a true and accurate reflection of the negotiation.*
2. *All parties bear their own costs and risk in relation to the negotiations irrespective of outcome.*
3. *Negotiations will be held on a without prejudice basis and will be treated as strictly Commercial in Confidence until such time as the negotiation has been concluded and Cabinet has made a determination in relation to the negotiated outcome, which shall be at Cabinet's unfettered and absolute discretion.*
4. *ACP has been provided with a list (presented in no particular order) of the 'Matters for Negotiation' as outlined in Section 4.*
5. *Negotiations will address each of the nominated criterion upon which Cabinet's rejection of the Initial ACP offer was based. These are listed under Section 4 ('Matters for Negotiation') and can be addressed in any particular order provided that all matters are discussed and a position is reached in relation to each matter.*
6. *Where matters overlap, ACP will be encouraged to separate out matters and, if possible, provide a possible range of solutions which address matters to varying degrees.*
7. *For each matter, ACP will be encouraged to present its understanding of the Government's requirements and state the current position. Renewal SA will provide additional information necessary to clarify the Government's requirements and to outline where necessary alternative solutions which may be more acceptable to Government.*
8. *It is envisaged that negotiations may occur over an extended period, over a number of individual meetings, or through out-of-hours correspondence.*

¹²⁷ RC7.

9. Where negotiations exceed 2 hours in duration (or some other duration agreed by the parties), breaks will be scheduled to provide refreshment and/or to facilitate each party holding confidential side-discussions.
10. Where negotiations extend over multiple scheduled meetings, the final 15 Minutes of each scheduled meeting shall be used to summarise the position that has been reached against each matter negotiated.
11. Where matters are to be addressed out-of-hours, matters are to be communicated in writing with such correspondence directed to the person nominated by each party. In the case of Renewal SA, this person is: Michael Buchan [REDACTED] and in the case of Adelaide Capital Partners, this person is: Andrew Gerlach [REDACTED]
12. Where written correspondence is sent to the nominated party, a copy of that correspondence is also to be sent to each representative of each party to the negotiation.
13. Negotiations on any matter for negotiation should only be undertaken in accordance the [sic] process set out above.

Part 6 provided:

6. THE COMPLETION OF NEGOTIATION

Negotiations shall be deemed complete once:

- *All matters for negotiation have been addressed; and*
- *A negotiated position addressing all relevant matters is documented and endorsed by the negotiating team for both parties; or*
- *The Renewal SA negotiating team deems that it has sufficient information for Cabinet to deliberate on the revised (11 October 2013) ACP proposal.*

Following the completion of negotiations, the Evaluation Panel will conclude the evaluation in accordance with the Evaluation Plan.

On that day the Evaluation Plan was executed by Mr Rollison, who had prepared the plan, Messrs Buchan, Hodgen and Rollison, who comprised the Evaluation Panel, and Mr Hansen as Chief Executive.¹²⁸

The Evaluation Plan provided for an internal URA Evaluation Panel consisting of Messrs Buchan, Hodgen and Rollison. It identified as third parties Messrs Andreotti, Piovesan and Thompson. The Evaluation Plan addressed:

Risk Assessment

As the ACP offer/proposal was initially brought to the attention of Renewal SA through an unsolicited offer that, by the magnitude of its offer, warranted consideration by Cabinet in a manner that is informed by (but not dictated by) Renewal SA's internal policies and processes. The Cabinet process provides for the consistent assessment of a range of different initiatives across a range of portfolio areas however there are not a significant number of individual transactions of any particular form, so the Cabinet process does not provide a robust basis for assessing any particular type of proposal, relying heavily on processes adapted from relevant Agencies.

In its initial assessment of the ACP Proposal, Renewal SA's assessment (supported by the Crown Solicitor's Office) identified that the unsolicited offer did not provide an opportunity for market testing demand or pricing for the land, either in a single holding (as ACP proposes) or developed into individual allotments or super lots by Renewal SA (or a third party).

The risk has the potential to manifest itself through a perceived lack of probity in relation to the transaction or through the government not receiving appropriate value for the land.

¹²⁸ Ibid.

In light of this, and consistent with Renewal SA's policy for off-market transactions concerning land, the assessment of land value must take account of available information (including independent valuation advice) on the value of the land.

There was also a Risk Matrix appended to the Evaluation Plan.

The Evaluation Plan addressed:

4. Probity

Based on the assessment of risk completed for the ACP proposal an external Probity Adviser has been engaged to oversee the Procurement Process under the following Scope of Services, noting that an initial workshop will be held to define matters for negotiation into either commercial matters or process/compliance matters:

In relation to Commercial matters it is anticipated that the Probity Adviser will undertake the following activities:

- *Ensure that fairness and impartiality are observed throughout the transaction process;*
- and*
- *Provide comment and advice on compliance/probity issues as required.*

In relation to Process/Compliance matters, it is anticipated that the Probity Adviser will undertake the following activities:

- *Review and provide probity advice in respect of the transaction process;*
- *Ensure that fairness and impartiality are observed throughout the transaction process;*
- *Provide comment and advice on compliance/probity issues as required; and*
- *Review and confirm compliance with any applicable Renewal SA and/or Government policies.*

It is envisaged that the Probity Adviser will:

- *Attend meeting(s);*
- *Provide written confirmation (via a probity report) of compliance with transaction process.*

In relation to Probity a suite of documents (including this Evaluation Plan) has been prepared so that the assessment can be undertaken (where possible) in the context of documented evaluation criteria which can be subjected to audit to demonstrate (if required) that the evaluation is conducted in a fair and transparent manner.

It also addressed a Selection Criteria.

The criteria against which performance was to be assessed were:

[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

The Evaluation Plan included a recommendation:

Michael Buchan (Lead Officer) will present a recommendation report/memorandum to Fred Hansen (Chief Executive) for endorsement prior to the recommendation report being converted into a Cabinet submission for approval to proceed with acceptance of a proposal.

Mr Rollison said in evidence that the fact that Mr Hansen had signed the Evaluation Plan and had thereby accepted the evaluation criteria contained in the Evaluation Plan was evidence that Mr Hansen had exercised his discretion to accept older valuations in accordance with the RPMP.

On the same day ACP's and URA's representatives met again.¹²⁹ Mr Hodgen, Mr Rollison, Mr Andreotti, Mr Piovesan, Mr Kain, Mr Andrew Gerlach, Mr Thompson and Ms Pashalidis were present. Mr Buchan was marked as an apology. In the meetings that followed the same persons were usually present.¹³⁰ Some persons might have missed a meeting but that is of no consequence. For that reason I will not continue to identify who was at each meeting when the ACP and URA representatives met.

During the meeting, Mr Rollison questioned whether there should be one single option period or whether there could be a three stage option. Mr Andreotti expressed the CSO's preference for three option periods as opposed to a single option. In relation to issues arising from the stormwater catchment issue, Mr Kain said 'the project plan may adequately deal with this issue.'¹³¹

On Sunday 3 November 2013 Mr Kain emailed Messrs Piovesan, Buchan, Rollison, Andreotti, Hodgen, Thompson and Andrew Gerlach (copied Mr Frearson-Lea) saying:

Gentlemen,

I circulate this email to all present at last Tuesday's meeting in accordance with the protocols which Michael outlined at the start of that meeting. I have not yet received a copy of the Minutes of that meeting.

My notes from Friday's meeting are attached as promised. Save for the matters set out in those notes, the principles raised in the amendments and drafting notes in the CSO version of the Deed circulated on 31 October are broadly acceptable.

ACP are anxious to finalise the terms of the Deed. Given that most issues have been resolved (and assuming that the attached notes adequately address the remaining issues) we would like to agree the final terms of the Deed this week for Cabinet consideration. To that end I propose the following timetable:

<i>Meet to agree outstanding issues from attached notes</i>	<i>All</i>	<i>11.15am Tuesday 5 Nov</i>
<i>Next version circulated</i>	<i>Kain C+C</i>	<i>Wednesday 6 Nov</i>
<i>Meet to agree final terms of Deed, subject to instructions</i>	<i>Lawyers and Kyffin</i>	<i>Friday 8 Nov (11am)</i>
<i>Meet to agree final terms of Deed</i>	<i>All</i>	<i>Friday 8 Nov (1pm)</i>

I look forward to meeting on Tuesday to agree all outstanding issues.

*John.*¹³²

Mr Kain was referring to the meetings of 29 October and 1 November. He attached a revised table.

Mr Kain thought that by Sunday 3 November most issues had been resolved and that the final terms of the Option Deed could be agreed during the week to follow.

¹²⁹ RC7.

¹³⁰ Ibid.

¹³¹ Ibid.

¹³² RC30.

The same day Ms Pashalidis emailed Messrs Piovesan, Andrew Gerlach, Kain, Andreotti and Thompson (copied to Messrs Rollison, Hodgen and Buchan) attaching the Draft Minutes from the meeting of 29 October 2013 seeking comments that day in advance of the next meeting the next day.¹³³

On 5 November 2013, representatives of the URA and ACP met again in the presence of legal and probity advisers.¹³⁴ Mr Buchan advised the meeting that the ability of suppliers to pitch for work could be used as a measure by which the Government's decision would be assessed in the future. Mr Andreotti tabled a suggested draft clause (Competitive Contracting) for insertion into the Project Objectives. The URA wanted the Option Deed to impose enforceable conditions on ACP relating to competition amongst suppliers of goods and services to ACP. Specifically, the State wanted ACP to bind itself to awarding contracts for work associated with the redevelopment project on the basis of competitive principles. In this context, Mr Andrew Gerlach noted that a consideration of contractors based on price would be too narrow.

On 6 November 2013, Mr Piovesan emailed Mr Kain, and copied in Messrs Frearson-Lea, Buchan, Rollison, Andreotti, Hodgen, Thompson, and Andrew Gerlach. Attached to the email was a draft licence agreement to facilitate and regulate entry into and actions upon the remaining area of the Option Lands after the first option had been exercised.¹³⁵ The draft licence included conditions relating to environmental management of the Licence Land, and limited the placement of fill on the Licence Land to the placement of 'virgin' fill quarried or mined for purpose.

On 6 November 2013 Mr Kain emailed Mr Piovesan (copy to Messrs Frearson-Lea, Buchan, Rollison, Andreotti, Hodgen, Thompson and Andrew Gerlach) attaching an amended Deed for discussion the next day.¹³⁶

The next day Mr Kain emailed a marked up Licence Agreement to the same persons for 'this afternoon's discussion'. A little later that day Mr Kain circulated a draft Concept Plan to the same persons.

The parties met again at 4.30pm.

At 11.26pm that night Mr Kain emailed Mr Andreotti (copy to Messrs Rollison, Hodgen, Thompson, Andrew Gerlach, Piovesan, Frearson-Lea and Buchan) attaching the amended Deed and Licence 'with the amendments discussed tonight ... attached'.

On Friday 8 November 2013 Mr Rollison emailed the negotiators advising that he had someone working on the holding costs for the licence area but that the figure would not be finalised until Monday.

The 'accepted and signed' Minutes of the meeting of 29 October were circulated on the afternoon of 8 November.

A number of emails were exchanged between the parties in relation to holding costs and the Speedboat Club's Licence which do not need to be explored.

On 8 November 2013, representatives of the URA and ACP met again with the legal advisers and probity adviser.¹³⁷

¹³³ Ibid.

¹³⁴ RC7.

¹³⁵ RC30.

¹³⁶ Ibid.

¹³⁷ RC7.

On Sunday 10 November 2013, Mr Buchan (as acting Chief Executive of the URA) sent Board members an email, informing them of the negotiations with ACP. He wrote:

*A significant amount of time was invested in the Adelaide Capital Partners (Stephen Gerlach, Simon Brown, John Hurst and others) proposal to acquire 400+ hectares at Gillman for \$30 a sqr mtr over 10 years (approx. \$120million). The offer is significantly above all independent valuations received and Cabinet has requested we negotiate directly with them which we have over the last 2 weeks. In short the majority of the key issues have been addressed and it is likely that the proposal will be rushed into Cabinet next Monday. All being well we will have a paper to the Board describing the transaction early this week.*¹³⁸

His evidence for the reason for his email was:

Q. You emailed the Board members?

A. *I did. I was acting Chief Executive at this time. As an acting officer, to a degree, you are in the privilege of holding someone else's authority by virtue of that I would typically report to the Board on a weekly basis on what had happened in the previous week and what I was anticipating what was going to happen in advance to enable Board members to provide guidance and/or commentary should they feel it was necessary. I particularly would do that because there are often matters you may pick up as acting Chief Executive that you were not privy to discussion on that where there were the discussions with Board members or the chair of the board et cetera that they would have a view or nuance on if I highlighted it, it gives them the opportunity to pick up the phone and say, 'By the way, you need to contemplate this'.*

On 11 November 2013, Mr Kain emailed Mr Piovesan attaching a draft Deed and writing that 'The Licence and the EM will follow tomorrow'. The draft Deed provided that the URA would pay all the statutory charges and levies payable in respect of the land subject to a licence in favour of ACP.¹³⁹

On 12 November Mr Buchan met with the Premier and Minister Koutsantonis. He said he told the Premier and Minister Koutsantonis that the URA had made unexpected progress and that the URA was getting towards drafting a submission. At that time Cabinet was also considering a separate issue relating to Incitec Pivot.

Mr Buchan said of the meeting with the Premier and Minister Koutsantonis on 12 November, Minister Koutsantonis said very little but the Premier was excited and very pleased. The Premier agreed that he was.

The Premier said that he would like to have Cabinet consider the Gillman land transaction and the Incitec Pivot matter together on the next Monday, 18 November.

After the meeting Mr Buchan spoke to Minister Koutsantonis and told him that he thought it was not practicable to have a submission ready for Cabinet on Monday 18 November. He said that Minister Koutsantonis said, 'you had better get onto it' but Mr Buchan told me that 'he did not intimidate'. Minister Koutsantonis' Chief of Staff, Mr Malinauskas, followed up by saying 'you will get us a draft by Friday'. Mr Buchan said he thought it was his responsibility to do so.

¹³⁸ RC4.

¹³⁹ RC28.

In a subsequent email to members of the Board (sent on Sunday 17th November) Mr Buchan described the meeting of 12 November:

Meeting – Premier, Deputy Premier and Minister Koutsantonis

The focus of the meeting was Port Adelaide. The key issues raised in order were:

- *Incitec – discussed the urgency of progressing the negotiations and the desire for Renewal SA to finalise ASAP.*
- *Masterplan – general status and discussion that this is something the community is looking forward to, however it cannot be progressed until Incitec relocation is finalised (sic)*
- *DPA – timing and practical reality that it will not be possible to complete until after March*
- *Clipper – ensuring we are considering the options for dealing with the Clippers arrival*
- *ACP – proposal impacts on Port Adelaide renewal.¹⁴⁰*

On the morning of 13 November Mr Piovesan sent to Mr Kain and the other interested parties a further version of the Option Deed and Licence which contained amendments that he and Mr Andreotti had made.

Mr Frearson-Lea replied advising that the amendments were acceptable, attaching revised versions of the Option Deed and Explanatory Memorandum and seeking agreement to distribute the final package.

On 13 November 2013, Mr Buchan emailed Mr Piovesan in relation to Version 6 of the draft Option Deed which had been circulated by Mr Kain in his email of 11 November to Mr Piovesan:

I saw the email last night and after having a conversation with the Premier late yesterday afternoon where speed coming to a resolution was reiterated. I rang Andrew Gerlach at approx. 7pm and informed him that I was disappointed that this was introduced at the eleventh hour..... He indicated they would continue to evaluate their first position on rates and taxes etc and would respond in the morning.¹⁴¹

However, later that day Mr Piovesan emailed the negotiators attaching a further marked up version of the Option Deed and Licence.

¹⁴⁰ RC4.

¹⁴¹ RC28.

THE URA BOARD IS ASKED TO APPROVE THE ACP DEAL

Mr Hodgen said that as of 13 November the URA was under a lot of pressure from ‘above to get this deal across the line’. He perceived the pressure to be coming from Minister Koutsantonis and that the Government wanted to make an announcement before Christmas.

He said he knew, from what was said within the office, that Mr Hansen and Mr Buchan were being pushed from Minister Koutsantonis’ office.

At 12:43 pm on Wednesday 13 November 2013, Mr Smith emailed all Board members¹⁴² attaching an Out of Session Decision Paper (‘OSDP’) authored by Mr Rollison and authorised by Mr Buchan.¹⁴³ OSDPs were contemplated by the BOM Policy.

Whether it was the appropriate process for this transaction is another question.

The email to which the OSDP was attached told the Board Members:

You are asked to consider the content of the paper and respond to the recommendations contained in the paper by 12 noon Central Standard Time on Friday 15th November.

Ms Pike described the transaction as a very significant matter that ideally should never have been considered in an OSDP.

Mr Hanlon was asked about management providing an OSDP to the Board in relation to the Gillman transaction, on 13 November 2013, seeking a decision in two days’ time and said:

On such a transaction it is almost unexplainable.

Mr Buchan said that he had an incorrect understanding of the level of the Board’s understanding when he published the OSDP to the Board on 13 November. His email of 10 November had been sent to provide a response to members in circumstances where the Board members had not asked the question.

The recommendations made to the Board were for the Board to approve:

Forwarding for the Minister’s consideration, a Cabinet submission to facilitate the off-market sale to Adelaide Capital Partners for 407 hectares of Renewal SA-owned land at Gillman-Dry Creek for future industrial development.

The OSDP provided members with ‘Background’ advising the members that the URA had previously advised the Minister that in response to the initial ACP proposal it recommended to Cabinet that the offer be rejected. The OSDP said:

2. BACKGROUND

An unsolicited offer for the land from ACP was received by the Premier in June 2013 and was forward [sic] to Renewal SA for advice. On 23 September 2013, following consideration and advice from Renewal SA, Cabinet considered ACP’s proposal to acquire 417.89 hectares of land held by Renewal SA in the Gillman/Dry Creek area. The initial ACP proposal included the majority of Renewal SA’s Gillman/Dry Creek land holdings (including the Dean Rifle Range) but excluded Renewal SA’s East Grand Trunkway Project. The proposal also excluded Renewal SA’s land holdings to the west of Grand Trunkway.

The initial ACP proposal was considered to have a number of shortcomings and Renewal SA had advised the Minister that he recommend to Cabinet that the offer be rejected as presented. Whilst rejecting the proposal Cabinet recognised that many elements of the

¹⁴² Ms Pike, Mr Terlet, Mr Maras, Dr Rischbieth, Mr Holden, and Ms Fulcher.

¹⁴³ RC4.

proposal were attractive and as such resolved that Renewal SA should enter into direct negotiations with ACP regarding the ten identified shortcomings of its initial proposal. Renewal SA has now concluded negotiations with ACP in relation to its proposal, and is now obligated to report the outcomes of the negotiations to Cabinet through the Minister for Housing and Urban Development.

In light of the amendments negotiated by Renewal SA, it is intended that Renewal SA will recommend that Cabinet accepts the revised ACP proposal as documented in a draft Deed to be provided to Cabinet.

The OSDP contained a part called 'Discussion' in which it was stated:

The initial ACP proposal was an unsolicited offer and as such, there has been no opportunity for market testing demand or pricing for the land, either as a whole (consistent with the original ACP proposal) or developed into individual allotments or super lots by Renewal SA (or a third party).

The risks associated with considering an unsolicited proposal were considered and addressed in the 23 September 2013 Cabinet submission. In recognition of the value placed by ACP on the land (in excess of \$100 million which is significantly greater than recent independent valuations) as part of its original unsuccessful proposal, Cabinet authorised Renewal SA to negotiate directly with ACP to ensure that the Government achieved not only a fair value for its land, but also a number of non-financial objectives, as set out below:

- *Initial land payment*
- *Security over future payments*
- *Competition provisions (suppliers/future occupiers)*
- *Development timeframes (land release/use targets)*
- *Alignment with Government objectives/initiatives*
- *Exclusivity provisions (land required for strategic purposes (current))*
- *Certainty of land uses/zoning (status of non-usable land)*
- *Land to accommodate strategic purposes (future)*
- *Governance structure (role for Government); and*
- *Announcements.*

Each of the above elements was discussed with ACP and a negotiated position reached. Whilst Renewal SA was unable to achieve its preferred outcome against all of the individual shortcomings identified by Cabinet on 23 September, ACP has altered its proposal in a number of significant ways which better manages potential risks to Government without reducing the purchase price for the land. The amendments include re-structuring the transaction to include three separate options over the land, considerably reducing the proposal's financial and outcome risk for Government.

In addition, Renewal SA and ACP have agreed to the creation of a Project Plan which includes a number of identified objectives (the Project objectives). The Project Plan will be finalised by ACP during a 12-month option period and while not approved by Renewal SA the proposed Deed includes an enforcement mechanism (albeit through termination) which requires the Project Plan to be competed and maintained throughout the term of ACP's proposed project.

The ACP proposal also contemplates that ACP and the Government (through the Minister for State Development and Renewal SA) would also establish a Steering Committee to manage future development of the land via quantifiable performance targets which are to be included in ACP's Project Plan. The Steering Committee would produce an annual report assessing the performance of the project against ACP's Project Plan to assist the Minister and Renewal SA in managing the Deed.

It was proposed that the Cabinet submission would recommend to Cabinet that Cabinet:

1. Approve Renewal SA granting ACP an exclusive call option (or series of call options) for ACP and/or nominee to acquire up to 407 hectares of future industrial land within the (3) tranches of a nine-year period.
2. Approve the off-market sale of approximately 150 hectares of land forming portion of Allotment 203 in Deposited Plan 75338 (or adjacent) at Dry Creek to ACP (and/or nominee) for \$45.000 million (GST exclusive) relating to the first exercisable option.
3. Approve Renewal SA entering into a long-term licence with ACP over up to 257 hectares of land adjacent to the land described above for uses that facilitate ACP developing the land which it acquires in a manner that it (sic) consistent with its project plan.
4. Approve the off-market sale of up to 257 hectares of land at Gillman/Dry Creek to ACP (And/or nominee) for up to \$77.100 million (GST exclusive) relating to the second and third exercisable option.

The OSDP stated in the part marked 'Budget and Financial':

It is noted however that whilst the cash surplus beyond the forward estimates that potentially may have been generated by Renewal SA's development of the land over the next 20 years could be significantly reduced (depending on the options take up by ACP) in net-present-value terms the first option of \$45 million is broadly equivalent to the present value of all future development returns.

The financial benefit of the ACP offer even when considering the worst case where ACP only exercises the first option is support (sic) by the independent valuations that have been undertaken for the compulsory acquisition process which value the land between \$19 million (Renewal SA's valuation) and \$59 million (Adelaide City Council's valuation) with the current Statutory valuation being \$26 million.

The OSDP contained a section entitled *Risk Analysis*, and identified the risks that were said to have been managed through the negotiation process with ACP, which were:

- Certainty of the initial land payment;
- Security over future payments;
- If ACP does not exercise the second or third options;
- Competition provisions; and
- Land to accommodate strategic projects.

The section relating to competition included the following advice:

... it is not considered that the land area included in the first stage of the ACP proposal is of sufficient quantum to adversely affect competition.

Risks, it was said, that could not be managed through the negotiation process with ACP were:

- *The ACP offer, both in scale and value is at odds with the position taken by Renewal SA's valuer in relation to a single purchaser with access to significant capital in the context of assessing compensation owing to Adelaide City Council arising from the compulsory acquisition. It is unclear what impact this will have, however it is likely that the Court would require disclosure of the transaction.*
- *The ACP proposal will include the procurement of goods and services with a significant value. Given the sale of the entire development area to ACP, there is a strong likelihood that potential suppliers to the project will express concerns that they may be locked out of providing goods and services required to develop the project.*
- *The Adelaide Speedboat Club is located on land envisaged to be included within the ACP project. As a community club, the Adelaide Speedboat Club currently enjoys discounted rent for its facility. Following transfer of the land to ACP, the rent charged to the club may be increased to a commercial rate (representing a significant increase) or its tenure may be terminated.*

As I have said, Board members were asked to respond by indicating whether they approved or did not approve the recommendation by Friday 15 November 2015 at 12 noon.¹⁴⁴

Mr Hodgen said he reviewed Mr Rollison's draft of the OSDP of 13 November and was aware at that time that management intended to propose to the Board that the Board advise Cabinet to approve the proposal from ACP.

Mr Hodgen thought that the request to the Board on 13 November to complete its consideration by 15 November was not reasonable having regard to the size of the transaction.

Mr Maras said that he was surprised that the OSDP was circulated in Mr Hansen's absence and in circumstances where the Board was being called upon to sell \$100 million worth of property without discussion between the members of the Board. Mr Maras thought that the email which enclosed the OSDP and sought a response by 15 November at 12 noon was unreasonable. He also thought it was unreasonable for the Board to be asked to make a decision without a discussion. He thought it was offensive to be asked to make the decision in the timeframe suggested. He thought that the information that was provided to the Board was inadequate and in particular the Board was not provided with any valuations. Nor was the Board provided with details of the contemplated transaction. He said not only was it an unsolicited approach but it was made in circumstances where the Chief Executive of the LMC had previously said publicly that LMC would seek expressions of interest.

Dr Rischbieth said she thought it was unreasonable to require a response to the OSDP by 12 noon on 15 November. She thought that the Board needed firm legal advice on the position and she wanted to see the legal advice that had been provided to management so that she could understand probity issues and risks issues which were the two more important matters for her.

Thus it was that Dr Rischbieth replied on the same day by email to Mr Smith and her colleagues on the Board (a copy was sent to Mr Buchan and other URA employees), expressing concern about probity and process risks to the Board and to the URA. She adverted to the risks that could not be managed by negotiation. She said that the Board needed 'firm legal advice on our position'.¹⁴⁵

Mr Terlet emailed:

*I share Amanda's concerns particularly given the relationship of an ACP proponent to a supplier of fill material.*¹⁴⁶

He also said he was concerned 'they believe that Gillman is a better location than Whyalla for an oil and gas support precinct'.

Mr Holden replied, saying that he did not believe:

*it is prudent for such a decision to be taken with only two days' notice without the Board and management having the opportunity to carefully consider the many important issues involved.*¹⁴⁷

At 5.26pm on the same day Mr Smith emailed the members of the Board and copied the email to Mr Buchan and others advising that Mr Buchan was tied up in meetings that afternoon and would not be able to respond but that Mr Buchan suggested a teleconference with Board members the next day.¹⁴⁸ The members of the Board responded indicating their availability.

Mr Buchan's evidence was that he was surprised with the Board members' reaction. He said he spoke to all of them and they were both cross and frustrated. He admitted that his request of the

¹⁴⁴ Ibid.

¹⁴⁵ Ibid.

¹⁴⁶ Ibid.

¹⁴⁷ Ibid.

¹⁴⁸ RC7.

Board to consider the matter by Friday was unreasonable but as a consequence of what he was told on 12 November by the Premier and Minister Koutsantonis he thought Cabinet would be discussing this matter on Monday 18 November. His evidence was:

Q. So, you were obliged, you thought, to act unreasonably?

A. No, I still made that decision. I regret the paper I put forward. I regret not picking up the phone and ringing the chair of the Board and saying, 'This is what is happening'. I incorrectly believed that my email on the Sunday night would have triggered a response from Board members in some ways to sort of say, 'What are you talking about? We are not aware of what you are talking about. You are going to do what next Monday?' So on and so forth. So I made a mistake.

At 9:50 pm that night, Mr Buchan emailed Board members providing further information. He said that the CSO had been involved in giving advice in relation to the proposal, [REDACTED]. He mentioned that probity issues were identified and raised by the URA in the Cabinet submission considered by Cabinet on 23 September 2013. He said that the URA's policy required two independent valuations to be undertaken with the higher of the two setting the value of the land.

He relied on the Dean Rifle Range valuations as satisfaction of the requirement for two independent valuations as required in the relevant policy for off-market land sales.

He noted the Board's concerns about the timelines for a decision, and said:

Renewal SA understands the Boards [sic] concern relating to the timeline set to consider this proposal. The negotiation have [sic] been undertaken intensively over the last two weeks and unexpected progress has been made during this period this [sic] has significantly compressed the anticipated evaluation timelines. It is noted that Renewal SA is responding to the compressed timelines set out ACP's offer and Cabinet's desires [sic] of a swift negotiation and evaluation period. Following discussions with the Premier, Deputy Premier and Minister yesterday it is likely the Government will require Renewal SA's advise [sic] on the negotiated ACP proposal for consideration by Cabinet on Monday.¹⁴⁹

The 'compressed timelines' referred to by Mr Buchan are probably those set out by Mr Kain in his letters to the Premier of 29 August and 11 October 2013.¹⁵⁰ Mr Buchan had been told that a Cabinet submission was required for a Cabinet Meeting on 18 November 2013.

At 7:09 am on 14 November Ms Fulcher replied, outlining some areas for discussion in the teleconference for later that day.¹⁵¹ She said there was a need for robust discussion around the possible management of the risks. She said:

I would be interested to know what the key sentence in a media release will say re the rationale for not going to the open market.

At 8.32am Mr Holden replied to Mr Buchan's last email saying that he was unable to support the OSDP:

... the Board needs time to carefully consider the many probity and contractual issues this decision involves, it would be unwise in my opinion to do otherwise.

Mr Terlet emailed at 8.57am, agreeing with Mr Holden.

At 9.20am Dr Rischbieth emailed indicating that she was also unable to support the OSDP.

Ms Pike described the OSDP of 13 November as an inadequate document which made the Board furious.

¹⁴⁹ Ibid.

¹⁵⁰ RC30.

¹⁵¹ RC7.

She said that Mr Buchan tried to be responsive to the matters raised by the Board but he was 'jammed up against time'.

Ms Pike said that she was not provided with the RPMP, nor was she provided with the CSO advice.

Mr Buchan was unable to retrieve the position because he could not provide the Board with the advice that it should have received in the period leading up to November.

At 11.18am at Mr Buchan's request Mr Smith emailed the Board members forwarding a copy of ACP's original proposal which he said gave rise to the Premier and Minister Koutsantonis seeking advice from the URA.

Later, three of the Board members Ms Pike, Ms Fulcher and Mr Holden and Messrs Buchan and Smith held a teleconference, during which those Board members sought more detailed financial and risk information about the proposed Gillman transaction. This teleconference did not purport to be a formal meeting of the Board.

Later that day Mr Terlet declared a conflict in relation to the ACP proposal.¹⁵²

He spoke to Mr Borrelli at about this time to ascertain from Mr Borrelli whether he was behind ACP for the purpose of determining whether he had a conflict of interest.

Mr Borrelli told him that he was not involved with ACP and in fact became quite angry when he heard that ACP had made a proposal for the acquisition, or at least the right to acquire, the whole of the land.

Mr Terlet's said that he also thought that because of his earlier association with IWS and because he had introduced IWS to the URA that it would be a lot safer for him not to be involved in the issue.

He mentioned his conflict to the Chair of the Board, Ms Pike, but did not comply with the written policy of the URA to provide a written explanation for his conflict of interest.¹⁵³ Nothing turns on that.

Thereafter, Mr Terlet played no further part in the Board's considerations of the ACP proposal.

Mr Terlet's evidence was that the OSDP, which required a response within 48 hours, was inappropriate because Gillman was the largest single piece of industrial land in the near vicinity of Adelaide and that the OSDP in any event lacked sufficient detail, information, rigour and evidence of compliance with the URA's responsibilities under State Procurement Guidelines.

Mr Terlet thought the 13 November OSDP was a poor presentation on a matter of such significance.

Mr Smith advised other Board members of Mr Terlet's declaration by email at 3.21pm¹⁵⁴ on 14 November, which he said would be formally recorded in the Minutes of the Board of Management Meeting on 25 November 2013. In the same email Mr Smith advised that the OSDP had been withdrawn to enable amendments to be made to the paper for resubmission to the Board members other than Mr Terlet.

The effect of Mr Buchan's evidence was that the OSDP was withdrawn so that the Board could not resolve to reject the recommendations.

At 6:04pm on 14 November 2013, Mr Buchan circulated a second Board paper to the Board members (but not Mr Terlet) seeking a response via email again by 12 noon on Friday 15 November. On this occasion the paper was described as an Out-of-Session *Noting* Paper (OSNP). The OSNP was in the same terms as the OSDP except it had a new section headed 'Key Issues Raised by the Board of Management'. It included a part entitled 'Process and Probity' incorporating much of the

¹⁵² Mr Terlet was a member of the Board of E & A Limited, which is a heavy engineering and logistics company which was interested in part of the Gillman land.

¹⁵³ RC16.

¹⁵⁴ RC7.

material from Mr Buchan's email sent at 9.50pm on 13 November. An appendix was also included containing a financial analysis of the ACP proposal.¹⁵⁵

The OSNP included a part headed 'Timelines'. It said:

- **Timelines**

The timeline set to consider this proposal has been driven by Renewal SA's need to respond to Cabinet and Ministerial imperatives and the negotiations have been undertaken intensively over the last two weeks with unexpected progress having been made during this period, which has significantly compressed the anticipated evaluation timelines.

Following discussions with the Premier, Deputy Premier and Minister on Tuesday 12 November it is likely the Government will require Renewal SA's advice on the negotiated ACP proposal for consideration by Cabinet as early as Monday 18 November.

The OSNP invited the Board to note the general nature of the ACP submission and note that the URA had operated in accordance with Ministerial and Cabinet approvals and independent probity advice. The Board was asked to note that the Cabinet submission would note risks relating to the lack of market testing to determine the value of the land, the probity of accepting an unsolicited offer and the associated risk of community and industry dissatisfaction, and potential implications arising from the impact on the litigation with the Adelaide City Council.

The recommendation made to the Board in the OSNP was for the Board to note:

4. **RECOMMENDATION:**

It is recommended that the Board of Management notes:

- *The nature of the Adelaide Capital Partners (ACP) submission to Government to purchase 407 hectares of Renewal SA-owned land at Gillman/Dry Creek for future industrial development; and*
- *That Renewal SA has at all times operated in accordance with Ministerial / Cabinet approvals and independent probity advice in relation to preparing advice in relation to the matter; and*
- *That the Cabinet submission being drafted by Renewal SA for the Minister's urgent consideration to facilitate an off-market sale of the subject land to ACP will note key risks and issues identified by the Board of Management in relation to:*
 - *The lack of market testing to determine the competitively derived market value of the subject land; and*
 - *The probity of accepting an unsolicited offer for the subject land and the potential for industry / community dissatisfaction with Renewal SA facilitating the sale of the subject land through a non-competitive process; and*
 - *Potential implications arising from the sale of the land in relation to the Adelaide City Council's claims for compensation for the portion of the subject land compulsorily acquired.*

The OSNP merely sought the Board to note the matters mentioned.

Dr Rischbieth said she was concerned that the withdrawal of the OSDP of 13 November led to the OSNP when the Board, instead of being asked to approve to resolve the matter, was merely being asked to note the matters contained in the recommendations.

A response was still required from Board members by midday on Friday 15 November 2013, less than 18 hours away.

¹⁵⁵ Ibid.

At 10.57am on 15 November 2013 Ms Fulcher indicated that she was prepared to support the noting recommendation with one slight amendment.¹⁵⁶ At 11.27am she rescinded her support for the recommendation. At 11.41am, Mr Holden responded to the OSNP, saying that he was unable to support the proposal.¹⁵⁷

At 12.24pm Mr Maras emailed indicating his non approval of the OSDP that had been withdrawn the previous day.¹⁵⁸

Ms Pike said that the 14 November OSNP was rejected because it did not address the fundamental issue about which the Board was concerned that an off-market transaction was not appropriate and that the land should be put to tender.

The Board's Minutes of the meeting of 25 November 2013 record that the OSNP was also withdrawn by Mr Buchan but there is no email or similar record which I have seen to that effect.¹⁵⁹

However, I do not think enough Board members voted upon the OSNP before noon on 15 November to say that a decision was made one way or the other. The OSNP was either not supported by members of the Board because they did not vote, or it lapsed.

At some time on this day Mr Rollison and Mr Hodgen signed a Recommendation Report addressed to Mr Buchan as Acting Chief Executive. The Evaluation Plan envisaged such a report. It recommended that the Chief Executive approve the URA preparing and forwarding a Cabinet submission for approval to proceed with acceptance of the ACP proposal. The document addressed the criteria in the Evaluation Plan.¹⁶⁰ Mr Buchan signed the Recommendation Report to indicate his approval that same day.¹⁶¹

It is worth noting that Mr Buchan's role changed with respect to the ACP offer evaluation process during the course of the process. In the Negotiation Plan, Mr Buchan was described as the 'lead officer' for the project, and his role was to report on the outcome of the evaluation to the Chief Executive. However in the final event it was Mr Rollison who made the recommendation to Mr Buchan, as he was Acting Chief Executive at the relevant time.

For that reason, the evaluation process lost its final layer of oversight.

There was no mention of the Board in that Recommendation Report, nor of the desirability of seeking the Board's approval before providing the submission to Cabinet.

On the same day, Mr Bowden on behalf of IWS emailed Messrs Rollison and Hodgen referring to the earlier proposal to form a joint venture with the URA for the filling and development of the land.¹⁶²

On 15 November 2013, Mr Borrelli emailed the Premier and Minister Koutsantonis on behalf of IWS/Acquista, pursuing a response in relation to the earlier joint venture proposal.¹⁶³

Mr Borrelli said that in November 2013 he heard a rumour about the Gillman land being up for sale which he said surprised him because Mr Hodgen and Mr Rollison had told him at the 6 March meeting there would be a tender process in relation to the Gillman site.

He said as a consequence he wrote his letter of 15 November 2013 to Minister Koutsantonis and to the Deputy Premier, Mr Rau, and to the Premier.

¹⁵⁶ RC7.

¹⁵⁷ Ibid.

¹⁵⁸ Ibid.

¹⁵⁹ RC4.

¹⁶⁰ RC7.

¹⁶¹ Ibid.

¹⁶² Paul Bowden, email, *Gillman Precinct*, 14 November 2013 4:36 pm.

¹⁶³ RC1.

It is probable that Mr Borrelli became acquainted with that information as a consequence of a conversation with Mr Terlet who was seeking to discover who was behind the ACP proposal.

On the same day Mr Stephen Young on behalf of E&A Ltd wrote to Minister Koutsantonis advising that he had heard of a pending deal to purchase the Gillman land, and expressing an interest in buying it directly from Government rather than through a developer at a higher price. A copy of Mr Young's letter was provided to the URA.¹⁶⁴

Mr Hodgen was aware that IWS and E&A had approached the Premier on 15 November 2013, which was part of the risk associated with the transaction which only could have been managed by going to market.

On 15 November, version 2 of the Gillman Masterplan Draft for Consultation was released.¹⁶⁵

On 15 November at 5.37pm Mr Smith sent to Minister Koutsantonis' office (copy to Katie Boyd, Marko Klobas, Sarah Goodchild, Robert Malinauskas (who were all staffers of the Minister), Mr Buchan and Mr Rollison) a 'Draft ACP Lipson Cabinet submission for Consideration'.¹⁶⁶

Accompanying that document was a Minute for Minister Koutsantonis signed by Mr Buchan and dated the same day which stated:

SUBJECT: LIPSON INDUSTRIAL ESTATE (FURTHER SUBMISSION)

BACKGROUND

On 23 September 2013 Cabinet considered a proposal from Adelaide Capital Partners ('ACP') regarding the possible acquisition of 417.89 hectares of land held by Renewal SA in the Gillman/Dry Creek area. Although the proposal was rejected, Cabinet approved Renewal SA commencing direct negotiations with ACP in order to address ten (10) identified shortcomings of its proposal.

Renewal SA has now concluded negotiations with ACP in relation to its proposal and has completed its assessment of ACP's final proposal.

KEY POINTS

- Renewal SA has negotiated with ACP in respect of its proposal in accordance with a Negotiation Plan and an Evaluation Plan prepared by Renewal SA for the purpose.*
- Those negotiations have also been undertaken under the guidance of an external probity adviser.*
- The final ACP proposal (prepared pursuant to the negotiations) identified that the proposal either met or exceeded the evaluation criteria when assessed each of the ten (10) shortcomings identified in the previous proposal.*
- Renewal SA is now presenting the negotiated outcome for Cabinet's consideration.*

RECOMMENDATION

- It is recommended that you forward the attached submission to Cabinet for their consideration.*

The Synopsis to the draft Cabinet submission (which was for signing by Mr Weatherill as Treasurer and Minister for State Development and Minister Koutsantonis as Minister for Housing and Urban Development) recounted a short history of the matter and stated that the URA had concluded

¹⁶⁴ Above n 46.

¹⁶⁵ RC11.

¹⁶⁶ RC8.

negotiations with ACP which excluded the relocation site for Incitec Pivot Ltd ('IPL') in accordance with a Cabinet decision of 8 October 2013 relating to the relocation of IPL.

The Synopsis recommended that Cabinet accept the revised ACP proposal identified in the draft Option Deed of 13 November 2013 subject to some further editing which would not be material.

The draft Cabinet submission addressed a number of matters that need not be mentioned because the draft did not become a Cabinet submission. However, it was stated:

5.11 Other

In relation to the risks identified above (and negotiated with ACP) there continues to be a risk that the proposal has not been subjected to an open and transparent market process. This matter has been raised by Renewal SA's Board of Management (the 'Renewal SA Board'). The Renewal SA Board noted that in the absence of market testing, there has been a heavy reliance placed on the significant financial modelling undertaken as part of the Dean Rifle range compulsory acquisition process in order to confirm that Renewal SA will achieve a fair and reasonable value for the land.

The Renewal SA Board also noted the potential impact the Government's consideration of the ACP proposal may have on the claim for compensation lodged by the Corporation of the City of Adelaide ('ACC') resulting from the compulsory acquisition by Government of ACC's interest in the DRR. The Renewal SA Board expressed concern that this risk may (although it is not currently forecast) result in Renewal SA being required to make payments which exceed the 14 December 2009 Cabinet Approval.

The current assessment of compensation in that case ranges from \$6.7 million (Renewal SA's valuer) to \$28.64 million (ACC's valuer). These figures are total compensation figures and include the \$1.52 million already paid to ACC.

[REDACTED]
[REDACTED]
[REDACTED] This is consistent with the 14 December 2009 Cabinet approval for the compulsory acquisition.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

The draft Cabinet submission made the following recommendations:

RECOMMENDATIONS

I recommend that Cabinet:

- 1. Endorse the Adelaide Capital Partners (ACP) offer as documented in the 13 November 2013 (Version 7) draft of the Deed, including the Project Objectives (Appendix A) and the Concept Plan (Appendix B).*
- 2. Note that the ACP proposal represents an off-market transaction and not the result of a market testing.*
- 3. Approve Renewal SA granting ACP an exclusive call option (or series of call options) for ACP and/or Nominee to acquire up to 407 hectares of future industrial land within three (3) tranches over a nine year period.*
- 4. Approve the off market sale of approximately 150 hectares of land forming portion of Allotment 203 in Deposited Plan 75338 (or adjacent) at Dry Creek to ACP (and/or Nominee) for \$45 million (GST exclusive) relating to the first exercisable option if ACP exercises this option.*

was concerned that if the draft Cabinet submission were to be presented to Cabinet on Monday 18 November, Cabinet would not be properly advised of the Board's position.

At 9:42 pm on Sunday night 17 November 2013, Mr Buchan emailed the Board:

I appreciated your feedback this week on this difficult topic and process. The draft Cab Sub that I provided to the Minister Friday night was much better for the discussions that we had.

Further I have had discussions with Jim Hallion – CE of DPC, Simon Blewett – Premiers CoS and Robert Malinauskas – Minister Koutsantonis CoS informing them of the Boards significant reservations. At this time I do not know whether they will be presenting the proposal for Cabinet's consideration on Monday.¹⁶⁷

The Board was not provided with the draft Cabinet submission to which Mr Buchan referred and which had been provided to Minister Koutsantonis' Office on Friday 15 November.

The draft Cabinet submission was not presented to Cabinet on Monday 18 November.

The Premier said that he cannot remember being told that the Board had not approved of the recommendations in the OSDP and the OSNP.

On 18 November 2013 the URA published the draft Gillman Masterplan report seeking responses from the public by 6 December 2013. The draft report does not include any information relating to the ACP proposal probably because there is no evidence that the authors of the report were aware of the proposal at that time.

The authors of the Gillman Masterplan did not investigate whether there was a market for acquiring the land for filling and then on-selling it for industrial purposes.

The Gillman Masterplan assumed that there would be four development stages over a period of 20 to 25 years which would involve 236 ha in total and that the remainder of the land would not be developed but would be used for stormwater management and habitat retention.

Mr Jensen said the estimate of the developable land (236 ha) was based upon a detailed amount of investigation and technical considerations and that he would stand by that recommendation.

His view is that the rest of the land is not capable of being developed because it needs to be retained for stormwater management.

The Gillman Masterplan also recognises a need for the raising of the levy on the Port River to protect the land from inundation by sea water.

On 19 November Minister Koutsantonis met with Mr Buchan and Ms Durand. Ms Goodchild's notes record:

Theo Maras phoned the Minister. Board wouldn't approve it. Have since had representations from other. Amend Cabinet submission to incorporate Board's concerns and explain other representations. E&A Stephen Young. Respond to letters before or after? Submission to have choices. Minister to attend Board meeting on Monday.¹⁶⁸

Ms Goodchild said that Minister Koutsantonis knew at this time that the Board would not approve the transaction. Minister Koutsantonis was also aware that other parties were interested in the land. The reference to amending the Cabinet submission was a reference to something Mr Buchan said.

At 10.20am on 20 November 2013 Mr Smith emailed Board members attaching a revised Out of Session Decision Paper ('OSDP(2)') seeking a decision by 5pm (CST) on 21 November 2013.¹⁶⁹

¹⁶⁷ RC4.

¹⁶⁸ RC34.

¹⁶⁹ RC4.

Mr Hodgen thought that the OSDP that was circulated on 20 November represented the Board's thinking at that time.

The OSDP(2) identified its purpose:

This paper outlines the terms of a draft Cabinet submission being prepared by Renewal SA management on behalf of the Minister for Housing and Urban Development in relation to the matter and seeks the Board of Management to consider a recommendation to advise the Minister for Housing and Urban Development to:

- *Reject the proposal from ACP to purchase approximately 407 hectares of Renewal SA-owned land at Gillman/Dry Creek for up to \$122.100 million; and*
- *Offer the Gillman/Dry Creek land to the market for sale in a transparent and open manner; and*
- *For the Board of Management to:*
 - *Note that their recommendation relating to the ACP proposal along with the key risks identified by Board of Management members relating to the proposal will be highlighted in the draft Cabinet submission to be forward to the Minister for Housing and Urban Development for his consideration; and*
 - *Note Cabinet's ultimate authority to approve the ACP proposal if it determines to do so.*

The recommendations that were made to the Board were:

4. RECOMMENDATIONS

1. *The Board of Management **recommends** to the Minister for Housing and Urban Development that:*
 - *The South Australian Government reject the Adelaide Capital Partners (ACP) submission to purchase 407 hectares of Renewal SA-owned land at Gillman/Dry Creek for future industrial development; and*
 - *The South Australian Government offer the Gillman/Dry Creek land to the market for sale in a transparent and open manner.*
2. *The Board of Managements **notes**:*
 - *That the Minister for Housing and Urban Development will advise Cabinet that:*
 - *Renewal SA's Board of Management has resolved to advise the Minister to reject the ACP proposal and instead offer the land to the market for sale in a transparent and open manner having regard to the following key risks and issues identified by the Board of Management:*
 - *The lack of market testing to determine the competitively derived market value of the subject land; and*
 - *The probity of accepting an unsolicited offer for the subject land and the potential for industry / community dissatisfaction with Renewal SA facilitating the sale of the subject land through a non-competitive process; and*
 - *Potential implications arising from the sale of the land in relation to the Adelaide City Council's claims for compensation for the portion of the subject land compulsorily acquired.*
3. *The Board of Managements **notes**:*
 - *Cabinet has the ultimate authority to approve the ACP proposal if it determines to do so having regard to whole of government considerations.*

At 4.14pm Mr Holden agreed to the recommendations in the OSDP(2); Ms Pike agreed at 5.07pm; Ms Fulcher agreed at 9.11pm; Dr Rischbieth agreed at 12:34pm the next day; and Mr Maras agreed at 9.03am on Friday 22 November 2013.¹⁷⁰

The OSDP(2) of 20 November, Ms Pike said, contained recommendations that the Board sought and the OSDP(2) was appropriate in the circumstances. Dr Rischbieth said that the OSDP(2) represented the view of the Board at the time it was published to the Board. Mr Maras said that when he received the OSDP of 20 November he thought that that document represented his view. Mr Holden said that the administration was under enormous pressure to get this over the line and they were doing what they could to do their job, as it were, as directed by Minister Koutsantonis but that the Board, on 21 November, took a different view.

On 21 November 2013, Mr Buchan sent Minister Koutsantonis a Minute advising of the Board's resolutions earlier that day and advising that negotiations between the URA and ACP were complete with ACP's amended proposal now meeting or exceeding the 10 evaluation criteria previously identified by the URA.¹⁷¹ In the Minute which attached a draft Cabinet submission and the 13 November 2013 version of the draft Option Deed, Mr Buchan said:

*The attached draft Cabinet submission has been revised to take account of the Board's resolution and provides Cabinet with the option of either rejecting the ACP offer and proceeding to offer the land to the market **or** accepting ACP's offer as negotiated.*

The Premier said he would not have seen the draft Cabinet submission of 21 November which was presented to Treasury but not to Cabinet.

The Synopsis to the second draft Cabinet submission said:

In the light of the amendments negotiated by Renewal SA, a revised ACP proposal as documented in the 13 November 2013 draft (version 7) of the Deed (which still requires further minor editing) was considered by the Board of Management responsible for Renewal SA who resolved that the revised offer should be rejected whilst noting that Cabinet has the ultimate decision making authority in relation to the matter.

The draft Cabinet submission recommended two options: to reject the ACP offer and offer the land for sale; or to endorse the ACP offer and approve the URA entering into an agreement with ACP.

For completeness I set out the two options in full:

RECOMMENDATIONS

OPTION 1

We recommend that Cabinet:

1. *Reject the Adelaide Capital Partners (ACP) offer as documented in the 13 November 2013 (Version 7) draft of the Deed, including the Project Objectives (Appendix A) and the Concept Plan (Appendix B).*
2. *Notes that the above recommendation is consistent with the resolution of the Board of Management responsible for Renewal SA which resolved that the land should be instead offered for sale in a transparent and open manner based on the following key risks and issues:*
 - 2.1 *The lack of market testing to determine the competitively derived market value of the subject land; and*
 - 2.2 *The probity of accepting an unsolicited offer for the subject land and the potential for industry / community dissatisfaction with Renewal SA facilitating the sale of the subject land through a non-competitive process; and*

¹⁷⁰ RC4.

¹⁷¹ RC8.

- 2.3 Potential implications arising from the sale of the land in relation to the Adelaide City Council's claims for compensation for the portion of the subject land compulsorily acquired.

OR OPTION 2

We recommend that Cabinet:

1. Endorse the Adelaide Capital Partners (ACP) offer as documented in the 13 November 2013 (Version 7) draft of the Deed, including the Project Objectives (Appendix A) and the Concept Plan (Appendix B).
2. Approve Renewal SA granting ACP an exclusive call option (or series of call options) for ACP and/or Nominee to acquire up to 407 hectares of future industrial land within three (3) tranches over a nine year period.
3. Approve the off market sale of approximately 150 hectares of land forming portion of Allotment 203 in Deposited Plan 75338 (or adjacent) at Dry Creek to ACP (and/or Nominee) for \$45 million (GST exclusive) relating to the first exercisable option if ACP exercises this option.
4. Note that this first payment of \$45 million (GST exclusive) is broadly equivalent to the present value of all future development returns and within the range of available independent valuations for all of the land being between \$19 million and \$59 million.
5. Approve Renewal SA entering into a long-term licence with ACP over up to 257 hectares of land adjacent to the land described in Recommendation 3 for uses that facilitate ACP developing the land which it acquires in a manner that is consistent with its Project Plan.
6. Approve the associated impact on the general government sector's net operating result and net lending position by way of changed contributions (dividend and tax equivalent payments) from Renewal SA as a result of the change in sales and cost of sales from the land, of ██████████ in 2013-14, ██████████ in 2014-15, ██████████ in 2015-16 ██████████ in 2016-17 and ██████████ in 2017-18, totalling ██████████ across the forward estimates.
7. Note that in addition to changed contributions (dividend and tax equivalent payments) from Renewal SA, further positive impacts are anticipated for the government sector's net operating result and net lending position by way of increased land tax which will bring the total impacts to ██████████ in 2013-14, ██████████ in 2014-15, ██████████ in 2015-16, ██████████ in 2016-17 and ██████████ in 2017-18, totalling ██████████ across the forward estimates.
8. Approve the off market sale of up to 257 hectares of land at Gillman/Dry Creek to ACP (and/or Nominee) for up to \$77.100 million (GST exclusive) relating to the second and third exercisable options if ACP exercises these options.
9. Note that the associated impact on the general government sector's net operating result and net lending position as a result of changed contributions (dividend and tax equivalent payments) from Renewal SA beyond the forward estimates cannot be quantified at this time but is estimated at between ██████████ and ██████████ depending upon the area of land within the second and third exercisable options that is called by ACP.
10. Note that although the negotiations on commercial terms has concluded, at the time of preparing this submission, ACP's legal advisers and the Commercial Section of the Crown Solicitor's Office (on behalf of Renewal SA and the Minister for State Development) were yet to agree on the final drafting of some of the clauses.
11. Note that the financial assessment within this submission is based on Cabinet approving the recommendations contained in the forthcoming submission titled 'Port Adelaide Renewal Project – Incitec Pivot Relocation'. If that submission is not approved, the financial assessment in Recommendations 6 and 8 may be subject to change.
12. Note that if ACP does not exercise the second or third exercisable options, the State (through Renewal SA) may be required to undertake certain rectification works (at an estimated cost of up to \$5 million) in relation to the management of stormwater, on the assumption that ACP may have only partially completed drainage works to service those portions of the land which would have already been developed.
13. Note that as a condition precedent to the exercise of the first option by ACP, Renewal SA will be required to complete its master planning work (which is currently the subject of stakeholder and community consultation) and to request that a Development Plan Amendment is initiated to ensure that more than 230 hectares of the land is zoned to accommodate industrial uses.

14. Note that the land includes an area currently leased to the Adelaide Speedboat Club and under the current arrangements, that lease would be assigned to ACP giving ACP the authority to terminate the Club's lease.



The draft Cabinet submission of 21 November brought together the draft submission of 15 November and the Board's resolutions of 21 November.

Accompanying the draft Cabinet submission was a copy of the draft Option Deed which had not been provided to the Board.

On 22 November 2013 at 9.01am Mr Smith emailed the Board members, Mr Buchan, Ms Hart (Department of Treasury and Finance) and Mr Fahey:

I advise the recommendations contained within this Out-of-Session Decision Paper have been carried by a majority of members.¹⁷²

As I have mentioned, Mr Maras agreed to the recommendations two minutes later. Because of his conflict of interest, Mr Terlet did not receive OSDP(2).

At some time on this day Mr Buchan met with Minister Koutsantonis. Mr Buchan said that Ms Durand was at the meeting with Minister Koutsantonis on 22 November but Ms Durand has no recollection of being present.

Mr Buchan said that Minister Koutsantonis said, referring to the draft Cabinet submission, 'what am I meant to do with this?' Mr Buchan said he told the Minister that he should present the submission to Cabinet, it being the view of the Board. He told Minister Koutsantonis that the Board does not support the transaction because it is off-market.

He said that Minister Koutsantonis was perplexed.

The whole of Mr Buchan's evidence as to this meeting in which he observed that Minister Koutsantonis was perplexed was:

A. *I do recall this one, quite clearly: 'What am I meant to do with this?'*

Q. *Is that what he said?*

A. *Yes.*

Q. *Did he use language?*

A. *No -- he did not use a lot. The minister had a couple of ways that he would, you know, 'What am I meant to do with this? And would lean out -- 'I can't use this. It is useless to me. What are you thinking? How on earth is this? How is this a Cabinet submission that I am meant to be dealing with?'*

I remember saying, 'Minister, the Board have resolved that, we've had the discussion. I had presented all of the information to them.' Notwithstanding the fact that I genuinely believed it was a reasonable transaction for the state to enter into, you know, I would not want to leave that impression notwithstanding the reservations for a minute.

Notwithstanding the fact, I argued it, and I argued it quite vigorously, around a number of these points that many of the issues that we were dealing with were

¹⁷² RC4.

possibilities and probabilities and could haves, maybes. This was a bit of a bird in the hand, in many ways, in dealing with quite a vexing problem, which is Gillman. It does not align with all of the policy matters, but notwithstanding that the Board has resolved and my responsibilities to communicate the Board's view and recommendation to you. I have attempted do that in this form which gives you the opportunity to take it through to the Cabinet. But other than that I see my job as done.

Q. *What did he say to that?*

A. *He was perplexed. That would be the best way. I have recounted that a little bit in my head a number of times. He slumped, was quite perplexed and slumped in his chair, that sort of, you know, 'You are all idiots' type. 'Well, what about I go and speak to them?'*

My comment was, 'You would be more than welcome to speak to the Board. I am sure the Board would welcome your view on this matter. I will have a conversation with the Chair; see if she is happy to have your attendance.'

'Get out', you know, that kind of approach to it. He probably did not say that, but that is the underlying feeling.

Q. *You are dismissed?*

A. *Yes, essentially.*

Minister Koutsantonis offered to speak to the Board and Mr Buchan said that the Board would welcome his view.

Minister Koutsantonis said of how he came to meet with the Board:

He [referring to Mr Buchan] said the Board had -- well, I cannot remember his exact words so I'd be paraphrasing something along the lines: The members of the Board don't recommend the deal. I said to him, 'What -- what do I do now?' And so I sought his advice. And -- and -- I -- and this is the part I can't -- I can't remember. I can't remember whether Ms' Pike asked me to come or there was a standing invitation for me to come and Mr Buchan asked me to take it up or whether I said to Ms Pike that I should come to the Board. But I've -- I've read her evidence and I accept that she asked me to come along. But I asked Mr Buchan for his advice on what to do and his advice was 'Speak to the Board; understand it'. So I went and understood it.

Ms Pike said that during the process in November she advised the Minister's staff about the mind of the Board. She urged Minister Koutsantonis to attend the Board meeting of 25 November so that there could be a conversation between the Minister and the Board. She desired an open and frank dialogue on the issue.

On the afternoon of 24 November Mr Frearson-Lea emailed Messrs Piovesan, Kain and Andreotti (copy to Messrs Buchan, Hodgen, Thompson, Andrew Gerlach and Rollison) attaching further drafts of the Option Deed and Licence 'where we have accepted all of your previous amendments and made further changes that are shown in mark-up'.

On 24 November 2013, Mr Buchan ceased acting as Chief Executive following Mr Hansen's return from leave.

The Premier does not remember whether he knew at that time that Minister Koutsantonis was meeting or had met with the Board.

On Monday 25 November the Board held its monthly meeting. All members were present (Dr Rischbieth via teleconference).

The Board Minutes for 25 November 2013 record that the Board resolved on 21 November that a majority approved recommendations:¹⁷³

The Board of Management recommends to the Minister for Housing and Urban Development that:

- *The South Australian Government reject the ACP submission to purchase 407 ha of Renewal SA-owned land at Gillman/Dry Creek for future industrial development.*
- *The South Australian Government offer the Gillman/Dry Creek land to the market for sale in transparent and open manner.*

The Board of Management notes

- *that the Minister for Housing and Urban Development will advise Cabinet that:*
 - *Renewal SA's board of management has resolved to advise the Minister [sic] to reject the ACP proposal and instead offer the land to the market for sale in a transparent and open manner having regard to the following key risks and issues identified by the Board of Management:*
 - *The lack of market testing to determine the competitively derived market value of the subject land.*
 - *The probity of accepting an unsolicited offer for the subject land and the potential for industry/community dissatisfaction with Renewal SA facilitating the sale of the subject land through a non-competitive process.*
 - *Potential implications arising from the sale of the land in relation to the Adelaide City Council's claims for compensation for the portion of the subject land compulsorily acquired.*

The Board of Management notes:

- *Cabinet has the ultimate authority to approve the ACP proposal if it determines to do so having regard to whole of government considerations.*¹⁷⁴

Below that was noted:

(Note that the Out of Session Decision Paper 15 (Paper 3) – Proposal Purchase of Renewal SA land at Gillman dated 20/11/12 was preceded by the following papers:

- *Out of Session Decision Paper 15 (Paper 1) – Proposed Purchase of Renewal SA land at Gillman dated 13/11/13 – withdrawn; and*
- *Out of Session Noting Paper 15 (Paper 2) – Proposed Purchase of Renewal SA land at Gillman dated 14/11/13 – withdrawn)*

The 25 November Board Minutes show that Minister Koutsantonis, as Minister for Urban Development, attended the meeting and addressed the Board. He was accompanied by Ms Goodchild. Mr Hansen also attended this meeting as did Mr Buchan and Mr Smith, and a number of other URA employees. Ms Durand said she was not present when Minister Koutsantonis made his presentation to this Board meeting. Mr Malinauskas did not attend the meeting and so could not have given any evidence on that topic.

Ms Goodchild said that Minister Koutsantonis went to the Board meeting on 25 November with the intention of explaining to the Board the benefits of the proposal, particularly in light of the knowledge that he had acquired as Minister for Mining and Resources. She made notes of what was said and by whom.¹⁷⁵

¹⁷³ RC4.

¹⁷⁴ RC4.

¹⁷⁵ RC34. The note reads in full: '25/11/13. Renewal SA Board. M - Got 3-day window outside of meeting to make a decision, no face-to-face meeting. Told Minister/Government want it to happen quickly. BK – Has brought into question the role of this Board. Haven't had line of sight on many projects. We wear the consequences of decisions made on balance sheet and otherwise. AR – Probity concerns. Representation. TK – Unsolicited proposals are received all the time. H – Concern about process and specifically the financials in the

Ms Pike said that Minister Koutsantonis told the Board how important the project was for the Government. He told the Board that the land had been vacant for 30 years and nobody had ever come up with a really significant proposal to utilise the land and that the proposal under consideration would add significant value. He said that the proposal would encourage employment and would allow the State to compete with Queensland in relation to a resources hub. He told the Board, from the Government's point of view, it was a very good proposal.

Ms Pike said that Minister Koutsantonis told the Board that he respected the Board's decision and its right to have an alternative view.

Mr Holden said that Minister Koutsantonis explained to the Board that the proposal that had been brought to him came from the EDB and was for an oil and gas hub which was vital to economic development in South Australia. Mr Holden said that Minister Koutsantonis said this was a one-off opportunity that was on the table here and now and the Government had to move very quickly because there was competition in Queensland that was moving very quickly, such that there was not any time for the tender process. Mr Holden said that Minister Koutsantonis said this was an excellent opportunity for the State; that the site represented a great opportunity; and that he wanted the Board's support to proceed with the project.

Mr Holden said that after Minister Koutsantonis left the Board meeting there was considerable discussion. He said that the Board was trying to find a way to resolve the matter and put it back to Government if an oil and gas hub was considered to be important. He took the view it was the Government's job to do that. He said that the Board's position was that it did not want to frustrate the possibility of an oil and gas hub. He said that the Board however, still wanted the process to be transparent and that the Government should do it in an open and transparent way.

Mr Maras said that Minister Koutsantonis said that the Government wanted the Board to have a look at the proposal because it was a great opportunity for South Australia and provided some detail of what was being proposed in the mining, gas and oil exploration industry. Mr Maras said that Minister Koutsantonis said this was an opportunity for some 6,000 people to be gainfully employed in the particular project.

Mr Maras said that he said:

Look Minister, all this is very well and good. And I am always happy to see Government being proactive in planning for employment but I think that there is other issues involved in this, and that is that we can make a decision or the Government can make a decision, but in order to make that decision, at least let us have a range of issues, which have never been explained to anybody, put on the table.

Mr Maras said that he asked to see an opinion from Crown Law or from an independent authority that the URA could make a decision on the sale of this land notwithstanding that the LMC had said it would go out to tender. Mr Maras was there referring to a time when the land was owned by the LMC. At that time Mr Wayne Gibbings was the Chief Executive Officer and he said, at a public meeting of the Urban Development Institute of Australia at which about 300 people were present,

Cabinet submission. Not convinced stacks up. CH – We think it needs to go to the market place. Broader concern is about amount time given to consider the proposal. TM – There should be a way land is offered for sale. Board might as well not be here, that would be fine. TK – Concerns are valid. On this land, no-one was doing anything about it until this bid came in. I have been contacted since. Was going to go to Cabinet today but I pulled it to allow the Board consideration. Explained reasoning – oil & gas/Cooper Basin. TM – Not correct. Should go to market; only given 2 days. BP – [blank - nil noted]. TK – We didn't just say yes, we referred it to Renewal SA. When they admitted they didn't have mining knowledge, they spoke to DMITRE. We gave Gordon Toll a similar opportunity based on his knowledge and skills. If it goes to tender it will be based on same. BP – But we didn't get any of that information. TK - not my problem, that's yours. You should seek it. I will hold off until you're comfortable. I'll get you a briefing from DMITRE. CH – [blank - nil noted]. TM – others could do this. You are taking an opportunity away from them. TK – I would agree if it was any random group, but not this. I will get you a briefing from Barry Goldstein and if you still think a tender is required, that's the recommendation I will take to Cabinet. When a consortium. TM – No-one has a track record in this field. TK – It has been done in Brisbane and Perth. CH – Why does this kind of proposal need to come to us then? TK – Strategic land use, it is in your interest. AR – Briefing from DMITRE would be good. Compensation and liabilities. TK – 2015 is needed.' [Note: BP refers to Ms Pike; AR to Dr Rischbieth; TK to Minister Koutsantonis; H to Ms Helen Fulcher; CH to Mr Holden; TM to Mr Maras.]

that the Gillman/Dry Creek lands would be part of a contestable process in due course. This meeting occurred about 6-9 months before the URA took over the functions of the LMC.

Mr Maras also said he requested to see valuations and some 'reversionary arithmetic relating to the landfill'. He said that for a piece of land as large as this that, 'the big dollar end, is the landfill'.

That was not the first time that Mr Maras had raised with Minister Koutsantonis the opportunity available for developers to use Gillman for landfill.

Minister Koutsantonis said that he was aware in general terms that there was an issue that the opportunity to fill Gillman had a value for developers because Mr Maras had raised it with him more than once. As I have said, Mr Maras gave evidence that he had raised the issue of fill at the Board meeting of 25 November 2013 in Minister Koutsantonis' presence, but did not give evidence of any other time that he had a conversation of that kind. Minister Koutsantonis said that Mr Maras raised the issue about fill with Mr Hansen and Mr Buchan at a meeting, and that Mr Buchan had later said 'No, there's no issue, we have got plenty of land, I don't know what Theo is talking about.'

This was not put to Mr Buchan by me because Minister Koutsantonis gave evidence after Mr Buchan. Mr Buchan gave evidence about the URA's experience in developing other low-lying industrial land, that acquisition of fill involves cost rather than income. In the course of his evidence I asked:

Q. Did it occur to you that or was it discussed within the authority that filling the land could be a positive?

He answered:

A. The answer is, it was discussed. The thought of it being a positive was never entertained. The expert advice that had been provided indicated that there were two matters that would need to be contemplated in an activity like this, one is, yes, the fill that is actually drawn in and the business model [REDACTED] where you actually charge a levy and people come in and deal with that.

Two issues: Yes, you charge a levy, you can charge a revenue stream and receive the money, but then you will have significant compacting and general earth movement costs associated with that process, so there was anticipation that there would still be a cost associated with filling the land. What it would do is potentially reduce the cost you were going to incur in filling the land. The second part that was contemplated, in the model that we were turning our minds to, in the model anticipated, it was difficult to reasonably anticipate that you could receive fill in the volumes necessary to fill land when you are charging a significant fee for someone to deliver land where they would actually have alternatives to go elsewhere to provide it. In our experience developing on East Grand Trunkway or through Port Adelaide or wherever we were undertaking development, essentially you always ended up having to acquire fill to match the profile of the development, the time of the development etc., that you were undertaking.

Mr Maras said that he also said at that meeting to Minister Koutsantonis and to the members of the Board that the Board was being asked to tie up 400 ha of land to be sold at today's price in nine years' time and that nobody who was selling their house would do that.

It was his opinion at that time that the land was probably being sold at under valuation.

He said Minister Koutsantonis did not react.

Dr Rischbieth was present at the 25 November meeting by teleconference as she was then in Sydney.

She said that during the meeting she raised with Minister Koutsantonis the question of probity and risk, in relation to which she required further information. She said at that meeting she recognised

that it was a question for Government as to whether the transaction should go forward but she was concerned with the question of due diligence. Dr Rischbieth said that the Board required further information.

Mr Hansen has said that the Minister did not apply any undue pressure on the Board or the URA at the Board meeting of 25 November.¹⁷⁶

Mr Buchan said that the Board was very pleased to have the Minister present. Mr Buchan said that Minister Koutsantonis was forceful in a passionate way in his presentation to the Board. Minister Koutsantonis mentioned the employment opportunities; the competition with Queensland for the gas and oil hub and the need for further infrastructure which would make Adelaide a key mining hub. Mr Buchan said:

- A. *Yes, absolutely. And to that end he traversed many of the matters that the Board had raised. 'This is the picture, but tell me what your issues are,' and there were discussions. I remember Amanda Rischbieth was on a speaker phone. For my recollection she was unable to attend the meeting for whatever reason. She attended the meeting but by speaker phone. I remember her because Amanda was very good in the probity matters. Every member had a slightly different reason why they were displeased, if I can put that way. And Amanda's (inaudible) was the probity, and I can remember the Minister very clearly kind of leaning forward saying, 'what probity? There is no probity. We have the authority; we have the power to do this'. And the Minister got up and left. And I remember - - I do not know why - - Craig Holden standing up and stretching his back and getting behind his chair and stretching and saying, 'I can see he is passionate. I understand what he wants. How do we help them? How do we provide them with more information to help them make a decision?*

And that is when there was discussion about do we have a, do we get a DMITRE expert, or DTED, or whatever they were called, to come in and talk about it and embellish more. That was kind of where the meeting finished. I think after that, and again I wasn't part of any of these conversations, there was a general view to getting another person in to tell us that mining is going to be fantastic, and boom, and this is a great opportunity, is not going to convert or turn the Board into experts and so why would they play outside of the realm. That is when Fred - - with whatever reason, my recollection is, in consultation with Board members, crafted the recommendations that ultimately were put together.

Minister Koutsantonis was asked whether he had attended the Board meeting on 25 November 2013 in order to persuade the Board to approve the transaction. He said:

No. Look, I know this from my perspective, Commissioner, I was getting -- I had just received a piece of advice from a Board that was completely contrary to everything the agency had been telling me. So, I -- I didn't understand what was going on here. I --- I was perplexed.

How could the Board not be doing the same thing as the -- as the agency? Why would my expert Board think that this was a bad deal? But my expert agency thought this was a good deal? And I think the agency were keen for me to convince them to change their mind. But I wanted to understand what was -- what was going on.

Was this about -- was this about them not getting information and them just digging their heels in and saying, 'Right, no we're not -- we're not playing ball anymore because the agency has been treating us so badly' or is this because it's a bad deal?

- Q. Yes.

¹⁷⁶ See Annexure 3 to this report.

A. *I didn't know. Because, like I've been telling you, it had been constantly coming to me that they were not getting the information that they needed. So I wanted to understand it.*

I went along there and I think one of the first questions they asked me was, 'Why do you think this is a big deal?' Or thereabouts; that was, you know, that was the idea. Now, I spoke quite passionately, like I always do, about oil and gas because I'm a big believer that oil and gas is going to be one of the big industries in this State, eventually.

Q. Yes.

A. *And despite Mr. Gerlach's political persuasion and Mr. McMahon's political persuasion, these were people who had very good connections within the oil and gas industry, and I was keen to see this developed. The truth is the Cooper Basin -- this is what I told the Board -- the Cooper Basin straddles two states; Queensland and South Australia. And we're very lucky that Tom Playford built Moomba -- well, helped build Moomba in South Australia -- and it wasn't Sir Joh Bejelke Peterson building it in Queensland. And I was very keen to see all this unconventional gas equipment fracture stimulation (inaudible) which are a series of (inaudible) that build up pressure to fracture stimulate the ground. I wanted them assembled and built in South Australia and transported up into the Cooper; the trick is though the road is bituminised from Brisbane to the Cooper Basin. In South Australia it's not. It's a terrible track.*

And you might have read in the paper recently where (inaudible) upgrade the Strzelecki Track. One of the reasons is I want to see companies like Santos and Beach and Senex and Drill Search and Cooper Energy importing out of the port of Adelaide their equipment (inaudible) the services -- the services jobs are where the jobs are; it's not in the actual drilling, it's in the ancillary industries and I want to see that here. And that's what we should be dealing with, the department advising me -- you know -- well, the department were advising me what's going on here. So when they asked me, why are you (inaudible) I was not speaking to them as the Urban Renewal Minister, I was speaking to them as the Mining Minister. My idea was if we get an advantage (inaudible) we should take it. Because -- well, what's going on in off shore South Australia and the Great Australian Bite, we've got BP and State Oil and Murphy Oil Australia and Santos and Chevron we are -- we could be looking at a very large expansion of that industry.

And I've been an advocate of that in my party; and that's what I said to them. But they were looking at it from a -- I assume they were looking at it from a very different point of view. I wasn't there to tell them that it was value for money. I was there to tell them that this is what the government's vision for that land was. This is what -- well, what I want it to be used for. You know, in the end -- in the end, if they had said, 'Thank you very much, Minister, but that's not all we're here for, our responsibility as a Board is to say that we don't think you're getting value for money; we're not changing our recommendation', then that would have been it.

Q. *That sounds like a person who is trying to persuade someone?*

A. *No, it's -- well, for me, it's telling them what I'm thinking.*

Q. *Yes. That's -- that's not a criticism? It's just --*

A. *No, I know it's not, Commissioner. But the idea that I can change Theo Maras's mind is ridiculous, or Craig Holden or any of them, you know. I remember Mr. Terlet leaving the room and coming back and being very angry at me; I don't know why he was angry at me. But I -- I'm not clever enough to change these people's minds.*

Q. *But you did?*

A. *No, they changed their own minds.*

Q. *Well, after hearing you?*

A. *Well, I'm not that convincing. Look, Commissioner, I went there and spoke to them about what I believe the value was in terms of the industry. If they had said to me, 'But, Minister, this deal doesn't make sense: Do not do it. We're your expert Board: Do not do this.' That would have been the recommendation to Cabinet.*

Q. *But that's not what they had been saying. What they had been saying is it ought to go to market. Not that the deal does not make sense but it ought to go market?*

A. *Well, they didn't make that recommendation after my meeting; and if they had that's would have happened.*

Q. *But they made it before the meeting?*

A. *Yeah, well, they changed their minds; they're a highly paid, highly respected Board, then I'm entitled to take their advice if they --*

I don't try and shop around the advice that I want, Commissioner, which I -- I-- I assume what some of the evidence is leading towards. If the department and (inaudible) and the Board had said to me at the end of my conversation with them -- a lot of it was about, you know, us not getting information and things on time, which I addressed. And I had said to -- to the members of the Board, I remember saying, you know -- Bronwyn said to this to me many times -- but I say, if they'd said to me at the end of this, 'That's all great, you've said all that; go to market'. That's what would've happened.

And this was -- despite my political differences with Mr. Maras he is someone I respect and the resignation afterwards I really didn't understand, I wanted to go and see him about. I know he talked about it in his -- in his -- in his evidence. But if -- if they had all said to me, 'No, still go out to market.' it would have happened. And if the agency had said that, that's what would have happened.

Q. *Yes. Well, the evidence seems to be that you spoke passionately at this meeting and as a consequence the Board tried to arrive at a solution?*

A. *Hmmm.*

Q. *Is that --*

A. *I was not there; I left, Commissioner.*

And later:

Q. *Well, when you left the meeting what do you understand happened?*

A. *I wasn't sure. What would happen then was, they would've discussed it and let me know later what they thought. And they did.*

Q. *If you'd spoke in the way that you just mentioned to me, you would have been assuming that that might change their mind.*

A. *No. I believe that the Board hadn't been getting the respect they deserved from the agency, which was fundamentally the complaint. 'You know, we're in charge of this agency; we are the Board we're not being given the respect we deserve.'*

There was a lot of conflict around Mr. Hansen's performance review. And I wanted to give them the respect they deserved by going there and answering their questions. Now, do I have the authority to change a professional Board's mind? I don't think so.

Q. *Well, why would you say that?*

A. *Because I'm a Labor politician who hasn't made a dollar in the development industry in my life; these guys have.*

Q. *But you are a minister?*

- A. *So what? Ministers come and go. And we were heading to an election no one thought we were going to win, including, Mr. Maras.*
- Q. *Now --*
- A. *The truth is a government after four years -- heading to an election -- at the end of that year, is its weakest possible moment, The idea that anyone thought we were going to win that election is laughable; the idea that that Board was trying to curry favour with me because I'll be the minister following the election, no one believes it.*
- Q. *I'm not --I'm not suggesting that -- that they're trying to curry favour but they might be influenced by the fact that the Minister has this vision which you mentioned?*
- A. *Oh, they might -- they may have been; you'd have to ask them. But the truth is that these are highly paid, highly professional Board members who've all done their accreditations through the appropriate process to know what their functions are and they have responsibilities.*

Now, if they had said to me, 'Thank you, Minister, that's a lovely vision but our responsibility is to the agency and this is our advice; you can choose to accept it or reject it'.

The Board Minutes state:

1.3.4 Proposed Purchase of Renewal SA Land at Gillman

Note that this matter is classified Sensitive: SA Cabinet as it relates to matters that have been considered by Cabinet or are to be considered by Cabinet.

Further discussion on this matter was held.

- *The Hon Tom Koutsantonis MP, Minister for Housing and Urban Development and Sarah Goodchild, Ministerial Adviser, joined the meeting.*
- *Board Member Mike Terlet AO excused himself from the discussion due to a potential conflict of interest.*
- *The Minister outlined the direct approached (sic) received by the Premier via letter from Adelaide Capital Partners (ACP) seeking to purchase a portion of Renewal SA owned land at Gillman to develop a mining services hub to support the oil and gas industry.*
- *Upon receipt of ACP's letter the Premier referred it to the Minister for Renewal SA to consider and provide advice. The Minister requested that the Board further consider the matter and provide advice back to him to enable Cabinet to determine its response to the ACP offer.*
- *The Minister and Ms Goodchild left the meeting.*¹⁷⁷

I am told that after his presentation robust discussion took place between Board members and Minister Koutsantonis. Further discussion occurred after Minister Koutsantonis left.¹⁷⁸ The Board's Notes of Meeting indicate that the following issues were addressed:

- *Discussion on the verbal advice provided by the Department for Manufacturing, Innovation, Trade, Resources and Energy (DMITRE) in support of the off-market transaction to enable a significant mining services hub to be established at Gillman to support the oil and gas industries, close to outer-harbour and road and rail links. DMITRE have advised that this is a unique opportunity that would enable the hub to be established in South Australia rather than interstate.*
- *Discussion on the potential for this land to be placed on the market and whether there would be interest from other entities or consortia that could provide the strategic mining services hub focus.*

¹⁷⁷ RC4.

¹⁷⁸ Ibid.

- *If the Government determined to place the land on the market for tender there is a need to ensure that the supporting documentation established clear criteria for the use of the land to be aligned to the mining services sector thus enabling the process to be kept within a defined timeframe and enabling any assessment of proposals to be undertaken expeditiously.*
- 
External probity advice had also been obtained from BDO in respect of the Cabinet endorsed negotiations with ACP.
- *Discussion on the potential reputational risks accruing to Renewal SA should an off-market sale proceed.*
- *Discussion on the potential implications for the Adelaide City Council's (ACC) compensation claim for that portion of the land compulsorily acquired by the former Land Management Corporation (LMC) should the off-market sale proceed.*
- *Discussion regarding any previous industry interest in purchasing this land. There has been long term lobbying from the property industry for Government to prepare the land for release to the market because of the extensive costs of readying this land for subdivision, including land fill and compaction (up to 3 metres in some instances), headwork infrastructure, roads etc. There has been little interest in broad hectare purchase unless Government funds the infrastructure. What limited interest has been expressed has been from industries such as the resource recovery industry for smaller land portions.*
- *Discussion on the current Gillman master planning consultation currently underway and closing on 9 December.*
- *Discussion on the options and potential timing should the land be placed on the open market.*
- *Discussion on how communication and messages would be managed by Government and by Renewal SA.*
- *Board requested that it be provided with an Out-of-Session Decision paper before the end of this week, which provides options for consideration to enable the Board to advise the Minister on a preferred option/s for Cabinet to consider in relation to the sale of Renewal SA's land holding at Gillman to support a mining services hub.*
[Matters Arising – Out-of-Session Decision Paper to be provided to Board providing options for Board to consider regarding the sale of Renewal SA land at Gillman for an oil and gas industry mining services hub.]
- *The following information is requested to assist Board members in their deliberations:*
 - *DMITRE advice regarding the benefits of the mining services hub at Gillman. Including any issues regarding timing;*
 - *Crown Solicitor's Office advice regarding any issues relating to probity or potential legal issues that could arise from proceedings with an off-market transaction;*
 - *Analysis of any potential impact on the ACC's compensation claim for that portion of the site compulsorily acquired by LMC;*
 - *Risk analysis and mitigations associated to an off-market sale including how communications / stakeholder relations would be managed, and*
 - *Advice on any other market interest expressed in this land by industry.*

Unfortunately there are two versions of the Minutes of the Board meeting of 25 November, both of which have been certified correct by the Chair, Ms Pike. The last bullet point commencing 'The following information ...' was contained in one set of Minutes but not the other.

The discrepancy was not noticed before Ms Pike gave evidence. I wrote to Ms Pike to try to determine which of the Minutes was in fact the record of the meeting and she replied that the Minutes containing the extra bullet point are the correct Minutes. She wrote:

I am of the view that the second set of Minutes marked with the notation 37.1 is the correct set of Minutes. This was also the set of Minutes which was included in the papers which we sent to the Board for consideration on the meeting on the 9th of December 2013.

As you note I did sign a first draft of the Minutes which had been sent to me following the meeting of 25 November 2013. These Minutes did not include the list of additional information which the board requested and they were subsequently amended.

My practice is to formally sign the Minutes of previous meetings once they have been approved at the next meeting. I believe I inadvertently signed the early draft of the Minutes of the meeting of 25 November 2013 and then signed the correct set when the mistake was identified by myself and Mr Warren Smith, Executive Director Corporate Affairs and Strategy.

That evidence is consistent with an email sent by Mr Smith on 28 November. On that day Mr Smith circulated to Board members and Messrs Hansen, Buchan and Ms Hart, a draft of the Minutes of 25 November 2013 which did not contain the extra bullet point which was included in the later version of the certified Minutes.

Although Mr Buchan said he thought the shorter version was correct, which he said was also Mr Smith's view, I think I should accept Ms Pike's evidence on this point because she was responsible for the Minutes.

The Board minutes above show that the Board was apparently told that the CSO advice was verbal and by email [REDACTED]

The minutes indicate the Board accepted that its resolutions of 21 November were not an end of the matter.

Ms Goodchild said in evidence that she attempted to arrange a briefing for the Board from Mr Goldstein for that day but she was unable to do so. She spoke to Ms Pike but was told that 'they didn't need any further briefings'.¹⁷⁹

On 25 November 2013, Minister Koutsantonis issued a Press Release in relation to the Gillman Draft Masterplan and was quoted as saying that 'Our vision for the Gillman area is for it to be a large – scale employment precinct ...' and that 'once developed, the precinct could support about 6000 jobs'.¹⁸⁰

On 25 November Mr Piovesan emailed Mr Frearson-Lea acknowledging receipt of the drafts and stating that they would respond when they had obtained their client's instructions.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

¹⁷⁹ RC34 – The full note reads '25/11/13. Bronwyn Pike. The Board had a good discussion after you left. Thank the Minister. They don't feel they need any further briefings. They're getting the Crown Solicitor's advice and info about the risks and going to put some recommendations together from the Minister. Michael working on it now.'

¹⁸⁰ Tom Koutsantonis, press release, *Gillman draft Masterplan released*, 25 November 2013, SA Government website, <http://www.premier.sa.gov.au/index.php/media-centre/news-archive/903-hon-tom-koutsantonis-mp/3625-gillman-draft-master-plan-released>.

¹⁸¹ RC4.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

There is no evidence that the CSO advice of 27 November was shown to anyone outside URA management. It was not provided to the Board members until the afternoon of 17 December 2013 when it was sent to them with the earlier CSO advice of 11 September 2013.

Minister Koutsantonis said in relation to the failure of management to give the Board the legal advice:

I instructed the department to give them all the information that they needed. I regret now not doing it in writing. I've never -- I've never had to -- I've never haven't -- I've never had to give a direction to a Public servant, in my knowledge, in writing.

By the time the Board was provided with the advice Mr Maras and Mr Terlet had already resigned; the Cabinet had made its decision; and the Option Deed had been executed. As far as I know the legal advice was never provided to Cabinet.

Also on 27 November 2013, Mr Thompson of BDO signed a letter addressed to Mr Buchan which reported on his provision of probity services in relation to the negotiations with ACP.¹⁸² He said that the letter did not constitute an audit opinion.

Mr Thompson said that nine times out of ten a probity adviser does not provide a report.¹⁸³

Mr Thompson was not aware when he wrote his report of 27 November of the Board's decisions earlier that month.

¹⁸² RC7.

¹⁸³ The services that he had contracted to provide included an obligation 'to report on all probity issues associated with an off-market Land transaction with the proponent'.

Mr Thompson had not been told the valuations being relied on by the URA were not current but dealt with the land as at February 2010 and that those valuations did not cover the same land as the ACP proposal. He had not been provided with a copy of the URA's RPMP.

Mr Thompson's report said under the heading 'Agreed upon Procedures':

BDO were engaged to observe, advise and to report on probity issues associated with the Lipson Estate procurement process and to undertake the following activities:

- *Recommend steps to be undertaken in the process (including development of Conflict of Interest and Confidentiality Declarations, Evaluation Plan, Risk Management Plan and Negotiation Plan);*
- *Provide advice in respect of the Tender Evaluation and Negotiation Plans;*
- *Ensure that fairness and impartiality are observed throughout the negotiations;*
- *Ensure that the evaluation criteria from the Evaluation Plan is consistently and appropriately applied during the evaluation phase; and*
- *Provide comment and advice on compliance/probity issues as required.*¹⁸⁴

In the set of 'Agreed upon Procedures', no mention is made of ensuring compliance with URA or Government policies. This may be contrasted with the second set of 'Agreed upon Procedures' relating to BDO's oversight of the assessment of compliance by ACP with the Option Deed conditions precedent, to which reference will be made.

Mr Thompson made the following observations in relation to the assessment of an unsolicited proposal in that report:

In relation to considering an unsolicited proposal there is a risk of an appearance of impropriety and perceptions of conflict of interest. Direct negotiations also run the risk of inferring a degree of favouritism, unfairness and lack of transparency.

However there are occasions where direct negotiations may be justified based upon particular circumstances. The key consideration is to ensure the direct negotiations will lead to an outcome that maximised value for money for the State whilst demonstrating adherence to probity principles.

In this case Cabinet required 10 aspects (which included financial and non-financial aspects) to be considered in the negotiations to achieve 'value for money' (versus undertaking a competitive tender process). These aspects were interpreted by the TEP into evaluation criteria and for each a 'minimum' requirement was agreed for each prior to negotiations. The evaluation criteria and 'minimum' requirements for each were considered in the Evaluation and Negotiation Plans.

One aspect was the price which had to meet or exceed the higher of two independent valuations recently received by Renewal SA.

Mr Thompson reported that 'the process was conducted in accordance with the approved Evaluation and Negotiation Plans and no material issues of a probity nature were observed'.

On 27 November 2013 the Director Government Enterprises provided the DTF's 'Costing Comment' to Minister Koutsantonis which addressed the draft Cabinet submission of 21 November 2013 and therefore the two options in that submission.¹⁸⁵

¹⁸⁴ RC7.

¹⁸⁵ RC8.

The Minute included the statement that:

Renewal SA has concluded negotiations with ACP and is now providing Cabinet a submission with two options:

- *Option 1 – Reject the ACP offer and instead offer the Gillman/Dry Creek land to the market for sale in a transparent and open manner; or*
- *Option 2 – Approve ACP’s unsolicited proposal to purchase up to 407 hectares² of Renewal SA owned land at Gillman/Dry Creek for up to \$122.1 million.*

Option 1 is consistent with the resolution of Renewal SA’s Board and addresses the following risks identified by the Board, being: lack of market testing to determine the competitively derived market value of the land; the probity of accepting an unsolicited offer for the land and the dissatisfaction with Renewal SA facilitating the sale through a non-competitive process; and the potential implications arising from the sale of the land in relation to the Corporation of the City of Adelaide’s (ACC’s) claim for compensation for the portion of the subject land compulsorily acquired.

On 28 November 2013 at 1:27 pm, Mr Smith emailed Board members attaching a further Out of Session Decision Paper (‘OSDP(3)’) seeking a response urgently from Board members, by 5:00 pm that same day, so that the matter could be brought before Cabinet.¹⁸⁶

In his email, Mr Smith said:

Following the Board discussion with the Minister for Housing and Urban Development on Monday 25 November, the paper focuses on three critical issues for the Board’s consideration as the owner of the land in question and the agency responsible for conducting any sale process:

- *Firstly, is the land at Gillman/Dry Creek an appropriate location for a resources sector services hub to support the expansion of the oil and gas industry?*
- *Secondly, does the offer received by Government from Adelaide Capital Partners for the land at Gillman/Dry Creek represent a good value offer based on independent valuations and existing market evidence?*
- *Thirdly, has Renewal SA managed the consideration of Adelaide Capital Partner’s unsolicited offer to Government in accordance with appropriate policies and procedures relating to probity?*

The attached paper seeks to provide assurance to the Board in relation to each of the three critical issues.

Mr Hodgen’s evidence was that the request by management made of the Board on 28 November in the email that accompanied the OSDP(3) for an answer by 5 o’clock the same day was not a fair request of the Board.

Mr Buchan said that the three critical issues were identified by Mr Hansen although as will be seen the OSDP(3) suggests that the Minister had identified the issues by requesting the advice from the Board.

Mr Buchan said of his own involvement in the creation of the OSDP(3):

Q. There is an email from Mr. Smith to the members. And a further explanation for some of the matters that were addressed by the Minister. Does this decision paper respond to what was requested by the Board?

A. Yes, it did.

Q. Does it? What options does it offer?

¹⁸⁶ RC4..

A. *Options to provide advice. My understanding of it, by this stage, Commissioner, I am falling further out of the loop in terms of the discussions, the Chief Executive is back now and having direct - - conversations directly with the Chair and other members by this stage. This was drafted separate to me and was dealt with in discussions with the CE, not myself. From my conversation with the Chief Executive, this was reflective of what they had asked for.*

Q. *Well of course the Chief Executive was at the meeting of the 25th?*

A. *Of the 25th, yes.*

Mr Smith said in his email:

There are, of course, a number of other critical matters that Government (Cabinet) must consider in relation to the proposal. These include: is the Adelaide Capital Partner's proposal to develop a resources sector services hub to support the expansion of the oil and gas industry credible; does it meet with Government strategic economic development objectives; and does it give Government sufficient confidence to proceed with accepting the offer on a preferred basis? These are matters that other bodies (including the Department of Manufacturing, Innovation, Trade, Resources and Energy and the Economic Development Board) would advise Government on and are not matters that Renewal SA can advise on as they are outside of Renewal SA's regulated roles, responsibility and expertise.

As outlined in the attached paper there had been a general understanding for some years that the Renewal SA land at Gillman/Dry Creek would be available for industrial/commercial uses with a number of unsolicited inquiries received by Government for portions of the land. These inquiries have generally related to land fill operations whereby the land would be held for fill disposal until such time as it could be developed for other industrial/commercial use. When discussing these inquiries with proponents the land has, in their view, held a very low value, much lower than that proposed by Adelaide Capital Partners.

The offer to purchase a large portion of the land and to develop it as a resources sector services hub brings the development of this land forward with a much higher value-add than otherwise had been contemplated through previous inquiries and has the potential to see these lands developed much sooner than (sic) would otherwise have been the case.¹⁸⁷

The contents of the paper did not respond to the Board's request at its 25 November 2013 meeting and mentioned either as the last or second last bullet point depending upon which Minutes are correct. Mr Buchan however said that the OSDP (3) 'was a compromise that the Board was trying to find'.

Mr Hansen has said that the Board was not rushed. He said that the Board knew what it wanted and that the issues were narrowed as a result of what Mr Holden had said at the meeting on 25 November.¹⁸⁸

Although, as I have said, Mr Buchan's evidence was that Mr Hansen had identified the three issues, the OSDP(3) stated that Minister Koutsantonis had requested advice on key issues.

Minister Koutsantonis has no memory of making this request. He said the agency was the source of this request for advice from the Board.

Ms Pike said it was Mr Hansen's idea to separate the issues which informed the OSDP(3) of 28 November.

¹⁸⁷ RC4.

¹⁸⁸ See Annexure 3 to this report.

The key issues identified were:

- a) *Is the land at Gillman/Dry Creek an appropriate location for a resources service hub to support the expansion of the oil and gas industry?*
- b) *Does the ACP offer for the land at Gillman/Dry Creek represent a good value offer based on independent valuations and existing market evidence?*
- c) *Has Renewal SA managed the consideration of ACP's unsolicited offer in accordance with appropriate policies and procedures relating to probity?*
- d) *Is the ACP proposal to develop a resources sector services hub to support the expansion of the oil and gas industry reliable; does it meet with Government strategic economic development objectives; and does it give Government sufficient confidence to proceed with accepting the offer on a preferred basis?*¹⁸⁹

The Board was asked to provide advice on a), b) and c) with other Government agencies such as DMITRE and the EDB providing advice in relation to d).

The OSDP (3) recommended that the Board note:

*That advice pertaining to whether the ACP proposal meets with the Government's strategic economic development objectives and gives Government sufficient confidence to proceed with accepting the offer on a preferred basis will be provided by other Government agencies, and ultimately this will be a policy decision of Cabinet.*¹⁹⁰

The 'Discussion' section of the paper addressed the three issues. The first issue was dealt with quickly. The second issue of good value was addressed by referring to the two valuations obtained in relation to the compulsory acquisition dispute. In that same section reference is made to three sales of land in excess of 50 ha which is said 'supports the value inherent in the ACP offer of \$30/m², equalling to a total purchase of \$122.10 million'. The OSDP (3) said, repeating the effect of Mr Smith's email:

*In addition there has been a general understanding for some years that land at Gillman/Dry Creek would be available for industrial / Commercial uses with a number of unsolicited inquiries received by Government for portions of the land. These inquiries have generally related to land fill operations whereby the land would be held for fill disposal until such time as it could be developed for other industrial / commercial use. When discussing these inquiries with proponents the land has, in their view, held a very low value, much lower than that proposed by ACP.*¹⁹¹

In dealing with the third issue the OSDP(3) referred to the URA's policy 'Real Property Marketing and Pricing Policy' and identified what it said were the relevant provisions.¹⁹²

It referred to the CSO's advice of 11 September and 27 October without identifying the dates or the content and context of the advice.

It told the Board members of Mr Thompson's appointment and attached his letter of 27 November 2013. It said:

The probity issues in relation to the legal and commercial aspects of an off-market transaction of this scale were identified and raised by Renewal SA in the submission considered by Cabinet on 23 September 2013. To date Renewal SA has acted, and continues to act, in accordance with Cabinet approvals, and in accordance with Cabinet directions.

Renewal SA has conducted its considerations and negotiations in relation to ACP's unsolicited offer in accordance with established policies and processes, and in addition, has sought and acted upon independent probity advice.

¹⁸⁹ RC4.

¹⁹⁰ Ibid.

¹⁹¹ Ibid.

¹⁹² RC9.

The recommendations made in the OSDP(3) were:

4. RECOMMENDATIONS:

*It is recommended that the Board of Management **approves**:*

1. *That advice be provided to the Minister for Housing and Urban Development that:*
 - a. *Renewal SA's landholding at Gillman / Dry Creek, that is the subject of the Adelaide Capital Partners (ACP) unsolicited offer to purchase, has been identified as land appropriate for industrial / commercial development to support employment and growth targets contained in The 30-Year Plan for Greater Adelaide and as such a resources sector services hub is an appropriate use of the land;*
 - b. *The ACP offer of \$45 million (GST exclusive) as their first exercisable option for 150 hectares of land at Gillman / Dry Creek and \$77 million (GST exclusive) for their second and third exercisable options for 257 hectares of adjacent land represents a good value offer based upon independent valuation advice and comparable market evidence;*
 - c. *Renewal SA's consideration of ACP's unsolicited offer has been managed within existing policy relating to off-market transactions and has been guided by independent probity advice.*

*It is recommended that the Board of Management **notes**:*

2. *That advice pertaining to whether the ACP proposal meets with the Government's strategic economic development objectives and gives Government sufficient confidence to proceed with accepting the offer on a preferred basis will be provided by other Government agencies, and ultimately this will be a policy decision of Cabinet.*

At that particular time the only policy that the URA had in relation to the type of transaction that the OSDP(3) addressed was the RPMP Policy to which I have already referred.¹⁹³

Four Board members sent emails supporting the recommendations, which had the effect of a resolution of the Board accepting the recommendations.¹⁹⁴

Ms Pike said that Minister Koutsantonis knew, and the Government knew, that the Board did not support the off-market transaction.

Ms Pike said that the Board did not seek the valuations before it resolved on 29 November.

She said that the OSDP(3) was designed to give the Board comfort that there were up-to-date valuations which allowed the Board to note the matters in paragraph 1b of the Recommendations.

Ms Pike said that with the benefit of hindsight there was a lot more information about the potential utilisation for the land including landfill purposes that the Board was not able to canvas because it did not have the time or the level of detail required to make that decision.

She said the Board was never given the opportunity to determine the best use of the land.

Ms Pike said that the Board was not aware of approaches made by IWS and E&A Ltd that had been made on 15 November 2013.

Ms Pike said that if she had her time again she would not have supported the Board's resolution made on 29 November because the Board was not privy to a lot of additional information that has come to hand since, about the valuations and about the potential usage of parts of the land.

¹⁹³ RC9.

¹⁹⁴ RC4.

Ms Pike said that the resolutions made on 21 November 2013 were never withdrawn.

Mr Holden said that by the time that the Board received the OSDP(3) the Board had had enough. He said that by this stage the members of the Board had got to the point where they were talking about resigning.

Some members of the Board took the view that they had been asked to approve the transaction but on a number of occasions had said no.

Mr Holden said that at the time the Board resolved to provide the advice that it did and it ultimately went to Cabinet the Board had been told all of the valuation advice was current and could be relied upon but the Board did not see the valuations.

He said that the Board took the view that the whole process was inappropriate. There was no fair and open, transparent tender process and it was unacceptable in principle.

Dr Rischbieth said that when she received the OSDP(3) on 28 November which included the report of Mr Thompson of 27 November, she felt pressured to provide a response and into not being obstructive.

She said at that time she was wavering as to whether or not she should support the recommendations in the OSDP(3) because the risk remained the same as she had previously identified.

The resolutions were included in the Board Minutes of 9 December 2013 at which only Ms Pike, Ms Fulcher, Mr Holden and Dr Rischbieth were present (for reasons that will be explained shortly):

Proposed Purchase of Renewal SA Land at Gillman for an Oil and Gas Industry Hub

The Board of Management resolved to approve:

1. *That advice be provided to the Minister for Housing and Urban Development that:*
 - a. *Renewal SA's landholding at Gillman / Dry Creek, that is the subject of the Adelaide Capital Partners (ACP) unsolicited offer to purchase, has been identified as land appropriate for industrial / commercial development to support employment and growth targets contained in The 30-Year Plan for Greater Adelaide and as such a resources sector services hub is an appropriate use of the land;*
 - b. *The ACP offer of \$45 million (GST exclusive) as their first exercisable option for 150 hectares of land at Gillman / Dry Creek and \$77 million (GST exclusive) for their second and third exercisable options for 257 hectares of adjacent land represents a good value offer based upon independent valuation advice and comparable market evidence;*
 - c. *Renewal SA's consideration of ACP's unsolicited offer has been managed within existing policy relating to off-market transactions and has been guided by independent probity advice.*

The Board of Management resolved to note:

2. *That advice pertaining to whether the ACP proposal meets with the Government's strategic economic development objectives and gives Government sufficient confidence to proceed with accepting the offer on a preferred basis will be provided by other Government agencies, and ultimately this will be a policy decision of Cabinet.*

Carried by the majority of members on 29 November 2013.

(*Note that the Out of Session Decision Paper 15 (Paper 4) – Proposed Purchase of Renewal SA land at Gillman dated 28/11/12 was preceded by the following papers:

- Out of Session Decision Paper 15 (Paper 1) – Proposed Purchase of Renewal SA land at Gillman dated 13/11/13 – withdrawn.
- Out of Session Noting Paper 15 (Paper 2) – Proposed Purchase of Renewal SA land at Gilman dated 14/11/13 – withdrawn.
- Out of Session Decision Paper 15 (Paper 3) – Proposed Purchase of Renewal SA land at Gillman dated 20/11/13.¹⁹⁵

On 29 November 2013, Mr Hansen sent a Minute to Minister Koutsantonis setting out the Board's 28 November resolution and attaching a draft Cabinet submission.¹⁹⁶

The draft Cabinet submission was created by Mr Rollison. The 'Contact Officer' identified in the draft Cabinet submission was Mr Buchan.

The Minute set out the three discrete pieces of advice the Board recommended to approve. The Minute did not refer to the Board's earlier disapproval of the ACP deal and its reaction to the OSDP and OSNP. However, Minister Koutsantonis had been advised of those matters in Mr Buchan's Minute of 21 November 2013. The Board's resolutions of 21 November 2013 were also not referred to in the body of the draft Cabinet submission in the 'Consultation' section or elsewhere.

The Premier's evidence was that he would not have seen the draft Cabinet submission for the Cabinet meeting of 2 December 2013 but would only have seen the submission that he signed.

The Costing Comment prepared by the DTF and provided to Minister Koutsantonis on 27 November 2013, to which I have already referred and which mentioned the two Options, one of which was the Board's resolution of 21 November, was attached.

In the Synopsis to the draft submission it was stated:

The revised ACP proposal has been considered by the Board of Management responsible for Renewal SA who resolved to advise Government that the ACP offer (which values the land at \$30/m²) represented a good value offer, based upon independent valuation advice and comparable market evidence. The Board of Management also noted that advice to Government as to the underlying strategic value of the proposal to the State (in terms of a potential oil and gas industry hub) was the responsibility of other agencies of Government better placed to make this assessment.

In the body of the draft Cabinet submission there appeared under the heading '5.11 Other':

In relation to the risks identified above (and negotiated with ACP) there continues to be a risk that the proposal has not been subjected to an open and transparent market process. This matter has been discussed by Renewal SA's Board of Management. The Renewal SA Board of Management noted current Renewal SA policies contemplate potential off-market transactions in cases where a 'strong justification' exists, however the Renewal SA Board of Management acknowledged that Renewal SA does not have expertise in the oil and gas sector required to inform Government on whether there is sufficient merit in the ACP proposal to warrant an off-market transaction.

Based on the significant financial modelling undertaken as part of the DRR compulsory acquisition process, the Renewal SA Board of Management was satisfied that the ACP offer (which values the land at \$30/m²) represented a good value offer, based upon independent valuation advice and comparable market evidence.

The Renewal SA Board of Management also considered the issue of probity in accepting an unsolicited offer for the subject land and the potential for industry / community dissatisfaction with the sale of the subject land through a non-competitive process. In relation to probity

¹⁹⁵ RC4.

¹⁹⁶ RC7.

matters, the Renewal SA Board of Management received a Probity Service Letter from the independent Probity Adviser (BDO) which concluded that 'the Lipson Estate procurement process involved a fair, impartial and unbiased process conducted in the public interest without any known conflict of interest'.

Despite the robust internal processes adopted by Renewal SA in its dealings with ACP the concern regarding probity is reinforced by the recent receipt of two letters from industry to the Minister for Transport and Infrastructure expressing an interest in the Government's intentions, based on hearsay, of the potential sale of the land.

The Renewal SA Board of Management was also made aware of the potential impact the Government's consideration of the ACP proposal may have on the claim for compensation lodged by the Corporation of the City of Adelaide ('ACC') resulting from the compulsory acquisition by Government of ACC's interest in the DRR. The Renewal SA Board of Management expressed concern that this risk may (although it is not currently forecast) result in Renewal SA being required to make payments which exceed the 14 December 2009 Cabinet Approval.

The current assessment of compensation in that case ranges from \$6.7 million (Renewal SA's valuer) to \$28.64 million (ACC's valuer). These figures are total compensation figures and include the \$1.52 million already paid to ACC. [REDACTED]

[REDACTED] This is consistent with the 14 December 2009 Cabinet approval of the compulsory acquisition.

[REDACTED]

Mr Buchan accepted that the mention in the Costing Comment was insufficient notice for Cabinet of the Board's previous resolutions. I asked him about the content of the OSDP:

Q. That then gives rise to the draft Cabinet submission which is made on the 29th November. Which is in the white folder this time with the simple recommendations mentioned, 1 to 15. The draft submission and the actual submission do not identify, do they, the fact the Board had rejected the proposal?

A. No.

Q. Why is that?

A. No. I don't know.

Q. You weren't responsible for that?

A. No.

I asked Mr Hanlon what should have been in the draft Cabinet submission provided by the URA that followed the Board's decision on 29 November 2013:

Q. Then assuming you had this, what appears to be a contradiction in terms of the Board's resolution, what was the obligation of the management of Renewal SA in relation to presenting that to the Minister for Cabinet?

A. Well, at the very least it should have pointed out the change in direction and the reasons why that would have occurred, and new information had been presented to them to make them change their reasoning in relation to it, a change of heart of the Board or whatever it would have been.

It would have been very clear in the documentation. It should have been clear in the documentation -- it looked like the papers were written completely separately on this without any suggestion anything had happened or moved beforehand.

And:

Q. *Should Cabinet have been advised directly of the decision of 21st November?*

A. *Yes.*

Q. *Should Cabinet have been informed of the reasons for the change of heart in relation to this?*

A. *Absolutely. No doubt about it. I mean that would have been normal practice.*

Q. *That is normal practice in any Cabinet submission?*

A. *It is normal practice in any Cabinet submission especially if you have a Board.*

Q. *Could it be said that it is not necessary because the Board did not make the ultimate decision, Cabinet would.*

A. *No. At the end of the day the Board should on every occasion make a recommendation. Cabinet has every right, if it wishes, to go against that, but I am even surprised that the suggestion of the Board makes a recommendation and then suggesting but, Cabinet, you can do whatever you want, but we are recommending this. You could make a pretty good argument as to why you were making that decision and I think it goes back to the heart of how you treat a statutory board, are they there to make those decisions and recommend them.*

Mr Hanlon said that the draft Cabinet submission of 29 November 2013, authored by the URA, was deficient because it did not take into account the special value that the Gillman lands had for a soil-banking business that could be undertaken whilst the land was being prepared for industrial development. He said:

A. *The whole area of the land fill argument was not really prosecuted in this -- was not really considered in many ways in this document. Not to any extent that the actual land fill component of this particular transaction was what underpinned the entire deal.*

Q. *Should that have been apparent to Renewal SA?*

A. *Yes.*

Q. *Because of the players within Adelaide Capital Partners?*

A. *Yes.*

Q. *One of the partners is Resource Co, which is in the business of filling land?*

A. *Yes, and McMahons.*

Q. *Yes, McMahan's which is part owner of Resource Co?*

A. *Yes. That is correct. Two of the biggest players in the land fill -- and, plus, we had entered into a recent transaction with them on site -- next to this site, of which they were able to fill up to three to four metres on that site. It is quite obvious this one is flat and, this one has three metres of fill -- obviously, that is what you are going to do on the site.*

And:

Q. *The evidence from Mr. Simon Brown was that they would not include in any of this fill any waste derived fill. It would all be quarry -- all be taken out of quarries?*

A. *I'd be surprised. I would be surprised. This market is incredibly worthwhile if you were to actually provide a site where you could take fill, whatever that might be. And however he might explain it. But I go. If we were to dig any hole in Adelaide where ever you were -- the new RAH site -- we started a plaza site out here and started to dig a hole, I have got a choice of taking it to Dublin or down south which is 80 kilometres away or I could take it to Gillman and put it on this site and you could -- so he might say that. There is nothing in any of the documentation that prevents him from doing anything other than he could fill that with basically any form of fill other than waste. So I would have thought the business case was pretty well that you could put -- you would run a counter business to anybody else who is taking fill -- any sort of contaminated waste on this site.*

Q. *Would you see the business proposal for this land to use it for the purpose of making a profit out of the deposit of fill on it?*

A. *Yes, absolutely and increasing the value of the land at the same time. As a matter of fact I had a chat with the EPA not long after I started because I thought that the options on this might fall over that I would set it up as a business for the State and run it under Renewal SA's banner -- which they have done in Victoria -- which is just taking derived fill and you could have, 18 million tonnes of fill that site could take. You could put a fee on it \$10, \$20 \$30 a tonne. That is where there is the greatest return on this site. That would be an income stream to the government. That is why I am disappointed from my agency's point of view that no one even presented that as a viable option. Yet, that is exactly what Resource Co and McMahon will do.*

On the same day, 29 November 2013, the DTF sent a Minute to the Treasurer (Mr Weatherill) urging rejection of the ACP proposal in favour of an open marketing and sales process.¹⁹⁷ The Minute stated:

*To The Treasurer
Minister for Finance
Chair of SBCC*

**BRIEFING FOR CABINET NOTES AND OTHER POTENTIAL WALK IN ITEMS
2 DECEMBER 2013**

Lipson Industrial Estate (Koutsantonis)

...

- *DTF recommends that the government put the land (either the full amount or the Stage 1 (150 ha) package) to an open market sale process to which the ACP could provide a bid. This would ensure we maximise value and also reduce any perceived lack of probity associated with a direct negotiation with ACP. We note that the submission indicates that there are other parties that have expressed some interest in the site.*
- *If the government is inclined to go with the Lipson proposal it should only accept it for Stage 1 (150 ha) and not have options for Lipson to purchase subsequent areas. This would at least provide flexibility for the government to deal with the remaining 257 ha rather than having it locked up by ACP for up to 9 years and at a fixed price of \$30m2. It also avoids Lipson cherry-picking the best parts of the site and leaving the government with the rest.*

...

*David Reynolds
EXECUTIVE DIRECTOR, BUDGET BRANCH¹⁹⁸*

¹⁹⁷ David Reynolds, Minute, Briefing for Cabinet Notes and other potential walk-in items – 2 December 2013, 29 November 2013.

¹⁹⁸ Ibid.

I asked both the Premier and Minister Koutsantonis whether that Briefing Note had been provided to Cabinet. The question to the Premier was put in writing after he had given evidence. Both said Treasury's Briefing Notes are for the information of the Treasurer. They are not provided to Cabinet but the contents of the Minute might be provided to Cabinet if the Treasurer thought that appropriate.

The Premier, properly in my view, referred to the public interest immunity that attaches to Cabinet deliberations, and declined to tell me whether he, as Treasurer at the time, provided the information to Cabinet.

Because the claim of public interest immunity was properly made, I did not ask Minister Koutsantonis what the Premier, or indeed he, told Cabinet.

It follows that I cannot make a finding on the topic.

DECEMBER 2013

Early on 2 December Mr Frearson-Lea emailed Messrs Piovesan, Kain and Andreotti (copy to Messrs Buchan, Hodgen, Thompson and Andrew Gerlach) asking whether the CSO had been able to obtain its client's instructions as Mr Piovesan had said it would in his email of 25 November. Mr Frearson-Lea said that 'we would like to finalize these documents as soon as possible given that, among other things, we are fast approaching Christmas'.

On 2 December 2013, the Premier and Minister Koutsantonis signed a Cabinet submission relating to the revised ACP proposal.

The Premier said it was best practice to require a briefing before signing a Cabinet submission but usually it arrives in a docket which contains the briefing.

He said of the Cabinet submission that he would not have been acquainted with what had occurred to that point in time except to the extent it was included in the Cabinet submission itself.

He said he would discuss Cabinet submissions with his Chief of Staff and if the recommendations needed to be amended or augmented he would instruct his Chief of Staff to do so.

The Premier said that by the time of the Cabinet meeting of 2 December he knew of the Board's concerns. He had read the Treasury note but by then he said he knew the Board had resolved to recommend the proposal.

The Cabinet submission included a copy of the Costing Comment dated 27 November 2013 which was in the same terms as previously recited. It also included a copy of the draft Option Deed and Annexures A and F to that Option Deed which were respectively the Project Objectives¹⁹⁹ and The Concept Plan.²⁰⁰

The last paragraph of the Synopsis now read:

The revised ACP proposal has been considered by the Urban Renewal Authority Board of Management which resolved to advise Government that the ACP offer (which values the land at \$30/m²) represented a good value offer, based upon independent valuation advice and comparable market evidence.

There was no longer a paragraph marked '5.11 Other' in the Cabinet submission but all of which was included in the draft (with minor and inconsequential amendments) was under the heading 'Announcements'. Nothing turns on that.

The Cabinet submission set out the history of the ACP offer following consideration of the offer and the 23 September Cabinet discussions.

It referred to the potential for cost escalation in relation to delivering the development of the Dean Rifle Range land.

It also said:

The ACP proposal allows the State to achieve the forecast development profits for the project without incurring the identified development costs, thereby reducing the financial risk to Government.

¹⁹⁹ RC13.

²⁰⁰ RC14.

In the 'Consultation' section, the submission referred to the Gillman Masterplan public consultation process, which was to close on 6 December 2013. It said:

The draft Gilman Masterplan was released for public consultation on 18 November 2013. A stakeholder workshop was held on 26 November and public consultation closed on 6 December 2013. Feedback to date supports the land use in the 30-Year Plan.

In the 'Risks' section, the submission noted that there had been no opportunity for market testing of demand or pricing. It noted:

Prior to entering any direct negotiations an external probity adviser Mr Kyffin Thompson of BDO was engaged to provide probity advice about Renewal SA's negotiations with ACP. BDO provided feedback about the creation of a Negotiation and Evaluation Plan ... attended all meetings, was copied into all correspondence during this negotiation period and attended the final negotiation meeting.

That statement should be seen in the light of the negotiation history of the transaction, where a number of communications and meetings occurred between ACP and the URA after the 23 September Cabinet Meeting and before the first negotiation meeting in the presence of a probity adviser. For example the significant concessions from ACP to structure the acquisition as a series of options to provide security for the vendor rather than the vendor financing two thirds of the value of the transaction secured by a second ranking mortgage was offered by ACP prior to the involvement of the Probity Adviser.

The submission included an analysis of the anticipated financial impact of the ACP proposal, which was said to be a profit of approximately [REDACTED] across the forward estimates.

The submission said:

The financial benefit of the ACP offer is supported by the independent valuations that have been undertaken over portions of the land for the compulsory acquisition process. Those assessments value the land between approximately \$19 million (Renewal SA's valuation) and approximately \$59 million (Adelaide City Council's valuation) with the current statutory valuation being approximately \$23 million, noting that the current assessed value of the land could be achieved by Renewal SA should ACP exercise the first option only.

Under the title 'Are there any business impacts?' the submission stated that the development of the land, as proposed, would provide a 'significant positive impact for business through the provision of well-located industrial land particularly for the mining and resources, and oil and gas sectors,' provided that there were 'significant mechanisms in place to ensure that there is an equitable access for businesses to the land.'

It also said:

It is considered that negative business impact (which will materialise through the inability of some suppliers of goods and services to access work within the project) will exist.. In order to manage this impact, Renewal SA notes that it will continue to own, manage and be responsible for significant government landholdings at East Grand Trunkway Gillman (15.36 hectares), West Grand Trunkway in Port Adelaide (89.59 hectares), Northern LeFevre Peninsula (222.27 hectares) and at Edinburgh Parks (312.71 hectares). In this context, it is considered that Renewal SA and other government agencies are likely to be able to generate sufficient demand for the type of goods and services expected to be required in the project through the development of alternative land within its ownership so as to provide an opportunity for parties who are not associates of ACP.

It did not provide information about when these opportunities for parties who were not associates of ACP might be available.

The submission referred to previous environmental advice from the Department of Environment, Water and Natural Resources ('DEWNR') about a series of potential environmental impacts which could result from the proposal:

It is noted that the above should be managed through existing legislative controls, including the Development Act 1993.

The Cabinet submission recommended that Cabinet approve the ACP offer as documented in the 13 November 2013 version of the draft Option Deed.

The Recommendations to Cabinet were in the same form as in Option 2 in the draft Cabinet submission of 21 November.

I raised with the Premier the information that should have been provided to Cabinet at its meeting on 2 December 2013:

Q. *The collective responsibility of Cabinet requires does it not that Cabinet be fully informed so you can assume that responsibility?*

A. *Yes.*

Q. *In the circumstances it would have been better would it not that Cabinet had been advised of the Board's deliberations and resolutions?*

A. *I am not suggesting they weren't.*

Q. *In that paper I am saying?*

A. *Well, ideally, but you remember this was walked in. It was in the context it was really. What we already had we had a Cabinet meeting about this matter, so this was next in a sequence, in a sense it was a continuation of an earlier discussion. And I think in substance the issues which were whether it should go out to tender or not, and the Board's views about this were fundamentally before the Cabinet.*

Q. *When you say 'walked in' why does that have an impact?*

A. *It is usually a ten day rule with Cabinet submissions. But it is not usual when you have something that has been in Cabinet and it has been essentially bounced out on a conditional basis and when it comes back on a second occasion it -- you do not have to go through the whole process.*

Q. *Well, being walked in, doesn't that mean that you have to have -- to be very careful that all of the information is contained in the submission?*

A. *Well, it is probably more important what you are saying.*

Q. *Except the only record is in the submission, because we don't go to the deliberations of Cabinet?*

A. *Well I suppose it is a question of whether, for the purposes of exercises like this, where you are trying to retrospectively recreate the decision, it would be more helpful. But as a matter of fact and what occurred in this case, I am satisfied that the Cabinet had all of the material they needed to make the judgment.*

Q. *You might not have been aware of all of the matters which I am suggesting should have been included, you may not have been aware of the rejections of 13th, 14th, 15th of November and you may not have been aware of the resolutions of the 21st November in their entirety -- would that mean that the Minister has a higher responsibility to Cabinet to ensure that the documents includes everything that is relevant?*

A. *I think the Cabinet submission is obviously an important document, but so are the surrounding documents that are inputs. But also so are the contributions that are*

made verbally by the relevant minister. I think I mean it seems like the sequence here was that the two options were going to be presented until the Minister spoke to the Board, in which case they changed their position. I think the Minister knew that the -- I do not think that the Minister has any had any suggestion that you know, the Board would later almost walk away from the decision that they took up when he spoke to them. So I think so he has presented what I think he knows or knew at that time.

The Premier relied upon Treasury's Costing Comment. His evidence was:

- Q. *The costing comment as you say does have a reference to the previous deliberations of the Board, that is annexed to the Cabinet submission?*
- A. *Yes.*
- Q. *And it identifies the two options that were contained in the draft submission which never went to Cabinet. In a sense that is rather confusing, because there are not two options to be considered in the Cabinet submission to which it is attached?*
- A. *I think -- I mean the -- because the document was walked in there was not that further process, so in a sense this was a costing comment on the draft Cabinet submission not the final Cabinet submission, which was obviously altered to have regard to the fact that the Board of Renewal SA had since resolved its position.*
- Q. *I appreciate it was all done with urgency and I appreciate the reasons for the urgency -- that then reinforces doesn't it the previous proposition that I put to you, because it is confusing, the detail should have been in the submission?*
- A. *I do not know how confusing it is really. One really flows from the other. I mean to us this was really the decision, I mean you either accept or you reject you know the off market transaction, so to some degree one just reflected the opposite of the other. It did not surprise me to see the two options. The truth is you know it could have still been presented as two options in the Cabinet submission, but the preferred option was the off market transaction. Sometimes Cabinet submissions set out options, but more often than not they just put the preferred option of the Minister bringing the document in, then we try to canvas the views for and against.*
- Q. *If you look at the costing comment, it says in the third paragraph Renewal SA has concluded negotiations with ACP, and is now providing Cabinet with a submission with two options?*
- A. *Yes.*
- Q. *But it was not. It was not providing a Cabinet submission with two options?*
- A. *No, but it is not unusual for agencies to take a different view from the Minister.*
- Q. *I appreciate that, but what I am saying, but this could only be confusing to someone who is reading it I would have thought. I am reading a costing comment which refers to two options which are not contained in the submission?*
- A. *I think most people would have assumed that the Minister chose a preferred option and advanced that. It was notorious that these were the two paths where you could go, you would go out to market or entertain this proposition.*
- Q. *After the reference to the two options, option one is explained, which takes up part of the resolution of the 21st of November, as I say, does that not just create confusion because that is not what the Cabinet submission is about?*
- A. *Well, except that if you consider the Cabinet submission as a sequence, and you consider the first Cabinet submission, and you look at the very substantial section about risks, the way option one is described there, it is almost entirely consistent with the language we used in the first Cabinet submission about why it is a risk. But for me at least it looked like market/non-market; and non-market had these risks, and*

these benefits, and we just simply had to make a choice. And all of the relevant risks and opportunities were before the Cabinet. I mean as a matter of neatness should it all be contained in one document – yes – but it was not.

Q. *As I was putting to you the document does seem to pick up the resolution of the Board of November but in a context which to a reader would be difficult to understand having regard to the submission that is being put to Cabinet?*

A. *Well, I suppose I would put a different proposition, I do not think it is so difficult to understand.*

The Premier was asked about valuations. His evidence has to be understood in the light of his evidence that it was for the Cabinet to make a decision on ACP's proposal. The URA was acting as 'our advisers or people who did the ground work to give us the information necessary'.

He said he was not aware when Cabinet made its decision that there were no contemporary valuations:

Q. *Would you agree that it would have been better at least that Renewal SA obtain contemporary valuations of the land?*

A. *I saw their evidence, apparently they checked back with the valuer, he said that nothing's really changed, in fact it might have gone backward or remained stagnant. I suspect they were trying to save \$15,000; it would have been prudent to get probably get an updated one to complete the picture. Otherwise we would not be talking like this.*

Q. *It would have been prudent for this reason – because Cabinet was making the decision, it would have put this matter beyond criticism if there had been contemporary valuations provided to Cabinet?*

A. *Yes.*

I then showed the Premier Mr Rollison's email to Mr Taylor:

Q. *You will see in the chain that Jason Rollison emailed Mr. Taylor who was Renewal SA's valuer in relation to the compulsory acquisition case, on the 27th May in relation to his understanding of the industrial market. But I will let you read that first.*

A. *So it looks like he sent an email to summarise the effect of an earlier conversation that he had had.*

Q. *That is right. He sent that email, Mr. Rollison sent that to Mr. Taylor because of the Auditor-General's enquiry in relation to his knowledge of the valuation. He refers to a previous discussion. Mr. Taylor has given evidence. He says his valuation cannot be relied upon; I think for the reasons he said that is probably right. In those circumstances it would have been better, I think, would it not, if Renewal SA had obtained a contemporary valuation for the assistance of Cabinet?*

A. *Yes, it would have.*

Q. *The other thing I should tell you is that Mr Thompson, who is the probity adviser's evidence is that if he had known that the valuations weren't contemporary, which he says he didn't know, he would have advised differently.*

A. *Yes.*

Q. *Which again is another reason why there should have been contemporary valuations?*

A. *Yes.*

He was later asked:

Q. *There should have been two independent valuations which would have accorded with the policy in Renewal SA for the disposal of land?*

A. Yes.

I questioned Minister Koutsantonis about the final draft Cabinet submission, and the Cabinet submission, and in particular why it did not contain information about the Board's deliberations in respect of the OSDP, OSNP and its resolution in response to the OSDP(3). His evidence on this is important:

A. *Are you asking me why -- why the Cabinet submission didn't contain the previous rejections and a subsequent approval of the Board?*

Q. Yes.

A. *I can't answer that, Commissioner. I don't know why the department didn't put that in; you'd have to speak to the people who drafted the submission.*

Q. *But isn't it your submission?*

A. *It's mine and the Premier's; yes.*

Q. *Well, didn't you have to ensure that it's in there?*

A. *Well, that's something that the department does for me. I rely on their advice. (Inaudible) I have carriage of it into the -- into the -- into the Cabinet. And I rely on the agencies to draft my submissions; I don't have the expertise in my office to draft a Cabinet submission. And I rely on the advice of the department. They're the ones who give me the -- the drafts and the only amendments that we make are grammatical. We don't make substantive changes to -- to Cabinet submissions; we act on advice.*

Q. *Well, do you question the advice, if the advice is clearly inappropriate?*

A. *Can you please explain the question?*

Q. *Yes. If you receive advice in a Cabinet submission, to put to Cabinet, which you think is inappropriate?*

A. *That I have not previously seen?*

Q. Yes.

A. *So something new that's in a Cabinet submission; do I question? I may. I may wish to call the department and ask them about it. But, again, it's not my job to write the advice that I receive. My job is to receive the advice and act on it; one way or another.*

Q. *Quite, I understand. But in a Cabinet submission you're giving advice?*

A. *No, I am giving to them no that's not how. The Cabinet submissions are drafted for you by the agencies.*

Q. *I understand that.*

A. *Not by the political office.*

Q. *I understand that.*

A. *Thank you. So I rely on them to give me the advice to give to Cabinet. If they choose, for one reason or another, to exclude or include something based on their opinions and their advice; that is how I conduct myself.*

Once you start interfering in that process, you can change recommendations, and that's a very dangerous place for a minister or ministerial office to go. I would not have looked at this and said, 'Oh, you've included advice that's detrimental or advantageous to the outcome of the recommendations. I accept the advice they give me as is. I don't attempt to interfere in the way they draft my submissions. And I do that deliberately, Commissioner, because it is a dangerous slope for ministers to start interfering with advice.

Q. *Yes, well, perhaps I can put this way: it's not a question of interfering with the advice, it's questioning the advice?*

A. *Well, there are two ways of doing this: either I can be -- get politically involved in drafting the Cabinet submissions or I can't --*

Q. *It's not political --*

A. *-- you can't -- you can't be a little bit pregnant. In my view I don't tell agencies how to draft Cabinet submissions other than grammatically.*

Q. *Well, perhaps put another way: Cabinet deserves, as you said earlier, to have full information because Cabinet has a collective responsibility for the decision it makes.*

A. *Yes, it does.*

Q. *So for all of the other ministers who are not privy to the information they require all the information necessary to make a decision?*

A. *Absolutely.*

Q. *And for the Minister who is seeking Cabinet approval the obligation falls upon that Minister?*

A. *And the Premier and I would have assumed, whilst signing this submission, that the agency had included all the relevant information in here that was required. Now, if the Premier and I attempted to interfere with the advice that was put in here, that would be a dangerous path for us to take.*

Q. *But it's not the advice that you're interfering with; it's the information to be given to Cabinet?*

A. *Well, that's a matter for the agency.*

Q. *Well, no, I would have thought it's a matter for you, isn't it?*

A. *Well, no, it's a matter for you. I mean Cabinet and the Cabinet office -- which are the gate keepers for advice and what goes into the Cabinet -- are the ones who check this. Now, I'm entitled to rely upon the advice of my agency. Now, if my agency didn't include information in here, I would assume that they were for very good reasons.*

Q. *What could be the very good reason for omitting that information?*

A. *You'd have to ask Renewal SA.*

Q. *Pardon?*

A. *You'd have to ask Renewal SA -- microphones overlapping --*

Q. *Well, no, I'm asking you because --*

A. *I can't think of any reason why they would have excluded it.*

Q. *It should have been included, shouldn't it?*

A. *Well, you'd have to ask the person who -- (microphones overlapping) --*

- Q. No, it's your submission Mr--
- A. -- reading -- reading it now -- reading it now -- I'm now -- I'm going to guess, I'm assuming that they think that the Crown advice has been dealt with in the negotiations with ACP and mitigated the risk.
- Q. No.
- A. Now, whether they have or haven't it's a matter for the person who drafted the submission.
- Q. No, we're not talking about the Crown advice;
- it's -- it's a question whether there should have been included in the submission a history of the Board's rejection of the proposals put to the Board in relation to this transaction, including the recommendation to the Minister that there the that the proposal be refused and it be sent to market: Should that have been included?
- A. Hmm.
- Q. You signed it?
- A. Yes, I did. And I read it and I was satisfied with the advice given to me by the agency. So, if the agency had the agency did not give me the option of, 'Minister, would you like this advice being put in there?' And I made a decision yes or no. And I made it -- I'm not trying to frustrate you, but what I'm saying to you is --
- Q. You're not frustrating me.
- A. -- well, I don't write the submissions.
- Q. I -- I -- I understand that, but you're responsible for them?
- A. You're asking for an opinion, about whether there should be approval. I would have thought that all of the relevant information should be put in the Cabinet submission, and the officers that we have in the department are trained to make sure that they put all the relevant information that they think should be in there and I'm entitled to rely on the fact that the agency have the qualified people to do that for me.
- Q. Well, should that information have been included, as I ask?
- A. I really can't answer that, Commissioner, other than to say I'm assuming that they thought it was not relevant.
- Q. No, but you're asking for Cabinet approval -- you're asking your colleagues to approve a transaction and you know that the Board has rejected this transaction prior to resolving, had it, on the 28th of November?
- A. That's -- well, that's like --
- Q. No, no -- yeah, I'm asking the question?
- A. I understand, sir.
- Q. You know they have rejected it. Shouldn't you tell the Cabinet?
- A. Well, I'm -- one, I'm not saying that the Cabinet wasn't informed of that.
- Q. No.
- A. And --
- Q. I'm -- I'm -- I'm not -- I'm not saying that either; I'm saying should you not tell the Cabinet?

- A. *Should I not tell the Cabinet?*
- Q. *Isn't it your responsibility to tell the Cabinet that if you know that to be the fact?*
- A. *If you're asking me -- I think what you're asking me is, regardless of the approval we have from the Board to sell this land should I tell them of previous rejections?*
- Q. *No, no. No, you -- you haven't got the approval to sell the land? You've -- you've got -- you've got -- that you've got the Board's resolution.*
- A. *(Inaudible) this is pre to the -- to the Board -- to the --*
- Q. *What -- what I'm asking you, Mr. Koutsantonis, is this: You knew at the time you signed this Cabinet submission that the Board had rejected -- had recommended the rejection of this proposal and that the land go to market?*
- A. *On the 2nd of December?*
- Q. *Pardon?*
- A. *On the 2nd of December, when I signed it?*
- Q. *Yes, you knew that.*
- A. *No, I had the expert Board telling me that this was a deal that should go ahead.*
- Q. *No, no. I'll ask again. You knew on the 2nd of December --*
- A. *That they had previously rejected it.*
- Q. *That they had previously rejected it?*
- A. *And subsequently supported it.*
- Q. *Let me -- let me ask a question.*
- A. *Yes, sir.*
- Q. *You -- you knew they had rejected it?*
- A. *Yes. I knew that they had rejected it; yes.*
- Q. *Should not that have been included in this submission?*
- A. *Well, I'm at a disadvantage because I can't explain to you what happened in the -- in the Cabinet meeting.*
- Q. *I'm not asking what -- I'm not --*
(-- microphones overlapping --)
See, I'm not asking that. My question is: Should it not have been included in this submission?
- A. *Well, it's probably not relevant because they subsequently supported it.*
- Q. *Aren't you going to answer the question?*
- A. *I am. No, I'm not trying to be difficult, sir.*
- Q. *Well, you are.*
- A. *Well, I apologise.*
- Q. *Will you answer the question? I'll put it to you again.*

- A. *Okay.*
- Q. *Should not that information have been included in that submission?*
- A. *No.*
- Q. *It shouldn't have been included -- the book; is that -- is that what you're saying?*
- A. *I'm -- I'm trying to give you a -- a --*
- Q. *Well, I understand your answer, but I just want to make it absolutely clear you're saying it should not -- the submission should not have included the fact that on the 22nd of November 2013 the Board had recommended that the ACP proposal be rejected and that the land go to market; and that's what you're saying?*
- A. *Yes, because it was redundant.*
- Q. *Okay. I understand your evidence.*
- A. *And I apologise for misunderstanding what you're putting me. And -- and I -- I'm not attempting to be difficult; I'm sorry for your perception of me being difficult.*
- Q. *No, what -- what I'm asking is just a precise question, it just needs a precise answer.*
- A. *Yes, but I'm -- I'm at a disadvantage.*
- Q. *No, you're not. Not many people --*
- A. *I am. I have taken an oath; I can't talk about Cabinet deliberations.*
- Q. *I haven't asked you anything about Cabinet deliberations.*
- A. *I know you haven't, sir.*
- Q. *And it has got nothing to do with any of my questions so far. I have asked you whether in a document that you signed there should have been included a fact, you say, 'it need not have been included'.*
- A. *Yes.*
- Q. *That's exactly your evidence; I've got it right?*
- A. *Yes.*
- Q. *Right. So the -- so you're saying Cabinet need not have been advised of the previous resolutions of the Board in relation to this transaction prior to the resolutions it made on the 29th of November --*
- A. *I don't --*
- Q. *-- in -- in the submission?*
- A. *I don't think it would have done any harm.*
- Q. *No. No. No. It's not a question --*
- A. *I don't think it would have done --*
- Q. *-- Mr. Koutsantonis, it's not a question of whether it does harm. It's a straight forward question?*
- A. *If I were drafting the submission, I may have included it, but I understand why it was not.*
- Q. *Well, you're signing the submission?*

- A. *Yes, along with the Premier. Yes, I am.*
- Q. *And it's your submission?*
- A. *Yes, it is; it's our submission, yes. And our submission contains the advice we had from the agency and they're the ones who formulate it; I don't write the submissions.*
- Q. *But if -- if that's -- if that attitude -- if that attitude is correct, that means a minister can quite happily put forward something the minister knows not to be correct because he didn't write it -- he or she didn't write it?*
- A. *No. That's not -- that's no -- I don't think a fair characterisation of what I'm saying. I think Cabinet should have all the information before it.*
- Q. *Right.*
- A. *And if the information is relevant, the independent agency put it in the submission --*
- Q. *And if --*
- A. *But if they think it not relevant, they don't. And if you're asking me whether I think it's relevant that the Board changed its mind, it could be, yes. But I think to be fair, the submission was based on the independent expert advice we had.*
- Now, should I have changed it? Should I have included it? Should I have sent it back to them and said, 'Hang on a second, you haven't included the information here that was previously given to the -- given to us by the Board when the Board said that they reject this deal.' Would that have better informed the Cabinet of the risks? I don't think so. I think the Cabinet understand that and had information here from, one, the Treasury that this was a deal that served (?) a risk and they made a decision accordingly.*
- Q. *Where's that information?*
- A. *In the Treasury costing comment.*
- Q. *But that addresses a previous Cabinet submission that never went to Cabinet?*
- A. *Yes, you would have to speak to the Treasury about that, Commissioner. But I think the Treasury advice would have remained relevant, all it would have done is just removed one of the options; I think the advice would remain the same. You need to speak to Treasury about that.*
- Q. *Well, are you saying that Cabinet had sufficient information because it had Cabinet costing comment?*
- A. *Yes.*
- Q. *That was sufficient?*
- A. *Treasury is held in high regard in Cabinet.*
- Q. *Of course.*
- A. *Yes, I think -- in fact, I would say that probably the first piece of advice everyone reads when they get a Cabinet submission is the costing advice, because if we spend money in someone's portfolio someone else is not getting it. That's the first thing, I think, everyone reads.*

Ms Pike said that she is now aware that the Cabinet submission did not mention the Board's decision of 21 November. She said she thinks that the Board assumed that the advice of the Board that it did not support the transaction would have been forwarded to the whole of Cabinet.

Ms Pike said that the Board's resolution of 21 November should have been included in the Cabinet submission even though it is referred to obliquely in the Costing Comment. She said Cabinet needed to know of that resolution because Cabinet needed to manage the risk that Cabinet had assumed with the Cabinet decision.

On the same day Cabinet resolved to approve the URA entering into the Option Deed.

That same day both Mr Maras and Mr Terlet resigned from the Board.²⁰¹

Mr Maras said that he resigned because he felt that the process that had just occurred was not correct and he could not be part of the process.

Mr Maras said that he told Mr Hansen that he was going to give Mr Hansen his resignation and that he had sent a copy to Minister Koutsantonis. He said that he told Mr Hansen he was very sorry but he could not proceed with an organisation upon this basis.

He said he wrote a three line resignation which he emailed to both Mr Hansen and Minister Koutsantonis.

Twenty minutes later Minister Koutsantonis arrived at his office.

His evidence was that he said to Minister Koutsantonis:

Look, I spent all of my life trying to build up a fair and reasonable operation. I have spent all of my life trying to work through a system in property that has some integrity. I feel that I have been compromised and I am not prepared to sit here and take this. And on the other hand, Minister, you know, I have come out of hospital – and this is a fact – stress is not doing me any good. My physician said to me that I must take care of myself, get out of all of this, and I am doing this forthwith. I am sorry. There is no further discussion. I have made up my mind. I just cannot go on like this.

He said Minister Koutsantonis went white and said he was very disappointed that Mr Maras felt so strongly about this and said:

Look, I just hope that time proves all of this to be different.

Mr Maras said he resigned as a matter of principle because of the way that the Board had been asked to deal with the matter without information.

Mr Maras said in his evidence, 'you just can't sit on a Board and serve the State and let something like this happen because it would be immoral'.

He also said he had not changed 'his mind':

I feel stronger now than I did before. I questioned, at the time, several things but including why the land was being sold and why the whole of the land was being sold and why would you not sell a portion of the land, not the whole of the land because there was no way that anybody could develop even 100 ha to start off with. That was the first issue. But I am also so sure about all of this in my own mind and my own conscience and my own experience that you said earlier that you now publish: I do not have any problem, sir, if you publish anything that I have come up with.

Mr Terlet said that the transaction was pushed through in haste for reasons that were not apparent but that he believed was a consequence of either political naivety or arrogance or a failure on the part of Minister Koutsantonis and his office to understand or support appropriate process. He resigned because he did not want to be involved with the URA if that was the sort of thing that was going to happen in the future. Although he took no part in the decision making process he said he could not support the proposal because it was not the subject of due process.

²⁰¹ URA, Annual Report 2013-14.

On 3 December 2013, a Ministerial liaison officer Claire Wilson emailed the URA advising that the Cabinet submission had been approved in the Cabinet meeting.²⁰²

On 3 December 2013 Mr Piovesan replied to Mr Frearson-Lea's email of the previous day and provided a response to Mr Frearson-Lea's email of 24 November 2013. He addressed ten separate points and said:

We shall await your response in relation to your client's position in respect of the latest draft of the deed and licence.

As you are aware, if the terms of these documents are now acceptable to your client, from Renewal SA's perspective the transactions contemplated by these documents remain subject to the necessary Government approval processes.

On the same day after an exchange of emails of no consequence Mr Frearson-Lea responded to the matters raised by Mr Piovesan by making some minor amendments.

On 6 December 2013 Mr Frearson-Lea emailed Mr Piovesan and Mr Andreotti saying:

*My client informs me that this has been approved by Cabinet.
Are we able to progress to execution?*

On 9 December 2013 Mr Piovesan responded to Mr Frearson-Lea's email of 6 December 2013 in an email to Messrs Frearson-Lea and Kain (copy to Messrs Andreotti, Buchan, Rollison, Hodgen and Thompson) saying:

I refer to your email of 6 December 2013 set out below.

Our client has instructed us that whilst it has recently been made aware that Cabinet has approved the transaction, our client is awaiting advice as to the formal terms of the approval in order to ensure that Renewal SA is able to execute the documents as is.

Pending our instructions as to the above we consider that it would be appropriate for you to send us execution copies of the documents in anticipation of our client obtaining confirmation that the terms of the Cabinet approval authorise Renewal SA to sign the documents as is.

I also advise that once our client has received advice that Cabinet has approved Renewal SA to sign the documents as is, our client is obliged to promptly disclose details of this transaction to the Adelaide City Council, for the purposes of the compulsory acquisition litigation referred to in the deed. We propose to do that in a letter to the Adelaide City Council's lawyers, Cowell Clarke, summarizing details of the transaction, once we have been advised of the terms of the Cabinet approval. We note that this disclosure is permitted by clause 16.7 of the deed. Please to not hesitate to contact either Lidio or me if you have any queries.

About four hours later Mr Frearson-Lea responded by email to all of the recipients of the earlier emails:

Thanks for your email. As discussed, you will shortly provide the outstanding annexure information whereupon we will immediately prepare execution versions to be held pending confirmation that Renewal SA is approved to sign the document.

I note your comments regarding disclosure of transaction details to the Adelaide City Council. It is our understanding that any disclosure (which we remain to be satisfied is permitted under clause 16) would only occur following full execution of the Option Deed. Let us know immediately if you are of a different view and the reasons why.

²⁰² Claire Wilson, email, *Sensitive: SA Cabinet Approval*, 3 December 2013.

On 9 December 2013, the URA Board met. The resolution of the Board approving the recommendations of the Board contained in OSDP(3) are as I have said, recorded, and the Board Minutes then indicate that further discussion ensued.

Discussion

- Board members requested information on Cabinet's deliberations in relation to the matter and also the timing of any announcement.
- Board members requested copies of any potential draft media releases and Question and Answer documents prepared by Renewal SA. It was explained that these documents have been prepared by Renewal SA and provided to the Minister's Office. They will be amended by Minister's / Premier's advisers for their use. [Matters Arising – copy of draft media releases and Q&As in relation to Gillman proposal be forwarded to Board of Management members.]
- Board members again requested a copy of the written advice received from the Crown Solicitor's Office in relation to the Gillman proposal be tabled at a subsequent Board meeting. [Matters Arising – Copy of CSO advice in relation to Gillman proposal to be tabled at a Board of Management meeting.]
- Discussion regarding the communication strategy to be employed with industry and other stakeholders.²⁰³

The Board Minutes do not disclose whether the Board was told about the Cabinet decision to approve the URA entering into the Option Deed with ACP, although the first two and the fourth bullet points might suggest the Board was informed.

The Board again requested a copy of the written advices received from the CSO in relation to the Gillman proposal.

In the Board Minutes, the following is recorded under the heading 'Matters Arising':

*Copy of CSO advice in relation to Gillman proposal to be tabled at a Board of Management meeting.*²⁰⁴

On 10 December 2013 Mr Frearson-Lea emailed Mr Andreotti and Mr Piovesan (copy to Mr Kain):

*As discussed, please see **attached** a further draft of the Option Deed. You will note the slight amendments to clause 16 to clarify that the Deed itself is confidential – I trust that these amendments are uncontroversial.*

We understand that it is Renewal SA's view that PC027 (Disclosure of Government Contracts) will not apply to the Option Deed unless and until an option is exercised and Land Sale Contract formed. Please confirm this is the case.

We have considered whether disclosure of the current arrangements may be discoverable in the compulsory acquisition proceedings between the Adelaide City Council and Renewal SA. Absent any specific court order to the contrary, we consider any disclosure obligation will only arise following the execution of a binding contract. Any disclosure prior to execution of a binding contract would appear to serve no utility in the proceedings. Following execution of a binding agreement we understand that disclosure may be required 'promptly' which may be prior to any public announcement (depending on how quickly the public announcement is made following execution).

I look forward to receiving Annexure H (Negotiation Parties) and Annexure I (Speedboat Club Lease) later today so that a final execution version can be prepared.

²⁰³ RC4.

²⁰⁴ RC4.

At or about the same time, Mr Rollison emailed Messrs Andrew Gerlach, Kain, Buchan, Hodgen, Andreotti, Piovesan and Thompson (copy to Ms Pashalidis):

It has come to my attention that I did not distribute draft Minutes for the 8 November 2013 meeting between ACP and Renewal SA. Can you please review and provide comment (if any) on the draft Minutes such that they can be finalised as an accurate record of that meeting?

The draft minutes which were attached to that email show that minutes were taken of the three previous meetings of 29 October 2013, 1 November 2013 and 5 November 2013.

The draft minutes indicate ongoing negotiations in respect of the terms of the Option Deed and Licence. It is recorded in the draft minutes:

6.1.5 The Project Plan

- *LA raised the issue of procurement practices and discussed the potential to identify requirements based on specific contract value thresholds.*
- *AG provided a practical example of a potential procurement through the sourcing of fill material. AG advised that it was not ACP's intention for the site to become a dump site, as this would create issues for development.*
- *The parties agreed that this issue needed to be addressed and JK undertook to suggest wordings.*
- *JR advised that there was a preference to ensure that the objectives are linked to the project plan to ensure that these are carried through.*

I raised with Mr Malinauskas in his evidence the absence of information in the 2 December Cabinet submission relating to the Board's resolution of 21 November.

He was of course aware of the Board's resolution of 21 November in which the Board resolved to recommend that the ACP proposal be rejected. He was also aware that there was a draft Cabinet submission provided to the Minister on 21 November but he did not have a specific memory as to why that draft Cabinet submission did not go to Cabinet.

I asked him why the Board's resolution of 21 November was not included in the Cabinet submission of 2 December 2013 and he said that he assumed that there had been pretty extensive discussions around it within Cabinet.

He said that a Cabinet submission should be accurate and fulsome. He explained the absence of any reference to the 21 November resolution in two ways. First, as I have mentioned, because there had been extensive discussion in Cabinet about it. Secondly, the later resolution of the Board superseded the previous decision of 21 November.

I asked him a number of times what in fact he was asserting needed to be in the Cabinet submission, having regard to the previous resolution of 21 November which had not been revoked, but unfortunately could not get a satisfactory answer from him in that regard.

On 10 December 2013 Minister Koutsantonis' Ministerial Liaison Officer, Claire Wilson, emailed Mr Smith advising that the Cabinet submission 'was approved as signed with no amendments' and she sent Mr Smith a copy of the Cabinet submission.

On 11 December Mr Piovesan emailed Messrs Frearson-Lea and Kain (copy to Messrs Andreotti, Buchan, Rollison, Hodgen and Thompson) in which he said:

1. *In relation to the issue of application of PC 027 (Disclosure of Government Contracts) it is our view that PC 027 does not apply to the Option Deed, but will apply to Land Sale Contracts created if any of the options are exercised by the ACP (if the purchase price exceeds \$1M). Having regard to this we propose that Annexure D of the Option Deed (setting out the Special Conditions to the Land Sale Contract) include a new item 4.4 which reads '4.4 a clause acknowledging the potential applicability of PC 027 to the Land Sale Contract'.*

2. We note that PC 027 contains an (sic) mechanism for seeking exemption from disclosure including in the case of the existence of a confidentiality clause in the contract.
3. Other than the amendment proposed above the form of Option Deed enclosed with your email accords with RSA's understanding of the agreed form of document, and is suitable for execution. In this regard, RSA has today instructed us that Cabinet has approved RSA signing the form of Option Deed attached to your email (incorporating our requested amendment).

We note that Helen Ward of this office has spoken to you concerning the intended timing of the disclosure of the Option Deed to Adelaide City Council's lawyers in the compulsory acquisition proceedings (which is intended to be after the Option Deed has been signed by both parties, and prior to the public announcement of the signing of the Option Deed). We also note that clause 15 of the Option Deed deals with the process of liaison between ACP and Government in respect of the timing forum and first announcement of the 'Project and/or the grant of the Option.

On 11 December 2013 three copies of the Option Deed were executed by Mr Hansen on behalf of the URA pursuant to a power of attorney given to him by the URA.²⁰⁵

The Premier as Minister for State Development executed the Option Deed on that or the following day.²⁰⁶

ACP executed the Option Deed on 13 December 2013.²⁰⁷

The final executed Option Deed differed from the draft Option Deed approved by Cabinet in two respects; first, in the identification of the parcels of land available under the three stages; secondly, in relation to the terms and conditions of the Licence to the Stage 2 and 3 lands after the Stage 1 Option was exercised.

On 17 December Minister Koutsantonis met with Mr Hansen and Ms Durand. Ms Goodchild has recorded in her notes:

*Lipson – Michael is writing dot points. Premier's office questioned if people were being charged to put fill on site. Above flood plain. They must buy local. Then Maras raised concern about commercial arrangements being entered into, it's not proper. Release went through 3 others if not Michael.*²⁰⁸

On 17 December 2013 at 5:12 pm, Ms Durand emailed the remaining members of the Board an 'Information Paper re: Process and Role Clarity for ACP (Lipson Industrial Estate) at Gillman,' describing the transaction contained in the Option Deed. The information paper was written by Ms Durand and Mr Rollison and authorised by Mr Hansen. Also attached to the email was a document entitled 'Proposed Media Statement Guidelines' and the CSO's two advices to the URA dated 11 September 2013 and 27 November 2013.²⁰⁹

The Information Paper advised the Board that Cabinet approved the URA offering three options over the land to ACP and advised the Board that the Minister, the URA and ACP entered into the Deed on 13 December 2013.

The Information Paper said that 'given the decision to enter the deed arrangement was outside of Renewal SA's remit, based on the broader economic development outcomes, State Government will continue to be referenced as the decision maker for the unsolicited bid'. It announced that the Premier would hold a press conference the next day and that ACP would be represented by Mr Stephen Gerlach.

²⁰⁵ RC21.

²⁰⁶ Ibid.

²⁰⁷ Ibid.

²⁰⁸ RC34.

²⁰⁹ RC4.

The information paper recommended:

... that the Board note the content of this paper, the attached legal advice pertaining to the Cabinet submission and the attached proposed media statement summary.

The legal advice which was attached was the CSO advice of 11 September and the CSO advice of 27 November 2013, both of which were written by Messrs Andreotti and Piovesan.

This was the first time the Board or its Members had received those legal advices.

At 5.15pm (ie, within 30 minutes of receipt of that email) Dr Rischbieth emailed the Board's Chair, Ms Pike:

Bronwyn

It is with significant disappointment that I read this email, the attachments and in particular the 2 letters of Sept 11 and Nov 27 which we as the board members have only sighted today.

I have left you a voicemail but please give me a buzz as soon as convenient.

I am drafting a letter of resignation to the Minister.

Kind regards

Amanda²¹⁰

At 5.45pm Dr Rischbieth wrote to Minister Koutsantonis resigning from the Board, effective immediately.

Dr Rischbieth said she first became aware that Cabinet had made its decision when she received the email of 17 December 2013 which included the two advices of the CSO which left her 'completely gob smacked'.

Her evidence was that she was astounded by the content of the advices and she said that if she had read those pieces of advice earlier she would have formed a different view.

Dr Rischbieth said that at that point she thought her position on the Board was untenable because she had not been receiving information in a timely and fulsome manner, which had been confirmed by the email which she received on that day. Dr Rischbieth said that she felt uncomfortable because she thought as a member of the Board she was being disregarded and she was not being provided with information. She said that she raised it with Mr Hansen.

She spoke to Ms Pike telling her that she intended to resign. Ms Pike asked her to reconsider her position but Dr Rischbieth said she was unable to do that. She wrote a letter of resignation and sent the email to Minister Koutsantonis that night.

She spoke to Minister Koutsantonis and confirmed her resignation.

On 18 December 2013 Mr Holden resigned from the Board. He apparently spoke to the Premier either that day or the next to explain why he had resigned.

Mr Holden said that he resigned because he felt that it was not appropriate for the project not to go to tender. He said that he thought there was good reason why it should, for transparency sake. In the end he determined it was inappropriate for him to stay on as a member of the Board because it needed to be understood that the failure to go to tender was not acceptable.

He said he took the view that the Board had, on numerous occasions, rejected the proposal and he could not counter staying on as a Board member in an environment where the Government proceeded in that way.

Ms Pike said that the provision by management of the CSO's two advices on 17 December 2013 gave rise to the resignations of Dr Rischbieth on that day and Mr Holden on the next day. Ms Pike said that it immediately appeared, on receipt of the advices, that the Board members had been

²¹⁰ RC19.

misled. However, she did not feel she had been misled because she understood the elasticity of some of these processes. She just thought that the failure to provide the advice earlier was indicative of management's behaviour.

Ms Fulcher's evidence was that when she received the CSO's advices she felt 'duded'.

She gave evidence that management had previously given the impression that the [REDACTED]

[REDACTED] She also became aware that there was recent commercial interest in the Gillman land that had been expressed to management but had not been made known to the Board.

She said that she was extremely distressed and angry with the way the Board had been dealt with. Notwithstanding that, she did not consider resigning, in part because:

I just take the role of being on that Board very seriously, and I was aware of the impact of all of this on the organisation; all of these people who had been working on it.

And it seemed to me that while things were not going well, it was actually the time to be steadfast and to try and assist the organisation to make its way out of it.

The press conference to be held on 18 December 2013 did not eventuate. Mr Gerlach's evidence was that it was delayed because General Motors made a significant announcement about its future in South Australia. That may have been what he was told by Government.

On 19 December Dr Rischbieth emailed Ms Pike asking that it be formally noted that her previous approvals of Board Agenda Items relating to ACP be formally rescinded on the basis that she was 'not comfortable that all relevant information and correspondence related to this matter was provided to the Board to best inform notation and decision'.

On 22 December 2014 *The Advertiser* published a story '6000-Job Plan for Former Multi-Function Polis at Gillman', which was as a result of the Government advising the media of the transaction.

Subsequently those parties which had expressed an interest in acquiring interests in the Gillman land were advised.

THE MINISTER'S INTERACTIONS WITH MANAGEMENT OF THE URA

When I commenced this inquiry I had not envisaged the need to consider in detail the interactions between Minister Koutsantonis and the URA and the manner in which those interactions may have influenced the URA's actions.

However, when Mr Hanlon gave evidence, he said that Mr Buchan, who was the Chief Operating Officer of the URA and acted as Chief Executive in the absence of Mr Fred Hansen in November 2013, had told him that Mr Buchan had been directed by the Minister to bring about the result that was achieved. Although Mr Buchan had previously given evidence I decided to recall him because I thought it important to inquire as to whether Minister Koutsantonis' conduct had had the effect of influencing those who were advising him on this matter. As I have said, that was not a matter that I had initially anticipated would need to be canvassed.

Mr Buchan said that the process relating to the ACP proposal was driven by a sense of urgency which he thought was generated out of the Premier's Office. That understanding was as a result of conversations with Minister Koutsantonis' Office.

Mr Buchan's evidence was that with the transition from the LMC to the URA, Government became more interested in the activities of the agency, and agency management started having weekly meetings with the Minister and multiple daily discussions with the ministerial advisers in relation to operational matters.

I asked him whether Mr Hansen had allowed URA to become too close to politicians. He said:

If I could say it another way: it did not influence our decisions. We knew the consequences of our decisions more swiftly and more personally.

Mr Buchan said he was directed to bring the transaction to fruition initially by Mr Hansen but this was 'further reiterated in my dealings with the Minister'. He was asked whether Minister Koutsantonis actually directed him to bring the result about. He said:

A. *The Minister did not direct me to create an approval for the transaction. And again, Minister Koutsantonis and directions are a difficult matter, they are not explicit, 'I sit here and formally require you to do A, B, and C'. It was more along the lines of a raft of expletives and followed by a 'Pull your finger out and get it done for me'.*

Q. *Can you use exactly what the language was that he used?*

A. *He would essentially swear at us as individuals and as a collective, as the organisation, and suggest effectively, you know, 'If you can't do these things, what do you exist for? Why are you here?' So on and so forth.*

Q. *Did he do that in relation to this transaction?*

A. *He did that in relation to most things.*

Q. *What sort of language did he use: I do not want to embarrass you; I think the ladies here have unfortunately heard the language before? If you would not mind telling me exactly what he said?*

A. *He would call you, um 'what the fuck would I employ you for? Are you a bunch of useless cunts or not? Hurry up, get things done. For Christ's sakes, what are you doing?' Da da da da da. That would be the run of the mill meeting with the Minister.*

Q. *Did he do this in relation to this transaction?*

- A. *Yes, in relation to this one. It was particularly, if I can say, on the first rejection. It was, you know, for – excuse me.*
- Q. *What did he say? Tell me.*
- A. *It is very uncomfortable.*
- Q. *I appreciate.*
- A. *I appreciate you have asked me. I recall him saying, 'For Christ's sakes, would you hurry up and get this done. It is not that hard; pull your fingers out, make the contacts. Don't make assumptions. Get on with it.' That is it very simply the way he would do it - -*
- Q. *Did he say that to you in relation this transaction?*
- A. *Yes. It was in relation to this transaction.*
- Q. *That was what the rejection of 13th November?*
- A. *No, that was after the first rejection. So that was - -*
- Q. *The 4th of July?*
- A. *It would have been in July some time – following the meeting with the Minister. As I say, that was my first exposure to the transaction essentially at that point in time where Fred had – whether he had walked in or sent across a memo to say – my understanding of the tone of the memo, and I think fundamentally what still permeates in most people's minds is, you know, these guys are having a bit of a lend.*
- That they will do it get their footprints over this land, get everyone stitched up and then negotiate back, and what you end up with is you get \$1.50 and a whole heap of pain. So that was pushed. The Minister was very, very keen. There was a draft provided as part of that pack to say no, a letter from the Premier, 'For Heaven's sake what are you doing? You can't do this. We need this prosecuted. Other parties think this is a really good idea.'*
- Not, I can only assume that was Mr Spencer as part of the Economic Development Board, and so on. You know, 'why can't you see the opportunities here?' And that is when, I suppose, we went back and stated the discussions. And, essentially, that process continued through the - -*
- Q. *So that was after the 4th of July Minute of Mr Hansen to the Minister?*
- A. *Yes, that is correct.*
- Q. *And that is when he used language of the kind that you mentioned before?*
- A. *Yes.*
- Q. *You said you were uncomfortable repeating it. I understand why. Were you uncomfortable to hear it?*
- A. *Yes.*
- Q. *Was it intimidatory?*
- A. *Yes, absolutely. I have written my resignation more times in this job than I have in any.*
- Q. *Is that right – because of his conduct?*
- A. *Yes. The Minister - - the background, Commissioner. The Minister and I did not have a good relationship. When he became my Minister, my first meeting with the Minister*

was something along the lines of 'Oh, Christ. I did not know I got you with the agency - - if I had known that I would have got the fucking street - - the brooms organised and you could go down on North Terrace and do something useful and sweep the leaves for me.' That was my first meeting with the Minister.

Q. *When was that?*

A. *That was when he took over the portfolio, back after Minister Conlon moved on –and my relationship went back when we were running the Tonsley Project and Minister Koutsantonis would often want us to do things, that I did not think were commercially appropriate necessarily at that point in time – and as a result I would often tell him. As a result, if we were sitting at a meeting like this, across the table, he would turn his chair and totally put his back to me. And I would have often – I would have acted as Chief Executive at the time at the LMC, the early days of Renewal SA, and that I was almost a Chief Executive I was at that stage. That was the background. That is my issue. There has always been a degree of – and, unfortunately, that tends to be Minister Koutsantonis' way.*

Q. *Were you present at other meetings when he spoke to other people?*

A. *Yes.*

Q. *Did he speak to Mr Hansen the same way?*

A. *Yes.*

Q. *With a lot of swearing?*

A. *Absolutely.*

Q. *And in an intimidatory way?*

A. *Yes, it is. I have said this a couple of times to people, Commissioner, there is a robustness and a resilience that you had to build working within the environment. And I would often be very mindful of ensuring that my staff were not exposed to it, generally, by having to sort of deal with the Minister. Because it often did not matter who the audience was. If it was an agency, it was an agency, the way I have typically described it as, what I would like to think of as a robust conversation, would be clearly seen as bullying and intimidation by many people.*

Q. *You can have a robust conversation with someone, but if you are in power it is a bit one sided?*

A. *Yes. Very one sided.*

Q. *Is that what these conversations were; the exercise of power?*

A. *Yes. In my view; yes.*

Q. *Were they upsetting, these conversations?*

A. *They were upsetting to the point of - - Renewal SA had more problems than you could poke a stick at, to be completely honest, if I can comment - - just to put it into the context.*

We had a Chief Executive that was listless, and saw himself as a politician. So he was kind of - - he was almost battling for the power that the Minister had, if I can put it that way, and did not worry about managing down. He created an environment within the organisation which was contested. I have worked in private firms where we were contested ie, you know, who can get the best job. This was basically pitting people against each other in the leading executive forums and sitting back to while the behaviour of senior staff members to other senior staff members was just atrocious. I think in the end, the entire thing actually got too much for Fred, and the behaviour of the Minister kind of just became like 'I can let any behaviour go, it does

not matter'. I cannot imagine the cultural difference coming across – maybe there was a thought, oh, this is the way it works in Australia. But the organisation was incredibly difficult. As a result of that I have never, in all of my working life, hated working in an organisation more than working in Renewal SA.

Q. *That was up until the time the Minister changed?*

A. *That was up until the minister changed; the change of minister has been a breath of fresh air, but the overhang and stigma continue - -*

Q. *Has the culture changed?*

A. *The culture is changing. It is not like a light switch, you can't turn it on or off.*

Q. *Mr Buchan, is it fair to say that you felt intimidated by the behaviour of the Minister - - in relation to this transaction?*

A. *Yes, I would prefer not to give him the pleasure of that as an outcome, and I would very, very rarely show that. But, absolutely, I went home and spoke to my wife.*

Q. *I will be taking evidence from the Minister tomorrow, and I will be taking evidence from the Premier tomorrow. I will be putting to the Minister that his conduct was in the way that you described. So it is important for me to have your accurate recollection of his conduct.*

As a result of Mr Buchan's further evidence I thought it necessary to take evidence from Ms Julie Durand who, at the relevant time, was the URA's Executive Director of Marketing and Corporate Relations. Ms Durand reported directly to the Chief Executive, Mr Hansen. She had held that position since the URA's inception on 1 March 2012. For three years before that she held a similar position with the LMC.

Part of her duties was to accompany the Chief Executive to meetings with the Minister. They met two or three times a month during the period that Minister Koutsantonis was Minister. She also accompanied Mr Buchan to meetings with the Minister.

She can remember being at meetings with Minister Koutsantonis prior to Cabinet authorising the URA to negotiate with ACP. She said Minister Koutsantonis was very enthusiastic about the proposal and was keen to keep things moving. She told me that Minister Koutsantonis thought the URA was 'dragging (our) heels'.

She volunteered in her evidence that Minister Koutsantonis was a very impatient man and became overtly frustrated. She said:

Q. *Was the Minister apparently enthusiastic about this proposal?*

A. *Yes, very.*

Q. *How did he show his enthusiasm?*

A. *I think the keenness to keep things moving. Quite often there was a feeling that we were dragging our heels.*

Q. *He said that?*

A. *Probably not those exact words, but I think the entire time Renewal SA existed I got the sense that people thought we were getting in the way of progress, which is just a part of being an agency I think that does the work behind the scenes. He was a very impatient man.*

Q. *A very impatient man?*

A. *Very impatient.*

- Q. *How did he show that?*
- A. *Being overtly frustrated, and swearing.*
- Q. *How does he swear?*
- A. *How?*
- Q. *Yes.*
- A. *Oh, just nothing like you would not hear typically in our industry or - - there was nothing over and above. But I think you can tell when someone is passionate. He is a very passionate man and I think he had very clear objectives. And - -*
- Q. *Was he demanding?*
- A. *Very demanding.*
- Q. *Was he intimidating?*
- A. *Yes, as were his staff.*
- Q. *Did you feel intimidated by him?*
- A. *Absolutely. Not in a way that made me not want to be in the room, but I just - - you can get a good sense of someone who has that passion and the enthusiasm and the traits that come with it.*
- ...
- Q. *Was he unreceptive to advice he did not like?*
- A. *Yes, very.*
- Q. *How would he show that?*
- A. *Rolling his eyes, snapping, you wouldn't get invited back to meetings.*

I asked her about his language and her evidence was:

- Q. *Perhaps, rather than me tell you what he said, because I was not there, you were, you tell me what type of thing he would say about the staff at Renewal SA in relation to the Gillman transaction?*
- A. *In relation to the Gillman transaction it was similar to the other things we were working on, that everything just took too long.*
- Q. *What would he say?*
- A. *It might be along the lines of, 'you are not helping, trying to make something work'. You know, that sort of language, just general frustrated language.*
- Q. *Would he use profanities?*
- A. *He definitely used profanities; definitely a swearer.*
- Q. *And the words - - the language I just used?*
- A. *Yes, I mean - - I just keep flashing - - it just keeps flashing before me, me being quoted in the paper as swearing, but he would say things like, 'for fuck's sake' or it might just be 'fuck', if he was frustrated. Just a very passionate driver, which was to be admired at times, because you do need people that really want to get things going. And it was obvious to me that he wanted the State to improve but, yes, certainly - - certainly (inaudible).*

In relation to Minister Koutsantonis' approach to Gillman, Ms Durand agreed that he drove the transaction hard and she said that there were a lot of people whose attention was diverted to making it happen.

I then showed her part of Mr Buchan's evidence, commencing with the question 'what sort of language did he use ...' which I have reproduced above. Ms Durand agreed that the conduct attributed to Minister Koutsantonis by Mr Buchan in that passage was typical of the conduct that she had witnessed. She said:

Definitely things like 'For Christ's sake, what are you doing?' 'It's not that hard.' 'Get it done.' 'Pull your finger out' does not - - I mean I wouldn't attribute that to him. Yes, but there is certainly the intent of all of this language here is very - - yes, just someone who is very impatient trying to drive something forward.

She later said:

Q. *If I can go back to the Minister for a moment. At all of the meetings at which you were present, in relation to - - and when the Gillman transaction was discussed, was the Minister impatient about bringing it to a resolution?*

A. *Yes.*

Q. *And to bring it to a resolution by entering into a transaction with ACP, Adelaide Capital Partners?*

A. *Yes.*

...

Q. *I am sorry again to dwell on this, but - - and the sort of impatience that the Minister exhibited was the sort of impatience that is disclosed in the evidence I showed you, was it?*

A. *Yes.*

Q. *With that sort of language?*

A. *Yes.*

Q. *How did Mr Hansen handle that?*

A. *Not well. Fred was not - - Fred had a very different style and certainly would never have spoken like that in any meetings. So - - but did not address it, just wore it. Possibly, the Minister might have been less vocal when Fred was there. Fred always painted the positive side of what was going on when he was in a meeting with the Minister. Whereas the sorts of meetings Michael had were more the reality of the situation.*

Q. *Well, to put that another way, was Mr Buchan inclined to be more objective about the advice?*

A. *Yes. More forthcoming with pros and cons and positives and negatives, whereas, I think, Fred really wanted to present an organised and unified approach when he was with the Minister.*

...

Q. *Was the Minister more impatient with Mr Buchan than he was with Mr Hansen, in your experience?*

A. *My experience was he - - the Minister did not ever want to be in a room with Fred Hansen and, therefore, was not overly forthcoming. And Fred would respond in a fairly rosy fashion. Michael, I think, the Minister was more blunt and honest and*

Michael probably shared some views about Fred. So I think their meetings were probably just at a different level.

Q. *Does that mean the Minister treated Mr Buchan better than he treated Mr Hansen or the other way around?*

A. *The relationship between Michael and the Minister was probably more genuine. I think the Minister would call Michael for meetings, without Fred's knowledge, and Michael would attend with Fred's knowledge; and I think that speaks volumes about the relationship they had.*

Q. *Mr Buchan said he was intimidated by the Minister; did you observe that?*

A. *There were times when I thought Michael was quite meek in front of the Minister. But I also - - I did not necessarily think that was the case.*

She said that while she agreed that Minister Koutsantonis' language was peppered with profanities, he would temper his language to whoever was present.

In respect of Minister Koutsantonis' attitude to the URA, Ms Durand said that he was never unpleasant to her, nor did he ever make her feel that she was holding up progress or that she was not someone he wanted in the team.

When asked whether she had the impression that Minister Koutsantonis was 'generally contemptuous of the whole of the office', her answer was "yes".

Ms Durand was asked by Ms Kleinig about the Minister's attitude to Mr Hansen:

Q. *And before, when you said that the Minister did not want to be in the same room as Fred Hansen, how did that manifest itself through the Minister's behaviour?*

A. *There was cues that I felt I could pick up on, but it was relayed to me that he did not have any time for Fred. I saw him a couple of times - - lots of times rolling his eyes or swearing under his breath if he saw Fred. And I think, in general, sometimes just in the work you do with the advisers that there were often comments that sort of reinforce that view. And, certainly, Michael Buchan made it known.*

I heard some evidence in respect of Mr Malinauskas, who was, at the relevant time, Minister Koutsantonis' Chief of Staff.

However, having considered all of the evidence, I do not intend to make any finding in respect of Mr Malinauskas' conduct because there is no suggestion that his conduct impacted directly upon the transaction into which I am inquiring.

Minister Koutsantonis was provided with Mr Buchan's and Ms Durand's evidence before he gave his evidence.

During his evidence I asked Minister Koutsantonis if he considered Ms Julie Durand's description of him as 'a very impatient man' was fair. He said, 'I can be impatient, but I do like -- I do like activity. Yes.' He gave evidence that he did not consider impatience to be a characteristic which defined him.

He agreed that he was demanding, and said, 'I expect a lot from my public servants and my staff.'

Because of the evidence of Ms Durand and Mr Buchan, which had previously been provided to Minister Koutsantonis in the form of draft transcripts, I asked him about his use of profanities.

Q. *And the other flavour of his evidence is that your -- your conversations with senior public servants is littered with profanities?*

A. *Yes, I read that.*

- Q. *What do you say about that?*
- A. *Do I use profanities? Yes, I do, Commissioner. Do I use them at people? Never. I have never sworn at a public servant. I've never attempted to intimidate or humiliate a public servant. I reject that categorically and emphatically. I have never sworn at a public servant in my entire six years as a minister. But I am -- you know, yes, I'm a working class boy and I do use -- I do use the occasional F ^ word, but I never use it in reference to a person. I suppose context is everything in this. And I was deeply hurt by that evidence in reading it. It really surprised me.*
- Q. *Well, the -- the evidence of both Mr. Buchan and Ms. Durand is that you frequently use the word 'fuck'; is that correct?*
- A. *Well, I would not say frequently but, yes, I use it. But not in terms of the context, it's never in terms of me pointing at them saying, 'F you.' or 'Why didn't you f-ing do this?' Never like that, ever.*
- Q. *Well, how else is it used?*
- A. *'I'm f-ed now', or 'What do I f-ing do now?' or 'Oh that is f-ing difficult.' but it is never in terms of the personal.*
- Q. *Well Mr. Buchan's evidence was that you intimidated him?*
- A. *I disagree with that categorically and emphatically.*
- Q. *And -- and that he shouldn't have got the impression that you were -- were attempting to intimidate him?*
- A. *Absolutely not.*
- Q. *Did you read his evidence as to the first conversation he said you had with him after you were appointed minister?*
- A. *Yes.*
- Q. *Did that happen?*
- A. *Like any good story, it has a little bit of truth in it but most of it's -- most of it's not accurate.*
- Q. *Well he, perhaps -- (inaudible) -- he said, 'When he became minister my first meeting with the Minister was something along the lines of 'Oh, Christ, I did not know I got you with the agency''; did you ever --*
- A. *I would never have said 'Oh, Christ'.*
- Q. *You wouldn't?*
- A. *No. Commissioner, I do swear, but I have a -- always had an attempt not to use blasphemy.*
- Q. *Yes.*
- A. *But, you know, I accept that I swear.*

I asked him about Mr Buchan's evidence of their first meeting after Minister Koutsantonis became the Minister for Housing and Urban Development:

- Q. *Yes. He said you said 'If I'd known that' meaning if I've got you, 'I would have got the F-ing street brooms organised and go down to North Terrace and do something useful and sweep the leaves for me', did you say that?*

A. *No. I'll give you the context of it, if you like. Previously, I'd met Mr. Wayne Gibbins who was the head of Land Management Corporation –*

Q. *That's right.*

A. *-- advocating on behalf of a local football club to get some land to build a soccer club; this is the West Adelaide Football Club. And that was progressing along and then there was a change to Urban Renewal and Mr. Hansen was chief executive and I was the minister for Correctional Services, I think it was; I can't -- I can't remember the exact portfolio that I had when I had this meeting, and Mr. Buchan was at that meeting.*

And Mr. Buchan was very insistent that the -- I had no role to play in advocating on behalf of anyone and that the -- only Mr. Conlon could. It was a very tense conversation. When I became minister, Fred said to me, 'Remember that meeting you had with Mr. Buchan?' And I said, 'Yes.' He said, 'Well, you know, are you worried about the way he spoke to you?' And I said, 'No, not at all.' And in the first meeting I said to him, 'Look, we need to work collaboratively, we work together otherwise you're as much use to me as if you were out sweeping the streets on North Terrace'. And when I read it in the context he gave it, it made me very angry because it was in a conciliatory -- forget the way you spoke to me in the past, let's work together and get good things done, and we had an excellent relationship after that.

In fact, one of the better -- better relationships I had in Renewal SA.

Q. *With Mr. Buchan?*

A. *Yes. Yes. That's why, you know, a little bit of -- a little bit of truth mixed in without the context, which really concerned me when I read that evidence.*

Q. *Well, he also said that you used words to the effect, 'What the fuck did I employ you for?'*

A. *Never.*

Q. *'Are you a bunch of useless cunts or not?'*

A. *Never*

Q. *'Hurry up, get things done.'*

A. *Yes.*

Q. *'For Christ's sake, what are you doing?'*

A. *No, I don't think I would have said that, Commissioner.*

Q. *That'd be blasphemy, again?*

A. *Well, I -- I'm not -- I don't claim to be perfect, and I, you know, I do occasionally slip, but I do have a -- I make a conscious attempt not to say that, but -- 'pull your finger out' wouldn't ever have been in terms of a person; it would have been, 'Come on let's pull our fingers out and get this done.' And that would have been in terms of my staff, many and everyone together; it was a collegiate term. I would've never -- I -- I -- I would never use it to intimidate or belittle anyone.*

I gave Minister Koutsantonis a further opportunity to respond to the thrust of Ms Durand and Mr Buchan's evidence:

Q. *... I have the evidence of Mr. Buchan and Ms. Durand that you did behave in the way you did. You -- you agree you used profanities; you agree that you're impatient and you agree that you're demanding?*

A. *Yes. But, Commissioner, may I add?*

Q. Yes.

A. Do you mind?

Q. No, go ahead.

A. All right. Ministers are entitled to push their agencies, but I'm entitled to expect that the advice I get from my public servants is frank and fearless. And it doesn't take much courage to put in a briefing note that this was a bad deal; it doesn't take much courage to speak truth to power.

And -- and I hold a number of agencies, portfolios really, and I have always encouraged frank and fearless advice. I'm entitled to, as the elected member, to -- to push them on that advice and ask them about it and probe -- and push and probe it. It doesn't mean though that I get them to write the advice that I want, and I've never done that. And I reject the proposition that Mr. Buchan makes that I bullied him or intimidated him into doing a deal that, even in his own evidence, says it's a good one.

But I find it remarkable that he can say that I bullied him into a deal he thought was worthwhile.

Q. Well, that -- that was the effect of Ms. Durand's evidence as well, that she said that, if -- talking about you -- 'If you're getting in the way you certainly knew about it, and I think it was a brave person that put a case forward that went against the vision', talking about yours. 'But quite often that is what we were there to do, provide information on the facts.'

A. And I think what she was -- the way I interpret by Mrs. Durand's evidence was she never felt intimidated by me; she never felt that I wouldn't allow her to speak her mind and she called me passionate; one person's passion.

Yeah, I'm enthusiastic the State has serious challenges facing it. The most recent budget was not a traditional Labor budget because, you know, I believe in doing things the way it needs to be done rather than just, you know, following an ideology.

But the idea that I would push my public servants in a direction they didn't want to go or that would make them compromise their very best advice to me is not accurate; I've never done that.

Q. You may not intend to do that but could you understand that may be the effect of your conduct?

A. No.

Q. No. I -- I asked her this question:

'Was he unreceptive to advice he did not like?'

And she said, 'Yes, very.'

'How would he show that?'

'Rolling his eyes, snapping, and you wouldn't get invited back to meetings.'

Is she wrong about that?

A. Yes, she is wrong about that. I don't organise the invites to the meetings, they're done by the Chief Executive; Mr. Hansen or Mr. Buchan they're the ones who bring their staff with them. I don't tell them who to bring, unless I ask or request someone; they're the ones who decide who to bring to meetings, not me.

Q. Yes. Well, she said this, again, which is perhaps not inconsistent with what you're saying. 'Yes, I mean I just keep flashing -- it just keeps flashing before me, being quoted in the paper as swearing but he would say things like, 'for fuck's sake' or it

might be just 'fuck' if he was frustrated; just a very passionate driver which is to be admired at times, because you do need people that really want to get things going'. Would that be a fair assessment of you?

- A. *I don't know if it's fair; it's her assessment of me. I'm not sure that categorises the way I conduct myself in all my meetings. I think if you spoke to my Treasury officials they would probably be very shocked by that assessment of me. Depending on the issue, I can take a long time to consider an issue; depending on what is before me. I don't think that characterises my entire ministry.*

Look, Commissioner, I'm -- I'm a believer that the privilege of being minister really means that you implement policies and procedures to get the State productive and, you know, being the government's head kicker, for lack of a better word, so when there's conflict in the -- in the media I'm out there.

The public servants see that and they get a perception of me through what they see in the public. And often perception becomes reality in their own minds, and when they deal with me, the number of times I've had public servants say to me, 'Gee, I was shocked how polite you were.' Or 'I was', you know, 'It's not what I expected of you.' So, I -- I do not categorise myself as being this oafish brute that I'm reading about in this evidence, that pushed people around to get what I want. I expect public servants -- highly paid public servants -- to be fearless in their advice and I respect them for that fearlessness.

- Q. *Was there any part of their evidence of your conduct with which you do agree?*
- A. *Pardon?*
- Q. *Was there any part of their evidence of your conduct with which you do agree?*
- A. *I said to you, sir, that, yes, I did use pro -- I do use profanities; but I don't use them at the scale and size that they claim.*

I asked Minister Koutsantonis to respond to the evidence of Ms Durand that he was driving the proposal, generally, and in the context of his response to the advice of the Board of Management, which I will come to in detail later:

- Q. *The evidence of Ms. Durand is that you were driving the proposal?*
- A. *Well, no. I was -- I suppose what I'm driving is the process; and get the process done; if the process recommends not to proceed, then that's the recommendation; if the process recommends to proceed then we proceed; but get it done.*
- Now, did I ask them to take shortcuts? Never. Did I tell them to have a pre-determined outcome? Never. Did I ask them to change their advice? Never. If the department had come to me at any stage and said, 'Stop, get another valuation. Go to open tender. Recommend to the Cabinet; that would have been my recommendation.*
- Q. *If the advice you'd received was go to the market; you would have done that?*
- A. *Yes.*
- Q. *But you did receive that advice?*
- A. *Not the final advice; no. The Cabinet -- the Cabinet instructed the department to go away and work with the Australian (sic) Capital Partners and they did. And if the advice had come back after that we should go out to open tender anyway, then that's what would have happened.*
- Q. *That was the advice of the Board on the 21st of November?*

- A. *Well, Commissioner --*
- Q. *Was it not?*
- A. *Well, where is that? Can you remind me of it?*
- Q. *Yes, sure, if you look at the -- the out-of-session paper of 20th of November, which is in RC4?*
-
- A. *This is the out-of-session paper distributed to the Board, recommending Renewal SA advise me to reject the ACP proposal?*
- Q. *Yes. And offer the land to market.*
- A. *Did I -- I'm not sure I received that advice, Commissioner.*
- Q. *Well, the evidence is that you did on the 22nd of November?*
- A. *Oh, this is when they came to me, and said -- yes; yes.*
- Q. *Well, I'm just asking you; there you are, you have the advice from the Board go to market?*
- A. *Yes.*
- Q. *And you rejected it.*
- A. *They invited me to speak to them.*
- Q. *No. No. I know what happened after, but I'm just asking now?*
- A. *Well, I asked the -- I asked Mr. Buchan, 'What do I do, what's -- what are my steps now? And is this not a good deal?' He said, 'No, it is a good deal.' I said, 'All right, what do we do?' 'Speak to the Board.'*
- Q. *The -- the point I'm putting to you, Mr. Koutsantonis, is there you are on the 21st or the 22nd of November you had the advice of the Board to go to market. And you challenge it?*
- A. *Well --*
- Q. *That's right, isn't it?*
- A. *Well, I don't challenge it. I want to understand it. I don't challenge their advice; I don't go there and tell them that they're wrong.*
- Q. *Perhaps I'll put it another way. You don't accept it*
- A. *No, no; I want to understand it.*
- Q. *You don't accept it though?*
- A. *No. I -- I -- it's not that I don't accept it. If I'd gone -- if the department and the Board had said to me both 'This must go to open tender.' That would have been the recommendation to the Cabinet. And I can't change the advice the Board give me; I cannot force them to.*
- Q. *No.*

A. *They do it voluntarily.*

Q. *I understand that. But --*

A. *But, Commissioner, I -- I -- it's not that I don't accept their advice; I wanted to understand it. And I'm speaking plainly to you.*

Ms Goodchild attended most of the meetings which Minister Koutsantonis had with URA staff. She agreed that Mr Buchan was articulate and confident and honest and decent. She agreed that Ms Durand was clever and articulate and honest and decent; but said Ms Durand was not confident but a bit timid. She said Ms Durand did not offer much at meetings.

Ms Goodchild was asked about Minister Koutsantonis' conduct in meetings. While she agreed that he swore in meetings, she said that he did so only occasionally. She did not agree that he was impatient nor did she agree that he intimidated people.

She was asked about his conduct in meetings and his reaction to advice:

Q. *Yes. Mr Buchan said he was intimidated by the Minister.*

A. *Okay.*

Q. *Did you observe any sign of intimidation?*

A. *No.*

Q. *Ms Durand said the Minister liked to hear advice that he wanted to hear.*

A. *Okay.*

Q. *Do you agree with that?*

A. *[Pause] Did he like to hear advice he wanted to hear? I don't really know how to answer that.*

Q. *So say in Gillman, he would like to hear advice that it was progressing and that it was going to go through -- some of the --*

A. *Sure.*

Q. *Yes.*

A. *We were generally getting weekly updates by that point.*

Q. *And she said that providing him with advice that he didn't want to hear could be -- he would react to it by rolling his eyes or something of that kind.*

A. *Sure.*

Q. *Yes. He did that?*

A. *Yes.*

Q. *And did he roll his eyes often when, when he received advice that he didn't wish to hear? Sorry, you don't know if he wished to hear it. Did he roll his eyes often when he received advice?*

A. *Yes.*

Q. *And when you say 'roll his eyes', it's sort of -- threw the head back and?*

- A. Yes.
- Q. Yes. *Made it clear that he was at least disappointed with the advice?*
- A. Sure.
- Q. Yes. *That could dissuade people giving him advice you would think?*
- A. I guess.

I referred her to notes that I had been provided with, by Minister Koutsantonis' solicitor:²¹¹

- Q. *Now I think in the notes that have been provided to me by Mr Tisato that Minister Koutsantonis often used the expression 'fuck a duck'.*
- A. Yes.
- Q. *Is that when there was a problem?*
- A. Yeah.
- Q. *He used that frequently?*
- A. Yeah.
- Q. *And with public servants?*
- A. Yes.
- Q. *Did Minister Koutsantonis get angry from time-to-time? And I'm talking outside of meetings now. When he got angry, how did he behave?*
- A. *He raised his voice. He used his hands a lot – he always used his hands a lot.*
- Q. *He used to?*
- A. *He used his hands a lot.*
- Q. Yes.
- A. *And swore.*
- Q. *Swore more?*
- A. *I don't know.*
- Q. *And the language – using the 'fuck' and the 'C' word?*
- A. Yes.
- Q. *Yes. Did you see him angry in meetings?*
- A. *Um, I don't know if I would call it angry. I'd call it frustrated.*
- Q. *Yes. Yes. But let's call it frustration where he raised his voice, uses his hands and swears.*
- A. *He didn't often raise his voice in meetings.*

²¹¹ RC35.

- Q. *But he did.*
- A. *Occasionally.*
- Q. *Yes. Well, if a Minister raises his voice and uses his hands with expression and swears, that could be intimidating?*
- A. *I guess so.*

Ms Goodchild said that Minister Koutsantonis was frustrated by the URA and frequently criticised it throughout the relevant period. He would often describe the URA as 'useless' and 'hopeless'. He was frustrated by its inability to get things done because of incompetence. He became frustrated at meetings and occasionally in meetings his body language showed that frustration although she said things never went so far so as to make the meetings awkward.

She said Ms Durand's impression that Minister Koutsantonis thought the URA was dragging its heels was a fair impression for her to have had.

Ms Goodchild agreed that Minister Koutsantonis wanted to bring the Gillman transaction to fruition.

She said that Minister Koutsantonis could be demanding. I put to her Ms Durand's evidence:

- Q. *Yes. And she described Minister Koutsantonis as a very passionate man, would you agree with that?*
- A. *Yes.*
- Q. *Yes. She said he was very demanding.*
- A. *Okay.*
- Q. *Would you agree with that?*
- A. *I guess he could be.*
- Q. *There's that expression, 'people don't suffer fools gladly'. Was that, that his attitude – you don't suffer fools? I mean the way he behaved.*
- A. *Yeah, I mean – I guess so. I never got the sense that he was directly trying to give them any sort of impression.*
- Q. *No. But I suppose a level of frustration leaves you with an impression.*
- A. *Sure.*
- ...
- Q. *Yes. Well at the same time, to be fair, Ms Durand says she wasn't intimidated.*
- A. *Okay.*
- Q. *Yes. She said 'if you were getting in the way you certainly knew about it and I think it was a brave person that put a case forward that went against the vision'. Would that be a fair impression?*
- A. *I don't think so. I – the news delivered by agencies during meetings with Ministers isn't always good but we got it anyway, and didn't at any point stop getting it.*
- Q. *And I asked him this – I asked her this I'm sorry. 'Was he unreceptive to advice he did not like?' Answer: 'Yes, very.' 'How would he show that?' 'Rolling his eyes, snapping.*

You wouldn't get invited back to meetings.' We'll leave, leave aside the point of invitations – she's right is she, that he rolled his eyes with that type of advice?

A. Yes.

Q. Yes. And 'snapping'; I'm not quite sure what she means by 'snapping' but.

A. I'm not either.

Q. No. And if she said he used the language of a frustrated person.

A. Okay.

Q. Would you agree with that?

A. Sure.

Q. Yes. She said he would say things like 'for fuck's sake'.

A. Yes.

Q. Yes. When he was frustrated.

A. Yes.

Q. You agree with that?

A. Yes, I do.

Q. Yes. And she said, 'you are just a very passionate driver, which was to be admired at times'. You would agree with that, I suppose?

A. I do agree with it.

Q. Yes. And she said he 'drove Gillman hard'. Do you agree with that?

A. Yes.

Q. And she said – well no I'm sorry, I won't ask you that. She said he used phrases like 'For Christ sakes, what are you doing? It's not that hard. Get it done, pull your finger out'.

A. It's just not familiar, [inaudible] ring a bell and it –

Q. Did he use that or did he say those sorts of things outside meetings? Pull your finger out; get it done; things like?

A. Sure –

Q. Yes.

A. – to staff, yes.

Q. Well it might have been that you just – it happened so often you missed it.

A. It's possible.

Q. And she said he was – I asked was the Minister impatient about bringing Gillman transaction to a resolution and she said, 'yes'. Would you agree with that? He was impatient to get it done?

A. Yes.

- Q. *She said that Mr Buchan was more forthcoming with the Minister than Mr Hansen?*
- A. *Correct.*
- Q. *That, that.*
- A. *Yes.*
- Q. *Did Mr Hansen have trouble communicating with the Minister?*
- A. *No, I don't think. He wasn't as across projects. Things like this Michael was dealing with, Fred was supposedly running the organisation, so that was Michael's focus. So Michael had more to say about it when agenda items came up. You know, as did others who were there so if it was something –*
- Q. *Okay.*
- ...
- Q. *She said that the Minister responded very well to advice that he wanted to hear. I suppose that's obvious. Do you agree with that?*
- A. *Yes.*

Mr McLachlan is a General Manager employed by the URA. He has had significant experience in property related matters. He has tertiary qualifications in business operating in real estate valuations and marketing. He commenced his employment with the URA in September 2012 when part of Defence SA was absorbed by the URA. He had previously had a senior management role with Defence SA.²¹² He described the URA as then being in a transitional stage. He reported directly to the Chief Executive, Mr Hansen.

When the URA absorbed part of Defence SA it acquired significant property assets but also incurred significant debt.

Mr McLachlan had no involvement in the Gillman transaction, possibly because he was an acquaintance of Mr Andrew Gerlach. Mr McLachlan said it was proper that he not be involved or briefed.

Mr McLachlan said in answer to my questions that he was an articulate, confident and resilient man who is not easily offended in his business life and who is potentially more confident than some of his colleagues. He said he could not be easily intimidated. I observed and heard him over 4 hours in which he gave his evidence and I accept his own assessment of his personality. He is a strong character.

Mr McLachlan attended a number of meetings between the senior management of the URA and Minister Koutsantonis and his staff between June and December of 2013 which was sometimes held in the Minister's ministerial office and sometimes in his office in Parliament House.

During this period Mr McLachlan was responsible for activities in relation to the Riverbank Precinct, the Festival Centre Plaza and Car Park Project, the Port Adelaide Renewal Project and growth area infrastructure negotiations which were, as he described them, high profile and of interest to Minister Koutsantonis.

He said that he was present at between two and four meetings when the Gillman land transaction was discussed.

²¹² RC36; RC37.

He said that Minister Koutsantonis had a high level of interest in the Gillman transaction and displayed a real keenness to progress the opportunity and try to bring it to fruition.

He said that Mr Hansen was not able or willing to make hard decisions. He said Mr Hansen struggled to build a rapport with Minister Koutsantonis after Minister Koutsantonis succeeded Mr Conlon as the responsible Minister.

He said that Minister Koutsantonis' body language showed that he was exasperated by both Mr Hansen and the URA. On one occasion when Mr Hansen attended a media briefing for the Riverside Project Minister Koutsantonis said of Mr Hansen, out of Mr Hansen's hearing, 'what the fuck is he doing here'.

Mr McLachlan was asked about his observations in relation to the effect if any on Mr Hansen in his relationship with the Minister. He said:

my recollection is that with the passage of time through 2013 that Mr Hansen started to demonstrate a general level of malaise and perhaps, you know, a resignation to his potential fate as the Chief Executive of Renewal SA. And so my observation of his body language and behaviour that I think potentially that he had, you know, the whole situation that he found himself in was potentially impacting upon him.

He was asked what it was about his behaviour that led him to think that and he said:

I guess a, perhaps a level of, of general reservation and a lower level of engagement perhaps. He did not seem to be what I describe as a fire in the belly to keep fighting, necessarily, and you know, perhaps as a resignation that some of our challenges were, as an organisation, were perhaps unwinnable battles. The problems were not necessarily going to be solved.

He said that this malaise of which he spoke commenced in about mid 2013.

The Board on the other hand treated Mr Hansen respectfully even though the Board recognised and was concerned that the URA was in a poor financial position and did not have a clear strategic plan.

Mr Hansen was aware of the Board's concerns but Mr McLachlan said Mr Hansen appeared powerless to resolve the financial issues and did not remedy the absence of a strategic plan.

He said that at times Mr Hansen appeared taken aback and negatively impacted by Minister Koutsantonis' behaviour and by the outcomes of meetings with Minister Koutsantonis. Mr McLachlan said in his statement²¹³ and generally confirmed in his evidence:

...and as the time progressed Fred became increasingly subservient and appeared resigned to his fate. He appeared to be suffering from a general malaise and a sense that there was no solution. That came through in body language that I observed.

He said that the Minister was a conversational swearer and:

someone that would frequently embellish or emphasise a point with swear words and at times it might have also been the way in which he expressed his frustration around certain matters.

He said the word 'fuck' was quite regularly used and phrases such as; 'this situation is fucked', or 'what am I going to fucking do about this?', 'how should I fucking deal with that?' were used and accompanied by body language that was indicative of someone expressing their frustration and concern.

²¹³ RC 37.

The body language included Minister Koutsantonis:

sort of being head in hand and a little down-cast at times, shaking his head in a sort of incredulous way and the sort of general demeanour of someone that perhaps might be sort of slouched or leaning forward and concerned and frustrated about how to deal with particular situations.

He said Minister Koutsantonis did not display aggressive behaviour that was pointed towards individuals or table thumping or anything of that kind. Nor did he raise his voice.

He said that the projects for which he had responsibility had a very high profile and with one exception progressed in a very positive way.

He said, however, there were two occasions where the advice that he gave Minister Koutsantonis was not positive. The first was when he told the Minister that a project could be completed in a particular time but later had to amend the time for the project to report to market and the Minister said: 'well, you have fucking let me down'.

On the second occasion Mr McLachlan said that he wrote to the Walker Corporation which was concerned with the Festival Centre Plaza and Car Park project and was told in a subsequent telephone conversation with Mr Walker that he did not appreciate Mr McLachlan's advice but it did not matter much because Mr Walker said he had spoken to Mr Hooker and Minister Koutsantonis and that Mr Walker would not be dealing with him in the future. Mr McLachlan said that without being told he was removed from responsibility for that project.

On one occasion he witnessed Minister Koutsantonis' frustration at advice given by Mr Maras that the Gillman transaction should not progress.

Minister Koutsantonis also became frustrated with the URA's financial position.

Mr McLachlan said he thought it was his responsibility to provide frank and fearless and open advice to Minister Koutsantonis and where the Minister was not particularly pleased or happy with the advice he endeavoured to fully explain the situation and justify the advice that was being provided.

In his case he said that the projects were largely successful and it was unlikely that he had to deliver unhappy news to the Minister too often.

He said that if Minister Koutsantonis was given advice a common reaction of the Minister was expressions such as 'this is just fucked' or 'how the fuck do I get myself out of this situation?'.

He said that URA management 'appeared to respectfully accept the Minister's behaviour'. Management did not behave in the same way as Minister Koutsantonis and always remained professional.

He was asked about Mr Buchan's evidence.

Q. *Mr Buchan has said in his evidence that the Minister used expressions like 'pull your finger out and get it done for me'. Did you hear the Minister say something to that effect?*

A. *No, I don't recall that. No.*

Q. *Expressions like 'what the fuck would I employ you for?'*

A. *I don't recall that.*

He said of Mr Buchan:

Michael Buchan was an experienced professional. It appeared to me that he would take the Minister's behaviour as part of professional life at senior level. Aside from informal post meeting discussions I had no indication that it had affected him. However, we did not have a close personal or professional relationship.

Ms Durand's evidence was put to Mr McLachlan and his evidence was:

A. *Yes, I've known Julie since the early 2000's. We worked together at AV Jennings. In that time we've maintained a – what I describe as a business friendship or a professional acquaintance ever since.*

Q. *Ms Durand gave evidence, Mr McLachlan, and said that 'the Minister was very enthusiastic about the Gillman transaction'. Would you agree with that observation?*

A. *Yes, I would.*

Q. *She said that 'he had a keenness to keep things moving'.*

A. *I would agree with that.*

Q. *She described the Minister as 'a very impatient man'. Would you agree with that?*

A. *Yes, I would.*

Q. *She said that 'he showed that by being overtly frustrated and swearing'.*

Would you –

A. *I would agree with that.*

Q. *She said he was 'a very passionate man' and –*

A. *I would certainly agree with that.*

Q. *And 'had very clear objectives'.*

A. *Yes.*

Q. *She said he was 'demanding' – she said he was 'very demanding'.*

A. *I wouldn't particularly describe him as being 'very demanding' but certainly passionate and driven.*

Q. *She said 'he was intimidatory, as were his staff'. Would you agree with that?*

A. *I don't necessarily agree with that, no.*

Q. *And she was asked whether she felt intimidated by him and she said 'Absolutely. Not in a way that made me not want to be in the room but I just, you can get a good sense of someone who has that passion and enthusiasm and the traits that come with it'. Did you ever experience that sort of reaction yourself?*

A. *I certainly felt very strongly, well respect, for Minister Koutsantonis and his position but I don't recall ever feeling that I was intimidated by him or his behaviour.*

Q. *Yes. And she was asked whether he used profanities and she said 'he was definitely a swearer', which I think is your evidence?*

A. *Yes, I've described him as a 'conversational swearer', I think.*

Q. *Yes. And he would use expressions like 'for fuck's sake' or 'fuck' or something of that kind.*

- A. *I would certainly agree with that.*
- Q. *Yes. And she said that 'he drove Gillman hard'. Well, the question was: 'did he drive this Gillman?' Answer: 'did he?' Question: 'did he drive Gillman hard?' Answer: 'absolutely'. Would you agree with that in your observations?*
- A. *In my observation I concur with that, yes.*
- Q. *And in your observation was he determined to bring about the transaction?*
- A. *Yes, I would say that I think there was a general level of determination to advance the transaction. Yes.*

I asked about Ms Durand and whether he ever saw her cower or be taken aback during meetings with Minister Koutsantonis. His answer was 'not specifically'. 'No'. 'Julie's approach as I observed it was always to try and progress matters, find solutions and find ways to please the Minister effectively'.

He said that he did not observe Mr Buchan display any negative response to the Minister.

He said that Minister Koutsantonis was determined that a way should be found to transact the deal.

Mr McLachlan said that he did not consider Minister Koutsantonis' behaviour as bullying or intimidatory but that he was not in the direct line of fire. He did not consider the language employed by Minister Koutsantonis as threatening. Mr McLachlan said he was not intimidated.

Mr Malinauskas first worked as an adviser for the Hon. Kevin Foley MP when Mr Foley was Deputy Premier and Treasurer. In 2005 he was employed by *The Advertiser* and undertook a journalist cadetship and in 2008 became a fully accredited journalist. In 2009 he became a member of Premier Mike Rann's media unit and was seconded to work as a media adviser to the Hon. Michael Atkinson MP who was then the Attorney-General.²¹⁴

After the 2010 State Election he was appointed Chief of Staff to Minister Koutsantonis and held that position for four years from 2010 to 2014. He is now working in private industry.²¹⁵

He said that he observed the interaction between Minister Koutsantonis and Mr Hansen and he spoke to Minister Koutsantonis about Minister Koutsantonis' impressions of Mr Hansen.

He said that Minister Koutsantonis' concerns about Mr Hansen were as a consequence of reports he had received from the URA Board of Management.

He said Minister Koutsantonis was frustrated with the way in which the URA was conducting itself.

He said that early Minister Koutsantonis was very keen to see the URA succeed but over time frustration did creep in at points in terms of what they were not delivering.

He could not remember Minister Koutsantonis describing the URA as hopeless and useless as Ms Goodchild had recalled but he did remember Minister Koutsantonis expressing frustration about what the URA was delivering at the time.

He said:

I remember him being frustrated about the fact that the agency itself had a bad or poor reputation in terms of competence. I think that was the view expressed not only within the ministerial circles but also in the wider government bureaucracy as well. And I think he was keen to turn that around and obviously generate some, some positive sentiment coming out of

²¹⁴ RC38.

²¹⁵ Ibid.

Renewal SA and obviously his frustration when they were not, and I guess in some ways helping themselves to actually shake off that moniker, for lack of a better term.

His evidence in his affidavit was that Minister Koutsantonis sometimes swore in front of URA staff.²¹⁶

He first said that in a meeting of about one hour Minister Koutsantonis might swear 3 or 4 times. Later he said Minister Koutsantonis might swear 5 or 6 times in a half hour meeting. Later he said he swore a fair bit. Then he said:

MR MALINAUSKAS: Actually, can I just go back to a point I [words inaudible] prior. I said he probably swore about five or six times in a half an hour to an hour meeting. It probably was more than that, looking back through.

COMMISSIONER: Well it's much more than that, isn't it?

MR MALINAUSKAS: Well, no oh probably – yeah, I'd probably say it's more 20 to 25 times. I would be saying it would sort of be maybe, on average, but obviously I could say that was the standard we would expect where [words inaudible] not so much, you know. Say it was a half hour meeting; yeah, say 15 to 20 times in a meeting.

A submission was later provided on behalf of Mr Malinauskas in respect of his transcript of evidence. In part that submission said:

On reflection, Mr Malinauskas believes he has seriously overestimated the swearing referred to therein. His considered statement is that Mr Koutsantonis would have sworn perhaps 15-20 times in an hour meeting, but Mr Malinauskas does not believe it was it was [sic] in an offensive or intimidatory way.

He agreed that Minister Koutsantonis became frustrated and demonstrated his frustration by his body language. He said that Minister Koutsantonis would look to the sky, held his head in his hand, would say 'fucking hell' and 'fuck it'. When Minister Koutsantonis was passionate he would use such language more often.

He did not agree that Minister Koutsantonis was impatient. However he agreed that Minister Koutsantonis was demanding.

He said that Minister Koutsantonis was definitely passionate and was keen to see the Gillman transaction completed.

As I have said Counsel for Minister Koutsantonis requested that Mr Buchan and Ms Durand be recalled to be examined by him. I acceded to that request.

Mr Abbott questioned Mr Buchan in relation to his meetings with Minister Koutsantonis where the Gillman matter was discussed. He was then questioned about the meeting with the Premier and Minister Koutsantonis on 12 November:

A. It was abundantly clear to me that this needed to be completed. He made that abundantly clear to me in his body language and his positioning and the words that he used and the tone that he used.

Q. You said on the previous occasion when you volunteered in your evidence of this discussion, you said, and I'm reading from page 12 of the transcript of the second occasion on which Mr Buchan gave evidence, "He essentially said, 'You had better get on to it.' He did not intimidate."

²¹⁶ RC38.

- A. He –
- Q. Now, is that evidence correct?
- A. My evidence is the best of my recollection that I provided on all occasions.
- Q. Of course, of course. What you said on that occasion, which was 10 June this year, "He essentially said, 'You had better get on to it.' He did not intimidate." That's what happened, isn't it?
- A. That was my evidence at the time.
- Q. And that was the truth?
- A. That was the truth. He gave me a direction.
- Q. You characterise it as a "direction", but do you agree that the direction was in these terms, "You had better get on to it"?
- A. Again, the exact words specific – my point in terms of that was that he didn't – and we had been talking for some time about some of the language that the Minister used and his general behaviour. On this occasion he did not use any of that. He was quite calm, he was quite silent, he stood in front of me and said, "You had better get on with it."
- Q. And you did?
- A. And I did.
- Q. Yes. And I think you next had a meeting --
- A. No, can we traverse that for a little bit then in terms of --
- Q. Sorry?
- A. I'm not sure, Mr Abbott, whether I'm going to have the opportunity to talk to the response associated to that direction, the board's response and the board's correspondence --
- Q. I'm happy to – I may not have it all, because I have only lately come into this matter and there's a volume of documents, but my understanding is – and I'm happy to be corrected by the Commissioner or by you if I'm wrong – that the next step was that the URA board has emailed an out-of-session decision paper entitled "Proposed purchase of SA land at Gillman"?
- A. Yes, that's correct.
- Q. That was a day or two after the Premier's meeting?
- A. That would have been the following day.
- Q. The following day?
- A. From my recollection that was the Wednesday. As a result of that, we had – I had an immediate response from board members to say, "What is this? Why don't we know about this? How has this happened" and so on and so forth. I responded to the board members and told them the situation that we were in, that I had been required, I had been directed by the Minister to complete the Cabinet submission in accordance with the request from the Premier for the Friday and, as a result, I was trying to bring this matter to the

attention of the board where previous Cabinet submissions had not been brought to the attention of the board. The board members were somewhat disappointed by that and I said that, "I am only acting under the direction," and numerous of them said, "Well, that is a matter that we'll take up with the Minister."

Q. *Okay. And I think there was more to come after that.*

A. *Yes, absolutely.*

Q. *I don't want to - you obviously want to talk about that, so I'll put the dates to you.*

A. *Yep.*

Q. *So that --*

A. *But, importantly, I think in terms of that effect is that no member of the board, nor did the Minister, ring me and tell me to cease and desist processing.*

Q. *Well, the Minister was merely following on the Premier's request, wasn't he?*

A. *Absolutely. He could well have had the conversation with the Premier to suggest that we couldn't achieve it within the time frames as I recommended to him, but I'm not aware of whether he did or he didn't.*

Q. *Did you at any stage request more time?*

A. *No, I did at the time. I said that I'm not going to be able to do that.*

Q. *But apart from that?*

A. *That was the day before. That was on the Tuesday of which I was then trying to get a Cabinet submission together for the Friday.*

Q. *I'm just asking you after - we've dealt with the conversation --*

A. *Yes --*

Q. *-- you had --*

A. *-- not with the Minister. I had a conversation with Rob Malinauskas again to say that we need more time, we are not able to get this done in time. The board had already responded by that, I'd expected that the board had spoken and, from the feedback that I was getting from the board members, they had spoken either to the Minister or Rob.*

Q. *I'm just dealing with your discussions with the Minister.*

A. *Yes.*

Q. *And only your discussions with the Minister.*

A. *I just think it's insightful in terms of --*

Q. *Well, maybe. I don't want to stop you if you want to talk about it, subject to the Commissioner's overriding discretion to say what you want to say, but so far as the Minister is concerned, and only the Minister --*

A. *Yes.*

- Q. -- he's present when the Premier says effectively,

"I want to put up the Incitec Pivot and the Gillman project at the same time in Cabinet"?
- A. Yes.
- Q. *"And I want it at the next Cabinet meeting"?*
- A. Yes.
- Q. *You leave the meeting. The Minister says to you, "Get on to it," or something like that; right?*
- A. Yes.
- Q. *You do get on to it and that involves you contacting the board via the minute you prepared?*
- A. Correct.
- Q. *Right? And that was the next day?*
- A. Yes.
- Q. *Then there were these - and I'm not asking what was said, I'm dealing solely with the Minister, but I don't want to pass over the fact that between the 14th and the 19th, which is when you had your next meeting with the Minister, there were, as you've observed, several dealings that you had with the board.*
- A. *Yes, and several dealings I understand the board had with the Minister.*
- Q. *Well, maybe, but you weren't party to them?*
- A. *No, that is correct.*
- Q. *So I'm just dealing with your relationship with the Minister.*
- A. Yes.
- Q. *On the 15th there was a recommendation report signed by the evaluation panel and approved by you?*
- A. Yes, correct.
- Q. *You prepared a further draft Cabinet submission but didn't send it to Cabinet on 15 November?*
- A. *We - as public servants we don't provide anything to Cabinet; we provide it to the Minister's office.*
- Q. *Well, on the 15th I think you had prepared a draft submission for the Minister if he thought it necessary to send to Cabinet?*
- A. *The 15th being the Friday?*
- Q. Yes.
- A. Yes.

- Q. Yes. And on the 17th - that's the Sunday - you sent out an email to all Renewal SA board members?
- A. That's correct.
- Q. Telling them about the meeting you had had with the Premier and the Deputy Premier?
- A. Reiterating. At that stage I had already advised them all, because most of them had rung me.
- Q. And on the 19th you had a meeting with the Minister?
- A. I can't recall that meeting with the Minister. My next real recollection I thought was on around about the 22nd with the Minister, which related to after we had provided the "no" vote.
- Q. Yes, but I'll be able to show you something that I think will jog your memory.
- A. Good.
- Q. Because when you gave evidence previously to the Commissioner, you were of the view that between the 15th - I'll make sure I get the dates right - between the date of the meeting with the Treasurer, which was the 12th?

THE COMMISSIONER: He wasn't the Treasurer.

THE WITNESS: The Premier.

- MR ABBOTT: Q. Sorry, between the meeting with the Premier on the 12th - I will start again. When you gave evidence on the last occasion, you were of the view that between the meeting on the 12th when you spoke to the Minister you didn't speak to him again until the 21st or the 22nd and I think that's still your recollection, is it not?
- A. Yes, that's correct.
- Q. I want to assist you in your recollection, because I understand that there was a meeting with the Minister on 19 November 2013, which was one of the regular weekly meetings - Tuesday, the 19th? They were invariably on a Tuesday?
- A. They were.
- Q. 19 November, I tell you, was a Tuesday, as the Monday was the 18th.
- A. Yes.
- Q. And that you were present, and Ms Goodchild made some notes. Could you look at Ms Goodchild's notes? I understand that you have them. Do you have one for 19 November?
- A. Yes.
- Q. Could you look at that, please?
- A. Yes.
- ...

MR ABBOTT: Q. And I suggest to you that what's recorded here is the advice you were giving the Minister.

A. Yes.

Q. And you were able to give that advice to the Minister on this occasion - brief him on the state of affairs?

A. Yes, he was very displeased.

Q. But, nevertheless, you gave the advice?

A. I gave the advice, absolutely.

Q. So at this time it was, as on other occasions, frank and fearless advice?

A. I absolutely gave the advice to the best of my ability.

Q. And this note sets out, in very brief terms, some of the advice?

A. Some of the advice.

Q. Yes, but it wasn't pleasant - it wasn't advice that was good - sorry, I withdraw that. It was good advice, but it wasn't good news?

A. That's correct.

Q. Right. But the fact that it wasn't good news didn't prevent you from giving the advice?

A. No, no. I provided that advice. That was the position that the board had taken and was the position - it was my duty to pass through to the Minister.

Q. Exactly. And that's what you did on every occasion?

A. Again, to the best of my ability.

Mr Buchan was later questioned about a meeting with Minister Koutsantonis on 22 November:

Q. All right. In any event, this meeting was less than 30 minutes?

A. Yes. Absolutely.

Q. About 15 minutes, or less?

A. I cannot recall the exact time.

Q. Right. And the Minister said to you, "What am I meant to do with this?" That's all you remember about him saying?

A. Yes, I remember him being particularly frustrated, as I think I've said. I remember him waving it around, "What am I meant to be doing with this?", putting it on the table and putting his hands on his head and sort of saying, "How have you helped me?"

Q. Well, that's your interpretation of it but, nonetheless --

A. You're absolutely right, that was my interpretation.

Q. Nonetheless, you went ahead and said to him, "Minister, this is what the board have resolved."

- A. Yes.
- Q. *"We've had the discussion. I presented all the information. This is the situation."*
- A. *Absolutely.*
- Q. *Again, you were giving frank and fearless advice to him.*
- A. *I was giving the advice to the best of my ability, yes.*
- Q. *And you said to him that it was a reasonable transaction for the State to enter into.*
- A. *Yes, I believed, and I have said all the way through, that I think the transaction has real merit and significantly better than any other proposal associated with this land that we've seen.*
- Q. *And, on this occasion, on 22 November, you told him, in no uncertain terms, despite his reaction to the proposal, that this is the best deal the government can expect to get?*
- A. *That would have been - yes, that was my view.*
- Q. *And I put it to you that your frank advice was quite lengthy - quite lengthy advice you gave him.*
- A. *Yes, I would have --*
- Q. *Because you wanted to convince him that this was an appropriate and proper deal for him to enter into - to put to Cabinet?*
- A. *I think it would have been quite lengthy, because we were discussing the board --*
- Q. *Yes.*
- A. *-- the board's views, the board's concerns associated with the off market nature, the fill business, probity issues, et cetera, et cetera.*
- Q. *And there were a number of issues that were discussed, I suggest, at least that you dwelt on to put to the Minister, because you saw it as part of your duty to properly brief him, and they included the fact that the eventual proposal did not align up with all the government objectives for the area. You mentioned that aspect at some length?*
- A. *Are there minutes of this?*
- Q. *There are no minutes of this. I don't have any unless you've made some.*
- A. *No, I can't recall in detail this --*
- Q. *Right. Well, you did give some evidence before --*
- A. *Yes.*
- Q. *-- and you said that you argued quite vigorously to the Minister --*
- A. *Yes.*

Q. -- to convince him that what you were putting up was a proper and good proposal for the State.

THE COMMISSIONER: Where is that in the transcript?

MR ABBOTT: It is page 18.

Q. Correct?

A. Can I see the transcript?

Q. Yes. Well, no, I'll put it to you.

A. I believed in this transaction.

Q. Exactly. You believed --

A. So I believed that it did represent good value for the State, I believed that it did create jobs for the State and ticked a number of boxes in terms of --

Q. Yes. And on 22 November, to use the vernacular, despite the Minister's reaction to it, "What am I meant to do with this", you were saying to him --

A. Put it to Cabinet.

Q. And you were telling him to put it to Cabinet and you were telling him this was the best deal that could be achieved.

A. Yes.

Q. And some of the things that you mentioned were, even though it didn't align with all the policy matters, it was what the board had resolved?

A. In terms of the board had resolved to reject it.

Q. Well, no - well, all right. You said it didn't align with all the policy matters but it was the best deal possible; correct?

A. Yes.

Q. In any event, he said that he would attend the meeting, as he'd said previously on the Tuesday?

A. Yes.

Q. And he did?

A. He did, absolutely.

Q. Do you remember - and you gave evidence before - you don't suggest that he swore on this occasion on 22 November, do you?

A. No, that's correct.

Q. It was you giving frank advice and him listening to it?

A. That's correct.

Q. On 25 November he attended the board meeting?

A. Correct.

- Q. *You remember that board meeting?*
- A. *Yes, yes, I do.*
- Q. *Right. Fred Hansen was there --*
- A. *Yes.*
- Q. *-- because he'd returned from leave?*
- A. *He'd returned from leave.*
- Q. *In fact, the meeting that you'd had with the Minister on the 22nd was the last day when you were the acting CEO.*
- A. *That's - well, that would have been the last day, yes.*
- Q. *Yes. And you were discharging, as you saw it, your role of acting CEO on that occasion, on 22 November?*
- A. *Yes.*
- Q. *And on 25 November did Fred Hansen lead the discussion with the board?*
- A. *The discussion with the board took place after the Minister had actually given his briefing, so I think he entered the board, from my recollection, at the beginning of the board meeting and not during the board meeting.*
- Q. *Right.*
- A. *And so, as a result, there wasn't, if you like, a lead in the ordinary sense of the business. There was a presentation where the Minister passionately advocated for the project and then departed, and essentially the chair then led the discussion in reality, because she was trying to wrap and summarise what happened.*
- Q. *25 November, was that a meeting where the Minister was asked many questions, or did he just give a presentation?*
- A. *No, he opened it to questions.*
- Q. *And the board members made it clear that they had a particular view about what should be done?*
- A. *Yes.*

He was questioned further:

- Q. *From what you've told me, throughout this period that you were involved in the negotiations for the Gillman project, there was not an occasion when you were unable to give frank advice to the Minister?*
- A. *No. At all times I gave the advice to the best of my ability, absolutely.*
- Q. *And you didn't withhold advice?*
- A. *No.*
- Q. *You didn't make up advice that you thought was wrong, but nevertheless gave it?*

- A. No.
- Q. *You never gave advice that was somehow biased; it was your independent advice. You didn't tell the Minister what you thought he wanted to hear?*
- A. No.
- Q. *In fact, you told him several times things that you appreciated he wouldn't want to hear?*
- A. *That's correct.*
- Q. *And that's how you continued in your role as a public servant then, and now?*
- A. *To the best of my ability.*
- Q. *And, look, you know, there are Ministers and Ministers I suppose. Some, their personalities are different. Have you worked for different Ministers?*
- A. Yes.
- Q. *Including John Rau?*
- A. Yes.
- Q. *What other Ministers have you worked for?*
- A. *Minister Conlon.*
- Q. *I take it some Ministers are easier to get on with than others?*
- A. Yes.
- Q. *But regardless of whether there is any difficulty in getting on with them or not, you still give your frank advice, and have done so?*
- A. Yes.
- Q. *Tell me, we know that the Minister did not think highly of the agency at all times, Urban Renewal?*
- A. *That's correct.*
- Q. *And sometimes he said so?*
- A. Yes.
- Q. *Or expressed sentiments that you took as him being dissatisfied with the agency?*
- A. *Beyond dissatisfied, yes.*
- Q. *That never affected your ability to give advice?*
- A. *No, it does affect your ability to give advice, but you still provide it, regardless.*
- Q. *Yes, of course. That's your job, isn't it?*
- A. *That's correct.*

Mr Buchan was also questioned on Minister Koutsantonis' use of swear words:

- Q. *You don't suggest, do you, that on every occasion you were with the Minister that he used swear words to you?*
- A. *No, I think my evidence is clear on that.*
- Q. *The evidence, so far as I read it, was that the use of swear words during the course of discussions where you were present was infrequent - not frequent?*
- A. *I would suggest that it is - it was frequent. It was part of the vernacular.*
- Q. *But not every occasion?*
- A. *No, not every occasion.*
- Q. *And you now, with one or two exceptions, can't identify the occasions when he didn't use a swear word?*
- A. *No, what I was suggesting before was that that was - even in a good meeting, the Minister would swear.*
- Q. *He might drop a swear word in?*
- A. *Yes.*
- Q. *And I suggest that the swearing was, "What the fuck do we do next," or, "What the fuck's going on here" - something like that?*
- A. *On occasions, yes.*
- Q. *And have you been in meetings with your officers at Urban Renewal where people have sworn?*
- A. *Yes.*
- Q. *Not in - it happens quite frequently?*
- A. *On occasions, yes.*
- Q. *At least so far as many of the occasions where the Minister swore, it was nothing unusual?*
- A. *It was part of - it was part of his personality.*

On the following day Ms Durand attended to give further evidence. Prior to Ms Durand being called, I made a statement in the presence of Minister Koutsantonis' legal representatives, a copy of which I then provided to those representatives and to the CSO. Amongst other things I said in that statement that it was irrelevant whether Ms Durand was in fact intimidated by Minister Koutsantonis's conduct because she was not part of the decision making process in Gillman. I said that I did not intend to find that Minister Koutstantonis had engaged in maladministration in public administration or that his conduct intimidated Mr Buchan or affected the advice that Mr Buchan gave. I also said that I would accept Mr Hansen's submission that 'the Minister did not apply any undue pressure on the Board or us'.

Having made that statement I was informed by Mr Abbott that he did not wish to ask Ms Durand any questions. Ms Durand was not examined further.

I received a statutory declaration sworn by Tom Carrick-Smith who was one of two Ministerial Advisers responsible for the Resources and Energy portfolio which was the responsibility of Minister Koutsantonis²¹⁷. During that time Mr Malinauskas was Minister Koutsantonis' Chief of Staff.

Mr Carrick-Smith became Minister Koutsantonis' Chief of Staff in September 2014 when Mr Malinauskas resigned.

He said that he had never observed Minister Koutsantonis act in a bullying or intimidatory way towards Mr Hansen, Mr Buchan or Ms Durand in any of the meetings at which he attended. Nor did he observe any signs of their being bullied or intimidated.

He said Minister Koutsantonis does swear but he has not seen Minister Koutsantonis direct his swearing at an individual or a group of people in a personal or direct or abusive, bullying or intimidatory way.

He said:

it is more that a swear word such as the 'f' word , will be used in conversation, sometimes jokingly, sometimes to express frustration, but just as part of his expression of speech, not directed at anyone in a personal abusive way.

He deposed to a conversation that he had with Mr Buchan at Rigoni's restaurant in Leigh Street on 29 April 2014. The conversation to which he deposed in which he said Mr Buchan spoke positively and enthusiastically about the casual way in which he could communicate with Minister Koutsantonis and that Mr Buchan has described his relation as a close personal relationship.

He said that Mr Buchan contrasted Minister Koutsantonis' casual way with the more formal relationship he had with the now Minister, the Hon. John Rau MP.

That conversation was put to Mr Buchan by Ms Kleinig and Mr Buchan swore a statutory declaration in which he said:

10. *I do recall conversing with the Treasurer, and I congratulated him on his election victory that may have led on to a conversation with Mr Carrick-Smith.*
11. *In relation to the comment that I spoke fondly about the relationship with him and his Minister's office in paragraph 11 of the statutory declaration, we may have had a conversation that could be characterised in that way.*
12. *I am sure that I would have been attempting to foster a positive working relationship with him so that I could do my job.*
13. *Renewal SA had large financial challenges at the time of the dinner, and in my view maintaining a good relationship with the Treasurer and his office was critical to the agency's ability to resolve those challenges.*
14. *In that context I would not have said anything negative about the Minister or his office, notwithstanding any privately held views that I might have had.*
15. *In that context I would have restricted what I would say about the Minister or his office to positive comments.*
16. *In terms of the first sentence in paragraph 12 of Mr Carrick-Smith's statutory, I may have spoken with Mr Carrick-Smith about the interactions of the Minister and the agency in terms of the frequency of meetings with Minister Koutsantonis and approaches for information from Ministerial staff.*
17. *At that time, the Deputy Premier, the Hon John Rau MP who was the agency's new Minister appeared to have adopted an 'arms-length' approach to the agency. At that time the relationship between Minister Rau and the agency was more formal and remote.*
18. *Mr Hansen was still Chief Executive of the agency at the time of that dinner.*
19. *I note though that Minister Rau's 'arms-length' approach did not continue after a new Chief Executive was appointed by Government.*
20. *I very much doubt that I would have said to Mr Carrick-Smith that I had a 'close*

²¹⁷ RC29.

personal relationship' with the Treasurer.

21. *I say that because the relationship that I had with the Treasurer did not bear the hallmarks of what I would characterise as a close personal relationship.*
22. *A close personal relationship in my judgement is characterised by social and family interactions in a non-work related setting.*
23. *The Treasurer and I did not interact in that way.*²¹⁸

Under questioning by Mr Abbott, Mr Buchan re-affirmed that he did not think he had a close personal relationship with Minister Koutsantonis, but that he did have a professional one.

I have also considered six further statutory declarations put forward by Minister Koutsantonis' legal representatives:

1. statutory declaration of Andrew Charles Blaskett dated 16 September 2015²¹⁹;
2. statutory declaration of Andrew James Cadd dated 16 September 2015²²⁰;
3. statutory declaration of 'T' dated 16 September 2015²²¹;
4. statutory declaration of Geoffrey Ronald Knight dated 17 September 2015²²²;
5. statutory declaration of Robert Ian Thomas dated 18 September 2015²²³; and
6. statutory declaration of Owen George Brown dated 1 October 2015²²⁴.

Mr Blaskett is the Executive Director of the Public Finance Branch of the Department of Treasury and Finance ('DTF'). He said in his statutory declaration that he had been in many meetings with Minister Koutsantonis and:

[i]n all the meetings that I have had with the Treasurer, he has never engaged in bullying, intimidatory, overbearing or abusive behaviour towards me or any other public servants.

Mr Blaskett said that he worked with Minister Koutsantonis in a high pressure environment, and that while Minister Koutsantonis would sometimes get frustrated when he received advice or information that he did not like, his frustration was not 'over the top'.

Mr Blaskett supports the evidence of others that Minister Koutsantonis does swear in meetings with public officers, but that it was 'conversational swearing' that was never abusive, never directed at any person and never bullying or intimidatory. Mr Blaskett could not recall Minister Koutsantonis using the 'c' word in his presence.

Mr Cadd is the Director, Account Management, Budget Branch of the DTF. Mr Cadd said that when the ACP proposal came to his desk in 2013 he prepared a costing comment to go to Cabinet.

Mr Cadd said that he had had a number of dealings with Mr Buchan, whom he said he found to be 'polite but opaque to deal with'. Mr Cadd spoke about a recent proposal (not related to Gillman) to which he had sought information from Mr Buchan. Mr Cadd said that he found Mr Buchan would do his best to 'pitch the project' rather than giving him specific answers.

On the topic of Minister Koutsantonis conduct during meetings, Mr Cadd echoed the evidence of Mr Blaskett. Mr Cadd said that he had never observed Minister Koutsantonis act in a bullying, intimidatory or abusive way towards public officers in any of the dealings he had with him. He said that Minister Koutsantonis will challenge people's ideas in a 'vivid way', but that he had never seen him scream at anyone or swear at them or threaten them. He described Mr Koutsantonis' language in meetings as nothing abnormal, and that it would on occasion lighten the mood in meetings.

²¹⁸ RC40.

²¹⁹ RC44.

²²⁰ RC43.

²²¹ RC42.

²²² RC41.

²²³ RC45.

²²⁴ RC55.

Mr Cadd said that he had been in meetings with Minister Koutsantonis when the Minister received bad news or advice or information that he does not like. Mr Cadd said:

although it was apparent that he was unhappy about what he was hearing, he has never exploded at, or reacted angrily or disrespectfully towards, the bearer of the advice. What he does is turn to us and explore and debate the issue.

'T' is a very senior public officer.

She said in her statutory declaration that she had had many professional dealings with Minister Koutsantonis and had been present at a number of meetings with a number of Chief Executives and the Minister. She said:

It was my experience that the Treasurer would engage, sometimes with high scrutiny, sometimes colourfully, with senior public servants on difficult issues. On these occasions the Treasurer focused on the issues and did not make discussions or debates personal.

'T' said that Minister Koutsantonis was 'even-handed' when expressing his disappointment about someone not meeting a deadline and that she felt about to engage in debate or challenge Minister Koutsantonis. She said that she felt able to give frank and fearless advice and that Minister Koutsantonis would, in fact, encourage it. She said that she had observed Minister Koutsantonis change his position as a result of advice he had received from public officers.

She said that Minister Koutsantonis does swear in meetings with public officers and that she had observed him to swear to describe his frustration, but that she had not observed that language to be directed at a person or used in a bullying or an intimidating way.

Mr Knight is the former Chief Executive of DMITRE. He has been a member of the Board of Management of the URA since late 2014. The Gillman transaction pre-dated his involvement with the URA.

Mr Knight said that he could not recall an occasion where Minister Koutsantonis behaved other than appropriately towards public officers. He said that there had never been an express or implied suggestion or direction from Minister Koutsantonis to any of Mr Knight's staff or to Mr Knight to deliver a particular outcome or result. Mr Knight recalled an example relating to the approval of a mining licence on the Yorke Peninsula. He said that he explained to Minister Koutsantonis the process that had to be undertaken, notwithstanding the pressure that the Minister was under to progress the approval. Mr Knight said:

In relation to the possibility of us completing the assessment and having the Minister approve and announce it before the March 2014 State election, Minister Koutsantonis said words to the following effect to my staff and me, "You must ignore my political timeframe. This proposal will only work if you undertake a thorough and proper process. If that means not completing the assessment before the election, so be it. I don't want you to compromise your expert assessment of the proposal in favour of political timing".

Mr Knight relayed other examples of his interactions with Minister Koutsantonis that supports the contention that, in those dealings, Mr Knight observed Minister Koutsantonis to handle difficult and sensitive situations professionally and respectfully and to insist upon a thorough, expert and objective assessment of any matter that would be approved by the Minister or go to Cabinet for approval.

He said that he had never observed Minister Koutsantonis to act in a way that was bullying, intimidatory or abusive. Although Minister Koutsantonis did swear in meetings, Mr Knight said that that swearing was 'conversational and was usually used either to express frustration or when he was being light-hearted with us, which he regularly was'.

Mr Thomas is a scientist who has held a number of positions in State Government. In 2011 he was appointed the Chief Scientific Adviser for the Olympic Dam Taskforce. He first met Minister

Koutsantonis in 2011. He described Minister Koutsantonis as 'fair, passionate, respectful and decisive'. Mr Thomas said that he had never seen Minister Koutsantonis take a pre-conceived view on any work that he had been involved in. He said that he had never worked with a Minister who is as respectful of the public service as Minister Koutsantonis is and had never seen Minister Koutsantonis abuse, bully or intimidate any public officer.

He said that he can be 'robust' when a public officer has not done something within an agreed timeframe or when he receives advice that he doesn't agree with or is not correct, but that he engages in a process of testing the advice and is always open to discussion about it.

Mr Thomas said that he has never seen Minister Koutsantonis act in a way that is bullying, intimidatory or abusive to any public officer. Mr Thomas said:

[a]ny senior public servant has to be able to deal with robust interaction in their dealings with a Minister. If not, that are in the wrong place.

Mr Owen Brown was a media adviser to Minister Koutsantonis between 2011 and 2014. He provided a statutory declaration in which he said he had accompanied Minister Koutsantonis to a number of meetings with URA executives. Mr Brown recalled becoming aware of the ACP proposal in 2013 and speaking to Minister Koutsantonis about it. He recalls the proposal being discussed at meetings between the URA and Minister Koutsantonis to which he was present.

Mr Brown recalls Minister Koutsantonis receiving assurances from Mr Buchan that ACP's offer was good value for money. He said that both Mr Hansen and Mr Buchan were enthusiastic about the ACP proposal. Mr Brown said he was surprised to learn that the Board did not support the proposal because he had the impression from meetings with the URA and Minister Koutsantonis that it was a good value deal and that 'neither Mr Hansen or Mr Buchan had ever suggested or expressed a concern that the Board might not support it or that the Board was not sufficiently informed to make a decision'.

Mr Brown said:

In all of the meetings I attended between the Minister and Renewal SA's senior executives, the Minister was polite and direct. This is the way he is with public servants. I have been with him in many meetings with public servants since 2011 and this is his style.

I have never seen him act in a bullying, intimidatory or abusive manner towards any public servant, including any Renewal SA executives in any of those meetings.

Mr Brown said that he had never heard Minister Koutsantonis use the 'c' word in front of a public servant and never directed any profanity at anyone in meetings.

MR HANSEN'S ROLE AND HIS RELATIONSHIP WITH THE BOARD OF MANAGEMENT

On 4 November 2013, Mr Hansen went on leave and Mr Buchan became the acting Chief Executive of the URA. I should say something about Mr Hansen's role as Chief Executive and his relationship with the Board of Management.

Mr Hansen had an obligation to report to both the Minister and the Board.

Mr John Hanlon is, as I have said, the current Chief Executive of the URA. He was appointed in July 2014, well after the URA had entered into the Option Deed with ACP. He was not a participant in the events of the second half of 2013, but he has had reason to analyse them closely.

He had an understanding of the role of the Chief Executive of the URA which included obligations to the Board. He gave evidence about the dual role of the Chief Executive, as he understood it. He said that the Chief Executive was responsible to the Minister for the legislative process but at the same time the Chief Executive has an operational responsibility to the Board.

He said it can be difficult to discharge both roles and often depends upon the Minister's understanding of the Board's role.

I asked Minister Koutsantonis about his understanding of the Chief Executive's responsibility to the Minister and to the Board. He said:

Well, my understanding was that even though the Crown appointed him, that is, the Premier and the Cabinet appointed him, that the Board were responsible and he would report to me and to the Board. But that often got confused throughout the entire process. It was a very – it was a sore point of conflict in the organisation.

Minister Koutsantonis said it was apparent to him shortly after he became Minister (21 January 2013) that Mr Hansen often got confused about his reporting obligations to the Board.

Mr Buchan said that Mr Hansen's relationship with the Board was 'difficult' and 'troubled' as a consequence of his management style and his failure to advise the Board of matters. He said that Mr Hansen responded to the Minister in a far more consistent manner. He said:

A: *Okay. I found I spoke to the Chief Executive on numerous times on how uncomfortable I was in terms of the role, the relationship that we had with the Board. I believed it was an inappropriate response to a statutory corporation, somewhat naively because my real role within Government being from the LMC days where we were totally left alone. And I believed that we were letting the political system too far into our thought process rather than having the thought; advising them and then dealing with the consequences of that.*

Q: *Had you lost your ability to be detached?*

A: *I believe we had.*

Q: *And therefore the possibility of losing your objectivity?*

A: *I certainly felt the impacts of that on the decision making. Again I would like to think that even, in hindsight I recognise I participated and I made a number of mistakes through this. They were my mistakes to make. I do not think I expressly had a second thought or pushed an opinion down because I believed that would be something that would be less than desirable.*

Q: *Do you think the Minister took advantage of this, of Mr Hansen's misunderstanding of his role?*

A: *No not necessarily. To suggest that he was taking advantage of it would, again, in my mind, would be that he was playing it and using it for his advantage, in getting outcomes and things he was looking for. I do not think the Minister thought that much about many of these matters.*

Mr Buchan said that Mr Hansen's relationship with the Board had fractured by November 2013.

Ms Durand said that Mr Hansen's strong relationship with Minister Koutsantonis undermined the role of the Board. It created a tension of which Mr Hansen was aware. The tension was greater by November but she was not aware that Mr Hansen did anything to address it. She noticed that members of the Board appeared to be frustrated. She was aware of emails that were circulating expressing frustration. She said that on the other hand Mr Buchan had quite a strong relationship with not all but various members of the Board. Some members of the Board relied upon Mr Buchan for information. She said Mr Buchan was a good operator.

Ms Pike thought that members of the URA Board found it difficult that the Chief Executive had been appointed prior to the Board's appointment. There was also difficulty because the Chief Executive was accountable to both the Minister and the Board.

Ms Pike thought that Mr Hansen did not understand his role well. He saw himself as accountable to the Minister and he did not really understand how to work with the Board and how to manage the dual accountability.

She said, as a consequence of his failure to keep the Board advised, the Board itself could not be accountable to the Minister because it was not well enough informed and therefore the Board was not able to be strategic in its decision making.

Ms Pike said the structure was such that from the Board's point of view they could not bring Mr Hansen to account because he saw himself as answerable to the Minister.

As a consequence Ms Pike said that the Board became increasingly concerned about Mr Hansen's resistance to recommendations about how the organisation should be run.

Ms Pike said she tried to tease this out with Mr Hansen on a number of occasions over the period that they worked together but that Mr Hansen, to use her term, 'just didn't get it, really'.

As a consequence, Ms Pike said he was selective in what he brought to the Board and to the material which he brought to the Board.

Ms Pike said by the time the Board was called upon to make a decision in relation to Gillman, Mr Hansen had lost the trust of the Board which by then was annoyed by his behaviour.

By October the frustration was mounting because the Board had also been quite unhappy with Mr Hansen's stakeholder management skills. It had been told by external bodies that Mr Hansen did not attend events that he was scheduled to attend and was not representing the organisation publicly.

Ms Pike said she communicated to Minister Koutsantonis the general frustration that the Board was experiencing.

Minister Koutsantonis knew, she said, that the Board was dissatisfied with Mr Hansen's performance and he was aware of that as at October.

Ms Pike said Mr Hansen's attitude was displayed when he refused to participate in a performance review, which she was conducting, because he said he was not accountable to her even though the Minister had delegated the responsibility for the performance review to her.

Mr Holden was highly critical of Mr Hansen. Mr Holden said that Mr Hansen took the view that he was appointed by the Minister and that the Board was a nuisance to him.

He said that Mr Hansen was very polite and civil to the members of the Board but that Mr Hansen took the clear view that his obligation was to report to the Minister.

He said that Mr Hansen's management style was unsatisfactory in that he was unable to carry his people with him.

He said that there was an ongoing battle between Mr Hansen and the Board because the Board wanted anything of any significance to be brought to its attention so that it could consider the matter and make a decision and direct Government appropriately.

Mr Maras raised with Mr Hansen his reporting obligations and the fact that he reported directly to the Premier and the Minister. He thought it was inappropriate that Mr Hansen report directly to the Minister or Premier rather than to the Board.

Mr Maras said that Mr Hansen's failure to report directly to the Board caused tension between the Board and Mr Hansen. He said he complained to Mr Hansen about the Board not being called upon to make decisions.

Mr Terlet was unhappy about Mr Hansen's appointment as the Chief Executive because the Board was not involved in the process. Mr Terlet said that Mr Hansen was not the type of person that Mr Terlet would have employed as a Chief Executive in any event. Mr Terlet thought Mr Hansen was a personable person but he was not suitable, in Mr Terlet's opinion, to be Chief Executive. In particular, Mr Terlet witnessed Mr Hansen's attendance at an Australian Land Management Conference in Darwin where Mr Terlet said Mr Hansen performed appallingly in a presentation that he gave to the Conference by exhibiting a complete lack of knowledge not only about the local situation in South Australia but in terms of the roles and responsibilities of the various land managements around Australia. Mr Terlet was also angry that the Minister had appointed the Chief Executive and that Mr Hansen was responsible to the Minister and not to the Board.

Mr Terlet thought the structure under which the URA operated where the Chief Executive was responsible to the Minister rather than directly to the Board was an improper structure.

Mr Terlet said that by 13 November the Board was getting increasingly dissatisfied with the performance of Mr Hansen who he thought, and he thought his colleagues thought, simply did not have the qualifications or experience to manage the type of organisation with which he was charged. Mr Terlet said that Mr Hansen lacked line management skills. He was too close to the Minister and the Premier.

Ms Pike's evidence was corroborated by Minister Koutsantonis. He said that Ms Pike on many occasions complained to him about Mr Hansen's refusal to keep the Board properly informed. Minister Koutsantonis said that Ms Pike told him on many occasions that Mr Hansen did not understand his role with the Board and Minister Koutsantonis was aware of that by October 2013. Minister Koutsantonis said that he spoke to Mr Hansen and told him that he needed to give the Board more information. He said:

I spoke to Mr Hansen and said, 'Well, the reality here is that this Board has responsibilities, and you need to serve them. And you need to be giving them more and more information; and I am getting very impatient with Ms Pike complaining to me about not getting the information they need, because it reflects on me, not you.' And he agreed.

Minister Koutsantonis agreed that the problem of Mr Hansen's lack of communication with the Board became a particular problem in November and December of 2013.

Ms Goodchild said she knew that the Board was dissatisfied with Mr Hansen's performance, and that the Minister intended to speak to Mr Hansen about this.

Minister Koutsantonis agreed with Mr Buchan's comment that Mr Hansen's relationship with the Board had fractured by November 2013 and that Ms Pike then had serious concerns.

Minister Koutsantonis said that Mr Hansen had been appointed to the wrong position, saying 'he would have been a much better Transport Chief Executive'. He said Mr Hansen was very much a big picture man, almost he said, like a Minister should be. He said that Mr Hansen was trying to change the URA but it was not responding for that reason and because he was an outsider; he was not one of them.

Ms Goodchild agreed with Minister Koutsantonis' evidence in that regard. Ms Goodchild said that Minister Koutsantonis spoke to her about Mr Hansen through the whole of the relevant period and it was clear that he did not have much confidence in Mr Hansen. She said it would not have been good timing to replace Mr Hansen with an election coming up.

Mr Malinauskas' evidence was to the same effect as the evidence already mentioned.

He said the relationship between the Board and Mr Hansen was frosty because there seemed to be a lack of communication.

He said that the Board expressed frustration to the Minister's office about a failure to obtain relevant information, not specifically about Gillman but generally.

He said that Minister Koutsantonis relayed that to Mr Hansen advising him that he had to keep the Board 'in the loop'. He told Mr Hansen 'if you don't give them information it's hard for them to obviously get a full understanding and appreciation of what the Department is doing'.

Putting aside the issues associated with these particular events, it is clear that the role and responsibilities of the Chief Executive of the URA and the Board of Management of the URA as between each other and the Minister should be clarified. I intend to make a recommendation to that effect later in this report.

THE RELEVANCE OF THE VALUATIONS PREVIOUSLY OBTAINED

Another matter that should be addressed is the currency and relevance of the valuations that had been obtained by the URA and the ACC in relation to the land acquisition proceedings in the Supreme Court.

I have already referred to the three valuations prepared by Mr Robert Taylor, who was employed by Savills at the relevant time, in relation to the litigation arising out of the compulsory acquisition process.

Mr Taylor said in his evidence that the valuations he provided were directed solely to the compulsory acquisition of the land from the ACC and the amount of compensation that would flow from that acquisition.

He said he was not asked to give any opinion in relation to the value of the land in connection with the unsolicited proposal made by ACP on 18 June 2013.

He was never asked whether his previous valuations were valid in the sense of being current for the purposes of that unsolicited proposal.

He said that at the time that he valued the land, the zoning of the land as Multi-Function Polis adversely affected its value.

He said if the land had been zoned as industrial or assumed to be able to be zoned industrial that would have made the land worth a good deal more.

He said that the land would have a special value for those people who operate waste management companies.

He was asked:

Q. *Now, do I understand is this right, that your valuation was only valid for the purpose of determining the value of the land as at the 2010 date of acquisition?*

A. *That is correct.*

Q. *Would you have allowed anyone to rely upon it for the purchase or the sale of the land three years later?*

A. *No.*

Q. *If a proposal was made in 2013, 18 June 2013, would that have required, in your opinion, a further valuation?*

A. *Yes.*

Q. *As to the market value of the land?*

A. *Yes.*

Q. *And would that valuation depend upon the use to which the land might be put?*

A. *Yes.*

...

Q. *If the land were to be used in accordance and had to be used in accordance and developed in accordance with a project objective would that affect the valuation at which you would arrive?*

A. Oh, yes.

Mr Taylor was shown Savills' Valuation Reports,²²⁵ the Project Objective which was Annexure A to the Option Deed,²²⁶ the Concept Plan which was Annexure F to the Option Deed,²²⁷ and the Option Deed, and was asked:

Q. *Would your previously expressed valuation opinions in 2008 and 2010 be relevant for determining the value as at 2013?*

A. *I do not believe so.*

Mr Buchan agreed that with the benefit of hindsight updated valuations should have been obtained but at the time the belief was that the valuation that the URA had obtained as part of the compulsory acquisition would not have changed in a material form. He said he understood that there had been discussions with Mr Taylor to that effect.

He was later questioned:

Q. *I just want to make it clear, do you accept now that it would have been appropriate to obtain a valuation as at October/November 2013?*

A. Yes.

Q. *And that Renewal SA ought to have done so?*

A. Yes.

Q. *Do you accept also that it was inappropriate to rely upon the 2010 valuations for this transaction?*

A. *I accept it had significant failings.*

Q. *The reason I ask that is Mr Taylor has given evidence here, and the thrust of his evidence was his valuations could not be relied upon for this transaction. If that be his evidence, would you accept it?*

A. Yes. Absolutely.

Q. *That his valuations could not be relied upon?*

A. Yes. I will say that was news to me; I am surprised by that.

Q. *The question I asked him was:*

Q. *Now, do I understand, this is right, that your valuation was only valid for the purpose of determining the value of the land as at the 2010 date of acquisition?*

A. *That is correct.*

Forgive me, Commissioner, I did not doubt for a Minute that ...

Q. *No, no.*

A. *I suppose my response was that was not when the transaction was going through, from my understanding of the decision making, that was being made, that was not purported at any stage.*

Q. *Did anyone speak to Mr Taylor about that?*

²²⁵ RC12.

²²⁶ RC13.

²²⁷ RC14.

- A. *I do not know -- I understand that Jason – again the vast majority of this, as I understood, took place whilst I was overseas. I understood Jason had a number of conversations with Mr Taylor. And from those conversations I suppose I formed the view that valuations were a reasonable basis to work from.*
- Q. *I think the evidence suggests he only had one conversation. And I show you RC24. You will see an email of 27 May, from Mr Rollison to Mr Taylor?*
- A. *Yes.*
- Q. *In the second paragraph of that email it says ‘I recall a discussion’.*
- A. *Yes.*
- Q. *Clearly if you had known that was Mr Taylor’s opinion in 2013, you would have recommended that valuations be obtained?*
- A. *Yes.*
- Q. *So it was critical to understand whether his valuations could be used?*
- A. *Yes.*
- Q. *And Renewal SA made no formal attempt to do that?*
- A. *No, other than, as I understand, the discussions Jason had with Mr Taylor.*
- Q. *That would not be enough, would it, in the process, it would have to be some signing off by Mr Taylor to that extent?*
- A. *Ordinarily I would have thought that would have been the case, as part of Mr Hansen’s decision to accept the older valuations, that he would have taken that into consideration.*
- Q. *Did Renewal SA apply its mind to that in the (inaudible) management?*
- A. *I was not there during that period. However, I did come back and question; I actually had a conversation with Jason specifically on the matter of the valuations. I made the remark last time that there was a mindset or a consideration that it effectively would have been a waste of taxpayers’ money. That was essentially how the conversation was related. It was as if we had gone through an evaluation of this and had taken into consideration the evidence we had in front of us, and did not believe that an updated valuation would add more weight or evidence to the transaction being undertaken.*

Mr Hodgen did not speak to Mr Taylor about his valuations but he was told by Mr Rollison that Mr Rollison had, and that the valuations were still valid.

Mr Buchan said that he was not aware until he made inquiries that there was not a current valuation of the Gillman land. He asked Mr Rollison ‘why don’t we obtain an updated valuation’ but he was told by Mr Rollison that Mr Rollison had discussed the matter with the valuer ‘which identified that the valuation had either fallen or at best remained static over that entire time’.

At some time after 2010, and I cannot be more precise than that, Mr Rollison had a conversation with Mr Taylor about the industrial market after 2010. Mr Rollison referred to that conversation in an email he sent to Mr Taylor on 27 May 2014.²²⁸

On that day during the course of an audit by the Auditor-General which led to a Supplementary Report, Mr Rollison emailed Mr Robert Taylor, saying:

²²⁸ RC24.

In the context of the current interest in Gillman (including interest in the Legislative Council) I have been asked to articulate my understanding of the industrial market from 2010 onwards, particularly in the Gillman area.

I recall a discussion that we had some time ago when the Dean Rifle Range valuations were being discussed. I understood from that discussion that the anticipated (in 2010) uplift in industrial land values which had been taken into account in the 2010 valuations had failed to materialise with industrial land values remaining flat (at best) over the intervening period.

I had understood that if, in 2010, the actual market conditions that existed in the years following had been accurately predicted, the valuation in 2010 may have been lower, and that any valuation conducted subsequent to this, would not have resulted in an increased valuation figure being derived.

*Are you able to confirm my understanding, or if I have misunderstood, please provide your recollection of the discussion?*²²⁹

Mr Taylor responded to Mr Rollison on the same day:

*As discussed today, I would say your understanding of our earlier discussion is reasonable. I suggest you discuss the state of the industrial land market over this period with Martin Coote. We had provided commentary in respect of Techport and Port Direct allotments earlier this year and that I expect would provide you with appropriate information in this context.*²³⁰

I wrote to Mr Taylor and asked him a series of questions relating to those emails.

Mr Taylor said in answer to those questions that he could remember a discussion of the kind referred to in Mr Rollison's email:

I recall some comments I would have made in the context of the state of the market of the kind referred to in the second and third paragraphs of Mr Rollison's email dated 27 May 2014. I believe the comments were likely within a broader range of discussion in the context of the valuations for the Adelaide City Council's half interest in the Dean Rifle Range land.

I cannot recall the particular discussion referred to, nor exactly when that would have taken place, so [I] cannot specifically recall the contents of the discussion.

I asked him how he considered Mr Rollison might use the information and he said:

I don't believe I particularly considered what or how Mr Rollison would use the information referred to, other than to assist him to articulate his understanding of the state of the industrial market from 2010 onwards, as he mentioned in his email to me.

I then asked him:

In particular, did you understand that the discussion that you had with Jason Rollison about the industrial land market and the Dean Rifle Range valuations would be used to justify a decision not to obtain a current valuation in relation to the Gillman lands which included the Dean Rifle Range in the context of assessing an unsolicited offer to purchase the Gillman lands off-market?

He replied, 'no'.

Mr Buchan said it came down to whether 'we waste \$15,000 and get a current statement from a valuer on information that we already know in the organisation'. He said he accepted that argument then but would not now.

Mr Buchan said in hindsight the URA should have received a covering letter from its valuer which updated the valuation from the 2010 date to the current time.

²²⁹ Ibid.

²³⁰ Ibid.

Mr Buchan accepted that the URA had not complied with its own policy,²³¹ in that it did not have contemporary valuations.

Mr Thompson was asked about the valuations:

- Q. *Okay. Well, did you know at the time you were engaged that there were two things: First, Renewal SA was considering an unsolicited proposal; and, two, there were no contemporary valuations?*
- A. *I did ask and so the answer to the first one, yes; the answer to the second one, no, because I was informed there were valuations.*
- Q. *Contemporary valuations; up-to-date valuations?*
- A. *I -- when they said that there were 'valuations' I assumed that they were reasonably current.*
- Q. *Well, did you ever see the valuations?*
- A. *No, I didn't.*
- Q. *Wasn't that part of your duty?*
- A. *No, because, again, it was a thing of an unsolicited proposal, coming up with the figure, you know, and the amount, what was a reasonable hurdle, which I had been challenging them on. But, no, I did not reconcile the different characteristics of the valuation plan back to, you know, the founding -- the documents as far as, you know, whether it be a dollar value, whether it be the land area, whether it be the stage process. I was providing advice to them, saying: You really need to make sure you've got a basis of -- while you have that, criteria, especially when it is a mandatory one, because if the stock goes --*
- Q. *How can you assess value for money, if you don't know the valuations?*
- A. *For me or for them?*
- Q. *For you, first.*
- A. *For me, I'm providing advice to them to say that they should be, you know, making sure regards value for money and encourage them to be able to consider as far as what the dollar for value is.*
- Q. *So your role is not to assess for yourself value for money?*
- A. *No, but by encouraging them to make sure they do take that into consideration.*
- Q. *Did you encourage them in that regard?*
- A. *I would have encouraged them mainly because of the use of the term 'mandatory' to be able to make sure that --*
- Q. *Mr. Thompson, I will ask the question again: Did you encourage them to ensure that they had up-to-date- valuations so that they could assess value for money?*
- A. *I would have encouraged.*
- Q. *Did you, I ask you?*
- A. *I believe I encouraged them to do -- make sure that they had valuations to be able to support what they're saying.*

²³¹ RC9.

- Q. *Up-to-date valuations?*
- A. *I don't believe I would have used the term 'up-to-date' because I would have thought that was -- would be expected.*
- Q. *Self-evident?*
- A. *Yes. Sorry.*
- Q. *You would not work on valuations four years old?*
- A. *No. I would not have thought so.*
- Q. *But they did?*
- A. *Apparently -- apparently. I don't know.*
- Q. *Do you know that now?*
- A. *Only through media comments.*
- Q. *You did not know that at the time?*
- A. *No. I did not know.*
- Q. *Nobody told you the valuations were four years old?*
- A. *No, they just told me that they had valuations to support the amount that they had included in the evaluation plan.*
- Q. *Who told you that?*
- A. *That would have been Renewal SA.*
- Q. *Yes, but who told you that?*
- A. *I think that was -- it might have been Jason.*
- Q. *Who?*
- A. *Ja --*
- Q. *Rollison?*
- A. *Yes.*
- Q. *Yes.*
- A. *Jason was the closest to the --*
- Q. *As a Probity Adviser what would you say of a government department that entertained an unsolicited proposal for a significant asset without a current valuation?*
- A. *I'd tell them to get a current valuation.*
- Q. *I beg your pardon?*
- A. *I'd tell them to get a current valuation.*
- Q. *To reject the proposal then -- without a current valuation?*
- A. *I would tell them to keep hold of the proposal until you've got a current valuation.*

There was discussion between Minister Koutsantonis and the URA about valuations during this period. Ms Goodchild said Minister Koutsantonis was told that the last valuation was three years old.

ACTIONS SUBSEQUENT TO THE SIGNING OF THE OPTION DEED

On 28 January 2014, Mr Hansen signed a Minute to Minister Koutsantonis with a draft letter to the Deputy Premier seeking rezoning in accordance with the Gillman Masterplan. The Minute stated that the ACP 'land contract is subject to the land being rezoned in accordance with the Masterplan.'²³² The Minute was emailed to Minister Koutsantonis' office on 30 January 2014.²³³

On 28 March 2014, Jensen Planning + Design provided the URA with an 'Implementation Strategy + Feasibility Report' in relation to Gillman.²³⁴ The report gave a hypothetical Gillman redevelopment project a Net Present Value of [REDACTED], using a discount rate of 25%. Only one discount rate was used and the report does not indicate why the particular discount rate was selected.

The report identified a number of assumptions about the costs associated with the development of the land. It assumed that some fill would have to be purchased at an average cost of \$18 per cubic metre, and the cost for placing the fill would be \$4.80 per cubic metre. The report assumed that some fill would be available for free, and that other fill would need to be purchased.

The report assumed a further cost of \$35 psm for compacting the fill, a process referred to as 'pre-loading'. The report referred to independent advice from Rider Levett Bucknall as the source of the pre-loading cost estimate.²³⁵ It is not stated whether the pre-loading cost estimate was formulated following a test filling site study, or by some other means.

The impact of the assumptions made in respect of cost variables was tested. Testing of an alternate value for the fill cost variable, namely where 100% of the fill was obtained at no cost, resulted in a Net Present Value calculation of [REDACTED]

The report did not contemplate the possibility that the receipt of fill might be a source of revenue for the developer.

The report considered three broad options for the development of the Gillman land: first where government was the lead developer; secondly where a private entity was the lead developer; and thirdly where there was a hybrid of the two forms. The third option was considered to be the best.

On 11 April 2014 Mr Hansen signed a Minute, drafted by Mr Hodgen, to the Minister for Housing and Urban Development, who by that time was the Hon. John Rau MP, recommending that as Minister for Planning, the Minister initiate a Ministerial Development Plan Amendment (DPA) 'to support the delivery of the major new Gillman Employment Lands Precinct north-west of Adelaide'.²³⁶

The Minute stated that the proposed rezoning would replace the MFP Zone with a policy that supports the establishment of a wide range of industrial and commercial activities at Gillman while ensuring sufficient land is available for regional storm water development.

The timing of the rezoning had become critical because rezoning was a condition precedent to a Land Sale Contract between the URA and ACP in the event that ACP exercised the Stage 1 Option.

On 22 May 2014 Mr Hansen signed a Minute drafted by Mr Rollison for Minister Rau. That Minute discussed the 'background concerning valuation information obtained by the URA that was used to support the URA Board of Management's advice to the former Minister for Housing and Urban

²³² RC8.

²³³ Ibid.

²³⁴ RC11.

²³⁵ Ibid.

²³⁶ RC8.

Development that the offer from ACP for URA owned land at Gillman/Dry Creek represented a 'good value offer based upon independent valuation advice and comparable market evidence'.²³⁷

The Minute discussed the valuations that had been obtained as a consequence of the Government's compulsory acquisition of the ACC interest in the Dean Rifle Range land. The Minute referred to the valuation commissioned by the URA from Savills which was provided in December 2008. It also referred to the Opteon valuation which was provided by the ACC in February 2012. The Minute referred to two subsequent sales, being allotments 201 and 202, which each comprised 15.68 hectares. In June 2008 Opteon had provided a market valuation of allotment 202 for the URA at \$6.3 million (\$40.18 psm). The second sale settled in December 2010.

Knight Frank valued allotment 201 for the URA in May 2013 at \$5.46 million (\$34.82 psm) which formed the basis of the sale of that land to Royal Park Salvage.

The two valuations were said to be 'a reliable assessment of the change in industrial land values following the compulsory acquisition'.

Reference was also made to the statutory valuations made by the Valuer-General under the *Valuation of Land Act 1971*.

Lastly, the Minute referred to the Gillman Masterplan. The Minute stated that those consultants concluded the land had a Net Present Value ('NPV') [REDACTED]

The key points identified in the Minute were:

KEY POINTS

- *In assessing value for the Gillman land in accordance with Renewal SA policy for off-market transactions, the key valuation report relied upon was the Opteon Valuation report commissioned by the Corporation of the City of Adelaide ('ACC') which values the land at \$13.49 per square metre.*
- *Renewal SA has recommended against providing details of this valuation, which was not prepared for Renewal SA, as it is currently the subject of a compensation claim related to the Dean Rifle Range, and is disputed by Renewal SA's expert valuer in the case (Savills), which contends that the land has a lower value (\$7.39 per square metre).*
- *Both the Opteon and Savills valuation reports represent many years of detailed investigations into the land and although both reports do not cover the full extent of the land now under option, Renewal SA considers that the reports present the most accurate assessment of land values in the area which can be determined in the absence of a concluded sale via the open market.*
- *As part of Renewal SA's master planning works for Gillman, consideration has been given to the Government (through Renewal SA) developing the land itself.*
- *Linked to the Gillman Masterplan (Draft report currently available via the Renewal SA website), Renewal SA commissioned independent consultants to prepare a financial feasibility for the development.*
- *The independent consultant estimated to deliver the industrial estate detailed in the Gillman Masterplan, development expenditure of \$270 million would be required in order to achieve projected revenue of \$285 million.*
- *The financial model for development of the land consistent with the Gillman Masterplan identified a Net Present Value (NPV) of [REDACTED]*
- *If all options are exercised as provided for in the Deed, acceptance of the ACP offer is forecast to achieve revenue of \$122.1 million, with an NPV of approximately \$100 million (positive).*
- *On the basis of the above, the Urban Renewal Authority Board of Management's advice to the then Minister for Housing and Urban Development was that the offer from Adelaide Capital Partners represented a 'good value offer based upon independent valuation advice and comparable market evidence'.*

²³⁷ RC8.

MR HANLON'S OPINION OF THE OPTION DEED

Mr Hanlon was asked about the structure of the transaction and whether he regarded it as appropriate and beneficial for the URA:

- A. *I think it is an extraordinary transaction to make. And I was extremely surprised. I mean, you only needed 150 hectares so why would you allow them to tie up 400 hectares over options that you have no control over.*
- Q. *The other land is tied up for over nine years?*
- A. *That is correct. They have basically stopped you dealing on that land for nine years. That is why I would question ResourceCo's position on it -- this is probably one of the last major land fill opportunity sites for soil. So they quite successfully tied up ten years' worth of competition whilst they filled up the first 150 hectares and then move to the rest of the site by paying options; it is just an extraordinary way of tying up your asset.*
- Q. *If they do not exercise the stage 2 option, the land is still tied up to the end of the stage 3 option?*
- A. *It is an extraordinary transaction and that you do question why. There does not seem to be benefit; there is not benefit to the State in relation to this.*
- Q. *The transaction also provided for a licence agreement which allows ACP complete access to the whole site -- even that which it has not exercised an option over for the whole of the period of time. Again, do you want to make any comment about that?*
- A. *I think it lacked a sense of understanding on behalf of those people who undertook this transaction from government as to just what ACP were doing. ACP -- and they did it very well. But they certainly took advantage of some people who did not understand the transaction arrangement they entered into.*
- Q. *Is that your evidence, that Renewal SA did not understand what it was entering into --*
- A. *Look, I came to that conclusion either they did not understand it or were directed not to go there.*
- Q. *Is there any evidence of the second?*
- A. *The only evidence of the second was when I first asked Michael Buchan why he entered into the transaction and why he did not see this. He did say he was directed to go into that and get the deal done.*
- Q. *Directed by whom?*
- A. *The minister at the time. I still do not think that means anything more than you could still put those arguments in a paper; they were never there. I have never been quite sure whether they just never got the deal never saw it, never really understood it or they were preoccupied with what was going on above the ground in the oil and gas precinct that was being created and never understood the land economics of this particular deal. But I have to say they have been around a while, this staff, they should understand those; they do transactions a lot for the state.*

Mr Hanlon acknowledged that the structure of the Option Deed had the effect of tying up the land until 2024 if the Stage 1 Option was exercised and ACP settled on the Stage 1 Settlement Date. He thought that the draft Cabinet submissions did not ensure that this was to be well understood by Cabinet.

FEATURES OF THE OPTION DEED

The Option Deed was the culmination of negotiations between the parties and their lawyers over the period August to December 2013. The precise content of those negotiations are not important because they do not throw any light on the questions that I need to address.

However, it is important to understand the terms of the Option Deed to understand the benefits that flowed to parties.

The parties to the Option Deed are the Minister for State Development, the URA trading as Renewal SA and ACP.

The Option Deed is in 3 parts and it has nine Annexures (A to I). One of these Annexures, (G), is the Licence Agreement to which reference has been made.

The substantive provisions called in the Option Deed the 'Commercial Terms' are in Part 1 and in the Licence Agreement.

Part 3 contains the definitions that are used in the Option Deed and Part 2 the 'Standard Terms.'

The land to which the Option Deed relates is discerned from the definition of 'Land' and 'Option Land', and 'East Grand Trunkway Land'.

Land is defined:

- 34.14 **'Land'** means the whole of the land contained in:
- 34.14.1 Allotment 3 DP64288 (approximately 52.97 ha);
 - 34.14.2 Allotment 5 DP64288 (approximately 97.5ha);
 - 34.14.3 Allotment 203 DP 75338 (approximately 234 ha);
 - 34.14.4 Allotment 3 DP80215 (approximately 39.38 ha);
 - 34.14.5 Allotment 101 DP41796 (approximately 2.7 ha);
 - 34.14.6 Allotment 107 DP45483 (approximately 3.2 ha); and
 - 34.14.7 Allotment 204 DP 48102 (approximately 3.5 ha);

The total area of land is 443.25ha. Option Land is defined:

- 34.18 **'Option Land'** means the land excluding:
- 34.18.1 the East Grand Trunkway land; and
 - 34.18.2 any portion which is excluded from the sale consequent upon exercise of the Options pursuant to:
 - (a) the redefinition of the land under Clause 2.6; or
 - (b) agreement between Renewal SA and ACP;

East Grand Trunkway land is defined:

- 34.9 **'East Grand Trunkway Land'** means approximately 26.25 hectares of land within Allotment 3, DP64288 and known as the East Grand Trunkway Project Area;

That area of land is 26.25 ha which makes the Option Land about 417 ha subject to the parties redefining the land boundaries pursuant to Clause 2.6.

The relevant recitals to the Option Deed are:

- F. *The Land has been identified in the 30 Year Plan as a site of future industrial Land supply for Adelaide and in particular the western suburbs of Adelaide where the Government has established a target of 40,500 new jobs over the next 30 years. It is the intention of MSD that the Land be developed to support this target, and to facilitate economic activity in the region.*
- G. *The objective set out in **Clause F** will be contributed to through both the timely release of portions of the Land to meet general demand, and through the targeted release of portions of the Land for specific strategic uses.*
- H. *In addition to the objective set out in **Clause F**, it is acknowledged that the Land (or parts of it) currently serves a stormwater management function for the TRDA Catchment which covers an area of approximately 2,300 hectares in Adelaide's north-western suburbs.*
- I. *In response to the general requirement to release industrial Land, RSA is in the process of developing two discrete parcels within the Land, including the East Grand Trunkway Land and the Hanson Road Extension Land. In the absence of a private sector developer for the Land, it is RSA's intention to continue development of the Land in order to meet the objectives in Clause F and Clause G.*
- J. *In response to the desire to accommodate strategic uses, RSA is currently working with Metcash Food and Grocery, Incitec Fertiliser Limited, SA Water and the Department of Planning, Transport and Infrastructure who may seek to develop facilities with the Land. If these requirements are confirmed before the Option is exercised, RSA and ACP will negotiate in good faith to agree to the terms upon which they may be accommodated within the Land.*
- K. *RSA has commenced master planning for the remainder of the Land (excluding the East Grand Trunkway Land and the Hanson Road Extension Land) with the master planning works to form the basis of a subsequent Development Plan Amendment ('DPA'). It is RSA's expectation that the DPA it contemplates will result in approximately 230 hectares of the Land being zoned for industrial use.*
- L. *RSA understands that a subsequent DPA could be initiated to rezone further areas of the Land for industrial use, provided that an acceptable solution to manage stormwater from the TRDA Catchment basin can be implemented. The DPA process is independent of this Deed and is not affected by it. It is RSA's expectation that a subsequent independent DPA process would not receive the necessary support to be implemented in the short term.*
- M. *ACP wishes to purchase and develop the Land in a timely, economical and responsible manner as an industrial hub to cater for the needs of South Australian business entities and the South Australia resources industry. Further, ACP wishes to achieve the Project Objectives set out in **Annexure A** within the Target Project Timeline of 12 years.*

As Recital M shows, the parties agreed on Project Objectives which are contained within Annexure A:

ACP intends to establish itself as a tier one rated employer, manager and contractor who is strongly engaged with Government, business and the broader community. In that capacity, ACP seeks to achieve the following objectives for the Project, for industry and for the broader South Australian community:

1. For the Project

- 1.1 *To create the leading industrial precinct for a range of industries within South Australia;*
- 1.2 *To benchmark Lipson Industrial Estate against like for Like Business Parks through Australasia and seek to be in the top 10% in Australasia for planning and environmental performance;*
- 1.3 *To deliver tier one construction outcomes and client service;*
- 1.4 *To deliver a minimum 5 Star NABERS rating for all built form;*
- 1.5 *To provide end users with a product which out performs efficiently and economically;*
- 1.6 *To help to rehabilitate areas surrounding the Option Land to create community based open spaces; and*

- 1.7 To seek to incorporate effective, sustainable development into the surrounding, existing and emerging communities.

2. For Industry

- 2.1 Includes a range of utilisation options for industry, including serviced industrial blocks and developed 'turnkey premises' for sale and/or lease;
- 2.2 Creates and encourages a range of industry based clusters throughout the estate;
- 2.3 Creates an industrial ecology, where the infrastructure and mix of industries will enable inter-relationships to emerge;
- 2.4 Provides the resources sector with a hub for future expansion and clustering of like for like business with a focus on the emerging shale gas industry in South Australia; and
- 2.5 Provides a fair and reasonable opportunity for South Australian industry to:
- 2.5.1 bid for or offer to provide works, goods and services for any civil works, construction or engineering works in the development of the Project above a threshold to be nominated in the Project Plan; and
- 2.5.2 purchase or lease developed land within the Project.

Further, by doing this, seek to help the State of South Australia to generate a demand for product which might otherwise not exist, for example, by helping to attract external industry or business to base itself in South Australia, when otherwise they may not.

3. For the South Australian community

By delivering the Project in a manner which seeks to achieve the objectives in paragraph 2, to facilitate an industrial precinct in which the industries and businesses located there:

- 3.1 are major contributors to employment and economic development in South Australia; and
- 3.2 provide employment, industrial training, technical education and research to the surrounding community, consistent with the objectives in **Clause F** of the Deed and the 30 Year Plan.

The Option Deed commenced on the day of execution, 11 December 2013, and provides for its expiry on 30 June 2014 if the Deed Conditions Precedent (DCP) are not met, but if met, expires on the twelfth anniversary of the date upon which settlement of the Stage 1 Option Lands occur.

The Stage 1 Option Lands are that portion of the Option Land to be described as Stage 1 in the Project Plan and the subject of the Stage 1 Option.

The DCP are described in Clause 1.3:

1.3 Deed CPs

The following Deed Conditions Precedent must be satisfied by the Deed CP Date:

- 1.3.1 the development of the Project Plan in accordance with **Clause 8**;
- 1.3.2 ACP demonstrating that it is likely to secure the financial capacity to commence the Project; and
- 1.3.3 ACP demonstrating the capability to execute the Project in accordance with the Project Plan and the terms of this Deed.

If those DCP were not met by 30 June 2014 the Option Deed expired.

The Option Deed provides that in the period from 11 December 2013 to 30 June 2014 if the DCP were not satisfied, or until the twelfth anniversary of the Settlement of the Stage 1 Option Lands, if the Stage 1 Option was exercised, the URA could not enter into negotiation with any person to deal with the Option Land except with five separate parties identified in Annexure 'H' with which the URA could negotiate until the exercise of the Stage 1 Option.

The URA also agreed not to encumber the land or deal with the land in any manner inconsistent with ACP's rights.

The Option Deed provided that the URA grant ACP the option to purchase the Option Land in three Option Stages.

The Stage 1 Option could only be exercised after the DCP were satisfied and had to be exercised over not less than 150 ha of the Option Land and within six months of the DCP being satisfied which meant 31 December 2014.

The Stage 2 Option cannot be exercised until 12 months after the Stage 1 Settlement Date but before five years after the Stage 1 Settlement Date and only if ACP substantially complies with the Project Plan for Stage 1 of the Project.

If the Stage 2 Option is not exercised the Stage 3 Option survives.

The Stage 3 Option cannot be exercised until 12 months after the Stage 1 Settlement Date but before nine years after the Stage 1 Settlement Date and only when ACP has substantially complied with the Project Plan for Stages 1 and 2 of the Project.

ACP can exercise an option for a part of the Option Land and more than once, but only in respect of Stages 2 and 3, provided it is exercised within the time frames mentioned.

The effect of the exercise of an Option is to deem the URA and ACP to have entered into the Land Sale Agreement which comprises Annexure C to the Option Deed. Annexure C provides for a purchase price of \$30 per square metre for the land described in the Option Notice.

Annexure D identifies the Special Conditions to the deemed Land Sale Agreement. Clause 1 of Annexure D provides:

1. *Settlement of the Land Sale Contract shall be subject to:*

- 1.1 *at least 230 hectares of the Option Land being rezoned 'General Industry'; and*
- 1.2 *the Purchaser being satisfied that all Regulatory Approvals required for the Relevant Stage of the Project have been obtained (in a form satisfactory to the Purchaser acting reasonably)*

Such conditions to settlement to be for the benefit of (and able to be waived by) the Purchaser only.

The Option Deed also provides that the URA grant ACP two different licences over the Option Land.

The first licence is styled a Pre-Settlement Licence which commences on the execution of the Option Deed and expires on the Stage 1 Settlement Date.

Although the Option Deed does not say so it may be inferred that the Pre-Settlement Licence would expire if ACP did not exercise the Stage 1 Option.

Clause 5.2.1(b) provides for the terms of the Pre-Settlement Licence:

5.2 Licence of Option Land

5.2.1 *By this Deed, RSA grants to ACP and its authorised representatives a licence over specified portions of the Option Land (**'Pre-Settlement Licence'**) on the following terms:*

- (a) *The Pre-Settlement Licence commences on the Commencement Date and expires on the Stage 1 Settlement Date.*
- (b) *The Pre-Settlement Licence confers on ACP and its authorised contractors and consultants the right to enter upon those portions of the Option Land nominated by RSA in writing (in response to a notice issued by ACP seeking the grant of a licence), in respect of which:*
 - (i) *RSA's written approval may incorporate such terms required or specified by RSA (including as to releases and indemnities in*

- relation to the activities undertaken by ACP and its authorised representatives); and*
- (ii) *such licence shall be to the extent reasonably commercially or otherwise necessary to perform its obligations under this Deed.*

The second licence that has been granted by the URA operated from the Stage 1 Settlement Date and is in the terms of Annexure G.

The purpose of the Licence Agreement was to grant ACP an exclusive licence to use that part of the Option Land over which an option has not been exercised until the Option Deed has ended, which will be nine years after the Stage 1 Settlement date, which is when the Stage 3 Option must be exercised.

ACP has the right to use that area of land (the Licenced Area) in a manner consistent with the Project Objectives including the ability to undertake stormwater infrastructure prior to the exercise of an Option over that part of the land.

There is no Licence Fee.

ACP has obligations under the Licence Agreement including maintaining the Licensed Area in good neat and tidy conditions and managing its operations so as to prevent environmental contamination or damage.

In particular Clause 12.4 addresses the placing of fill or rubbish on the Licenced Area:

- 12.4 *The Licensee must obtain written permission from Renewal SA (which must not be unreasonably withheld or delayed and must not impose unreasonable conditions) prior to placing any fill of rubble (Fill) on the Licenced Area, in respect of which, the decision of Renewal SA as to the granting of such permission may be given subject to conditions. When requesting permission ACP must notify Renewal SA whether or not the Fill is fit for purpose and complies with any Regulatory Approvals (including without limitation for the EPA Waste Fill Criteria). Any Fill brought onto the Licenced Area must be fit for the purpose and comply with any Regulatory Approvals (including without limitation the EPA Waste Fill Criteria). All costs in relation to Fill brought to the Licenced Area are to be borne in full by the Licensee.*

The Licence Agreement has some curious features to it.

The permitted use is governed by the Project Objectives which, as can be seen above, are very wide.

The Licence Agreement specifically authorises the ACP to build infrastructure on the Licenced Area during the period of the Licence. It also permits ACP, subject to the provisions of Clause 12.4, to bring waste fill onto that area. That would be of significant value to ACP's shareholder, ResourceCo, and perhaps ACP itself. It is a significant area of local land that can be filled using waste derived fill. The area is not available to any of ResourceCo's competitors.

Provided ACP complies with any necessary Regulatory Approvals, the area not comprised within Stage 1 may be used as a site for waste fill provided it complied with EPA Waste Fill Criteria.

That could create a liability for ACP if the fill causes contamination or environmental damage: Clause 12.2. But that would be unlikely if ACP complied with the obligations in Clause 12.4.

At the end of the term of the Licence ACP must comply with Clause 14 which provides:

14. OBLIGATIONS AT THE END OF THE LICENCE TERM

Upon the expiration or earlier termination of this Licence, the Licensee will, in respect of any part of the Licensed Area that remains in Renewal SA's ownership:

- 14.1 *remove all of the Licensee's fixtures, fittings, equipment and property (including fill/stockpiles and any fencing erected by the Licensee);*
- 14.2 *make good any damage caused to the Licensed Area as a result of such removal or otherwise as a result of its occupation or use of the Licensed Area;*
- 14.3 *ensure that any trenching or site disturbance is reinstated and certified to the level at which it was certified at the Commencement Date; and*
- 14.4 *deliver up possession of the Licensed Area in such condition as shall be consistent with the obligations contained in this Licence.*

However, Clause 14 does not require ACP to remove the fill from a site that has been filled but only to remove fill/stockpiles.

ACP was obliged to develop a Project Plan which is identified in Clause 2. The Project Plan needs to be consistent with the Project Objectives and the South Australian Government 30 Year Plan which was subject to the oversight of a Statutory Committee responsible for the development of the Project and the Project Objectives. The URA and the State Government has no entitlement to contribute to the Project Plan.

ACP was to develop the Project Plan in accordance with Clause 8, which provides:

8. Project Plan

8.1. The Project Plan must:

- 8.1.1. *identify all Relevant Project Stages, including the Option Land for each Stage, in a manner which is substantially consistent with the indicative stages described in the Concept Plan;*
- 8.1.2. *identify all Regulatory Approvals;*
- 8.1.3. *identify how and when those Regulatory Approvals are expected to be obtained (including any possible conditions which may be expected to attach to those Regulatory Approvals);*
- 8.1.4. *set the Target Project Timeframes;*

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- 8.1.6. *include a strategic marketing plan which identifies:*
 - (a) *the public marketing practices intended to provide a fair and reasonable opportunity for South Australian industry to purchase or lease developed land within the Project; and*
 - (b) *the requirement for ACP to give due and proper consideration (having regard to the Project Plan) to all reasonable and complying responses to market offers sought by ACP or its nominees; and*

8.1.7. *in all material respects, be consistent with:*

- (a) *the Project Objectives; and*
- (b) *to the extent that they are directly applicable to the Project, the 30-Year Plan and the Strategic Plan.*

8.2. *ACP acknowledges and agrees that:*

8.2.1. *failure by it to comply with **clauses 8.1.5 and 8.1.6** would entitle RSA to exercise the rights set out in **clause 12**; and*

8.2.2. *monetary damages may not be a sufficient remedy for failure by it to comply with **clauses 8.1.5 and 8.1.6** and that RSA shall be entitled, without limiting any other rights or remedies, to such injunctive or equitable relief (including specific performance) as may be deemed proper by a court of competent jurisdiction.*

8.3. *ACP must monitor and review the Project Plan and use its reasonable efforts to ensure that the Project Plan continues to be consistent in all material respects, with:*

8.3.1. *the Project Objectives; and*

8.3.2. *to the extent that they are directly applicable to the Project, the 30-Year Plan and the Strategic Plan.*

8.4. *ACP may vary the Project Plan from time to time but only to the extent that the variation is in all material respects consistent with:*

8.4.1. *the Project Objectives; and*

8.4.2. *to the extent that they are directly applicable to the Project, the 30-Year Plan and the Strategic Plan.*

*Any dispute as to whether the varied Project Plan meets these objectives will be resolved by the dispute resolution provisions of **clause 18**.*

8.5. *ACP must promptly notify the Steering Committee of any variation to the Project Plan.*

The Option Deed also provides for a Steering Committee of three members who are nominated by each of ACP, the Minister for State Development and the URA. The purpose of the Steering Committee is identified in Clause 7.1:

7.1 Purpose

Whilst it is intended that ACP be responsible for the development and implementation of the Project, the parties intend that the Project proceed in a spirit of cooperation between RSA and ACP to achieve the Project Objectives. To that end the parties agree to constitute a Steering Committee.

ACP is obliged to provide an annual report to the Steering Committee by 31 October each year after the Stage 1 Settlement Date. Clause 7.5 entitled 'Issues' identifies the role of the Steering Committee which was for ACP to keep the URA and the Minister for State Development apprised of the status of the Project and for the URA and the Minister to consult and contribute (at no cost) to the planning and execution of the Project: Clause 7.5.2.

The Option Deed therefore purports to be more than simply the grant of an option to a party who, if that party exercised that option, would then be free to deal with the land as that party wished.

The Option Deed attempts to give the SA Government a continuing say, outside the ordinary statutory Acts and Regulations, in how the land will be developed after the land is acquired by ACP.

The Option Deed requires ACP, if it exercises an Option, to deliver the Project in a manner which is likely to achieve the Project Objectives and in accordance with the Project Plan, all Regulatory Approvals and all laws.²³⁸

Whether the Option Deed can fulfill the objective might be a matter for debate, which would probably take place in a court.²³⁹

The Option Deed allows ACP to pick for itself the land to which the Stage 1 Option shall apply subject only to the condition that it be over an area of not less than 150 ha. It means that ACP can exercise an option over an area of land that is the most developable and at the same time prevent the URA dealing with the remaining less developable 260 ha. At the same time ACP can fill that less developable land in accordance with the terms of the Licence Agreement.

ACP will, if it settles on the Stage 1 Settlement Date, have to pay \$30 psm for the land the subject of the Stage 1 Option. But that is not a burden; it will acquire the best of the land for the average price of the whole of the Gillman lands.

That is an incentive to settle on the Stage 1 Settlement Date and a disincentive to exercise the Stage 2 and Stage 3 Options. But if it does not seek to acquire the rest of the Gillman lands it can, in the meantime, use those lands for fill in accordance with the Licence Agreement.

The commercial effect of the Option Deed is:

1. ACP was granted three options that could be exercised at three different times over the whole of the Option Land.
2. If the DCP were not met or if ACP decided not to exercise Option 1 the Deed expired on 30 June 2014.
3. If the Option Deed expired on 30 June 2014 the URA would have:
 - a) lost the opportunity of dealing with the land over the period between 11 December 2013 to 30 June 2014;
 - b) had to permit ACP to exercise its Pre-Settlement Licence rights which gave ACP and its contractors a right to enter.
4. If ACP wished to exercise its Option and provided it had complied with the DCP it could require the URA to transfer to ACP not less than 150 ha of the Option Land for a consideration of \$30 per square metre.
5. On that event and after the Stage 1 Settlement ACP became entitled to:
 - a) all of the rights attached to ownership of that part of the land the subject of Option 1; and
 - b) the rights attaching to the Licence Agreement over the remainder of the Option Land; and
 - c) subject to complying with the Project Plan and exercising the Options within the relevant period an Option over the remainder of the Option Land; and
 - d) for a period of 9 years after the Stage 1 Settlement Date the option to purchase all of the remainder of the Option Land for a consideration of \$30 per square metre.
6. ACP would assume the risk and responsibility associated with managing the stormwater catchment for the whole of the Option Land.
7. The URA on the other hand could not enter into negotiations with any other person after the Stage 1 Option was exercised.

The Option Deed required ACP, if it exercised an option, to develop the land in accordance with the Project Plan which meant meeting the Project Objectives and for a Steering Committee to have a form of oversight of that development.

²³⁸ Clause 3.4 Option Deed

²³⁹ [REDACTED] Steering Committee proposal.

THE CONDITIONS PRECEDENT AND THE OPTION EXERCISE

As already observed, the Option Deed required ACP to meet three conditions precedent prior to exercise of the first Option.

In June 2014, the URA extended the engagement of BDO in order to provide probity advice on the process of assessing whether ACP had satisfied the DCP and was therefore eligible to exercise the Stage 1 Option as provided for in the Option Deed.

On 6 June 2014 ACP wrote to Mr Hodgen addressing the DCP which had to be satisfied by 30 June 2014. He wrote²⁴⁰:

There are three Deed CP's. ACP currently intends to satisfy them as follows:

- *Project Plan (clause 1.3.1) – Mott MacDonald, consultants to ACP, have completed the detailed draft Project Plan setting out all matters required by the Deed. This will be submitted to MSD and RSA next week.*
- *Financial Capacity (clause 1.3.2) – the two corporate advisory houses engaged by ACP will provide a written report setting out:*
 - *Their credentials;*
 - *The outcome of the financial modelling and in particular the debt and equity components (derived from that model) which will be required to demonstrate that ACP is likely to secure the financial capacity to commence the Project;*
 - *The process to be undertaken to secure that debt and equity;*
 - *The current status of that process; and*
 - *Their opinion of the likely outcome of that process and its timing – that is that ACP is likely to secure the required debt and equity components to commence the Project.*
- *Operational Capacity (clause 1.3.3) – the Project Plan will identify each of the key parties to be engaged by ACP to execute the Project. Separate to this, the track record and operational capacity of each of those parties will be verified.*

In order to obtain the input of MSD and RSA into this process, I propose the following timetable:

Event	Person responsible	Target Date
<i>Initial briefing to present to MSD and RSA the Project Plan and the intended substance of the financial assurance</i>	<i>ACP, MSD and RSA</i>	<i>Thursday 12 June 2014</i>
<i>Second briefing to present revised Project Plan and financial assurance</i>	<i>ACP, MSD and RSA</i>	<i>Wednesday 18 June 2014</i>
<i>Final 'pack' to be submitted to MSD and RSA to validate satisfaction of the Deed CP's</i>	<i>ACP</i>	<i>Friday 20 June 2014</i>
<i>Acknowledgement from MSD and RSA that Deed CP's have been satisfied</i>	<i>MSD and RSA</i>	<i>Friday 27 June 2014</i>

'MSD' referred to in that table is the Minister for State Development. 'RSA' is a reference to Renewal SA.

²⁴⁰ RC7.

On 11 June 2014, an Evaluation Plan that was proposed by Mr Rollison was signed by representatives of the URA and DMITRE/State Development, setting out a process by which the fulfillment of conditions precedent would be assessed.²⁴¹

The Evaluation Plan created an Evaluation Panel (Messrs Buchan, Hodgen and Mr Rollison, and Mr Steve Ward and Mr Peter Hall, both of DMITRE), which was tasked with understanding the Evaluation criteria in order to evaluate responses. Like the Evaluation Plan of 1 November 2013 Messrs Andreotti, Piovesan and Thompson were recognised as third parties.

The Evaluation Panel was to receive 'written documentary evidence' from ACP against each of the Conditions Precedent in Clause 1.3 of the Option Deed and assess that evidence against each of the criteria in the Option Deed.

On 12 June 2014, a meeting was held which was attended by Mr Buchan, Ms Durand, Mr Hodgen, Mr Rollison, Mr Steve Ward and Mr Peter Hall (both representatives of DMITRE), and Messrs Andreotti, Piovesan, Andrew Gerlach, Kain and Thompson.

Messrs Ward and Hall were present to advise Minister Koutsantonis in his capacity as the Minister for State Development. Minister Koutsantonis had been appointed as Minister for State Development on 26 March 2014.

At the time of this meeting, ACP had not provided any information against the 'Financial Capability' condition precedent or the 'Capability' condition precedent.

Mr Andrew Gerlach provided a summary of the Project Plan structure, including

- *Rail is a challenge, in relation to requirements*
- *New opportunities are being investigated with respect to water*
- *Filing is a major cost focus which must be offset by land sale revenues*
- ...
- *Underlying principle is to use as much land as possible while addressing environmental matters.*

On 24 June 2014 ACP released the Lipson Industrial Estate – Gillman Project Plan,²⁴² the purpose of which was to comply with Clause 8 of the Option Deed.

The document was accompanied by a Concept Plan.²⁴³ The Project Plan needed to be consistent with the Project Objectives.²⁴⁴ The Project Plan identified the proposed staging of the development.

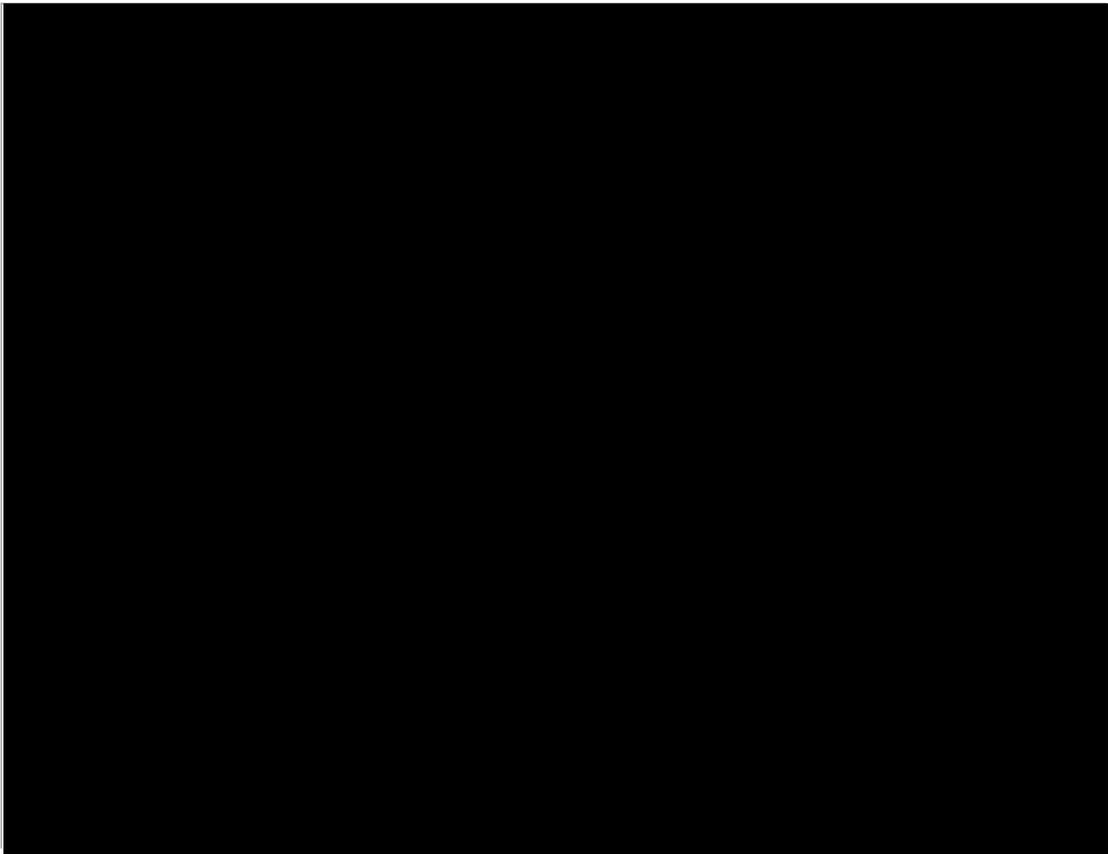
²⁴¹ RC10.

²⁴² RC15.

²⁴³ RC14.

²⁴⁴ RC13.

The stages were identified in the Project Plan:



[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]



Stage 1 comprised:

Stage 1, being a 150 hectare land parcel, is proposed to service the General Industrial market and the layout of allotments reflects these uses. The Access is provided by a new entry road to the estate being Hanson Road North and it is envisaged an entry statement will be constructed to provide visitors and users to the site with a sense of the quality of the estate.

The Stage 1 will broadly be bounded by Hanson Road North, the Port River Expressway and Eastern Parade. Stage 1 has been designed to provide a significant number of allotments of less than 5,000 sqm which is consistent with market soundings regarding the types of end users. We have highlighted three larger sites of in excess of 100,000 sqm which again is consistent with market demands and also specific tenant briefs.

Stage 1 also contains a section of 5 hectares which is proposed to be constructed on land accessible from Grand Trunkway to cater for Incitec Pivot facility if awarded to ACP.

This stage also provides for the opportunity and provision of an intermodal rail facility. This facility it is envisaged will be of general benefit to the infrastructure of the estate however significantly it will benefit from Stage 2 of the development which is more focused around the resources sector and specifically the emerging unconventional gas and the need for a service hub. The intermodal facility can be developed on a staged basis to meet market demand.

Stage 1 will be a minimum of 150 ha. Market demand will determine the extent of the intermodal facilities to be constructed.

Stage 2 comprised:

Stage 2 of the project will act predominantly as a hub for the resources and oil and gas sectors. The stage has been designed to allow for larger allotments with ease of truck movements to cater for the types of materials that will be stored or assembled in the facilities.

[Redacted text block]

[Redacted text block]

[Redacted text block]

Stage 3 comprised:

[Redacted text block]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Two letters were provided as evidence of satisfaction of the financial capacity condition precedent.

The first was dated 25 June 2014, from PFAL Australia, and was unsigned, but was drafted under the hand of a Mark Harrington.²⁴⁶ The letter did not contain any street address or contact details for PFAL Australia. The letter said that ACP had retained PFAL Australia on 10 April 2014 to act together with Highbury Partnership Pty Ltd ('Highbury Partnership') as joint financial advisers. The letter said that PFAL Australia's role included 'assisting ACP with developing the project financial model and introducing the Lipson Estate to potential investors and lenders in connection with raising equity and debt to fund the development of the project in line with the requirements set out in the Option Deed.' The letter said that PFAL group members were subcontracted to provide those services, and listed a number of high dollar value infrastructure projects that PFAL members had been involved in in the United States of America. PFAL's financial modelling resulted in estimations that the Lipson Estate project would require 'approximately \$80 million of equity capital up-front (including for the purchase of the option one land), and a peak debt draw-down of approximately \$62 million'.

Because of what it said was its own policy, PFAL Australia did not provide advice in relation to the likelihood of securing the required funding, but the letter noted that the project had attracted interest from unnamed 'investors focused on industrial assets'.

Project Finance Advisory Australia Pty Ltd ('PFAA') was registered with ASIC on 10 April 2014, the day it said it was engaged by ACP. The sole shareholder was Mark Harrington. The share capital of PFAA was one share of one dollar value. The directors of PFAA were Mark Harrington and Trevor Harrington.

The second letter was signed by Alan Young and Vic Hovasapian on behalf of Highbury Partnership. The letter stated that Highbury Partnership was established in 2013, and it recited a number of equity raising exercises that it had been involved in since establishment.

The letter recorded that Highbury Partnership was engaged by ACP to assist with the raising of equity to fund the development of Stage 1 of the Lipson Industrial Estate. An unnamed investor was reported as having submitted a non-binding expression of interest to fund the required equity component, subject to due diligence and formal approval.

²⁴⁵ RC14.

²⁴⁶ RC23.

Highbury Partnership also, on policy grounds, declined to provide an opinion on the likely success of the equity-raising process.

Highbury Partnership was registered with ASIC on 1 February 2013. The share capital of Highbury Partnership was 100,000 one dollar shares. The shares were owned by Matthew Roberts and Samantha Roberts, who jointly held 50,000 shares, and by 45 South Nominees Pty Ltd, which held 50,000 shares. The Directors of Highbury Partnership were Matthew Roberts and Alan Young.

On 27 June 2014 Mr Hodgen sought to convene a meeting of the Evaluation Panel for the next Monday.²⁴⁷

Mr Andreotti replied immediately saying that the Panel needed to meet earlier and indeed, on that day.²⁴⁸

On 30 June 2014, Mr Kain emailed the persons that had attended the 12 June 2014 meeting, attaching a letter from ACP of the same date requesting execution by Minister Koutsantonis and the URA of a Deed Poll which was attached. The email also attached an index to a Verification Pack, and a Project Plan.

On 30 June 2014 Mr Andrew Gerlach provided Mr Hodgen and Mr Peter Hall (DMITRE) with the Deed CP Verification Pack which contained a copy of the unsigned letter from PFAL Australia.²⁴⁹ On the same day he explained in a separate letter the provenance of the letter and that because of time factors he was not able to provide a signed copy of the letter but would do so as soon as practicable.

On Monday 30 June 2014, the Evaluation Panel met to assess the material provided by ACP as evidence of satisfaction of the DCP. The material was assessed in accordance with the agreed Evaluation Plan.²⁵⁰

In relation to the 'Demonstrated Financial Capacity' condition precedent, the Minutes of Meeting referred to the two letters provided, and that the PFAL letter was unsigned. Without any further recorded information or analysis, 'the Evaluation Panel considered that there was sufficient information to confirm the likelihood of ACP securing finance for the project'.²⁵¹

I asked Mr Buchan how it was that the Evaluation Panel could be satisfied that the Financial Condition Precedent had been met on the evidence of those two letters and given the credentials of the letter writers:

[REDACTED]

The Evaluation Panel decided that the DCP had been met. Because the DCP had been met by 30 June 2014 that meant ACP had to exercise the Stage 1 Option by 31 December 2014.

On 7 August 2014 Mr Thompson wrote to Mr Buchan reporting on probity issues associated with the Lipson Estate 'procurement' process.

The letter recorded 'Agreed upon Procedures', in which BDO was to:

²⁴⁷ RC7.

²⁴⁸ RC7.

²⁴⁹ RC23.

²⁵⁰ RC7.

²⁵¹ Ibid.

- *Recommend steps to be undertaken in the process;*
- *Provide probity advice in respect of the formal discussions between the Evaluation Panel ('EP') and ACP (in preparation for and during discussions);*
- *Ensure that fairness and impartiality are observed throughout;*
- *Ensure that the evaluation criteria from the approved Evaluation Plan is consistently and appropriately applied;*
- *Ensure probity aspects of related Renewal SA and SA Government policies were applied; and*
- *Provide comment and advice on compliance/probity issues as required.*²⁵²

Mr Thompson recorded a finding that 'On the basis of the agreed-upon procedures undertaken, we consider the Lipson Estate Stage 2 process involved a fair, impartial and unbiased process conducted in the public interest without any known conflict of interest.'²⁵³

On 16 September 2014, the URA provided ACP with a Deed Poll executed by Minister Koutsantonis as Minister for State Development and on behalf of the URA acknowledging fulfillment by ACP of the Deed Conditions Precedent.²⁵⁴

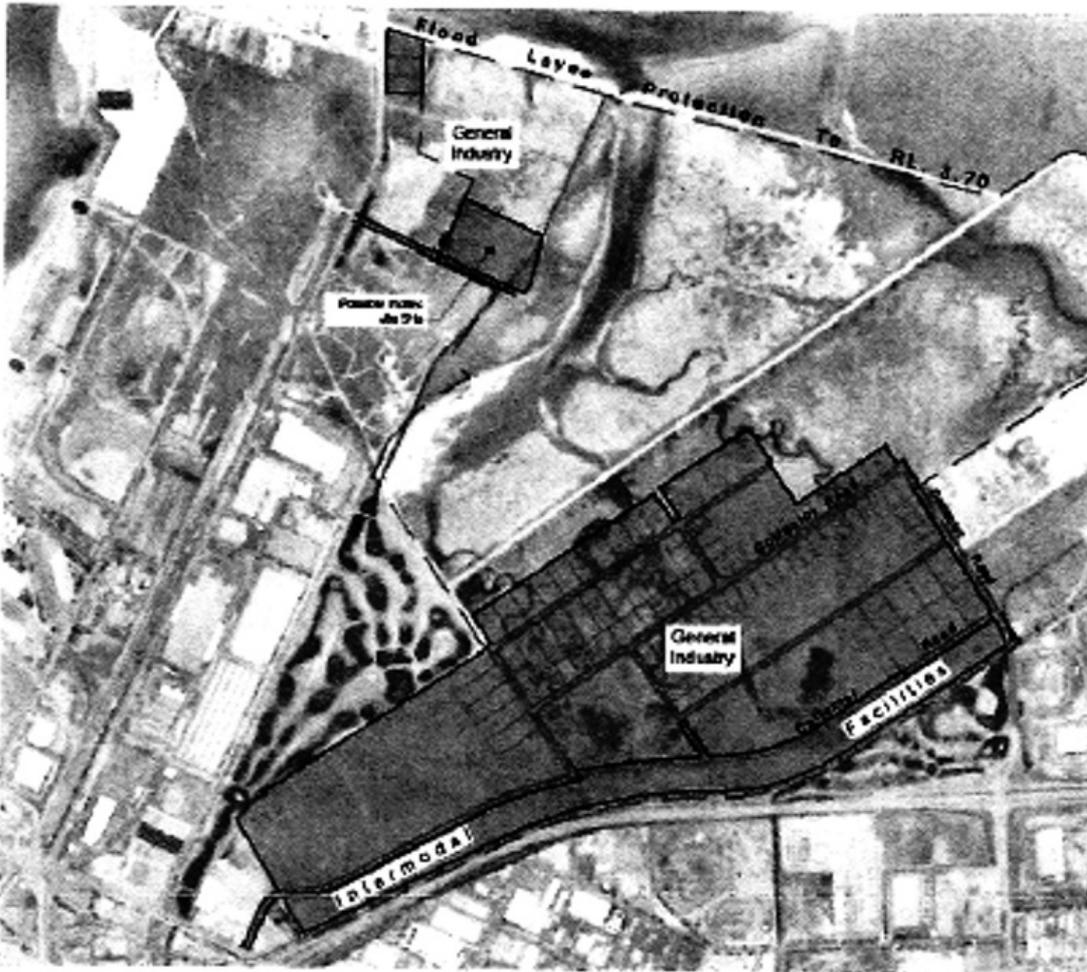
On 29 December 2014, Mr Simon Brown and Mr Andrew Gerlach executed an Option Notice on behalf of ACP. The Option Notice identified the Stage 1 Option Land by reference to a satellite image of the Gillman land. Three sections of the Option Deed Land were outlined and shaded on the satellite image that formed a part of the Option Notice: a large area to the south and west of the Option Deed Land, and two smaller parcels of land to the north and west of the Option Deed Land. The image which formed part of the Option Notice is included below.

²⁵² RC7.

²⁵³ Ibid.

²⁵⁴ Ian Hodgen, email, *Lipson Industrial Estate Option Deed – Conditions Precedent Acknowledgement*, 16 September 2014.

Stage 1 Option Land



The URA estimates that the land in relation to which ACP exercised its Stage 1 Option is approximately 167 hectares in area, and constitutes all but about 69 hectares of the Gillman lands identified as potentially capable of development in the Gillman Masterplan report.²⁵⁵ The URA notes that the ACP project plan is predicated on a less conservative set of assumptions than those which underpin the Gillman Masterplan.²⁵⁶

The Stage 1 Option was exercised within the time prescribed by the Option Deed. Upon the exercise of the Stage 1 Option, the Option Deed deemed the parties to have entered into a land sale contract, albeit one with no fixed settlement date. The parties have still not settled on the sale because the land has not yet been rezoned as industrial and because ACP does not yet have the necessary regulatory approvals to develop the land, as the Option Deed requires, and because until recently the State was not in a position to provide clear title to the land whilst the decision in the Supreme Court appeal in relation to the *Acquista* matter had not been delivered.

²⁵⁵ On behalf of John Hanlon, email, *FW: Investigation matter*, 6 February 2015.

²⁵⁶ *Ibid.*

CABINET COLLECTIVE RESPONSIBILITY

The Cabinet is not a legal entity and has no legal form. Cabinet is not recognised in any legislation, unlike the Executive Council which is recognised in the *Constitution Act 1934* and which has the function of advising the Crown (the Governor). Cabinet meets in the absence of the Governor.

Cabinet is a political institution which is mainly concerned with political, economic and social concerns of the moment.²⁵⁷ It is the means by which the Executive regulates itself so that governments can govern.

In South Australia the Cabinet consists of all the Ministers of the Crown who meet for the purpose of initiating and coordinating Government policy. The Premier presides over these meetings. The Members of Cabinet have collective responsibility for Cabinet decisions. Once Cabinet has made a decision each member of Cabinet is bound to support that decision whatever that person's personal opinion. If the member feels he or she cannot continue to support a Cabinet decision that person must resign as a Minister.

The notion of Cabinet collective responsibility is recognised in the Ministerial Code of Conduct.²⁵⁸ Paragraph 2.8 provides:

Ministers are responsible, with all other Ministers, for the decisions of Cabinet.

The ethical and effective working of Executive Government in South Australia depends on Ministers having the trust and confidence of all ministerial colleagues in their official dealings and in the manner in which they discharge their official responsibilities.

The collective decisions of Cabinet are binding on all Ministers individually. If a Minister is unable to support a Cabinet decision publicly, the Minister should resign from Cabinet. This convention is based on the proceedings of Cabinet ordinarily being secret and Ministers providing to their colleagues adequate notice of matters be raised in Cabinet.

A Minister is also bound to keep confidential Cabinet deliberations.

Cabinet confidentiality is also recognised in the Ministerial Code of Conduct in paragraph 2.9 which provides:²⁵⁹

A Minister must maintain the confidence of Cabinet decisions, document and deliberations.

The principle of collective responsibility for the decisions that are taken in Cabinet is fundamental to effective Cabinet government. From this principle flows the convention that what is discussed in Cabinet and in particular, the views of individual Ministers on issue before the Cabinet, are to remain entirely within the confidence of the members of Cabinet.

Similarly, the papers considered by Cabinet and any record of the outcome of Cabinet's deliberations are confidential to the government of the day. Separate procedures apply to the handling of Cabinet documents. The convention has been adopted by successive governments that the Cabinet papers (and deliberative documents generally) of a government are not available to its successors.

²⁵⁷ *Attorney-General (Canada) v Inuit Tapirisal of Canada* (1980) 115 DLR (3d)1, at 17.

²⁵⁸ Government of South Australia, *Code of Conduct for Ministers*, published May 2002 to take effect 1 July 2002.

²⁵⁹ *Ibid.*

It follows that Ministers and their ministerial staff may not disclose to anyone else what is discussed in Cabinet, the views of individual Ministers expressed in Cabinet, votes taken in Cabinet, or anything about material provided to Cabinet in Cabinet submissions.

A Minister who deliberately or recklessly breaches Cabinet confidentiality, should resign from the Ministry. The Premier may ask a Minister to resign in any case.

As I have said earlier and as this report discloses, I was provided with draft Cabinet submissions and Cabinet submissions and documents relied upon for the preparation of these submissions.

The State could have refused to provide the draft Cabinet submissions and the Cabinet submissions. As I have said the State asked me to respect the privilege and immunity consistent with the exercise of my authority.

The State and more particularly the Premier and Minister Koutsantonis did not seek to rely upon a claim of public interest immunity which may have been available by denying me access to the Cabinet submissions.²⁶⁰

With one exception, I did not ask the Premier or Minister Koutsantonis what was said at the two relevant meetings of Cabinet on 23 September and 2 December. When I wrote to the Premier asking whether the Treasury briefing note was provided to Cabinet I asked him, in the event that it was not, whether Cabinet was told of the contents. He declined to answer that question claiming public interest immunity. On reflection, I should not have asked the question. It was not appropriate to put the Premier and Minister Koutsantonis in the position of having to divulge Cabinet confidential communications. I have made my findings on the written and oral evidence that I have received.

Cabinet considers submissions which must be signed by the Minister who is seeking Cabinet approval for the subject matter of the submission.

Cabinet meetings are not minuted. Instead the Cabinet's decision is noted on the submission and on the Cabinet Agenda by the Premier. Later the Cabinet Office makes a record of the decision.

If a member of Cabinet is under an obligation to support a Cabinet decision, that member is entitled to be fully informed of the decision that is to be made and the reasons for that decision so that the member can put arguments the member thinks are relevant before Cabinet makes its decision. Each Minister and the Cabinet as a whole therefore, must be fully informed. That does not mean that the Minister who has brought a submission to Cabinet must provide all the information which has been provided to that Minister in advance of the Cabinet submission because that would require all Ministers to have a complete knowledge of each other Minister's portfolio insofar as it bears upon the submission.

However, Cabinet must be provided with all relevant information that would impact upon the decision to be made including any information that would be a reason for rejecting the Cabinet submission. In the end result all Ministers at a Cabinet meeting must be entitled to make an informed decision if they are to be collectively responsible for that decision.

Both the Premier and Minister Koutsantonis agreed that the Cabinet needs to be fully informed so it can assume the collective responsibility that is imposed upon members of Cabinet.

Although a Cabinet submission is usually drafted and prepared for the Minister by public officers, a Cabinet submission is made by the Minister, not by public officers. The Minister has the responsibility of ensuring that the Cabinet submission contains all the relevant information and is accurate. If the Minister is provided with a submission that is not fulsome or accurate the Minister has a duty to his Cabinet colleagues to require the submission to be corrected, or to ensure that the information is otherwise provided to Cabinet members during the course of Cabinet deliberations.

²⁶⁰ *Lanyon v Commonwealth* (1974) 129 CLR 650.

The State accepted in its submission that Ministers are responsible to Cabinet for providing accurate and complete information to Cabinet so that Cabinet is fully informed.

The State accepted the obligation arose for the reasons I have given but also because of Clause 2.5 of the Ministerial Code of Conduct that a Minister 'must use all reasonable endeavours to obtain all relevant information and facts before making a decision on a particular issue' which the State contended applies to the collective decision making process of Cabinet.

The State submitted that it is a matter for the Minister to decide whether the Cabinet submission should be corrected or supplemented by written amendment or orally during the course of Cabinet discussions.

Although I think that it might be appropriate for minor or last minute supplementations or corrections to be made during Cabinet discussions, I think that it would not be enough for that course to be taken in relation to matters of substance.

It would not be appropriate for a Minister to sign a Cabinet submission which he or she knew to be materially incomplete or incorrect, or in circumstances where he or she had not turned his or her mind to the fulsome and accuracy of the submission.

Minister Koutsantonis accepted that the Cabinet submissions that were made in respect of this matter were the Premier's and his Cabinet submissions. He said however, that he could not and should not correct draft Cabinet submissions where he thought them to be wrong except to correct grammatical and spelling errors. He said his job was to require advice and either accept it or reject it. I asked him about the absence of any information about the Board's reaction to the OSDP, the OSNP and its resolution on 21 November in response to the OSDP(2):

Q. *It doesn't say anything about the previous rejections?*

A. *On that you'd have to speak to Renewal so they drafted the submissions.*

Q. *But you were aware of the previous rejection?*

A. *Of the 13th, 14th and 15th?*

Q. *Well, you'd been aware on the 22nd that there had been a rejection by the -- (microphones overlapping) --*

A. *Are you asking me why -- why the Cabinet submission didn't contain the previous rejections and a subsequent approval of the Board?*

Q. *Yes.*

A. *I can't answer that, Commissioner. I don't know why the department didn't put that in; you'd have to speak to the people who drafted the submission.*

Q. *But isn't it your submission?*

A. *It's mine and the Premier's; yes.*

Q. *Well, didn't you have to ensure that it's in there?*

A. *Well, that's something that the department does for me. I rely on their advice. (Inaudible) I have carriage of it into the -- into the -- into the Cabinet. And I rely on the agencies to draft my submissions; I don't have the expertise in my office to draft a Cabinet submission. And I rely on the advice of the department. They're the ones who give me the -- the drafts and the only amendments that we make are grammatical. We don't make substantive changes to -- to Cabinet submissions; we act on advice.*

...

- A . *So something new that's in a Cabinet submission; do I question? I may. I may wish to call the department and ask them about it. But again, it's not my job to write the advice that I receive. My job is to receive the advice and act on it; one way or another.*
- Q. *Quite, I understand. But in a Cabinet submission you're giving advice?*
- A. *No, I am giving to them -- no that's not how. The Cabinet submissions are drafted for us by the agencies.*
- Q. *I understand that.*
- A. *Not by the political office.*
- Q. *I understand that.*
- A . *Thank you. So I rely on them to give me the advice to give to Cabinet. If they choose, for one reason or another, to exclude or include something based on their opinions and their advice; that is how I conduct myself.*
- Once you start interfering in that process, you can change recommendations, and that's a very dangerous place for a minister or ministerial office to go. I would not have looked at this and said, 'Oh, you've included advice that's detrimental or advantageous to the outcome of the recommendations. I accept the advice they give me as is. I don't attempt to interfere in the way they draft my submissions. And I do that deliberately, Commissioner, because it is a dangerous slope for ministers to start interfering with advice.*
- Q. *Yes, well, perhaps I can put this way: it's not a question of interfering with the advice, it's questioning the advice?*
- A . *Well, there are two ways of doing this: either I can be -- get politically involved in drafting the Cabinet submissions or I can't--*
- Q. *It's not political--*
- A . *-- you can't -- you can't be a little bit pregnant. In my view I don't tell agencies how to draft Cabinet submissions other than grammatically.*
- Q. *Well, perhaps put another way: Cabinet deserves, as you said earlier, to have full information because Cabinet has a collective responsibility for the decision it makes.*
- A . *Yes, it does.*
- Q. *So for all of the other ministers who are not privy to the information they require all the information necessary to make a decision?*
- A . *Absolutely .*
- Q. *And for the Minister who is seeking Cabinet approval the obligation falls upon that Minister?*
- A . *And the Premier and I would have assumed, whilst signing this submission, that the agency had included all the relevant information in here that was required. Now, if the Premier and I attempted to interfere with the advice that was put in here, that would be a dangerous path for us to take.*
- Q. *But it's not the advice that you're interfering with; it's the information to be given to Cabinet?*
- A. *Well, that's a matter for the agency.*
- Q. *Well, no, I would have thought it's a matter for you, isn't it?*

- A. *Well, no, it's a matter for you. I mean Cabinet and the Cabinet office -- which are the gate keepers for advice and what goes into the Cabinet -- are the ones who check this. Now, I'm entitled to rely upon the advice of my agency. Now, if my agency didn't include information in here, I would assume that they were for very good reasons.*
- Q. *What could be the very good reason for omitting that information?*
- A. *You'd have to ask Renewal SA.*
- Q. *Pardon?*
- A. *You'd have to ask Renewal SA -- microphones overlapping --*
- Q. *Well, no, I'm asking you because --*
- A. *I can't think of any reason why they would have excluded it.*
- Q. *It should have been included, shouldn't it?*
- A. *Well, you'd have to ask the person who -- microphones overlapping*
- Q. *No, it's your submission minister --*
- A. *-- reading -- reading it now -- reading it now -- I'm now -- I'm going to guess, I'm assuming that they think that the Crown advice has been dealt with in the negotiations with ACP and mitigated the risk .*
- Q. *No.*
- A. *Now, whether they have or haven't it's a matter for the person who drafted the submission.*
- Q. *No, we're not talking about the Crown advice; it's -- it's a question whether there should have been included in the submission a history of the Board's rejection of the proposals put to the Board in relation to this transaction, including the recommendation to the Minister that there the -- that the proposal be refused and it be sent to market: Should that have been included?*
- A. *Hmmm.*
- Q. *You signed it?*
- A. *Yes, I did. And I read it and I was satisfied with the advice given to me by the agency. So, if the agency had -- the agency did not give me the option of, 'Minister, would you like this advice being put in there?' And I made a decision yes or no. And I made it -- I'm not trying to frustrate you, but what I'm saying to you is --*

I do not accept Minister Koutsantonis' evidence because it would mean that a Minister could knowingly present Cabinet submissions that were wrong or incomplete to Cabinet. The Minister presenting the Cabinet submission has the ultimate responsibility for the accuracy and the content of a Cabinet submission.

Minister Koutsantonis' evidence that his role in reviewing a draft Cabinet Submission was restricted, in effect, to copy editing is also contradicted by the State's submission.

Minister Koutsantonis did not make a submission contrary to this finding in his response to the preliminary report.

FINDINGS

INTRODUCTION

As I said earlier the purpose of this investigation is to determine whether any public authority or public officer engaged in conduct that could be described as maladministration under the ICAC Act²⁶¹.

In order to make such a determination I must first make factual findings that are relevant to the question of whether maladministration occurred.

Any findings that I make should be limited to matters related to the sale of the State owned land at Gillman. I should and will not make any findings about any conduct of any public officer outside conduct that resulted from ACP's unsolicited proposal.

As I have said I should, in making those findings have regard to any relevant evidence and disregard any irrelevant matter. The findings must be reasonably open on the information available to me.

Before turning to those factual findings, I want to say something about the definition of maladministration under the ICAC Act and its application to this matter.

²⁶¹ I have set out that definition at page 4 of this report.

MALADMINISTRATION IN PUBLIC ADMINISTRATION

Because of the definition of maladministration in the ICAC Act, the only way in which a public authority can be found to have engaged in maladministration is if a practice, policy or procedure of that public authority results in an irregular and unauthorised use of public money or substantial mismanagement of public resources.

In this case there is no question of an irregular and unauthorised use of public money so the question for determination in relation to the URA is whether a practice, policy or procedure of that authority has resulted in a substantial mismanagement of public resources.

A public officer can engage in conduct that amounts to maladministration in one of three ways; first, if the conduct of a public officer results in an irregular and unauthorised use of public money; secondly, if the conduct of a public officer results in substantial mismanagement of public resources; and thirdly, if the conduct of a public officer involves substantial mismanagement in or in relation to the performance of official functions.

The first type of conduct that I have referred to is not an issue in this investigation.

Therefore I have to determine whether a public officer has engaged in conduct that has resulted in the substantial mismanagement of public resources or engaged in conduct that involved substantial mismanagement in or in relation to the performance of official functions.

Having identified the relevant considerations under the statute I should identify the relevant questions.

I must first determine what public authority might be implicated. Schedule 1 of the ICAC Act identifies 'public authorities' and 'public officers'.

The URA is and was at the relevant time a statutory authority and as such is and was a public authority.

I must also identify the relevant public officers.

All of those employed by the URA, which means the persons to whom I have referred in the URA in the body of this report, were public officers. The members of the Board were also public officers.

Those persons who at the relevant time were performing contract work for the URA were also public officers. For example, and it is only an example, Mr Thompson would be a public officer while he was discharging his duties as a Probity Adviser.

Minister Koutsantonis is a public authority because he was, at the relevant time, the Minister responsible for the administration of the Act under which the URA is constituted.

Both the Premier and Minister Koutsantonis are also public officers because they are persons appointed to an office, namely as Ministers, by the Governor. It follows that the conduct of the Premier and Minister Koutsantonis and the URA employees is conduct that can be examined to determine whether the conduct amounts to maladministration.

In respect of the public officers involved I must consider whether their conduct resulted in a substantial mismanagement of public resources or substantial mismanagement in or in relation to the performance of official functions.

Conduct that constitutes maladministration can result from impropriety, incompetence or negligence. That conduct is to be assessed against any relevant statutory provisions and administrative instructions and directions.

The relevant statutory provisions must be the HUDA and the Regulations. The administrative instructions and directions are the Ministerial Code of Conduct and the RPMP Policy.

I have already said that the conduct of public officers examined in this inquiry does not give rise to an irregular and unauthorised use of public money so that can be put aside. The conduct does, however, raise the potential for a finding of mismanagement of public resources.

The Gillman land is a significant public resource. If it were to be alienated in circumstances where the State did not get the value for money that would have been available to it, but for its mismanagement, that could amount to maladministration. Similarly, if it were to be alienated in circumstances where its true value was not known, that too could amount to maladministration. I will say more about this later.

Moreover, if any of the public officers to whom I have referred engaged in substantial mismanagement in or in relation to the performance of official functions that could amount to maladministration. In that case there need not be any financial consequences to the State for a finding of that kind to be made.

The findings that I am about to make are informed by those considerations.

THE PROCESS AND THE URA

The process applied by the URA was not as rigorous and independent as it should have been. In my opinion the approach taken by the URA was outcome driven. I think the URA's mindset contributed to the failures that infected the process.

The approach that Mr Stephen Gerlach made to Mr Spencer, which was followed by the proposal contained in his letter of 18 June 2013 to the Premier, was an unsolicited approach by the private sector to Government to acquire an interest in the Gillman land.

Mr Andrew Gerlach has been involved in the industrial property area in the United States and Australia and in particular, South Australia, for a number of years. He spent some time talking to Mr Simon Brown, who was the Chief Executive of ResourceCo, about starting a business which was aimed at remediation of contaminated sites and the subsequent development of those sites as industrial property.

Mr Stephen Gerlach became involved in those discussions and in particular, discussions relating to the Gillman land.

The partners in ACP concluded that it was possible provided there was an appropriate scale for the Gillman land to be developed by using international investors' capital.

There is no evidence to suggest that the Government had any advance notice of ACP's approach.

The Premier was excited about ACP's unsolicited proposal which was introduced to him by Mr Spencer, who himself was impressed by the sophistication of the proposal.

I am satisfied that the Premier was, as he claimed, excited by the presentation that Mr Stephen Gerlach and the other officers of ACP made to the Premier at the meeting on 15 June. Indeed Mr Gerlach's letter of 18 June provided reasons for excitement. I have addressed the more important features of the letter earlier in this report.

I also accept the Premier's evidence that the proposal was consistent with the South Australian Strategic Plan and if the transaction came about, and the land was remediated and sold as industrial land, it could have led to a resources hub on that land.

I think that structuring the acquisition of Gillman land via an option or series of options was probably necessary for ACP in order to give ACP an investment product that it could market and sell to potential financiers. It also provided ACP with the option to walk away from the purchase if investment support was not forthcoming. If what was on offer to potential overseas financiers was only an opportunity to participate in a tender process, I accept that it would have been difficult for ACP to offer that product to those financiers.

Mr Gerlach said that ACP has never intended to use the Gillman land for the disposal of waste derived fill and it will not be used for that purpose but will be filled from quarry material from quarries owned by ResourceCo. Mr Brown said that quarry sand would be used but also recycled construction materials might be used as a road base and as a topping layer, and that soil from excavations of car parks and the like would be mixed in with ResourceCo's quarried sand.

I will not make a finding in respect of that evidence because a finding is unnecessary. I simply observe that the Option Deed allows for the use of waste derived fill if EPA Standards are met.

The Premier provided the letter of 18 June 2013 to Minister Koutsantonis, which was appropriate because Minister Koutsantonis was the Minister for Housing and Urban Development. In turn, Minister Koutsantonis provided the unsolicited proposal on 25 June 2013 to Mr Hansen at the URA for its consideration, which was also appropriate.

I think it would be fair to assume that Minister Koutsantonis' office would have wished to facilitate the implementation of the proposal as a consequence of the Premier's enthusiasm.

After that the Premier played little part in bringing the proposal to fruition. Although Mr Kain wrote to the Premier on 29 August and 11 October putting amended proposals on behalf of ACP, those proposals were sent on to Minister Koutsantonis' office. I accept the Premier's evidence that it is doubtful that he would have seen them. He and Minister Koutsantonis jointly authored the submission which was presented to Cabinet on 23 September 2013. I accept the Premier's evidence that he would not have seen a draft of the Cabinet submission that he signed on 19 September. He met with Minister Koutsantonis and Mr Buchan on 12 November. He was aware of the Board's reluctance to endorse the transaction in the second half of November and the Board's resolution of 29 November prior to the Cabinet meeting on 2 December.

[REDACTED] again I accept his evidence that he did not see the draft of the Cabinet submission that he signed on 2 December 2013.

The Premier's enthusiasm, no doubt, infected Minister Koutsantonis and his office and indeed the URA. That said however, the Premier played little part in the process before the Cabinet submission and Cabinet meeting of 2 December 2013.

At the time that the URA received the proposal the only valuations that the URA possessed of the land were those valuations that had been obtained for the purposes of the claim for compensation by the ACC as a consequence of the compulsory acquisition of the Dean Rifle Range land. Those valuations were for only part of the land (the Dean Rifle Range land) and addressed the value of the land as at February 2010.

No relevant valuations were ever obtained.

No work had been done by the URA to determine whether the land had any special value to companies engaged in the waste management industry for filling purposes although it was clear that the land needed to be filled.

I am satisfied that the URA's initial reaction to the unsolicited proposal was that contained in the Minute of 4 July 2013 and was to the effect that the proposal should not be considered at least until the completion of the Masterplan which had been initiated the previous month by the engagement of Jensen Planning + Design.

There were good reasons for the URA to take that approach and those reasons are contained in the draft Minute to the Premier, which I find because there is no evidence otherwise, that Minister Koutsantonis did not provide to the Premier.

The URA's advice on 4 July was consistent with what Mr Hodgen and Mr Rollison had told Mr Borrelli and Mr Bowden on 6 March. It was also consistent with the URA's commission of the Gillman Masterplan. Lastly, it was consistent with what the former Chief Executive of the LMC had stated publicly and which was deposed to by Mr Maras.

Minister Koutsantonis was, like the Premier, excited about the proposal. He was keen to have the proposal become a transaction. The advice contained in the Minute of 4 July was not accepted by Minister Koutsantonis who even at that early stage was looking to have the proposal advanced. I accept Mr Buchan's evidence in that regard. For that reason Minister Koutsantonis required the URA to reconsider that advice.

Minister Koutsantonis was, of course, entitled to do so. However, I think Minister Koutsantonis' reaction to the advice of 4 July is consistent with the earlier finding that I have made that the process that addressed the proposal was outcome driven. That is to say that after Minister Koutsantonis received the proposal from the Premier he was determined to ensure that the proposal was effected. That is not to say that I think Minister Koutsantonis wanted the proposal to be brought to fruition in the absence of proper process.

The URA did as it was instructed and reconsidered its advice over the next month. Very little happened between 4/5 July and 6 August so far as ACP was concerned, which was a matter of

frustration for ACP and its directors. After the URA met with ACP on 6 August things moved more quickly.

By 13 August discussions had advanced sufficiently for Mr Kain to provide a draft Option Deed to the Premier's Chief of Staff and Mr Buchan. It is unlikely that the Premier would have seen this draft.

On 22 August Mr Rollison provided to Mr Andrew Gerlach a marked up a version of the Option Deed which reflected his thoughts and comments. His version was to be provided to the ACP Board at its meeting the next day.

At the Board meeting held on 26 August the Board received little information relating to the ACP proposal except that which Mr Buchan mentioned, which was that an offer had been made off-market, which involved a substantial amount of money. ACP's identity was not revealed.

I find that the failure to provide further information was symptomatic of the way in which Mr Hansen treated the Board and demonstrated a misunderstanding of his obligations to the Board.

On 29 August Mr Kain wrote on behalf of ACP to the Premier with a more detailed proposal, a copy of which he sent to Messrs Buchan, Blewett and Rollison and the directors and executives of his client.

I think Mr Kain provided these documents to the Premier as a matter of courtesy because ACP's initial approach was to the Premier. As I have said it is unlikely that the Premier would have seen the further proposal.

Mr Blewett requested Mr Buchan to review the proposal and provide advice to Minister Koutsantonis as to whether the proposal should be considered by Cabinet.

Almost simultaneously Mr Hansen provided Minister Koutsantonis with a minute recommending that the URA maintain contact with ACP to further discuss ACP's proposal but not to offer ACP an exclusivity period in relation to the land.

Mr Buchan said that Minister Koutsantonis accepted that advice. That is uncontroversial.

Mr Buchan said that he told Minister Koutsantonis at that time that an off-market proposal carried with it significant issues, and that Minister Koutsantonis said it was a matter for Government to decide whether the URA would enter into the transaction. I accept that evidence because it reflects the fact. The ultimate decision whether the URA entered into a transaction with ACP for the sale of the Gillman was for Government, ie Cabinet. It would be expected of course that Cabinet would, in making that decision, consider but not be bound by the advice of the Board of Management of the URA and URA's management.

Mr Hansen's minute was not provided as it should have been to the Chair of the Board or the Board so the Board was unaware of the recommendation made by Mr Hansen and the Minister's reaction.

The failure to inform the Board of the advice provided to Minister Koutsantonis was unsatisfactory.

At the request of the URA the CSO provided advice to the URA on 11 September 2013.

[REDACTED]

The CSO advice was undoubtedly correct and appropriately balanced and should have brought to the attention of URA management [REDACTED]

[REDACTED]

This was the largest transaction that URA had entered into and was larger than anything the LMC had previously seen.

It appears that the CSO advice was not brought to the attention of either the Board or Minister Koutsantonis at any time prior to the Option Deed being executed in December 2013, although there is an oblique reference to the advice in the Cabinet submission which Cabinet considered on 23 September.

In my opinion Mr Hansen was at fault in failing to provide the CSO advice to both the Board and the Minister [REDACTED]

On 12 September Mr Hansen provided Minister Koutsantonis with a further minute in which he identified the key points associated with ACP's approach to Government.

That minute was followed the next day by a draft Cabinet submission prepared by Mr Rollison, a copy of which was sent to Mr Blewett. On 19 September the DTF provided a Costing Comment. The draft Cabinet submission became a Cabinet submission, which was signed by the Premier and Minister Koutsantonis on 19 and 20 September 2013. As I have said I accept the Premier's evidence that he would not have seen the draft submission before he signed the Cabinet submission.

The Cabinet submission synopsis warned Cabinet that ACP's proposal did not allow an opportunity for market testing demand or pricing for the land.

Cabinet was also warned that the proposal could result in the creation of an effective monopoly for private land supplies within that area. The Cabinet submission synopsis included a warning that the ACP offer was based on developing 417.89 ha of usable land and that 200 ha might not be usable, which would have the potential to affect the financial aspects of the offer.

The CSO advice was mentioned. The Cabinet submission synopsis warned Cabinet that there were commercial reasons to reject ACP's proposal. It is not clear who formulated those reasons but there is no evidence they were presented to the CSO for its advice.

The formal recommendations that went to Cabinet have been earlier identified. Paragraph 1 was a recommendation to reject the offer. Paragraph 2 of those Recommendations recommended that the URA enter into direct negotiations with ACP but identified ten parameters that would need to be addressed to reach an in principle agreement with ACP.

In making that recommendation URA was setting its own parameters for accepting the proposal.

The parameters were not appropriate.

There were two important matters that were not included in considering an unsolicited off-market proposal: first, the need for valuations; and secondly, the need for the URA to be satisfied that the proposal represented value for money.

The parameters in paragraph 2 are also somewhat vague. The first two parameters relate to payment and security which are ordinary commercial considerations. The third, fourth, fifth, eighth and ninth contemplate that ACP would propose that the URA would have input into the development but in a way not described.

The sixth and seventh parameters are advantageous to ACP and it is not clear why the URA would want to be satisfied of these matters. But in any event these matters were within the URA's (or the Government's) power. The tenth parameter is a rather surprising matter for the URA to be satisfied before the transaction could be agreed.

As I have said, there is no mention in the ten parameters for the URA needing to be satisfied that the offer represented value for money. Indeed, even at this early stage it seems to be assumed that the offer price did not need to be tested.

Although the Cabinet submission identified some of the risks that were associated with an unsolicited off-market transaction the Cabinet submission did not provide a solution as to how those risks should be managed.

Because this was an unsolicited off-market transaction the URA, if it were to comply with its own policy, had to have two current valuations to satisfy itself that the offer was value for money. The parameters that guided the future negotiations did not address the most obvious risk and in fact that risk was never addressed.

The Cabinet submission does not refer to the Board's role or involvement in the process.

As I have already noted, paragraph 4 of the Recommendations was for Cabinet to approve a delegation to URA's Chief Executive to enter into a binding agreement to sell up to 417.89 ha of the URA's land at Gillman/Dry Creek to ACP, subject to URA's assessment confirming the suitability of ACP's revised proposal.

[REDACTED]

[REDACTED]

[REDACTED]

On the same day, or on 2 October 2013,²⁶² URA and ACP representatives met. The ACP representatives were told of the Cabinet's decision and I think probably of the ten matters which needed to be addressed to reach an In Principle Agreement. ACP indicated immediately that it wished to submit a further proposal.

A week after the Cabinet meeting, the URA Board met and received an oral briefing as part of the Chief Executive's Report.

The information that was provided to the Board was scant and insufficient for the Board to be able to carry out its functions.

There being no evidence that the Board was advised of Cabinet's decision on 23 September, I find that the Board was not advised of that decision on 30 September; nor was it advised of the identity of the proponent.

During October ACP and URA representatives exchanged documents and orally debated proposals to address the matters raised with Cabinet. The ACP proposal seemed to be addressed only by reference to the parameters raised with Cabinet.

On 11 October 2013 Mr Kain wrote again to the Premier with a further proposal that addressed some of the ten parameters. That proposal indicates ACP's eagerness to advance the proposal and to comply with the URA's requirements. A copy of that proposal was sent to Mr Hodgen and Mr Andrew Gerlach. It is most unlikely that the Premier saw that proposal.

The form of the transaction that was proposed in the letter of 11 October 2013 still required the URA to give ACP exclusivity in relation to the land for a period of six months and a further six months if certain conditions were met.

The proposed transaction of 11 October would allow ACP to pay one third of the purchase price for the whole of the land on the exercise of the Option and delay making payment of the other two thirds until eight years after the settlement date. It was proposed that the URA would take a second

²⁶² The evidence is not consistent in relation to when this first meeting took place. I do not think it necessary to resolve this inconsistency.

ranking mortgage over the land. In other words, the transaction at that stage was for significant vendor finance to be provided by the State to facilitate the purchase.

It is as well to consider the URA's position at this time. It had before it an unsolicited offer for an off-market transaction that was the largest transaction involving the sale of real estate seen by it or its predecessor, the LMC. The offer was over a total area of land of 417.89 ha.

There had previously been no thought of selling the whole of the land. Indeed, the advice that LMC had received in Mr Taylor's valuation was that it was unlikely that a single developer would wish to acquire the land.

The LMC had previously announced that the land would go out to tender. IWS had put forward a proposal for a joint venture in relation to 39 ha. The Gillman Masterplan had been commissioned and was being developed.

The Gillman land needed to be filled. Half of the land was thought to be necessary to be devoted to stormwater management. No attention at all had been paid to the value of the land if it were to be filled as described over the period suggested in the unsolicited proposal and then developed as industrial land.

The offer was not to be market tested and there was no current valuation of the land.

No due diligence had been done on ACP.

The offer that was before the URA contemplated that the land would be filled by ResourceCo apparently as it had previously done in what is described as the 'Pilot Project Gillman Precinct'. The proposal was to proceed in stages over a number of years.

At all times during the negotiations ACP's proposal was for a staged acquisition, culminating as has been seen with the Stage 3 Option being able to be exercised nine years after the Stage 1 Settlement Date which will be not before December 2024.

The ACP proposal, which became the subject of the Option Deed, was to acquire the Gillman lands by payment in three tranches.

When and if the Stage 2 Option is exercised, the Stage 1 area land would have been developed. Similarly, when and if the Stage 3 Option is exercised, the Stage 1 and 2 area lands would have been developed.

When then, for example the Stage 3 Option is exercised, it will be for land which is surrounded by developed industrial precinct of some hundreds of hectares. The land ACP will then acquire if it exercises the Stage 3 Option will be quite different to the land as it now exists. True it is that ACP will have borne the cost of developing the Stage 1 and Stage 2 land but ACP will have the advantage of paying in 2013 dollars. None of this was considered or even apparently contemplated by the URA.

ACP continued to put pressure on the URA by suggesting deadlines to allow it to open the 'optimum window' to source capital. ACP cannot be criticised for attempting to exert commercial pressure, which is commonly a part of commercial negotiations.

To this point in time, the URA had not given any proper consideration to CSO's advice of 11 September. It was not until 22 October that Mr Hodgen approached Mr Thompson of BDO to engage him to provide probity advice in relation to the negotiations with ACP.

In his initial approach to Mr Thompson, Mr Hodgen said:

*... no negotiations have occurred or, indeed, will occur until we have a probity adviser on board.*²⁶³

I am not sure what was meant by that statement.

There had been a number of discussions which might have been termed ‘negotiations’ over a period of more than two months even though the negotiations had not culminated in any agreement in principle or otherwise. There were further negotiations before Mr Thompson was formally engaged.

Whilst Mr Thompson was advised that ACP’s proposal was unsolicited and off-market he was not advised at that stage, or any stage, that the URA did not have a contemporary or recent valuation of the Gillman land. Whilst Mr Thompson was concerned that this was an unsolicited offer, that concern was addressed when he was told Cabinet had approved the URA entering into negotiations.

I think the URA’s failure to obtain valuations at this stage is probably indicative of the way in which it approached the proposal. It intended for the proposal to be effected as a transaction provided the ten matters that were raised by it with Cabinet were addressed.

Nobody seemed to have given much thought to the absence of current valuations. It was assumed within the URA at that stage that the offer was so good that no valuation needed to be obtained.

In the course of assessing whether to accept the ACP offer for the Gillman land, both the Board and Cabinet should have received advice about the current worth of the Gillman land in order to assess whether or not the ACP offer represented good value.

Mr Hanlon said in his evidence that in order to properly consider the ACP proposal, the URA needed to get an up-to-date valuation of the land and also gain an understanding of the potential use of the land, which as Mr Hanlon saw it, would include its considerable potential value as a site for receiving fill. In his view, the value in proceeding with the ACP proposal should have been weighed against the value to the State of using the site to run a State-owned soil banking business.

I accept his evidence.

Although I will deal with the Board’s deliberations on 29 November 2013 later, the Board did not receive any written advice about the value of the Gillman land until the OSDP(2) dated 28 November 2013, when the Board was asked to give advice, and did give advice that the ACP offer represented good value based largely on the following information:

*In determining a value for the subject land, Renewal SA has utilised evidence gained from working with an expert valuer (Mr Rob Taylor, Savills) for over 4 years to define a value for the former DRR in the context of the compulsory acquisition process. The portion of the former DRR represents 276.03 hectares of the 407 hectares included in the ACP offer. During the same period, ACC has been working with its independent valuer (Mr Peter Southwick, Southwick Goodyear). The two valuations (factored up on a pro-rata basis to account for the difference in land areas) suggest that the subject land should be valued at between \$18.567 million (rounded to \$19 million, being the Renewal SA valuation) and \$58.632 million (rounded up to \$59 million, being the ACC valuation).*²⁶⁴

The Board was not given a copy of the valuations that lay behind the ‘factored up’ estimate. Based on the figures mentioned, it seems most likely that those valuations are the ACC commissioned report of 27 February 2012 and the CSO requested report of 9 August 2013 respectively.

²⁶³ RC7.

²⁶⁴ RC4.

The Board was also asked to give advice to the Minister that ‘Renewal SA managed the consideration of ACP’s unsolicited offer in accordance with appropriate policies and procedures relating to probity’.

The RPMP Policy included, as Appendix 1, a document entitled ‘Sale of Renewal SA Property Assets’. That Appendix is a table that addresses the sales process and includes a part ‘Exceptions to a Competitive Sales Process’ and includes²⁶⁵:

TYPE OF SALE	COMMENT	SPECIAL ATTRIBUTES	PRICING/ VALUATION	APPROVAL AUTHORITY (refer to Renewal SA Delegations Schedule)	
Approach from private sector party (off-market)	Consider any benefit to justify off-market sale – generally competitive process should apply	Direct sale requires strong justification	Higher of two independent valuations	>\$4.4m <\$4.4m <\$0.5m	Minister Chief Executive General Manager, Urban and Portfolio Planning

In relation to that policy, the OSDP(2) said:

Renewal SA’s policy requires two independent valuations to be undertaken with the higher of the two setting the value of the land. In regard to this (in order to confirm the commercial aspects of the proposal) guidance has been taken from the extensive valuation work completed for the compulsory acquisition of the former DRR.²⁶⁶

The OSDP(2) did not advise the Board whether taking guidance in that manner constituted compliance with the RPMP Policy; whether such compliance was necessary or advisable in the circumstances; and the risks associated with non-compliance.

Given what was being asked of the Board and the timeframe given for assessing the information and making that decision, some three and a half hours during a working day, that advice should have been given.

The URA did not comply with its own policy. Further, the Dean Rifle Range valuations obtained for the purpose of the compulsory acquisition dispute with ACC could not properly substitute for the two independent valuations required by the relevant policy.

Two reasons for this are apparent from the nature of the compulsory acquisition valuations.

First, the compulsory acquisition valuations did not concern the same area of land as the ACP offer. It included land which was not within the ACP offer, namely Lots 201 and 202; and excluded over 100 hectares of the Gillman land within the ACP offer which lay outside the former Dean Rifle Range.

The URA never obtained a valuation of the whole of the land. At best, it had three year old valuations of part of the land. Moreover, the proposal was never to acquire the whole of the land at a particular date. The proposal was for ACP to be given the right to acquire the Gillman land in the future and in respect of some of the land nine years after the Stage 1 Settlement date which would be the end of 2024. In the meantime ACP would have access to all of the land. The value of the Gillman land was never addressed by reference to the detail of ACP’s proposal.

²⁶⁵ RC9.

²⁶⁶ RC4.

Secondly, the compulsory acquisition valuations provided a value as at the date of the acquisition, that is, 11 February 2010. It is the value of the land as at November 2013 and during the stages of the Option period that was relevant to the Board's deliberations.

Further reasons for not using the compulsory acquisition valuations to assess the value of the ACP offer become apparent on examination of the detail of the valuations.

First, Mr Taylor's valuations, in part, assume that a private purchaser would not be interested in purchasing the land. ACP's offer for an option to purchase the whole of the land meant that that assumption was not appropriate. It was not appropriate for senior management of the URA to rely upon a valuation that assumed that no private purchaser would be found for the land in order to justify an off-market sale of that land to a private purchaser.

Secondly, the significant differences in the valuations for the Dean Rifle Range land illustrate the difficulty in valuing the land. Variables such as how the land might be developed and the costs associated with development led to significant variations between the various compulsory acquisition valuations. The projected yields for the development depended on contestable assumptions. The cost of developing the land depended to a significant extent on the cost of obtaining and placing fill. There was little agreement amongst the experts about the cost of the fill and the timeline for procuring that fill. Because of that uncertainty the persons best able to assess the costs, opportunities and risks involved in the filling of the land would be those persons involved in the waste soils industry in South Australia. Two of those persons, Mr Maras and Mr Terlet, were on the URA Board.

The difficulty in valuing the land may have suggested that at a minimum some market testing was necessary and that an off-market sale in the absence of market testing was unwise.

Thirdly, none of the valuations took into account the possibility that cash flow could be generated from the commencement of the hypothetical development project by using the site as a place where clean fill or waste derived fill could be dumped for a fee. There is no doubt that if it is assumed that a private purchaser was seeking to acquire the land for sale for industrial purposes, the land had to be filled. The difference between the first and second Taylor valuations illustrates that where a net present value calculation is being undertaken and a high internal rate of return is assumed, early cash flow will make a substantial difference to the value of a development project. The relevance of the need to fill the site cannot be underestimated because Simon Brown and David McMahon, directors of ACP, are both involved in the waste soil business through ResourceCo and would have been aware of the site's potential for money to be made through the receipt of fill for a fee.

Fourthly, the valuations had been prepared on the basis that no price escalation for serviced industrial land allotments should be taken into account. Whilst that may be appropriate for a valuation in the context of an acquisition at a certain date, it is not an appropriate valuation method where the land is or might be acquired over a period until 2024.

Fifthly, as the valuations prepared for accounting purposes mentioned above show, the value of the Gillman land was not uniform across its various allotments. Some allotments were worth much more than others on a per square metre basis. The use of an average value per square metre derived from the Dean Rifle Range valuations, and applied across the whole of the Option Land deprived the Board and Cabinet of the opportunity to take those matters into account when making a decision in relation to the structure of the options, so as to ensure that the State received good value for the sale of the Gillman land regardless of which options, in relation to which land, were taken up by ACP. This is especially important where the transaction allowed ACP to ultimately decide which land would be assigned to the stages. That allowed ACP to cherry pick the most usable and developable land in Stage 1. The least usable and developable land might not be worth \$30 psm but that land might never be acquired. The most usable and developable land, which is now Stage 1 land, might be worth more than \$30 psm.

Sixthly, the valuations did not take into account that this transaction would only occur if 230 ha of the Option Land were re-zoned as 'General Industry'.

In the September 2013 Cabinet submission, Cabinet was advised of the statutory valuation referred to above, and were told that the book value of the Gillman land was \$32,743,000.

Cabinet was advised:

The extensive valuation work for the DRR acquisition suggests a value for the land of between \$18.567 million and \$58.632 million with a mid-point of 38.600 million.²⁶⁷

No additional information of substance relating to valuation of the land was provided in the December 2013 Cabinet submission.

The URA's own RPMP Policy required the URA, when considering an off-market transaction, to obtain two valuations and to set the price at the higher of the two valuations.

All of the witnesses who were involved in this transaction from the Government's side agreed that with the benefit of hindsight at least one valuation should have been obtained.

In my opinion the need for valuations was obvious as soon as the URA knew that it was being asked to consider an unsolicited off-market transaction.

The only way that the URA could know and be in a position to advise Government whether the proposal should be accepted was to obtain current valuations of the land, and which would have regard to the structure of the ACP proposal.

I accept the evidence of Mr Taylor that his previous valuations, which were obtained for the purpose of the compulsory acquisition litigation in the Supreme Court, could not be relied upon by URA to determine whether or not ACP's offer was value for money. The subsequent emails that Mr Rollison and Mr Taylor exchanged do not dilute the effect of his evidence.

The URA should have recognised that one of the two partners in ACP was a company that was in the business of filling land. Indeed in its presentation to the Premier, ACP pointed that out and identified, as I have earlier recited, how ResourceCo would fill that land.

It should have been apparent to those who were involved in this transaction on the URA's part that this land might have special value for a company involved in remediation of sites and that the filling of the site might not be, as it had previously been assumed, a cost to the owner but instead an asset if the owner were able to charge persons, who needed to dispose of fill, to place that fill upon that land.

It appears no attention was given to what might have been the special value of this land to ResourceCo. That is surprising having regard to the previous approach by IWS on 6 March 2013 when it was able to show that part of this land would have a special value to it in carrying out its business of filling land.

It was foolhardy to pursue the negotiations without valuations. The URA should have conformed to its own RPMP Policy in all respects. Its failure to do so represented a serious departure from what would be expected in a process of this kind.

On 24 October 2013 a further minute was provided to Minister Koutsantonis in which the 11 October ACP proposal was examined.

²⁶⁷ RC8.

Minister Koutsantonis was told that the proposal was not then in a condition to warrant it being presented to Cabinet but that URA would engage in direct negotiations with ACP once external probity advice had been received.

I think that minute has to be understood against the decision of Cabinet of 23 September, which was that the URA should come back to Cabinet only when it had assessed the proposal as complying with the ten parameters in the Cabinet submission considered on 23 September.

The minute of 24 October 2013 from Mr Hansen to Minister Koutsantonis contained the revised proposal that had been provided to the Premier by Mr Kain on 11 October and the advice that the revised submission was not considered by URA management to be of sufficient merit to warrant presenting to Cabinet.

The revised proposal indicates there had been continuing negotiations between the parties since the 23 September 2013 in an endeavour to address the ten parameters in the second recommendation of the Cabinet submission considered on the 23 September.

Although that Minute provided a draft Cabinet note to inform Cabinet of progress with the ACP proposal that Cabinet note was not provided to Cabinet, presumably because it contained no relevant information for Cabinet's consideration.

On the same day Mr Gerlach emailed Mr Buchan with a proposal to address the 'major sticking point' which was, to that point of time, the lack of adequate security for financial and project delivery performance.

In that note Mr Andrew Gerlach proposed that the structure of the option be changed so that it would not be exercised in one stage but in a series of stages and that the purchase price for each stage would be payable on the exercise of each option and that the exercise of each option would be dependent upon substantial compliance with the project plan.

That was a major step in the negotiations that the parties had conducted to that point of time and may have precipitated the events that followed at the end of the month.

When the Board met on 28 October 2013 it was provided with the information contained in the agenda item to which I have referred but with little or no further information. Again, it was not informed as to the proponent of the proposal.

In fact, the Board was not aware that the proponent was ACP until 13 November. That finding follows not only from the absence of any reference to ACP before 13 November but because of the actions of Mr Terlet on that day. He would not have contacted Mr Borrelli on that day if he had previously known that ACP was the proponent.

There is no reason why the Board should not have been told of the identity of the proponent until 13 November 2013. It is a glaring example of Mr Hansen's failure to keep the Board fully informed.

As at 28 October the Board had received three brief reports at the Board meetings of August, September and October but none of that information provided any details of the proposal or who the proponent was.

In my opinion, Mr Hansen again failed to properly acquaint the Board with the details of the transaction so that the Board could consider it in advance of receiving a recommendation for a resolution upon the proposal. He must also have known that negotiations were reaching finality. He would have known that he was going on leave on 4 November.

On that day Mr Kain emailed Mr Rollison with a further draft submission for discussion which again indicates the extent to which negotiations had progressed.

In late October, when the URA decided to engage a probity adviser, the parties had been negotiating for a considerable time prior to that time. They continued to do so through the last

week of October to the point, as I have mentioned, Mr Andrew Gerlach could provide a proposal to deal with the 'major sticking point'.

Although the witnesses said otherwise I find that the engagement of Mr Thompson amounted to an attempt to ensure that it would be perceived that the URA had conducted itself appropriately in the process, but no more.

I say that for a number of reasons: first, because of the lateness of Mr Thompson's engagement; secondly, because Mr Thompson was never fully advised of the events that preceded his appointment; thirdly, because he was not provided with the RPMP policy; fourthly, he was not provided with any valuations; and fifthly, he was not provided with details of the negotiations that had already occurred. The extent of Mr Thompson's role in the process was very limited. His role was to ensure that the further negotiations, at which he was present, were carried out at arm's length.

The Premier agreed that the Probity Adviser should have been in place earlier.

Almost simultaneously with Mr Thompson's appointment the URA put in place a Negotiation Plan and an Evaluation Plan but for the same reasons which I have already mentioned, those plans were also window dressing.

The Negotiation Plan provided for a selected team being Mr Buchan, Mr Hodgen and Mr Rollison to conduct the negotiation.

The URA had been conducting negotiations since 6 August and more particularly 23 September.

The Evaluation Plan appointed an Evaluation Panel made up of Messrs Buchan, Hodgen and Rollison.

Nowhere in the Negotiation Plan or the Evaluation Plan is there any suggestion that the negotiators or the evaluators would have any regard to whether the transaction reflected value for money for the URA in relation to the proposal.

That is rather remarkable when no assessment had been made prior to 1 November of the value of the offer.

It had always been assumed that the offer was one that could not be refused and that no more had to be done in relation to the evaluation of that important aspect of the transaction.

Mr Hansen did not, by signing the Evaluation Plan, thereby comply with the RPMP Policy by exercising his discretion to accept older valuations. There is no evidence that Mr Hansen thought he was exercising a discretion given to him by the RPMP Policy.

The Evaluation Plan finished with an obligation imposed on Mr Buchan to present a recommendation/report/memorandum to Mr Hansen for endorsement prior to a recommendation/report being converted into a Cabinet submission for approval to proceed with acceptance of a proposal.

There are two matters to note about this: first, when the Evaluation Plan was executed by the persons who I have mentioned (on the Friday), it was known or should have been known to each of those persons that Mr Hansen was to begin leave on 4 November (the next Monday); secondly, there is nothing in the Evaluation Plan that recognises the need for the approval of the Board either before or after Mr Hansen had given his approval and before a Cabinet submission was provided to Cabinet.

The speed with which negotiations completed in the first week of November indicates as I have already said that the negotiations were well advanced before Mr Thompson was advised by the URA that no negotiations had occurred or would occur until he was appointed.

Mr Kain thought by Sunday 3 November (which was before any working days had passed) most issues had been resolved and that the only matter necessary to conclude the transaction was the provision of the Option Deed. That confidence was not misplaced because the parties concluded their negotiations by 8 November which culminated in the provision by Mr Kain of the draft Option Deed on 11 November.

The structure which had been created by the URA was poorly designed.

When the parties concluded their negotiations, but for a few matters which are inconsequential, by 8 November, the URA had in place a Negotiation Team which consisted of the same persons as the Evaluation Panel. The Evaluation Panel was obliged to report to one of its own members to obtain his approval for the work of the Negotiation Team and the Evaluation Panel, both of which he was a member.

There was no layer of oversight and the process did not allow for any independent thought or consideration to be given to the transaction before the transaction was agreed as to its terms by 8 November.

Mr Buchan met with the Premier and Minister Koutsantonis on 12 November and reported to them that negotiations had reached a speedy conclusion. I accept Mr Buchan's evidence, which was not contradicted by the Premier or Minister Koutsantonis, that at the meeting of 12 November he was told that the Premier would prefer that Cabinet consider the Incitec Pivot matter at the same time as the Gillman land matter on the next Monday, 18 November. The reason for that is unimportant.

Mr Buchan told Minister Koutsantonis after the meeting that he thought he would not be able to complete the draft Cabinet submission but he was told by Minister Koutsantonis that he had better get it done and he was later told by Mr Malinauskas something to the same effect.

I think it a fair understanding of the whole of the evidence that Mr Buchan felt obliged on 12 November to be able to present to Minister Koutsantonis a draft Cabinet submission by Friday 15 November for a Cabinet meeting to be held on 18 November. I am unable to envisage any other reason that would explain why Mr Buchan treated the Board as badly as he did after that conversation with Minister Koutsantonis.

Mr Buchan says that he was directed to prepare the draft submission. In a sense that is right but the only quarrel Mr Buchan had was the time within which the Cabinet submission had to be prepared. The direction he was given to prepare a cabinet submission was because he had reported, accurately, that negotiations had concluded.

Mr Buchan did what he was told to do. He had a Cabinet submission prepared by 15 November notwithstanding the events that occurred between 12 November and 15 November.

If any of the relevant parties had, on 12 November, applied their minds to what was needed to be done before Cabinet could consider a submission in relation to the ACP proposal, the events that followed would not have occurred.

Mr Buchan should have told the Premier and Minister Koutsantonis on 12 November 2013 that the Board needed to be provided with the details of the transaction and have an opportunity to consider it in a Board meeting and that that would take some time and for that reason it would not be possible to have a draft Cabinet submission ready by 15 November.

It is surprising that nobody foresaw that the Board would wish to do its duty and consider the ACP proposal carefully before it reached any conclusion.

It seems to have been assumed by management that the Board's function was to provide its approval for a decision that appeared to have already been made.

They were very wrong about that.

I accept, as Mr Hodgen said, that the URA was under pressure as at 13 November to get this transaction across the line. That is consistent with Mr Buchan's evidence and nothing said by Minister Koutsantonis was inconsistent with that evidence.

I also accept Mr Hodgen's evidence that the pressure to get this matter completed was coming from Minister Koutsantonis' office.

After the 12 November meeting with the Premier and Minister Koutsantonis Mr Buchan had to obtain the Board's approval and draft a Cabinet submission for the Minister by 15 November. Unsurprisingly, that proved to be impossible.

Mr Buchan accepts that the Board was poorly treated. However it might be that he felt he needed to act in that way because he was feeling pressured to do so.

On the afternoon of 13 November Mr Smith emailed the OSDP which had been authorised by Mr Buchan, to all of the Board members, seeking an answer by 12 noon on Friday 15 November.

Two things can immediately be said about that strategy.

First, this was not a matter that should have been considered by way of a flying Minute even though the BOM policy permitted a flying Minute in certain circumstances.

This was a matter that needed to be considered by the members of the Board in a Board meeting so that each member of the Board would have the advantage of hearing the views of each other member. That procedure was not adopted because time did not allow for it to occur. The determination to get this matter completed impacted therefore upon the Board members' ability to make a proper and reasoned decision in relation to the transaction under consideration.

Secondly, it was both unfair and disrespectful to the Board to require the Board members individually to make a decision on this transaction by 12 noon on 15 November.

Mr Buchan asked for Board members to reach their individual decisions by that time because he was under pressure to present a draft Cabinet submission by Friday for Cabinet's consideration on the Monday.

He should not have succumbed to that pressure.

It was patently unfair to the Board to require it to consider such an important matter in such a short time and without the benefit of the exchange of each of the Board members' views.

The Board members' reaction to the OSDP was quite unsurprising. As Ms Pike said, the OSDP made the Board members furious.

However, with a little thought that reaction could have been predicted before the OSDP was sent to the Board members.

Mr Buchan had been away on leave for some weeks in September/October and therefore probably did not know, as he said, what conversations had been had with the Board in relation to the transaction.

He should not have assumed, however, that the information that was contained in his email of 10 November was likely to provide Board members with sufficient detail that the members would question the transaction before those members received the OSDP.

There was insufficient information provided in the OSDP for a sensible decision to be made and in my opinion the Board's behaviour on receipt of the OSDP was predictable.

The OSDP was withdrawn when Mr Smith emailed the members of the Board at 3.21pm on 14 November.

He said in his email the OSDP was being withdrawn to enable amendments to be made to the paper for re-submission to the Board members apart from Mr Terlet who had, on the afternoon of 13 November, declared a conflict of interest.

I find that the OSDP was withdrawn by Mr Smith on Mr Buchan's instruction so that Board members could not vote upon and reject the Recommendations.

The Board members should have been allowed to vote and reject the recommendations, which I find would have occurred if the OSDP had not been withdrawn.

The OSNP, which was circulated at 6.04pm on 14 November, was an effort by Mr Buchan to avoid the Board rejecting the ACP proposal by recommending to the Board to note the matters in the OSNP.

That tactic was rejected by the Board members almost immediately after the OSNP was circulated.

The OSNP was another insult to the Board. The purpose of the OSNP was to sideline the Board so that the Board would play no real part in a consideration of the proposal.

At or about the same time as the OSDP and the OSNP were being presented to the Board, IWS and E&A Limited approached, in the first case, the Premier and Minister Koutsantonis and, in the second case, Minister Koutsantonis, expressing an interest in the Gillman land.

I find that the Premier, Minister Koutsantonis and the URA were aware of those approaches.

There is no evidence to suggest that anybody, including the Premier or Minister Koutsantonis, paid any attention to those approaches and the earlier approaches to which I have referred. Nobody apparently gave any consideration to whether those approaches meant there was a market for the Gillman land and that the market ought to be tested. It is surprising that the URA did not then apply its mind to the question of the value of the land.

Notwithstanding that some of the Board members had already indicated that they would reject the OSDP and the OSNP in the morning of 15 November, Mr Buchan received from Mr Rollison and Mr Hodgen a recommendation report that a Cabinet submission be provided to Minister Koutsantonis for approval to proceed with acceptance of the ACP proposal. That was sent to Mr Buchan in conformity with the Evaluation Plan.

A draft Cabinet submission supporting the proposed transaction was provided to Minister Koutsantonis' office at 5.37pm on 15 November.

In my opinion that draft Cabinet submission should not have been sent to Minister Koutsantonis' office because it did not reflect the Board members' attitude to the OSDP and the OSNP.

Even if it were appropriate for the URA to provide the draft Cabinet submission to Minister Koutsantonis' office on 15 November then that draft Cabinet submission should have included a summary of the events of that week and a clear statement of the Board's position in relation to the transaction.

Mr Buchan telephoned Messrs Hallion, Blewett and Malinauskas on the evening of 15 November to inform them that the Cabinet submission did not accurately reflect the Board's position and to ensure that the draft Cabinet submission did not go to Cabinet. That was the right and proper thing to do and prevented any possibility of Cabinet being misled.

Whilst that was the proper thing to do Mr Buchan should not have put himself in a position where he had to do that.

The draft Cabinet submission itself should have included all the information that Cabinet needed to know in relation to the Board members' reaction to the proposal. It was relevant for Cabinet to know that the Board had not accepted the recommendations in the OSDP and the OSNP. The

omission of those matters, in my opinion, made the draft Cabinet submission misleading which, of course, was the reason for Mr Buchan's telephone calls on the evening of 15 November.

The OSDP(2) that was circulated on 20 November 2013 reflected the Board's view as at 20 November which had been the Board's view I think since 13 November. The Board members individually and collectively agreed with the recommendation to reject the ACP proposal.

The Board's resolution on 21 November accepting the recommendations of the OSDP(2) has not been revoked. The resolution was subsequently included in the Board Minutes of 25 November as being the resolution of the Board and there is no evidence, and no-one has suggested otherwise, that the resolution has been revoked at any time.

It has been said that the Board's subsequent resolution on 29 November meant that the Board approved of this transaction. That is not so. The Board never approved of the proposal or recommended the proposal go forward. The Board did no more than give advice on what was incomplete and incorrect information.

A number of the members of the Board indicated that they did not accept the recommendations contained in the OSDP of 13 November and it was withdrawn on 14 November so that those recommendations could not be voted upon. Some members of the Board indicated that they did not accept the recommendations in the OSNP and it was withdrawn. A majority of the Board accepted the recommendations in the OSDP(2) and the Board subsequently resolved in accordance with those recommendations. As I have said, the resolution has not been revoked and therefore it cannot be said that the Board ever supported the transaction or approved of it going ahead.

I will address exactly what the Board did in its later resolution shortly.

As Ms Goodchild's notes show, Minister Koutsantonis was advised on 19 November by Mr Buchan, of the Board's resolution that day.

The draft Cabinet submission that was sent to Minister Koutsantonis on 21 November precisely identified the Board's position, which was that it had resolved that the revised offer should be rejected and noted that the Minister would advise Cabinet of the matters referred to and noted that the matter was a matter for Cabinet.

The draft Cabinet submission identified two separate options. Option 1 reflected the Board's resolution of 21 November. Option 2 picked up the recommendations that were contained in the OSDP and OSNP.

Mr Buchan met with Minister Koutsantonis again on 22 November when they discussed Minister Koutsantonis attending the Board meeting on 25 November. I accept Mr Buchan's evidence that at that meeting Minister Koutsantonis said of the Cabinet submission 'what am I meant to do with this' and that Mr Buchan told Minister Koutsantonis that he ought to present the submission to Cabinet because it reflected the view of the Board.

Minister Koutsantonis had previously discussed attending the Board meeting with Ms Pike. Both Ms Pike and Mr Buchan were enthusiastic about Minister Koutsantonis addressing the Board on 25 November.

After Mr Hansen returned from leave he resumed control of the process. I accept Mr Buchan's evidence that his role after that point in time became less important.

Minister Koutsantonis addressed the Board on 25 November in a way that Mr Buchan described as passionate. He explained to the Board the benefits to the State of the proposed transaction. I think Minister Koutsantonis was attempting to persuade the Board to approve the transaction. The third and fourth bullet points in the 25 November Minutes support that proposition.

I accept Mr Maras' evidence about what he said during the course of the Board meeting.

Minister Koutsantonis was warned by Mr Maras at the Board meeting on 25 November and on earlier occasions that the Gillman land had potential value as a fill site. Ms Goodchild's note of 19 November records Mr Maras as having previously spoken to Minister Koutsantonis about that issue. Minister Koutsantonis said that Mr Maras had previously warned him of this matter. Minister Koutsantonis said that his advice from the management of the URA was otherwise.

Both the URA and Minister Koutsantonis should have paid better attention to Mr Maras' advice by pausing at the very least to consider whether the ACP proposal should be tested against current valuations. Mr Maras' advice is consistent with Mr Hanlon's evidence on the assessment of the value of the Gillman land.

I accept the accuracy of Ms Goodchild's notes of what various people said at the Board meeting and that Minister Koutsantonis said something to the effect; 'I will get you a briefing from Barry Goldstein and if you still think a tender is required, that is the recommendation I will take to Cabinet'.

That note is consistent with Minister Koutsantonis' own evidence. He said that if the Board had said to him 'this deal does not make sense' 'do not do this' that would have been the recommendation that he would have made to Cabinet.

Whilst I accept that was said that statement is inconsistent with what had transpired.

On the 21 November Minister Koutsantonis was provided with the resolution of the Board recommending the rejection of the proposal and was provided with a draft Cabinet submission to that effect which also provided for a second option.

He did not take that Cabinet submission to Cabinet on 25 November but, as Ms Goodchild said in her note, pulled it 'to allow the Board consideration'²⁶⁸.

That action demonstrates he was not prepared to accept the Board's recommendation without at least making a further effort to persuade the Board to a different position.

Moreover, the statement attributed to Minister Koutsantonis in Ms Goodchild's note is also inconsistent with what occurred after 25 November. The Cabinet submission of 2 December did not include a reference to the Board's resolution on 21 November recommending the rejection of the ACP proposal.

I accept the Board members' evidence that there was discussion after Minister Koutsantonis left to determine what the Board should do having regard to what had been said by Minister Koutsantonis. The Board members wanted the further information which is identified in the Board Minutes of 25 November. Minister Koutsantonis offered to attempt to make Mr Goldstein available to brief the Board but that could not be arranged. I accept the accuracy of Ms Goodchild's notes of her conversation with Ms Pike to the effect that the Board did not require any further briefing from Mr Goldstein.

As I have said, I accept Ms Pike's evidence that the longer Board Minutes are the true Minutes of the Board.

Although Minister Koutsantonis persuaded the Board not to stand in the way of the transaction the Board was not persuaded to resolve to approve the transaction as had been envisaged in the OSDP of 13 November. That is clear from the terms of the OSDP(3) which did not attempt to seek to have the Board approve the transaction but only to agree with various aspects of the transaction.

The questions formulated in the OSDP(3) were drafted by Mr Hansen. They were drafted in such a way as to avoid a conflict between the Board and management and to avoid any further resolution of the Board not to approve the transaction. The OSDP(3) falsely claimed that the Minister had

²⁶⁸ RC34.

requested the advice sought. I accept Minister Koutsantonis' evidence that he did not ask for that advice.

When the Board was asked to resolve as it did in relation to the issues raised in the OSDP(3) the Board was not in possession of all of the information needed to address those issues.

The Board had been wrongly advised at the meeting of 25 November that the CSO advice was not in writing. The Board was not provided with the CSO advice prior to considering the recommendations in the OSDP(3).

The Board was wrongly advised that there were valuations that were current and which supported the proposition that the ACP offer represented a good value offer based upon independent valuation advice. There were no such valuations.

The Board was wrongly informed that the URA had managed the unsolicited offer in accordance with existing policy. The URA had not complied with its own RPMP Policy and a representation to the contrary was in my opinion false.

The Board was not advised that there was further CSO advice on 27 November. I can find no rational explanation for the Board being provided with Mr Thompson's advice of 27 November but not the CSO's advice.

The Board was misled into giving the advice in accordance with the recommendations in OSDP(3). If it had been properly advised it would have been unlikely to have given that advice in that way.

I find that the Board approved giving the advice that it did on 29 November in circumstances where it was misled as to the information that was available and was not informed of other relevant information that was available.

I also find that the Board did not, by accepting the recommendations and approving the advice on 29 November, revoke its resolution of 21 November.

Minister Koutsantonis was provided with a draft Cabinet submission on 29 November.

The draft Cabinet submission was accompanied by a minute authored by Mr Rollison and under the hand of Mr Hansen.

There is nothing stated in the minute which is inaccurate but the omission of much information in that document renders the minute inaccurate in a number of important respects.

The minute was inaccurate in that:

- it did not advise the Minister that the Board had not accepted the recommendations in the OSDP and the OSNP and resolved in accordance with the recommendations in OSDP(2) and that resolution had not been revoked;
- that there were no contemporary independent valuations, advice or comparable market evidence that could support the advice in 1b of the Board's 29 November resolution; and
- that Resolution 1c was wrong in that the RPMP Policy had not been used to manage the unsolicited offer and that the URA SA had not complied with that policy.

The absence of that information meant that the minute could not be relied upon by Minister Koutsantonis.

I accept the Premier's evidence that he did not see that minute or indeed the draft Cabinet submission.

Minister Koutsantonis of course knew of the first matter. He was aware of the history leading up to the Board's 29 November resolutions.

He now knows of the second and third matters.

I do not find that he knew of the second and third matters prior to the Cabinet meeting on 2 December 2013.

However, he should have considered whether there was independent valuation advice that would support the second piece of advice. He could not have been expected to learn for himself whether the third matter was true.

When Minister Koutsantonis reviewed the draft Cabinet submission he was obliged to read it for its accuracy and completeness. If he was not satisfied that it was both accurate and complete he had a duty to his Cabinet colleagues to either correct or supplement the Cabinet submission or return the Cabinet submission to the URA for correction and supplementation.

I do not accept Minister Koutsantonis' evidence that his duty was no more than to proof read the Cabinet submission for grammatical and spelling errors. That is a clerical duty not a Ministerial duty.

The draft Cabinet submission was provided to Minister Koutsantonis with a minute signed by Mr Hansen. Mr Hansen had the responsibility of ensuring that the draft Cabinet submission was accurate and complete. Regrettably, the draft Cabinet submission was misleading in the way that I have described.

I have pointed out the only differences (which are of no importance) in the draft Cabinet submission to the Cabinet submission signed by the Premier and Minister Koutsantonis on 2 December 2013.

The Cabinet submission does not contain any information relating to the Board's deliberations in November. The omission of that information makes the Cabinet submission by itself misleading.

I cannot know what Cabinet was told by either the Premier or Minister Koutsantonis. Even if Cabinet was told of the Board's reaction to the OSDP and the OSNP on 14 and 15 November and the Board's resolution of 21 November in response to the OSDP(2) that would not necessarily correct the Cabinet submission.

The Cabinet submission also said:

Based on the significant modelling undertaken as part of the DRR compulsory acquisition process, the Board was satisfied that the ACP offer (which values the land at \$30/m²) represented a good value offer, based upon independent valuation advice and comparable market evidence.²⁶⁹

That statement is not accurate.

The Board did not resolve in favour of 1b upon the basis of the significant financial modelling undertaken as part of the DRR compulsory acquisition process.

However, the Premier and Minister Koutsantonis may not have known that was a misstatement.

The Premier has said that Cabinet was made aware of the Board's resolution of 21 November in the Costing Comment that accompanied the Cabinet submission. That Costing Comment had been prepared in response to the draft Cabinet submission of 21 November which contained the two options.

The Costing Comment does not make any mention of the Board's reactions to the OSDP and the OSNP on 14 and 15 November.

However, Option 1 is consistent with part of the Board's resolution of 21 November in so far as it advises that the ACP offer should be rejected and the Gillman/Dry Creek land should be offered to market in a transparent and open manner. The explanation of Option 1 in the Costing Comment is consistent with the second resolution of that date.

²⁶⁹ RC8.

However, the Costing Comment is exactly that. It announces itself:

These comments relate only to the costs, budget impacts and Full-time Equivalent (FTE) numbers in the draft submission and cannot be considered to imply support for this policy or initiative.²⁷⁰

I would not have thought that a member of Cabinet would read the Costing Comment for the purpose of supplementing his or her understanding of the Cabinet submission.

The place for the information about the Board's reaction to the OSDP and the OSNP and the Board's resolution of 21 November was in the Cabinet submission.

I cannot know whether the Cabinet was made aware of those matters. I did not seek that information because I knew the Premier and Minister Koutsantonis would be obliged to claim public interest immunity.

Cabinet was not provided with the Minute of 29 November 2013 provided by the DTF to Mr Weatherill, as Treasurer. I accept the Premier's and Minister Koutsantonis' evidence that Treasury routinely provided the Treasurer with a Briefing Note in relation to the submissions to be considered by Cabinet. Both said that the Briefing Notes were, again, routinely not provided to Cabinet but that the Treasurer might, at the Treasurer's election, advise Cabinet of the matters contained in the Minute.

Because I accept that evidence, I find that it was not inappropriate for the Minute not to have been provided to Cabinet.

It may have been that the Premier, as Treasurer, provided Cabinet with the advice contained in that Minute but the Premier declined to answer my question in that regard because of his duty to maintain public interest immunity over Cabinet deliberations. He was entitled to raise public interest immunity in relation to Cabinet deliberations and cannot be criticised for doing so.

On reflection, I should not have asked the question. I had otherwise deliberately abstained from asking questions seeking information as to what Cabinet was told.

Because I am not entitled to know whether Cabinet was told of the Treasury advice then it must follow that either Cabinet was not told and made its decision in ignorance of the Treasury advice or Cabinet was told and made its decision despite the Treasury's advice.

That issue cannot be resolved.

Cabinet approved the transaction on 2 December 2013.

On the same day Mr Maras and Mr Terlet resigned.

Both those persons were experienced in the way in which land can be used for filling purposes.

I accept the evidence of Mr Maras and Mr Terlet that they resigned because they thought the transaction should not have occurred.

The Board Minutes show that the Board members continued to be frustrated by the lack of information with which the Board was being supplied. The CSO advice was again requested at the Board meeting of 9 December but not provided.

In the meantime, ACP and the URA continued to negotiate on the final terms of the Option Deed.

On 11 December three copies of the Option Deed were executed by Mr Hansen. Even though Mr Hansen executed the Option Deed on behalf of the URA which was a party to the Option Deed and pursuant to a delegation which he enjoyed, he was not the person who made the decision to

²⁷⁰ RC8.

enter into the Option Deed. The decision was made by Cabinet. He acted with Cabinet approval and would not have executed the Option Deed without that approval.

The other parties, The Premier and ACP, executed the Option Deed on the following days.

The Option Deed that was executed differed from the Option Deed that had been provided to Cabinet but the differences were, of themselves, not so significant as to be able to say that Cabinet had not approved the Option Deed that was executed.

The last significant event so far as this transaction that occurred was when Ms Durand sent to the remaining Board members the two CSO advices.

The Board members had been requesting the CSO advices since probably 13 or 14 November. Management's failure to provide that advice is inexcusable. The Board should have been provided with the 11 September advice when it considered the OSDP, OSNP and OSDP(2). It should also have been provided with the CSO advice of 27 November when it considered the OSDP(3).

It is difficult to understand why that did not occur. There are two explanations, neither of which flatter management; it was either as a result of management's incompetence or it was a deliberate decision.

I have not been able to obtain Mr Hansen's evidence in order to come to a conclusion.

Dr Rischbieth and Mr Holden resigned when they read those advices. Ms Fulcher said she felt 'duded'. However, she and Ms Pike thought they should continue to serve on the Board even though they had been poorly treated.

The Board had been treated so badly that by 18 December, four of six members of the Board thought they could not continue to serve and the other two carried on with misgivings.

The Board members' behaviour speaks for itself.

The Board's advice of 29 November, as I have said, would not have been given by the Board if it had been properly advised and given all the information.

If, for example, the Board had been given relevant information that was available as at 29 November:

- a) that the RPMP was current but had not been complied with;
- b) that there were no relevant valuations; and
- c) the content of the CSO advice of 11 September and 27 November;

the Board would have been unlikely to have provided the advice that it did on 29 November and would have rejected the recommendations in the OSDP(3).

Management, and in particular Mr Hansen as Chief Executive, failed to provide the Board with the relevant information.

If the Board had resolved as I expect it would have, it is difficult to think that if the Cabinet had been fully informed of that resolution it would have approved the 2 December Cabinet submission.

I have not made any findings about Mr Rollison's conduct. Although he was the author of the documents provided to the Board and the draft Cabinet submissions, he was relatively junior and subject to a number of levels of oversight: Mr Hodgen, then Mr Buchan and finally, Mr Hansen. It would not be fair to him to make him responsible for the decisions of his superiors.

The events after December 2013 and before June 2014 do not need to be examined in detail.

The events in June 2014, however, are instructive. ACP needed to satisfy the DCP in the Option Deed to be able to exercise the Stage 1 Option. If ACP did exercise the Stage 1 Option, that did not involve ACP in any commercial risk.

The exercise of the Stage 1 Option meant that the URA had to bring about the necessary zoning changes. That and other matters are presently being addressed.

If that occurs, and there is no reason to think otherwise, ACP which has been deemed by the Option Deed to have entered into the Land Sale Agreement will have to pay the consideration for the land to be acquired in the Stage 1 Option. If it does not then the URA and the Minister can claim that ACP is in breach of its obligations. However, it would not rise above a claim because it does not appear that the URA could require ACP to settle or claim compensation if ACP did not.

[REDACTED]

The Option Deed required ACP to meet the DCP by 30 June 2014. On 6 June ACP wrote to Mr Hodgen of the URA setting out a timetable for the presentation of material to the URA, which would satisfy the DCP, 'in order to obtain the input of the MSD (Minister for State Development) and RSA [Renewal SA] into the process'

On 11 June the URA finalised its Evaluation Plan in anticipation of the event.

The Option Deed required ACP to satisfy the DCP before 30 June 2014 but it did not provide that the URA, at any time, had to be satisfied that ACP had satisfied the DCP.

What the Option Deed required was for ACP to develop the Project Plan and demonstrate that it was likely to secure the financial capability to commence the project and the capability to execute the Project in accordance with the Project Plan and the terms of the Option Deed.

The first DCP required ACP to develop the Project Plan in accordance with Clause 8 of the Option Deed. Clause 8 is quite prescriptive and required a Project Plan that identified the Project Stages and the land for each stage; the Target Project Timeframes; a strategic marketing plan; and was consistent with the Project Objectives.

The Project Plan had to be provided by 30 June 2014. If it was, and it appropriately complied with Clause 8, that DCP was satisfied. ACP did not provide the Project Plan until 24 June. The Project Plan would satisfy the DCP if it conformed with Clause 8.

I have referred to the evidence that ACP provided the URA, to satisfy the second DCP.

I cannot think how it can have been thought that the two letters to which I have referred meant that ACP had demonstrated that it was likely to secure the financial capacity to commence the project. PFAA said that it could not provide advice in relation to the ACP's likelihood of securing the required funding. The Highbury Partnership said that it declined to provide an opinion on the success of the equity raising process. Those two letters do not provide any evidence to satisfy the second DCP.

I have not seen any legal advice that the URA received from the CSO except the two advices of 11 September and 27 November.

[REDACTED]

However, on 30 June 2014, the Evaluation Panel met to assess the ACP material, some of which was only provided that day, and assessed it in accordance with the Evaluation Plan.

It is not clear why the URA reacted to ACP's commercial insistence in the way that it did. ACP provided the URA with a volume of material over a few days up to 30 June purportedly to provide evidence that it had complied with the DCP.

The Option Deed did not require the URA to react by 30 June. It could have simply studied the information at its leisure and in due course advise ACP whether it thought ACP had or had not complied with the DCP.

Instead, the URA allowed itself to be stampeded by ACP into making a decision that it did not have to make on information that did not satisfactorily address that decision.

The URA showed itself to be commercially naïve.

Conclusion

The URA was charged with considering an unsolicited proposal for 417.89 ha of land in circumstances where:

- a) The Dean Rifle Range had been acquired by the State Government in February 2010;
- b) Mr Wayne Gibbings, Chief Executive of the LMC, had publicly stated the Gillman land would be part of a contestable process;
- c) No inquiry had been made to determine whether the land had a positive value if used for land fill;
- d) About 200 ha of the land was needed to be used for stormwater management and habitat retention;
- e) The URA had recently commissioned a consultant to prepare a Masterplan for the land;
- f) There were no current valuations of any of the land and there were no valuations of the whole of the land;
- g) ACC's compulsory acquisition proceedings had not been determined;
- h) The URA had only one policy (the RPMP Policy) that addressed a proposal of this kind;
- i) The unsolicited proposal did not allow for market testing; and ACP would not participate in a tender process so the ACP proposal could not be market tested;
- j) The Chief Executive had a poor relationship with the Board as a result of his failure to keep the Board adequately and appropriately informed;
- k) The Chief Executive had a poor relationship with Minister Koutsantonis; and
- l) Minister Koutsantonis was an impatient Minister who regularly expressed his frustration with the URA to the Chief Executive and senior URA staff.

In respect of the transaction the subject of this inquiry I find that the URA engaged in maladministration in public administration, in that its practices resulted in a substantial mismanagement of public resources.

I make that finding in light of the following:

- The advice that the URA provided to Minister Koutsantonis in the Minute of 4 July was appropriate. The URA should not have changed that advice, as it did in late July, and commence to negotiate with ACP on 6 August.
- The URA should have waited upon the completion of the Gillman Masterplan. If it was to negotiate with ACP it should have insisted upon the proposal being market tested. If that meant ACP's proposal would be withdrawn and, if the URA or the Minister was still determined to go ahead, it should have employed experts including valuers to assess the value of the land to ACP, one of whose shareholders was in the business of filling sites in Adelaide.
- The URA should have, at an early stage, employed a probity adviser to obtain advice on how the URA could ensure that it adopted and complied with processes that would ensure it arrived at a result that was in the URA's and the State's interests.

- The URA should not have embarked upon the early stages of negotiations commencing on 6 August 2013 without a probity adviser in place.
- The URA should have complied with the one policy that was relevant to the transaction, the RPMP Policy.
- The URA should not have relied on the valuations obtained for the Supreme Court compulsory acquisition proceedings.
- The Board should have been provided with full particulars of the ACP proposal at the 28 August Board meeting because the Board needed that information to fulfill its functions and because the Board members themselves had knowledge and expertise that would have been invaluable in assessing the proposal.

- The parameters in Recommendation 2 of the September Cabinet submission to be addressed for future negotiations were commercially naïve. The URA should not have allowed as it did, those parameters to guide its negotiation process after it received Cabinet approval on 23 September.
- The continuing failure to employ a probity adviser after 23 September and before 30 October, when negotiations had nearly completed, represented a serious departure from appropriate practice.
- The Board should have been advised at its meeting of 30 September of the status of the URA's consideration of the ACP proposal and the content of the advice given to Minister Koutsantonis and the Cabinet. In particular, the Board should have been advised that the URA was intending to assess the proposal against the identified parameters. The Board's commercial experience would have been likely to have had a positive impact upon the way future negotiations were carried out.
- The Board should have been given a full briefing at its meeting of 30 October of the proposal and the negotiations to that point of time. It should have been advised that the URA had not complied with the only relevant policy, the RPMP Policy, and that the URA did not intend to comply with that policy. It should have been advised that the URA had not employed a probity adviser but was doing so. It should have been advised that the URA had no current valuations that addressed the land the subject of the proposal.
- If the URA was intent on proceeding it should have complied with the RPMP Policy and obtained two valuations of the whole of the land, which should have had regard to the proposal that was being advanced by a company which had, as one of its shareholders, a company which was in the business of making profit from filling land and also had regard to all of the benefits sought by ACP and associated with the proposal in the licence.
- The provision to the Board of the OSDP on 13 November, requesting the members' individual decisions by Friday 15 November, was unacceptable.
- The withdrawal of the OSDP and the substitution of the OSNP and its subsequent withdrawal was disrespectful to the Board and effectively avoided the Board responding adversely.
- The Board should have been provided with the CSO advices of 11 September and 27 November before the Board members made their decision to support the Recommendations.

The URA should not have concluded that ACP had met the DCP. Whilst it is arguable that the first DCP was met, it is not arguable that the second DCP was met. There was no evidence provided to the URA that could have satisfied the URA that ACP was likely to secure the financial capacity to commence the project, had been met.

I cannot say that the Option Deed represents a good or bad transaction from the State's and the URA's points of view. I suspect it will not be favourable unless all three Options are exercised and the transaction represents value. I also suspect that ACP will not exercise all three Options even if it settles on the Stage 1 Settlement Date. I do not know if the Option Deed represents value because there is no current valuation.

It was contended that I could not find that there had been substantial mismanagement of public resources because I was not able to make a finding as to the value of the Gillman land.

I reject that submission.

In my opinion a public authority and a public officer will engage in conduct that involves substantial mismanagement of public resources if the public authority or the public officer causes the State to dispose of an asset that has a value of many millions of dollars without knowing the true value of that asset.

It is necessary to manage public resources properly to be aware of the value of an asset that is to be either sold or acquired prior to the selling or acquisition of that asset.

The Board of Management was not responsible for the conduct of the URA in respect of this transaction.

As I have said the Board was not given the information that it was entitled to receive between August and 10 November 2013.

It was treated shabbily by being asked on 13 November and then again on 14 November to make a decision on a flying minute by 15 November 2013.

Its resolution of 21 November was appropriate. Whilst it was persuaded to give the advice that it did on 29 November 2013 it acted upon incomplete information and misstatements.

The Board should bear no responsibility for the transaction.

MR FRED HANSEN AND MR MICHAEL BUCHAN

It is unfortunate that Mr Hansen did not have the opportunity to explain matters in person or for me to have the benefit of hearing from Mr Hansen in person. As I already have explained, Mr Hansen declined to make himself available but I have had regard to what he wrote.²⁷¹ I have also considered the evidence I obtained from witnesses, including the members of the Board.

In respect of this transaction I find that Mr Hansen did not perform his role as Chief Executive of the URA to a standard expected of a person in that position.

He consistently failed to keep the Board acquainted with relevant information for the discharge of their duties. In particular he failed to acquaint the Board with sufficient information about this transaction before he went on leave on 4 November 2013.

Although the perception was that Mr Hansen was keen to do Minister Koutsantonis' bidding, the evidence suggests that Minister Koutsantonis had little or no regard for Mr Hansen and the URA. I accept Ms Goodchild's evidence that Minister Koutsantonis spoke disparagingly of the URA in private. He described the URA to the effect that the agency was 'useless' and 'hopeless'.

I accept Mr McLachlan's evidence of his observations of Mr Hansen.

In particular I accept that Mr Hansen failed to provide clear leadership during the course of these events.

I accept Mr McLachlan's evidence about the poor relationship between Minister Koutsantonis and Mr Hansen. That poor relationship manifested in obvious frustration on the part of Minister Koutsantonis and, at times, incredulity and exasperation which was conveyed by Mr Koutsantonis to Mr Hansen, Mr Buchan, Mr McLachlan and Ms Durand both through his body language and words.

I accept Mr McLachlan's observation that at times Mr Hansen was taken aback and negatively impacted by Minister Koutsantonis' behaviour and by the results of meetings.

I accept that Mr Hansen appeared to become increasingly subservient and suffered from a 'general sense of malaise'.

Because his relationship with the Board had already fractured and he had failed to keep the Board informed Mr Hansen left Mr Buchan in an impossible position when Mr Buchan presented the OSDP to the Board on 13 November. The Board's reaction to the OSDP, the OSNP, the OSDP (2) between 13 and 21 November is directly attributable to Mr Hansen's failure to treat the Board with the respect that it was due.

He and the URA treated the Board shabbily during the period leading up to his going on leave and after his return.

When Mr Buchan became the Acting Chief Executive for the three weeks in November there was no possibility of convincing a dissatisfied Board to approve a transaction which was of considerable magnitude and of which the Board had little knowledge.

I accept that Mr Buchan's role was less significant after Mr Hansen returned from leave.

That said however, Mr Buchan and Mr Hansen should have given explicit advice to Minister Koutsantonis before this time that an unsolicited off-market transaction could not be entertained until such time as appropriate valuations were obtained which had regard to the proposal that was being advanced.

They should have advised Minister Koutsantonis that the proposal should await the consultant's report on the Gillman Masterplan. In view of the interest of others in the Gillman land they should

²⁷¹ See Annexure 3 to this report.

have advised Minister Koutsantonis that consideration should be given to a tender process for, if not the whole of the land, at least the developable land. They should also have advised him that experts should be retained to assess the use that might be made of the land for waste fill.

Mr Hansen has to bear the responsibility for the OSDP(3) and the 2 December 2013 Cabinet submissions and for the omissions and misstatements in those documents.

These were serious failures. They are failures that should not have been made by executives in an agency whose core function was to manage transactions of this kind. They are failures that should not have occurred in respect of the largest single transaction to have been conducted by the URA or its predecessor. I find that those failures represented substantial mismanagement both in respect of the Gillman land, being a significant public resource, and in respect of the official functions invested in Mr Hansen.

Conclusion

In light of my findings above I conclude that Mr Hansen engaged in conduct that constitutes maladministration in public administration in that his conduct resulted in substantial mismanagement of public resources and secondly he engaged in conduct that involved mismanagement in or in relation to the performance of official functions.

I have also considered whether Mr Buchan's conduct was of a kind that might give rise to the same finding as I have made in respect to Mr Hansen. Although Mr Buchan had no input into a consideration of this transaction when he took the long period of leave between 29 August to 13 October 2013, he was reacquainted with the proposal on or about 22 October when Mr Hansen briefed him in preparation for the Board meeting of 28 October 2013. He became responsible for the proposal when Mr Hansen went on leave from 4 November to 22 November. By that time, because the Board had been sidelined the events that occurred when he was Acting Chief Executive were almost inevitable. I accept his evidence that after Mr Hansen's return he played a much less significant part in the events after 22 November and that the major responsibility for those events lies with Mr Hansen. I also accept that Mr Buchan did, and still does, believe that this transaction is a good transaction for the State.

Mr Buchan treated the Board disrespectfully on 13, 14 and 15 November 2013. He said he was directed to provide a Cabinet submission by 15 November. Whilst that was correct he should have advised Minister Koutsantonis that he could not do so because the Board was unacquainted with the transaction and would need time to consider it.

There were a number of occasions before 22 November when Mr Buchan, like Mr Hansen, should have given the advice to Minister Koutsantonis that he needed to receive and to which I have referred. I accept Mr Buchan felt that he was under pressure. However, that does not excuse his conduct.

For those reasons in my opinion Mr Buchan also engaged in conduct that constitutes maladministration in public administration in that his conduct resulted in substantial mismanagement in or in relation to the performance of official functions.

THE HON. JAY WEATHERILL MP

Compared with Minister Koutsantonis the Premier's involvement in responding to the ACP proposal was minimal.

Mr Stephen Gerlach made a presentation to him on 15 June and provided him with the ACP proposal which the Premier passed on, appropriately as I have said, to Minister Koutsantonis.

Although his office received further documents from ACP he did not see those documents which were forwarded to Minister Koutsantonis or the URA.

I do not think he had any further involvement in the proposal until he signed the Cabinet submission of 23 September without first having seen a draft of that Cabinet submission.

His next involvement seems to be at the meeting of 12 November when he asked Mr Buchan to prepare a Cabinet submission in relation to the Gillman lands so that the ACP proposal could be considered by Cabinet at the same time as Incitec Pivot matter.

He was not told at that time by Mr Buchan that Mr Buchan would not be able to respond by 15 November for the Cabinet meeting on 18 November. He was, so far as I understand, not aware that the Board had not been provided by management with any relevant information in relation to the ACP proposal.

He was aware prior to signing the 2 December 2013 Cabinet submission that the URA Board had resolved to recommend that the ACP proposal be rejected and of course he was aware by signing the 2 December 2013 Cabinet submission that the Board had given the three pieces of advice contained in that Cabinet submission.

I think, as I have said, that the Cabinet submission should have included a reference to the Board's reaction to the OSDP, OSNP and the resolution of the Board on 21 November 2013 rejecting the ACP proposal.

The Premier did not see a draft of the Cabinet submission and so was not in a position to proffer advice as to the content of the document.

I do not think that the costing comment that accompanied the Cabinet submission would have been sufficient to bring to a Cabinet member's attention that information.

However I do not know what was said during that Cabinet meeting or what indeed had been said at previous Cabinet meetings in relation to that matter.

Conclusion

In all those circumstances the evidence does not support a finding that the Premier has engaged in any type of conduct that would qualify as maladministration as it is defined in the ICAC Act.

THE HON. TOM KOUTSANTONIS MP

I wish to say some things at the outset.

Critical to good decision making is access to good information. A Minister must be able to rely upon advice provided by his or her advisors and from those in the public sector. In turn those persons must give that advice in an honest, frank and forthright manner.

It is not in the interests of the Minister, the Government or the State for a situation to arise where a public officer does not feel able to offer honest, frank and forthright advice to a Minister, or feels under such pressure that he or she will engage in a less than appropriate process.

I do not find that that happened in this case. However, during the course of my inquiry there was a suggestion that the Minister's conduct may have had that effect. It was thus necessary to consider Minister Koutsantonis' conduct in more detail during my inquiry.

A Minister of the Crown sits in a unique position of power. Whether or not a Minister intends to do so, the Minister's conduct may have the effect of creating an environment that could negatively affect the public officers that the Minister relies upon for advice. That in turn could affect the advice that the Minister receives. That can occur without the Minister ever realising that his or her conduct is having that effect.

On the other hand, a Minister should rightly expect to be able to engage in frank and robust discussions with senior public officers. Senior public officers need to bring to those positions a level of robustness to criticism and to the dynamic and stressful nature of high level executive decision making. They must be capable of providing the best advice possible even if it is advice that the Minister may not necessarily want to hear.

It is a matter of balance.

A Minister must treat the public officers who have the obligation to report to the Minister respectfully. The Minister must comply with the Ministerial Code of Conduct.

There is no doubt that a Minister should passionately advocate for decisions and projects that will advance the interests of the State. Nor can there be any doubt that a Minister should expect all public officers, particularly those in senior positions, to discharge their duties competently and with energy.

However, there can be a danger when the vigour with which a Minister advocates for a decision or a project has the effect of forcing the agency to act outside of proper process.

Again, it is a matter of balance.

I turn now to Minister Koutsantonis' conduct.

I have found that Minister Koutsantonis did not engage in maladministration, because I have found that his conduct did not influence the advice that he was given, nor that he drove the Gillman transaction in a way that pressured the URA to depart from proper process.

I find that Minister Koutsantonis' communicated with public officers employed in the URA in 2013 using profanities during the course of meetings with those public officers. I have received a large volume of evidence supporting that finding. Indeed, it is consistent with Mr Koutsantonis' own evidence.

Two witnesses said Minister Koutsantonis used the 'c' word during these meetings. Minister Koutsantonis denied that he did so and other witnesses said that they cannot recall him doing so. The evidence was that he used that language in his ministerial offices.

I do not need to decide whether he used that language in the presence of public officers because in the end result I have decided that his language, however colourful, did not influence the advice given, or not given, by the relevant public officers.

There was a difference in the evidence as to whether or not that language was directed toward public officers or was, as has been suggested in a number pieces of evidence I have received, 'conversational swearing'.

Minister Koutsantonis said he never directed that language to any public officer.

In the end, I also need not resolve that issue because I am not satisfied on the evidence that Minister Koutsantonis' conduct influenced the conduct of the URA or of URA employees.

Minister Koutsantonis was described by Ms Durand as a very impatient man. She said he becomes overtly frustrated and swears. She said he was demanding. Ms Durand said he was very non-receptive to advice he did not like. Both Ms Durand and Ms Goodchild said that Minister Koutsantonis is a man who wants his own way.

Mr McLachlan's evidence was to the same effect as Ms Durand's and Ms Goodchild's.

He said that Minister Koutsantonis was an impatient man who becomes overtly frustrated and swears. He did not agree that Minister Koutsantonis was overly demanding but he did otherwise agree with Ms Durand's assessment of him.

He said that Minister Koutsantonis displays body language which clearly demonstrates his frustration at the advice that he was getting or the person who was providing the advice.

I received statutory declarations from other witnesses who proffered other views.

Ms Goodchild said Minister Koutsantonis had little or no regard for the URA. He would react negatively by rolling his eyes and displaying his frustration when he was given advice which he did not want to hear.

Ms Goodchild was present at many of the meetings between the Minister and the URA during the second half of 2013. She said that she had never heard the Minister swear at a public officer during a meeting, although she had heard him swear during meetings. She said that when Minister Koutsantonis became frustrated during meetings he would roll his eyes and toss his head back, swear and would occasionally raise his voice. Ms Goodchild said that Minister Koutsantonis was frustrated and impatient with the URA and their apparent inability to get things done, and would privately use words like 'useless' and 'hopeless' to describe the agency.

Minister Koutsantonis accepted that he can be impatient. He agreed that he was demanding and said that he expected '*a lot from my public servants and my staff.*' That is not an unreasonable expectation. Indeed, I would expect all Ministers to hold the same expectation.

Minister Koutsantonis accepted that he used some of the language of the kind deposed to by Mr Buchan and Ms Durand and explained that was because he was 'a working class boy'. He denied that he ever directed those profanities at public officers or used them in a personal way.

A number of witnesses who provided statutory declarations said that while Mr Koutsantonis did use profanities, he had never acted in a way that was bullying or intimidatory. Indeed, those witnesses said that he encouraged those responsible for providing advice to provide it to him, but that he would test the advice if necessary. I have no reason to doubt the evidence in that regard. Of course, it is largely evidence of Minister Koutsantonis' interactions with staff outside of the URA.

The use of profanities in the workplace is not unique to Minister Koutsantonis. Nevertheless, a person in a senior position, such as that of a Minister, must be particularly careful that his or her

conduct does not cause a public officer to alter his or her behaviour or to feel he or she should not give advice that the Minister ought to hear.

Not all public officers will distinguish between swearing in response to bad news from that public officer in relation to a situation that the public officer was attempting to manage, and swearing at the public officer. It is entirely possible that the public officer would perceive that the swearing was directed at him or her.

Ms Durand said that Minister Koutsantonis was very enthusiastic about the Gillman proposal, and expressed keenness to keep things moving, and conveyed a sense that URA was dragging its heels and conveyed his impatience by body language and by swearing.

She said he 'absolutely' drove Gillman hard, and that as a consequence 'there was quite a lot of people whose attentions were diverted to making it happen.'

She said that he was impatient to bring the transaction to fruition.

Minister Koutsantonis said in his evidence that he was driving a process and not an outcome, and volunteered that he never asked the URA to take shortcuts, and never gave them a pre-determined outcome, and said that whatever advice the agency gave, he would have accepted.

While that may have been the Minister's view, it is inconsistent with the evidence of others as to how they perceived the situation.

First, Mr Hodgen's evidence that the URA was under pressure from the Minister's office to get the Gillman transaction across the line.

Secondly, Mr Buchan's evidence that, in respect of the draft Cabinet Submission, Minister Koutsantonis told him, on 12 November, that he had 'better get it done' following the Premier's expressed preference to deal with the matter at the next Cabinet meeting, notwithstanding Mr Buchan's reservations about the timeline.

Thirdly, Ms Goodchild's evidence in which she agreed that Minister Koutsantonis drove Gillman hard, agreed that Minister Koutsantonis was impatient to get the Gillman transaction to a resolution and agreed that he wanted the transaction to happen, and to happen so that it could be announced prior to the election in 2014.

Fourthly, Mr McLachlan's evidence that Minister Koutsantonis was determined that a way should be found to transact the deal.

Fifthly, the evidence about Minister Koutsantonis' reaction to the Board's resolution of 21 November 2013, where he did not accept the Board's rejection of the Gillman proposal but instead sought to persuade the Board to a different view when he attended the Board meeting of 25 November.

Of course, the Minister was perfectly entitled to drive the transaction hard, provided it did not compel the URA or its officers to depart from a proper process.

I find that Minister Koutsantonis did drive the URA's assessment of the Gillman proposal vigorously and his drive ensured the transaction occurred.

I accept that he thought this proposal was in the State's best interest.

There is a danger that a very impatient Minister who demonstrates disregard for the leadership of the agency for which he has responsibility, who is driving the assessment of a proposal by that agency towards a particular conclusion, and who communicates impatience and disappointment using profanities in communicating with the leadership of that agency, is less likely to receive the honest, frank and forthright advice that should be provided to that Minister.

Nevertheless, having considered all of the evidence, and in particular the evidence of those within URA responsible for advising the Minister and managing the process, I find that Minister Koutsantonis' conduct did not impact upon the advice that he received.

In other words, I do not find that Minister Koutsantonis' behaviour had the effect of obliging the URA to proceed with the transaction without proper process.

In the course of this inquiry I considered whether or not Minister Koutsantonis conduct had the effect of intimidating public officers responsible for providing him advice in respect of the Gillman matter.

The two persons who had to give Minister Koutsantonis frank advice were Mr Hansen and Mr Buchan. Although Ms Durand and Mr McLachlan were present at meetings with Minister Koutsantonis and his staff when Gillman was discussed, their roles did not include the giving of advice to Minister Koutsantonis. Ms Durand's responsibility was communications and Mr McLachlan's responsibility specifically did not include the Gillman transaction because Andrew Gerlach was an associate of his.

Therefore even if those persons were intimidated, which I do not find, that could not have affected the advice Minister Koutsantonis was given.

Mr Hansen said that Minister Koutsantonis did not exert undue pressure on URA.²⁷²

Mr Buchan said that the close involvement of the Minister and the Minister's office did not influence URA's decisions. He said that he always gave frank advice to the Minister.

Having considered all of the evidence, I am satisfied that Minister Koutsantonis' conduct did not have the effect of intimidating anyone in the URA engaged in the Gillman matter.

I have already said that, in my opinion, the Cabinet submission should have included a reference to the Board's 21 November 2013 resolution rejecting the ACP proposal, a matter of which Minister Koutsantonis was aware. The Cabinet submission should also have addressed the previous deliberations of the Board. He was made aware of that resolution on 21 November 2013 when he was provided a draft cabinet submission. Indeed as a consequence he attended the Board meeting of 25 November to attempt to educate or persuade the Board to support the proposal.

The costing comment that was obtained in support of the draft cabinet submission of 21 November 2013 did not when appended to the Cabinet submission of 2 December 2013 sufficiently explain the previous resolution of the Board of the withdrawal of the OSDP and the OSNP. Minister Koutsantonis was provided with a draft of the Cabinet submission which provided him with an opportunity to require the inclusion of the further information. In my opinion he should have corrected the omissions.

However, I do not know what was said during the Cabinet meeting on 2 December 2013 because such discussion would properly be the subject of public interest immunity. I therefore cannot make any finding as to what Cabinet was told. I cannot therefore know whether the omissions were corrected during the Cabinet's deliberations.

Conclusion

For all of those reasons I find that Minister Koutsantonis' conduct did not constitute maladministration in public administration as defined in the ICAC Act.

²⁷² See Annexure 3 to this report.

CONCLUDING REMARKS AND RECOMMENDATIONS

THE URA AND UNSOLICITED PROPOSALS

As I have said, I am exercising the powers of the Ombudsman in conducting this investigation.

One of the powers of the Ombudsman following the making of findings is to express an opinion as to what should be done as a consequence of those findings. Relevantly in an investigation such as this if the Ombudsman is of the opinion that action should be taken to rectify, mitigate or alter the effect of an administrative act or the practice that gave rise to the administrative act should be varied, the Ombudsman must report that opinion and the reasons for the opinion to the principal officer of the relevant agency and may make such recommendations as the Ombudsman thinks fit. Of course, I am not investigating an administrative act. Rather, I am investigating whether there was maladministration in public administration as defined in the ICAC Act.

The Gillman transaction has already been considered by the Auditor-General and by Justice Blue in the Supreme Court²⁷³.

It has now been about 22 months since the Option Deed was executed.

In the intervening period, the South Australian Government and the URA have made a number of significant changes which address many of the issues raised in this report.

Soon after the March 2014 State election, Mr Hansen ceased to be Chief executive of the URA, and on 21 July 2014 Mr Hanlon was appointed Chief Executive of the URA.

Mr Hanlon initiated a review of the whole of the structure of the executive team within the URA. That new structure was announced on 19 September 2014 and the executive team was reduced from 11 to 5²⁷⁴. The ongoing General Managers of the URA were appointed between October and December 2014.

In February of this year management and the Board of the URA met together for a planning session which focused on organisational governance, financial performance and key business priorities for this year. Mr Hanlon no longer provides out-of-session decision papers to the Board.

The URA has reviewed the Board of Management Policy, Renewal SA Charter and the delegation framework to take account of issues that arose on a consideration of the Auditor-General's Report and the judgement of Blue J. It is expected that revised policies will be presented to the Board following the decision of the Full Court of the Supreme Court in *Acquista*.²⁷⁵

In September 2014, as I have said, Cabinet approved a mandatory process and framework for the assessment of unsolicited proposals to Government.²⁷⁶ The guidelines contain financial thresholds that relate to the assessment process and lower value proposals may be referred back to the relevant agency to be managed under that agency's policy.

The URA in connection with the CSO has been working to ensure that its land disposal framework aligns with whole-of-government policy positions. No off-market transactions are now permitted without a current market valuation of the site in question.²⁷⁷

In March 2015 the Cabinet Guide which provides the guidelines for writing Cabinet submissions was reviewed. The Cabinet Guide requires that Cabinet submissions have a Cabinet Comment attached. The process for a Cabinet Comment has been adopted to raise the quality of Cabinet submissions.

²⁷³ *Acquista Investments Pty Ltd & Anor v The Urban Renewal Authority & Ors* [2015] SASFC 91 (20 July 2015).

²⁷⁴ Crown Solicitor's Office, *letter of submission*, 26 August 2015, 3.

²⁷⁵ *Ibid.*

²⁷⁶ Government of South Australia, *Guidelines for the Assessment of Unsolicited Proposals*, November 2014.

²⁷⁷ *Above n 274*, 4.

Cabinet submissions are now subject to review by the Cabinet Office with a view to identifying risks, policy anomalies, checking consultation and identifying whole-of-government impacts. A Cabinet Comment is now prepared by the Cabinet Office for presentation together with the Cabinet submission.²⁷⁸

I consider these to be appropriate responses to issues arising out of the Gillman transaction. For these reasons I do not consider it necessary to provide an opinion to the URA or Government about rectifying action, save for the following.

Section 25(2) of the Ombudsman Act contemplates the making of recommendations in any report prepared in accordance with that section. Those recommendations are to be made to the principal officer of the relevant agency. In this case, the relevant agency is the URA.

I intend to make one recommendation.

I recommend that the Chief Executive of the URA give consideration to proposing to the Government amendments to relevant legislation and regulations in order to clarify the reporting relationship, reporting requirements and decision making responsibility as between the Chief Executive of the URA, the Board of Management of the URA and the relevant Minister.

²⁷⁸ Cabinet Guide 5, *Cabinet Submissions: How to write submissions*.

CONDUCT OF MINISTERS

The Code of Conduct for Ministers of the Government of South Australia, to which I have already referred, says in its introduction:

Ministers of the Crown are in a position of trust bestowed by the people of South Australia. Ministers have a great deal of discretionary power, being responsible for decisions which can markedly affect an individual, groups of individuals, organizations [sic], companies, local communities or all South Australians.

For these reasons, Ministers must accept standards of conduct of the highest order. Ministers are expected to behave according to the highest standards of constitutional and personal conduct in the performance of their duties.

They must act honestly and diligently and with propriety in the performance of their public functions and duties and ensure that their conduct does not bring discredit upon the Government or the State.

Under the heading General Standards of Conduct it is stated:

2.2 Responsibility for Conduct

Ministers must ensure that their personal conduct is consistent with the dignity, reputation and integrity of Parliament. Ministers are responsible to Parliament for their actions and the actions of the departments and agencies within their portfolio

Ministers are required to ensure that their decisions, directions and conduct in office do not encourage or induce other public officials, including public servants, to breach the law, or fail to comply with the relevant code of ethical conduct applicable to them in their official capacity.

Ministers are also expected to ensure that reasonable measures are put in place in the departments and agencies for which they are responsible, to discourage and prevent corruption by officials.

Clause 2.5 provides:

2.5 Fairness and Diligence in Decision Making

Ministers should not make an official decision without first giving due consideration to the merits of the matter at hand and the impact the decision is likely to have on the rights and interests of the people involved and the citizens of South Australia.

A Minister must use all reasonable endeavours to obtain all relevant information and facts before making a decision on a particular issue and should consult, as appropriate, in relation to the matter at issue.

Decisions made by Ministers in or in connection with their official capacity, should be made in the interests of advancing the interests of the citizens of South Australia.

A Minister and a Chief Executive of an administrative unit (which includes a department) is a public sector agency for the purposes of the *Public Sector Act 2009* ('PS Act'). Section 5 of the PS Act prescribes 'Public Sector Principles and Practices'. Section 5(5) relevantly provides:

(5) **Employer of choice –**

Public sector agencies are to –

- *treat public sector employees fairly, justly and reasonably;*
- ...

- *ensure that public sector employees may give frank advice without fear of reprisal;*
- ...
- *set clear objectives for public sector employees and make them known;*
- *acknowledge employee successes and achievements and address under performance;*

It is important that all Ministers keep these obligations in mind in all dealings with public officers.

PUBLIC VERSUS PRIVATE INQUIRY

Since my office commenced in September 2013, there has been much discussion and debate about the model under which I operate. It has been said that I should hold my inquiries in public.

I have publicly expressed the view that the investigation of corruption in public administration should take place in private. I remain of that view because when I am investigating corruption I am investigating a crime. If I were to conduct such investigations in public the investigation itself would likely be prejudiced.

However, this inquiry was not an investigation into corruption.

In this inquiry I was investigating a potential issue of maladministration in public administration. I conducted the inquiry by exercising the powers of the Ombudsman. As I have already said, my investigation was conducted in private because of the requirement to do so under the Ombudsman Act.

On 30 June 2015 I published a review of the legislative schemes governing the making of complaints and reports about public administration.²⁷⁹ In that review I recommended that the mechanism by which I may investigate misconduct or maladministration in public administration be streamlined. I recommended that the existing process of exercising the powers of an inquiry agency be abandoned in favour of providing the power directly under the ICAC Act to investigate misconduct or maladministration in public administration utilising the powers of a Royal Commission, and to amend the report making power under the ICAC Act accordingly.²⁸⁰

My experience in conducting this inquiry has caused me to consider whether I should recommend to Parliament an additional measure with respect to such investigations. That is, whether I should have the power to conduct an inquiry into potential maladministration in public administration in public if such a public inquiry was in the public interest.

In my opinion, the ICAC should be given that discretion. There are two reasons I think this should be considered.

First, when I investigate corruption I do not make findings. Whether or not a prosecution ensues is a matter for the Director of Public Prosecutions. Whether or not a person is convicted of a criminal offence is a matter for a court.

In contrast, unlike a corruption investigation, an investigation into maladministration in public administration will require me to make findings in respect of the conduct of a public officer or the practices, policies or procedures of a public authority.

Secondly, there will be occasion where, as in this case, there is a significant public interest in the subject matter of the inquiry. In those circumstances, there is a strong argument in support of permitting public scrutiny of the evidence given, the submissions made and the procedure undertaken. In a corruption matter, such scrutiny would routinely occur when the matter is prosecuted in a court.

For these reasons I intend to write to the South Australian Parliament Crime and Public Integrity Policy Committee recommending that consideration be given to amending the ICAC Act to permit the holding of public hearings in respect of inquiries into potential maladministration in public administration, when it is considered that it is in the public interest to do so.

²⁷⁹ Independent Commissioner Against Corruption, *Review of Legislative Schemes: The Oversight and Management of Complaints about Police; The Receipt and Assessment of Complaints and Reports about Public Administration*, 30 June 2015.

²⁸⁰ *Independent Commissioner Against Corruption Act 2012*, section 42.

THE DECISION TO PUBLISH THIS REPORT

Section 26(3) of the *Ombudsman Act 1972* provides that the Ombudsman may, if of the opinion that it be in the public interest, cause a report on an investigation to be published in such manner as the Ombudsman thinks fit.

In my public statement I said that I would publish the report at the conclusion of the investigation.

I asked those to whom the preliminary report was provided whether they wished to make any submissions about me making my final report public.

The State submitted that the question whether or not it is in the public interest to publish the report was a matter for me to determine in the exercise of my statutory functions.

I agree with that submission.

The URA and ACP made no submission on this topic.

One witness made some observations which did not go as far as to suggest that I should not publish my report. However, that witness questioned whether I needed to include in the report the content of the evidence given.

I accept that the evidence that has been included in this report may be embarrassing for the witnesses who gave it and I regret that.

However, I do not think that to be sufficient reason for my not including the evidence in the report.

Whilst I exercised the powers of a Royal Commission the evidence upon which I have based my findings was taken in private. I warned each witness that I may publish their evidence verbatim because I thought that some of the findings that I might make would not be capable of being understood without reference to the detailed evidence.

In my view it is in the public interest for those parts of the evidence that are reproduced in this report to be published, in order to assist to explain both the process undertaken and my findings.

APPENDIX 1 – NEWPORT QUAYS AND LIPSON INDUSTRIAL ESTATE

Complaints have been made to the OPI alleging that there may be a connection between the agreement entered into by the URA with ACP, which is evidenced by the Option Deed and which was due to be announced on 18 December 2013, and the resolution of the State Government's and URA's dispute with the Newport Quays Consortium ('the Consortium') which was announced on 19 December 2013. The complainants said that they suspected an improper connection between the two events because of the timing of the announcements, and because Simon Brown, who is a Director of ACP, is the brother of Todd Brown, who was a Director of Urban Construct Pty Ltd, a member of the Consortium.

These coincidences, it was said, raised the question whether the Consortium resolved its dispute with the URA in exchange for preferential treatment for ACP.

To assist me with the investigation of this aspect of the matter, a large number of documents relevant to the resolution of the Newport Quays settlement were requested from the URA, including communications with the CSO who acted as their legal advisers. The documents were provided to me notwithstanding that they may be subject to legal professional privilege or contain details of confidential negotiations. The documents which have been relied upon are footnoted. However I do not intend to publish those documents, and nor will I refer to the monetary amounts which constituted offers and counter offers by the parties at various points in negotiations.

On 18 May 2015, I wrote to Mr Todd Brown, now resident in Queensland, to invite him to respond to the allegations that had been made if he wished to do so.

After informing him as to the nature of my inquiry, I wrote as follows:

Amongst the allegations concerning the Gillman land sale that were complained of to the Office for Public Integrity and brought to my attention is an allegation that Adelaide Capital Partners Pty Ltd, and your brother Simon Kingsley Brown received special treatment from the South Australian Government in relation to the Gillman land sale, and that that was somehow connected with the resolution of the dispute between the Newport Quays Consortium and Renewal SA/the South Australian Government.

I provided him the opportunity to give evidence in Adelaide or to provide me with a statutory declaration.

I wrote further:

Should you wish to provide me with a statutory declaration to assist me with my investigation into this matter, I invite you to address the following topics:

- 1. The extent of your business and financial relationship, if any, with Simon Brown, the ResourceCo group of companies, and with Adelaide Capital Partners in the period May to November 2013;*
- 2. The extent, if any, to which Urban Construct Pty Ltd's partners in the Newport Quays Consortium, Multiplex/Brookfield Asset Management Inc were involved in decision making concerning the Newport Quays dispute in 2012 and 2013;*
- 3. Your response to the allegation outlined above.*

Mr Todd Brown replied promptly through his lawyers, Iles Selley, and provided me with a statutory declaration, the relevant details which I have set out below.

I give some weight to a statutory declaration made pursuant to the *Oaths Act 1936*. A person who makes a statutory declaration under the *Oaths Act 1936* does so making a solemn declaration that the contents of the declaration are true. If a person knowingly makes a false statement in a statutory declaration, that person exposes him or herself to the risk of prosecution for a criminal offence and a potential punishment of a period of imprisonment. This does not mean that I would accept evidence in the form of a statutory declaration uncritically; rather it is a matter which goes to the weight of that evidence, which is to be assessed in the light of the evidence before me as a whole.

TODD BROWN'S CORPORATE INTERESTS

Mr Todd Brown stated in his declaration:

I have not had any business dealings or common investments with my brother and entities associated with him for approximately ten years. I have no interest in any of the ResourceCo group of Companies, nor have I ever had any interest in ACP.²⁸¹

I have examined ASIC records in which Messrs Simon Brown and Todd Brown are disclosed as former or current office holders or shareholders of corporations registered with ASIC. As I have said, Simon Brown's company SJK Brown Investments Pty Ltd ("SJK Brown Investments") holds 50% of the shareholding in ResourceCo, and ResourceCo holds 50% of the shares in ACP.

When on 10 May 1995, SJK Brown Investments was registered with ASIC, both Simon Brown and Todd Brown were appointed directors. On 5 August 2004, Todd Brown resigned as a director of SJK Brown Investments. ASIC records show Mr Todd Brown as a former shareholder of SJK Brown Investments. The 'Effective Date' of the filed document that effected the change in Mr Todd Brown's status from current to former shareholder was 17 July 2007, nearly three years after he ceased to be a Director.

On 24 February 2000, Urban Construct Pty Ltd was registered with ASIC. Its directors at the date of registration were David Anthony Rice, Jonathon James Rice and Janet Rice. Between 3 and 31 August 2001, ASIC records that Todd Brown served as an alternate director of Urban Construct Pty Ltd. On 1 September 2002, ASIC records that Todd Brown was appointed a director of Urban Construct Pty Ltd. The share capital of the company consisted of 100 \$2.00 ordinary shares, of which 50 each are owned by David Rice and James Rice, and one \$1.00 special dividend share owned by Belmont Strategies Pty Ltd. The ASIC record relating to Belmont Strategies Pty Ltd shows Todd Brown to be the sole shareholder of that company.

As at the date of the Cabinet decision to proceed with the ACP proposal, there were no companies registered with ASIC in which Simon Brown and Todd Brown had a common interest, either as shareholders or as company officers.

ASIC searches do not reveal any way by which Mr Todd Brown, or any company in which he was involved, could benefit from the Cabinet decision to accept the ACP proposal in relation to the Gillman land.

²⁸¹ Todd Hamish Brown, *Statutory Declaration*, 22 May 2015.

THE HISTORY OF THE NEWPORT QUAYS DEVELOPMENT 2002 TO 2014

In order to address the implications raised by the complaints about the Newport Quays Resolution and the Gillman transaction, it is necessary to consider the history of the Newport Quays Development and the dispute that arose from it.

In June 2002, the LMC selected the Newport Quays Consortium as the developer to redevelop State-owned waterfront land at Port Adelaide as part of a major urban renewal project.²⁸²

On 30 July 2004 Newport Quays Pty Ltd was registered with ASIC. Shares in Newport Quays Pty Ltd were held in equal parts by Multiplex Port Adelaide Pty Ltd and UCPA Waterfront Development Pty Ltd. UCPA Waterfront Development Pty Ltd was owned by Urban Construct Pty Ltd.

Multiplex Limited is recorded as the former ultimate holding company for Multiplex Port Adelaide Pty Ltd in ASIC records. A corporate publication published on the Brookfield Multiplex website brookfieldmultiplex.com entitled 'Corporate Profile 2014' recorded that Brookfield Asset Management, based in Canada, acquired Multiplex's listed operations in 2007.

In his declaration, Mr Todd Brown stated:

Urban Construct was a joint venturer with the Brookfield Multiplex Group of Companies in a project to develop the Port Adelaide waterfront pursuant to a contract with the Land Management Corporation ('LMC'), now known as Renewal SA. Urban Construct and the Brookfield Multiplex Group caused a joint venture entity to be incorporated, Newport Quays Pty Ltd, to be nominated as the developer of the project ('the Developer'). Urban Construct and the Brookfield Multiplex Group ('the Consortium') were equal shareholders in the Developer. Both joint venture partners had representation on the Board of Directors of the Developer.

On 25 October 2004 the LMC and the Consortium entered into a Project Development Agreement ('PDA') pursuant to which the Consortium was to build nearly 2000 residences at Newport Quays in stages within a set timeframe.²⁸³ The PDA is confidential between the parties, and I have sought their consent to disclose its contents to the limited extent which follows.

The PDA provided that the LMC had a right to terminate the PDA 'in its absolute discretion', provided the termination was not made 'in a capricious or bad faith manner'. If the LMC terminated the PDA 'in a capricious or bad faith manner' then the Consortium was entitled to pursue the LMC for damages for all loss suffered by the Consortium as a consequence of the termination.²⁸⁴

In 2007, the Consortium encountered problems in obtaining planning approval for the Precinct 2B Stage in the Newport Quays development. For example, the Port Adelaide Enfield Development Assessment Panel on 12 December 2007 reported a view that:

It is considered that the proposed development is seriously at variance with the guidelines contained in the Port Adelaide Enfield Development Plan ...

*It is emphasized that the issues of concern regarding this proposal are fundamental and acute. The elements of the proposed development that vary from the Development Plan guidelines cannot be managed through minor amendments to the proposal.*²⁸⁵

On 29 August 2011, the LMC Board approved the LMC exercising its discretionary right to terminate under the PDA, subject to approvals from the relevant Minister and from Cabinet.²⁸⁶

On 31 October 2011, the Premier publically announced the termination of the PDA.²⁸⁷

²⁸² Auditor-General, Supplementary Report for the year ending June 2007, *Land Management Corporation*.

²⁸³ PDA.

²⁸⁴ *Ibid.*

²⁸⁵ Port Adelaide Enfield Development Assessment Panel, 12 December 2007, 102.

²⁸⁶ URA Board of Management, Noting Paper, (undated, but for meeting 10 December 2012).

Under the PDA, if the LMC exercised its discretionary termination right, immediate consequences would follow. The LMC would be required to pay to NQPL compensation equivalent to the value of Monetary Performance Bonds that the LMC had given to NQPL pursuant to the PDA. In addition, if the development had reached certain defined stages, the LMC would also be liable to pay NQPL certain marketing and design costs to be calculated in accordance with the PDA.²⁸⁸

The Consortium accepted the termination, but maintained that the termination was capricious or done in bad faith. The Consortium claimed that the compensation to be paid following the termination was not that which was payable under the agreed damages provisions of the PDA, and meant that the Consortium was entitled to common law damages for breach of the PDA from the LMC for economic loss, loss of use, loss of profit and loss of opportunity. In other words, the Consortium asserted that its claim for damages was uncapped and was not limited to the agreed damages provisions in the PDA²⁸⁹.

On 9 December 2011, the Consortium commenced pre-action disclosure proceedings in the Supreme Court. The plaintiffs in the action were Newport Quays Pty Ltd, Multiplex Port Adelaide Ltd and UCPA Waterfront Development Pty Ltd. Mr M Abbott QC and Mr M Selley, a solicitor with Iles Selley appeared on the plaintiffs' behalf in the Supreme Court.²⁹⁰

The LMC, the Minister for Transport and Infrastructure for the State of South Australia and the State of South Australia were named as the defendants. After the LMC was dissolved, the URA was substituted in its place as the first-named defendant.

The defendants instructed the CSO to represent them in relation to the pre-action disclosure proceedings and in relation to the dispute generally. The CSO briefed independent counsel Mr R Whittington QC and Mr B Doyle to appear on the pre-action disclosure application.

The plaintiffs contended that three matters combined demonstrated that they may have a good cause of action for wrongful termination of the PDA in a manner which was capricious or done in bad faith:

- the forthcoming by-election for the seat of Port Adelaide following the announcement by the Hon. Kevin Foley MP of his intention to resign;
- the statement by an executive of LMC that he wished that the LMC had adopted 'super-lotting' as the development procedure for Newport Quays; and
- the Government's alleged failure to comply with an undertaking to endeavour to achieve a resolution of the concrete dust problem.²⁹¹

The plaintiffs claimed that the second and third defendants might be liable for wrongful interference with the contractual relationship between the Consortium and the LMC.

In addition, the plaintiffs claimed that the undertaking given by Government to endeavour to resolve a concrete dust problem and also an alleged failure to disclose explosion risks arising from Pivot Incitec both might constitute misleading or deceptive conduct contrary to the *Fair Trading Act 1987*.

A proceeding for pre-action disclosure does not constitute a claim for relief for the substantive claims that are alleged to support the proceeding. A party who obtains an order for pre-action disclosure must after considering the disclosure make a decision whether that party can make out a proceeding for the substantive claim.

On 25 May 2012, Judge Lunn, a Master of the Supreme Court, published his Reasons for Judgment on the Consortium's application for pre-action disclosure.²⁹²

²⁸⁷ Hon J Weatherill MP, Premier and Minister for State Development, 'Fresh Plans to Revitalised the Port', News release, 31 October 2011, www.premier.sa.gov.au.

²⁸⁸ PDA.

²⁸⁹ Todd Hamish Brown, Affidavit, 9 December 2011.

²⁹⁰ Ibid.

²⁹¹ Plaintiffs' Outline of Submission – Pre-action Discovery Application, Supreme Court action no 1864 of 2011.

Judge Lunn found that the threshold test for pre-action disclosure was satisfied for the potential actions relating to wrongful termination and wrongful interference in contractual relations, and also in relation to the first of the two potential actions relating to alleged misleading and deceptive conduct. In the exercise of his discretion, Judge Lunn made orders requiring the defendants to disclose certain classes of documents to the plaintiffs.

The defendants embarked upon the process of complying with the order of the Supreme Court.

Once the documents had been disclosed, the Consortium had to decide whether to commence an action against one or more of the defendants, or to attempt to negotiate a resolution of the dispute, or abandon the claim in its entirety.

On 27 September 2012, the Consortium proposed a dispute resolution process whereby it would accept that the PDA was validly terminated and would agree not to pursue uncapped or common law damages; URA would pay an amount equivalent to the performance bond guarantees due under the PDA for termination; and the parties would exchange information and negotiate in relation to a further component of the termination payment due under the PDA, namely payment to the Consortium for certain approved marketing and design expenditure.²⁹³

The parties agreed to negotiate the terms of a deed that would bind the parties to the proposed dispute resolution process.

Mr Todd Brown declared in his statutory declaration

*The Redevelopment Agreement between the Developer and LMC provided that in the event that LMC exercised its discretionary termination right, compensation would be payable to the Developer according to a complex formula. The interpretation of that formula was, however, the subject of dispute.*²⁹⁴

Email correspondence after 27 September 2012 between the CSO and the URA shows that the Consortium and the URA/CSO engaged in negotiation in relation to the proposed terms of a dispute settlement deed during the remainder of 2012.

On 18 March 2013, the parties executed a Dispute Settlement Deed.

The Dispute Settlement Deed is confidential as between the parties, as was the PDA, and when I circulated my preliminary report to the interested persons I sought permission from the Consortium and the State to refer to its terms to the limited extent that follows.

The State did not withhold its consent, but the Consortium did.

[REDACTED]

The Deed was executed in counterparties by two directors on behalf of Newport Quays Pty Ltd, two directors on behalf of Multiplex Port Adelaide Pty Ltd, by a director and company secretary on behalf of UCPA Waterfront Development Pty Ltd, by the affixing of the common seal by the Minister for Transport & Infrastructure for and on behalf of the State of South Australia, and by Fred Hansen as an Authorised Officer on behalf of the Urban Renewal Authority.²⁹⁶

²⁹² *Newport Quays & Ors v URA & Ors* [2012] SASC 84.

²⁹³ URA, Board of Management Noting Paper, (undated, for meeting 10/12/2012).

²⁹⁴ Above n 281.

²⁹⁵ Deed between Newport Quays Pty Ltd, Multiplex Port Adelaide and UCPA Waterfront Development Pty Ltd and the Crown in the Right of the State of South Australia,

²⁹⁶ *Ibid.*

[REDACTED]

Despite the Dispute Settlement Deed, the parties did not agree on the construction of that part of the PDA which governed the payment to the Consortium of the agreed damages. The difference in construction meant there was a significant difference between the amount URA said it was liable to pay and the amount the Consortium said it was entitled to receive.²⁹⁷

On 20 March 2013 [REDACTED] URA paid the bond guarantee amount to the Consortium.²⁹⁸

[REDACTED] the State and the Consortium scheduled a mediation in relation to the remaining termination payment for 20 August 2013.

On the scheduled date, Mr Alan Myers QC who had been appointed the mediator by the parties conducted a mediation between the parties. Both parties made concessions about the quantum of payment due to the Consortium that they would agree on to resolve the dispute, but no agreement was reached. The mediation was adjourned to 26 September 2013.²⁹⁹

On 16 September 2013, the Consortium advised that it would not proceed with the mediation because of the extent of the difference between the parties.³⁰⁰

Mr Todd Brown stated in relation to the period after the mediation

Subsequent to the Mediation, I, and a Director of Brookfield Multiplex, John Curry, met with senior representative of Renewal SA in the absence of lawyers. The issues in dispute were narrowed at that meeting but no final resolution was reached.

On 8 November 2013 the Consortium's lawyers wrote to the CSO advising that they had received instructions to commence proceedings in the Supreme Court, but at the same time made an offer to settle the dispute, which amounted to a further significant concession by the Consortium.³⁰¹

The URA sought and received advice from the CSO and from Mr Whittington QC on the offer and on a negotiation strategy.³⁰²

On 19 November 2013 the Minister for Housing and Urban Development, Minister Koutsantonis, approved the negotiation strategy recommended by the URA following advice from senior counsel.³⁰³

As I have said, on 2 December 2013, Cabinet decided to approve the ACP offer in relation to the Gillman lands.

On 13 December 2013 the CSO on behalf of the State made a counter-offer to the Consortium

On 18 December 2013, the ACP Gillman deal was due to be announced but was not announced.

²⁹⁷ Michael Buchan, Minute to the Minister for Housing and Urban Development, *Newport Quays Resolution – Status Update*, 17 July 2013.

²⁹⁸ Ibid.

²⁹⁹ Lidio Andreotti, Parliamentary Briefing Note, *Newport Quays Litigation*, 22 October 2013.

³⁰⁰ Ibid.

³⁰¹ Michael Buchan, Minute to the Minister for Housing and Urban Development, *Newport Quays Dispute Resolution – NQ offer to settle*, approved by the Hon Tom Koutsantonis MP, 19 November 2013).

³⁰² Ibid.

³⁰³ Ibid.

On 19 December 2013, Iles Selley, lawyers acting for the Consortium, advised the CSO of the Consortium's acceptance of the State's counter-offer.³⁰⁴

That same day, a public announcement was made about the settlement of the Newport Quays dispute.

Mr Todd Brown stated in his statutory declaration:

I say that throughout the negotiation between the Consortium and Renewal SA, the representatives of Brookfield Multiplex were intimately involved

And

I say that at no time in the Consortium's negotiations with Renewal SA was the Gillman land mentioned. My brother's negotiations with the State Government in connection with the Gillman land had no connection whatsoever to the Consortium's settlement of the Newport Quays dispute.

On 20 December 2013, Todd Brown resigned as a Director of Urban Construct (SA) Pty Ltd and as an alternate director for Newport Quays Pty Ltd.

On 10 February 2014, the URA and the Consortium concluded negotiations in relation to the terms of the settlement deed which formalised the settlement agreed upon on 19 December 2013.

I have not found any evidence of any kind that would suggest a finding of improper causal connection between the Gillman land deal and the Newport Quays dispute.

There are a number of matters arising from the chronology and the company information set out above which cause me to conclude that there is no causal connection between those two events.

First, as I have said, Todd Brown was not a director of ACP, and nor did he own shares in ACP or its affiliates, either directly or indirectly. There is no evidence that he would or could have benefited financially from the Gillman land transaction.

Secondly, Todd Brown was only one party of a number with a financial interest in the Newport Quays development. Multiplex Ltd and members of the Rice family also owned shares in companies which, on the face of the matter, stood to gain or lose as a consequence of the Newport Quays development. For that reason it is improbable Todd Brown was in a position to dictate the terms upon which the dispute between the Consortium and the State was conducted. He was not likely to be in a position where he could prefer his own interests at the expense of the Consortium as a whole.

Thirdly, the sequence of events following the commencement of the pre-trial action up to the time of the announcement of the settlement show that lawyers for the Consortium and the State were at arm's length with respect to the negotiations, but gradually made a series of concessions which ultimately led to a resolution of the dispute.

The monetary value of the concessions made by the Consortium in the course of negotiations was greater than the value of those made by the URA and the State, but the positions of both parties show a steady path towards resolution from September 2012 onwards, over a period of more than a year, notwithstanding the threat of litigation which was ever-present in the background right up until the settlement was achieved.

Finally, I note that solicitors acting on instructions of the LMC/URA on the one hand and the Consortium on the other conducted the critical negotiations on behalf of their respective clients. At key points in the course of the negotiation, the URA instructed the CSO to seek the advice of

³⁰⁴ Mark Mobbs, Memorandum to Chief Executive Renewal SA, *Newport Quays Dispute Resolution – Settlement Offer*, 20 December 2013.

independent senior counsel. The course which the URA and the State took in the negotiations was informed by the advice of a senior lawyer at the CSO and of independent senior counsel.

If, speaking hypothetically, there was an agreement to take a particular course in relation to the Newport Quays dispute in exchange for Government agreeing to the ACP offer for the Gillman land, such an agreement would had to have been known to the lawyers for the parties and also the senior counsel who provided advice in the matter. On the basis of the documents which I have viewed, that is entirely implausible.

I ordinarily do not believe in coincidences but I think that these events were a true coincidence.

For all of these reasons, I find that there was no improper connection between the granting of an option to ACP in relation to the Gillman lands and the settlement of the Newport Quays dispute.

PROTECTED



Reference number: 2014/000246

19 May 2015

PRIVATE AND CONFIDENTIAL

Mr Fred Hansen

Drive

Copy via email:- Email: [REDACTED]

Dear Mr Hansen,

Re: Investigation – Sale of State-owned land at Gillman

I am conducting an investigation into the sale of State-owned land at Gillman as a matter raising a potential issue of maladministration in public administration.

In doing so, I am exercising the powers of the Ombudsman under the *Ombudsman Act 1972*. The *Ombudsman Act 1972* gives me the powers of a commission under the *Royal Commissions Act 1917*. Amongst the powers of a commission granted by that Act is the power to take evidence under oath or affirmation.

I intend to take evidence under oath or affirmation as part of my investigation in relation to this matter.

In accordance with s 18(2) of the *Ombudsman Act 1972*, the evidence that I intend to take in this investigation will be taken in private.

Should you happen to be in South Australia for any reason between 28 May and 12 June 2015, I would like to hear evidence from you in relation to this matter.

Alternatively, would you be willing to speak to me via telephone in relation to the matter?

Should you be willing to provide me with evidence under oath in Adelaide or to speak with me via telephone, would you please contact Ms [REDACTED], my Executive Assistant at email [REDACTED] so that appropriate arrangements can be put in place.

I look forward to hearing from you soon.

Yours faithfully

A handwritten signature in blue ink, appearing to read 'Bruce Lander', written over a white background.

The Hon. Bruce Lander QC

INDEPENDENT COMMISSIONER AGAINST CORRUPTION

PROTECTED

PROTECTED



Reference number: 2014/000246

12 June 2015

PRIVATE AND CONFIDENTIAL
Mr Fred Hansen

Via email: [hansen](mailto:hansen@icac.sa.gov.au) [REDACTED]

Dear Mr Hansen

Re Investigation into the sale of State-owned land at Gillman

Thank you for your email of 27 May 2015, in which you replied to my letter of 19 May 2015.

In the course of my investigation into the sale of State-owned land at Gillman it is likely that I will make factual findings on a number of issues and include those findings in a report which I intend to write. At the conclusion of my investigation I intend to make a public statement about my findings, and I may publish my report or parts of it.

Because a number of the matters which I intend to address in my report might impact upon you and your reputation, it is appropriate that I give you notice of those matters, and invite you to address those matters.

As the matter stands before me, the particular matters upon which I might make findings which concern you are as follows:

1. Whether management of the Urban Renewal Authority (the URA) provided the Board of Management of the URA (the Board) with adequate information in sufficient time in order to allow the Board to discharge its statutory functions under the relevant acts and regulations in respect of the proposals of Adelaide Capital Partners concerning the land at Gillman;
2. Whether you failed to keep the Board informed about the Adelaide Capital Partners' proposals and the URA's actions in consequence of those proposals between 4 July 2013 and 3 November 2013 so as to permit the Board to fulfil the Board's statutory responsibility to oversee the operations of the URA with the goal of protecting the long term viability of the URA and the Crown's financial and other interests in the URA;
3. Whether it was inappropriate for management of URA to rely on, and to advise the Board and Cabinet to rely on valuations obtained by URA and the Adelaide City Council for the purposes of the compensation in relation to the compulsory acquisition

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of the Dean Rifle Range land in February 2010 when assessing the unsolicited offer made by Adelaide Capital Partners in 2013, having regard to the particular assumptions upon which the compulsory acquisition valuations were based;

4. Whether the Board of Management Out of Session Decision Paper dated 28 November 2013
 - a. Failed to meet the Board's request for an Out-of-Session Decision Paper providing options for the sale of the Gillman land, and requests for further information including copies of the advice of the Crown Solicitor, made at the meeting on 25 November 2013;
 - b. Required a response from the Board within about 3 ½ hours, which time period was inadequate given the nature of the matters to be decided;
 - c. Was to be considered and decided out of session, when it would have been appropriate to place the matter before a face-to-face meeting of the board, given the nature of the matters to be decided;
 - d. Contained resolutions which in isolation from earlier resolutions conveyed the appearance that the Board approved of the proposed transaction when the Board did not;
 - e. Asked the Board to make a decision to give advice to the Minister that the Adelaide Capital Partners proposal represented good value when there was insufficient relevant evidence about the valuation of the land;
 - f. Asked the Board to make a decision to give advice to the Minister that URA had managed Adelaide Capital Partners' unsolicited offer to Government in accordance with appropriate policies when there was inadequate documentation of adherence to or consideration of the URA's Real Property Pricing and Marketing Policy.
5. Whether the draft Cabinet Submission dated 28 November 2013 failed to accurately convey the substance of the Board of Renewal SA's decision of 21 November 2013 to the Minister, which had not been rescinded, and therefore had the potential to mislead Cabinet about the Board's views and the risks flowing from the fact that the Board held those views;
6. Whether failure to involve the Board in the decision-making process at an appropriate and early stage following the receipt of the Adelaide Capital Partners proposal had the effect of depriving the Minister and the URA of the fulsome and considered advice of the Board;
7. Whether the Minister sought to intimidate URA and its officers between 4 July and 28 November 2013 when the URA was dealing with ACP's proposal for the purpose of bringing about the result that was achieved.

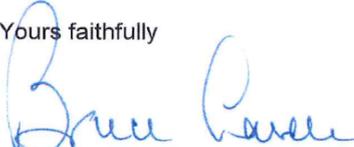
Should you require copies of any of the relevant documents or the evidence of witnesses received by me to date in this matter in order to consider your response, I would be pleased to provide them to you.

You have referred me to the evidence that you gave before the parliamentary Select Committee and said that it is as complete information as is available. I am aware of your evidence before the Select Committee and I have read it carefully. Parliamentary privilege in this country, however, prevents me from using or relying upon that evidence, because parliamentary standing orders prevent me from publishing that evidence prior to the Select Committee's report to the House without permission. The Committee has not given its report yet, and the House's permission has not been provided.

For that reason, I have sought direct evidence from some of the witnesses who have appeared before the Select Committee, including yourself.

The findings which I will make in due course will be made on the basis of the evidence which is available to me. I therefore ask that you give careful consideration to this request, and urge you to respond.

Yours faithfully



The Hon. Bruce Lander QC
INDEPENDENT COMMISSIONER AGAINST CORRUPTION

APPENDIX 3

From: Fred Hanse [REDACTED]
Sent: Wednesday, 27 May 2015 3:27 AM
To: [REDACTED] (ICAC)
Subject: RE: [PROTECTED] Letter from Commissioner Lander - ICAC SA

The Hon. Bruce Lander,

Thank you for your recent letter. I have not been in Australia for nearly a year and have no plans to be.

In regards to the Gillman land sale, this is something that took place between July and December 2013, at least in terms of my direct involvement. I have none of the documents associated with the transaction and therefore am unable to review them prior to a discussion. Furthermore I have not followed what has happened to the transaction since leaving Australia.

Since this transaction took place between two years and one and a half years ago my memory has faded. I would refer you to my testimony before Parliament just before leaving Australia. This is as complete information as is available.

Fred Hansen

From: Fred Hansen [REDACTED]
Sent: Tuesday, 30 June 2015 12:04 AM
To: [REDACTED] (ICAC)
Subject: ICAC response to Hon. commissioner Lander
Please confirm receipt,
Regards,
Fred Hansen
Sent from my iPad

There is much focus on whether the Minister or the Premier exerted undue influence on the Agency in this regard. A meeting in July on another matter was the only time I had contact from the Premier, and that was to ask why the proposal from ACP should not be evaluated. I expressed our initial reaction was to be dismissive. This was based on the expectation that the ACP proposal was similar to other proposals received by the government. That is, that the ACP proposal would only want the high value land and that they would seek government to fund the necessary infrastructure to make the whole of the land attractive.

Subsequent to this meeting I learned that the Premier had had his interest peaked by Raymond Spencer, the Chair of the EDB, prior to our meeting. I had no other communication with the Premier or his staff regarding this matter. Michael Buchan reported to me, however, that he had two or three communications about the proposed sale from Simon Blewett in the Premier's office.

As for the Minister he did not apply any undue pressure on the Board or us. As was the case in his meeting with the Board he pointed out the case that could be made regarding the ACP proposal and its comprehensive nature of providing a true mining hub. He indicated that one other prerequisite was necessary and that was the road needed to be paved from the mining site. This was something that the government was in the process of doing. With these two items in place SA would be in a competitive position with Queensland.

Now let me provide my best recollection in three areas that your preliminary conclusions address.

I

By tradition the Board of Management had established their agenda by having two main categories; decision papers and items for noting. At the beginning of meetings the Chair would ask if any member wished to have an item moved from the "noting" column and brought forward to be discussed. For the most part this did not happen with the exception of those items which could be perceived as having relevance to financial matters related to the performance of the Agency.

This left a dilemma facing the staff. Did one list items that were important but had not reached a decision point as "noting" or was it better to leave those items to be covered verbally by the Chief Executive or one of his Executives? The difference was that if they were for "noting" and had no discussion did it garner the full attention of the Board? On the other hand, if it were verbally covered, particularly at the end of a full agenda when members were eager to depart, was it passed over with little or no discussion or focus?

Generally we opted for a verbal briefing believing that the likelihood of the topic being focused upon by the Board with due consideration was more likely. This is the course we chose to pursue for the Gillman land sale at the August and September Board meetings.

At the August meeting Michel Buchan presented the the Gillman proposal ACP had put forward and went into some depth about the ramifications of this possible transaction. At the September Board meeting I briefed the Board on the fact that Cabinet had just approved proceeding with the sale. I remember very clearly that when I provided this briefing I noted that the conditions that were imposed by Cabinet (upon our recommendation) were so onerous that I doubted if the

transaction would proceed. In both the August and September Board meetings there was no substantive discussion by the Board.

Could we as management find a better way to keep the Board informed? This is the dilemma that we faced as an agency. I believe that the course we pursued was the best but this could be open to debate. As staff we constantly wrestled with how best to engage the Board in matters that were significant but which were not yet ripe of decision making.

II

The advice we received from the Crown Solicitor represented just that, advice. Lidio, our Crown Solicitor representative, came from the private sector in which he provided formal and informal advice as a matter of course. His role has been tremendous in serving the agency, serving as a sounding board to staff, giving preliminary advice and of course providing formal legal opinion.

Lidio provided such advice to the officer (neither Michael Buchan nor I had seen that advice until November) in early September regarding the Gilman land sale. This was provided to the officer in charge of this project. This was advice in anticipation of a draft Cabinet Submission being prepared by that officer.

It is significant to point out that this advice was given to the officer who was the point person for this transaction. This advice was included, in many cases verbatim, in the draft Cabinet Submission being prepared. This risk was included in the section, along with other findings, dealing with risks. In this regard Lidio was acting as advisor.

One of Lidio's great strengths is that he plays these multiple roles, sometimes in the same advice letter. When is it a formal opinion and not subject to change? When is it advice, as it was in this case, and should be taken into account?

III

As a preliminary view you seem to reach the conclusion that things were rushed by way of the Board's consideration of the Gillman land sale. I do not recall a single time when the Board expressed a view that they wished they had more time to consider the proposal from ACP. You might want to check with Michael Buchan to see if during the critical three weeks in November when I was unreachable whether he had received any such expression of concern from the Board.

It was, in my view, quite clear that the Board knew what it wanted and was not feeling they needed more time. The Board was attended by the Minister and after he left that Craig raised the issue of whether they were being asked to recommend a decision, one way or the other, that was beyond their expertise. This led us to narrow the issue for them to two essential items.

for their consideration. One, was the proposed use consistent with the land use so designated for the land. And second, did the offer represent a good value for the sale.

It was in this regard that I testified before Parliament that the proposal represented a four times greater value than our internal analysis indicated and two times greater value estimated by ACC who had a direct interest in a higher outcome. In fact when I had an informal discussion with their Chief Executive he could hardly contain himself with glee given the higher valuation as a result of ACP's proposal.

We sought, as was suggested by the Minister, the advice of Mr. Goldstein. It was he who is recognized as the leading expert in SA government regarding such matters. He bore out the Minister's view that SA was in a race with Queensland to position ourselves as a credible alternative to provide a mining hub and thereby compete against Queensland. This is a role, I was told, that they or their predecessor had played in similar land sales in the past

[REDACTED]

and reasonable value for the land.

[REDACTED]

[REDACTED]