



## Executive Summary

[This summary is not to be read as part of the Report]

1. In 2012 the Territory Government offered for sale a car park as a development site in Dickson (Block 30), adjacent to the Tradies Club. The sale was managed by the Economic Development Directorate (“EDD”) through the Land Development Agency (“LDA”).
2. The ACT Cabinet had decided that the car park should be sold by way of public tender. In the result, the only bidders were Tradies Club and a company owned by Woolworths. Tradies proposed a development comprising 130 residential apartments, 1,240m<sup>2</sup> of ground floor commercial space and a two-level basement for public and private parking. The tender price offered by Tradies was \$2.2 million (excluding GST). Woolworths proposed a 1,250m<sup>2</sup> Dan Murphy’s store, 440m<sup>2</sup> for three other retail spaces and two levels of basement car parking and a tender price of \$1.6 million (excluding GST).
3. After lengthy and complicated negotiations, a contract for the sale of Block 30 to Tradies was entered into for the price of \$3.18 million. In a separate but linked transaction, the Territory agreed to pay Tradies \$3.55 million and \$45,000 for two parcels of land owned by Tradies (in the Report referred to as the “Downer site”). The \$415,000 price difference between the sale price of Block 30 (\$3.18M) and the purchase price of the Downer site (\$3.595m) was to be paid by the Territory to Tradies on settlement of the Downer site transaction. This was completed on 15 December 2014. Contracts were exchanged on the same day for Tradie’s purchase of Block 30.
4. The Block 30 sale was complicated from the beginning by the requirement that settlement (and submission of planning approval) could not occur before the later of two events – either two years had elapsed from the date of the contract or a certificate of occupancy was issued for separate works underway on an adjacent property being developed by Coles. The purpose of this requirement was to ensure the continued availability of public parking. This time has not yet expired, with the result that Block 30 has not yet been transferred to Tradies.
5. The nature of the Block 30 sale transaction, and the circumstances in which it came about, were examined by the former Auditor-General. Her findings were documented in a report tabled in the Legislative Assembly in February 2018, and contained a number of criticisms of the process and, by implication, of relevant officials. The Legislative Assembly’s Standing



Committee on Public Accounts (“**Committee**”) then examined the issue, and subsequently tabled its inquiry report in May 2020. It also criticised the transaction and the manner in which it occurred. Two members of the Committee recommended that the matter be referred to the Integrity Commission for investigation.

6. The Commission’s role is unique in the Territory; it performs a different function to the Auditor-General, and parliamentary Committees. Its primary function, as an independent agency, is to investigate and expose “corrupt conduct” as defined by the *Integrity Commission Act 2018* (“**Act**”). The Commission is entrusted with certain compulsory powers to enable it to do so. This report contains discussion of the Commission’s role and approach, the definition of “corrupt conduct”, and the application of the Act to members of the Legislative Assembly, including Ministers.
7. The Committee’s referral was accepted by the Commission as a corruption complaint. The Commission is then required by the Act to assess the complaint to decide if it should be investigated, dismissed or referred to another entity. To commence an investigation, the Commission must form a reasonable suspicion on the evidence before it that the conduct under assessment may constitute corrupt conduct.
8. In this matter the Commission is satisfied that the legal threshold for investigation was not met. The Commission is further of the view that many of the criticisms made by the Auditor-General and the Committee were not justified. Accordingly, the investigation was discontinued.
9. Because the sale of Block 30 has been the subject of detailed public reports that attracted significant public attention, the Commission considers it is in the public interest that its analysis of the evidence be recorded and published in a Special Report. This Report explains the Commission’s findings and its reasons for differing from – and in some respects contradicting – those of the former Auditor-General and the Committee.
10. In short, the Commission found that the land sale process itself was adequate and complied with all necessary legal requirements. While there was an inappropriate lack of documentation surrounding some aspects of the transaction, there was sufficient material to enable the Commission to confidently conclude that there was no reasonable suspicion of corrupt conduct on any person’s behalf. There was also no basis for a reasonable suspicion of political interference in the transaction.



11. A key element in the Commission's assessment is the finding that inappropriate reliance was placed by both the Auditor-General and the Committee on an independent valuation of \$3.18 million for Block 30 that was obtained by the EDD in November 2012. The EDD obtained this valuation in an endeavour to set a reserve price for the land sale.
12. The Commission's view is that there was misapprehension of the true significance of this valuation, which was accepted at face value by both the former Auditor-General and the Committee. Neither the valuation nor their reports took account of the significant risks that would be faced by a purchaser of Block 30 arising from the very substantial delay in development that was part of the deal. This would almost certainly substantially shrink the market interest in Block 30. An added general consideration is that there are inevitable inherent and multiple uncertainties involved in attempting to value a development site. There were, as well, several significant problematic issues with the valuation method itself.
13. The reliability of the estimate should also have been assessed in light of the number of bids (only two) and the actual prices offered (much lower).
14. It followed that the many findings of the former Auditor-General and the Committee that depended to any significant extent on the reliability of the initial estimate of market value were necessarily distorted and, thus, questionable. This is often what facts do to hypotheses. The Territory officials, on the other hand, plainly understood the significance of the tender outcome.
15. The two bids for Block 30 were assessed against specified, weighted criteria by an Evaluation Team. It comprised four members, including three Territory officials and an independent Chair with extensive property industry experience, and it was briefed by a Probity Officer. The Evaluation Team recommended Tradies' bid as preferred. Whilst some criticisms of the transparency of the evaluation process were rightly made by the Auditor-General, the grounds for the evaluation against the criteria were clear enough to exclude any suspicion of improper conduct.
16. The major differences between the Tradies' bid and the Woolworths' bid, as assessed by the Evaluation Team, were the development concept viewed in light of the Dickson Centre Master Plan (a substantial mixed development proposed by Tradies, against a liquor store and a few shops proposed by Woolworths) and the tender price (\$2.2m proposed by Tradies as against \$1.6m proposed by Woolworths). On no reasonable view could Woolworths' bid



be regarded as superior. Nor was there any legal or other basis for terminating the sale process or negotiations at that stage.

17. The conventional complications of constructing a mixed commercial building on an essentially green fields site subject to complex planning requirements inevitably gave rise to complicated negotiations between the Territory and Tradies. In several respects the ultimate contract for the sale of Block 30 differed from that envisaged in the Request for Tender. The contractual negotiations were substantially conducted by the ACT Government Solicitor, who considered that the contract was compliant with regulatory requirements for a transaction of this nature.
18. The Auditor-General and the Committee expressed strong doubts about the probity and legitimacy of the variations between the Tender requirements and the contractual provisions. In part, their assessment was based on the finding that (very costly) parking requirements had been reduced, when they had not. They also overstated the significance of some of the contractual variations. The former Auditor-General and the Committee in her wake also relied upon highly contestable legal advice from the Australian Government Solicitor.
19. In the result the Commission's criticism of the process for the sale of Block 30 rises no higher than accepting that reasons for key Territory steps and decisions ought to have been better documented. There was no material that could reasonably give rise to any real doubt about the legal probity of the contracts. Nor did the evidence give rise to any reasonable suspicion of wrongdoing or corrupt conduct.
20. Another major focal point of concern for the former Auditor-General and the Committee was the propriety of the Territory purchase of the Downer site. That purchase, in effect, permitted Tradies to offset its purchase of Block 30 with the proceeds. The RFT did not (for obvious reasons) specify the mode by which a tenderer might finance its bid. Although what happened might be regarded as a "land swap", there is nothing in principle unusual about a purchaser of one property selling another to finance the purchase. Again, there is room for legitimate criticism of a lack of documentation of the public purpose served by the Downer site purchase. However, the prior history and the evidence of the officials provided an adequate explanation that dispelled any reasonable suspicion of corrupt conduct.
21. Lastly, there were suggestions that the Chief Minister had personally become involved or otherwise attempted to influence the process in favour of Tradies. There was no evidence before the Commission that he was involved or sought to be involved in the negotiations at



any point, let alone that he sought to influence any material decisions except, at the outset, the decision to sell the land by open competitive process.

22. Having reached these conclusions, it was incumbent upon the Commission to discontinue the matter, on the basis that it was satisfied on reasonable grounds that the corruption report did not justify investigation, in accordance with s 71(2) of the Act.