

138.5.2 City to the Lake: West Basin Waterfront

Dec 2014

**Purpose**

To provide an update on the status of the West Basin Waterfront project, including the procurement methodology, key program dates, funding requirements, negotiations on securing privately held leases and timing implications, and to identify possible options to achieve the Government's desired outcomes within a stipulated timeframe.

Background

To meet the Government's timeframes for West Basin, a number of factors with critical timing and budget implications must be considered and a recommended course of action endorsed.

In December 2013, the Land Development Agency (LDA) called for tenders for the design of an Estate Development Plan (EDP) for the full City to the Lake (CttL) precinct. The successful tenderer, Arup Pty Ltd (Arup), was engaged to undertake the works.

Following recent revisions to the Government's priorities, the full EDP is no longer required and Arup's engagement is being re-scoped to focus on an EDP for the West Basin Foreshore, from Commonwealth Park to the proposed Aquatic Centre, as this element remains an immediate Government priority with construction completion required by October 2016. The following discussion recognises that agreement to proceed to construction and funding are yet to be provided by Government.

Issues

Based on the Government's plans to complete the West Basin Foreshore redevelopment by October 2016, and a proposed construction timeframe of 15-17 months, the following considerations are critical:

- Work needs to commence on site by, at the absolute latest, April/May 2015.
- The LDA must acquire the leases and business interests of Mr Spokes (Mr Martin Shanahan and Ms Jillian Edwards), Lake Burley Griffin Boat Hire (the paddle boats – Mr Jim and Mrs Cony Seears) and Dobel Pty Ltd (Mr Pat and Mrs Maura Seears) by April 2015 at the latest.
- The processes to acquire the separate interests commenced in June 2014 with initial discussions. Following the Government's decisions on the governance structure of the CttL project, formal negotiations were commenced with Mr Spokes and LBGBH. Dobel did not respond to initial requests for discussions.
- The process to achieve a negotiated (i.e. non-compulsory) outcome could take several more months and, amongst other factors, will be subject to delays over the holiday period and also the parties' aspirations on what constitutes fair compensation.
- There are no known factors that would compel or entice the separate parties to negotiate an outcome within the Government's timeframe.
- It is suggested that this may result in claims for compensation (whether financial or otherwise) in excess of what the Government could be willing to pay, or be able to defend.

- A compulsory acquisition process under the *Land Acquisition Act 1994* (the Acquisition Act) could be initiated in parallel with commercial negotiations with the knowledge of the parties. This was raised in discussions with Mr Spokes and LBGBH. Compulsory acquisition, or foreshadowing same, is not intended as a means of coercion in itself, rather being open and transparent about the pathway that the Government might choose to take to achieve its policy objectives.
- Commencement of a compulsory process under the Acquisition Act does not mean that it is the preferred, or recommended, means of acquisition. Rather it means that a clear signal would be sent that there would exist a point in time, beyond which a more prescriptive (and potentially less generous) process would be pursued. [REDACTED]
- CttL is pursuing options for relocation of the paddle boats and Mr Spokes. The National Capital Authority (NCA) has expressed the view that, if the business owners did not want to relocate, the LDA might elect to build around them. In the event that consultation raised issues of access or safety, the NCA could require these to be addressed as part of the works approval process.
- Notwithstanding the need to identify a source of funding and to resolve procurement and physical construction challenges, which it is expected can be managed, failure to acquire the three separate interests by April 2015 will result in delays to the project beyond October 2016.

Concurrent with the acquisition of private interests at West Basin, the following matters must also be resolved:

- The abridged EDP must be finalised, which is expected to occur in early 2015;
- Various preliminary studies need to be procured and progressed;
 - Preliminary geotechnical investigations have already been undertaken, including a tree assessment, an indigenous heritage assessment and ecological studies. Contamination and heritage studies are being procured.
- NCA works approval needs to be secured (expected to be March and May 2015). An approved funding source may be a condition of approval.
- A managing contractor needs to be engaged by February/March 2015.
- A funding source needs to be identified;
 - A Project Concept Brief has been submitted to the Integrating Minister, Mr Barr, and Treasury for consideration as part of the 2015-16 Budget process (\$35m design/construct). If supported, funds would not be available until the passage of the Budget (August 2015, based on the Budget being handed down in June 2015) and would delay procurement and result in the redevelopment not being completed until February 2017; or
 - An alternative funding option could be explored, possibly involving LDA borrowings, which would allow procurement to proceed independent of the budget cycle.
- Given the timing constraints, and that the 2015-16 Appropriation Bill may not be passed until late August 2015 (if the Budget is tabled in early June 2015), one possible option is that the works could be funded through borrowings. This would allow procurement to proceed according to the timeframes outlined above.
 - Notwithstanding that the LDA's recent discussions with Treasury on borrowings did not contemplate the works proposed at West Basin, being a critical piece of

enabling infrastructure for land release, the purpose is not inconsistent with the original request. The development of a full Single Assessment Framework capital works business case in tandem with any formal request for borrowings would ensure rigour and transparency.

- Subject to further exploration of funding options and finalisation of a business case, the Board's agreement may be sought (meeting of February 2015) to submit a formal request to the Under Treasurer to establish and draw on a borrowing facility.

Recomendation

That the Board note the information in this paper.

Dan Stewart
Deputy Chief Executive
December 2014

From: [EPD Ministerials - Government Services](#)
To: [EPD Ministerials - Planning Delivery](#)
Cc: [Crowe, Lindsay](#)
Subject: 14/23800 - MINISTERIAL CORRESPONDENCE - Block 13 Section 33 Acton - Development of West Basin Mark Flint (obo Martin Shanahan and Jillian Edwards)
Date: Wednesday, 1 October 2014 2:25:00 PM
Attachments: [FW Martin Shanahan and Jillian Edwards - Development of West Basin.msg](#)
[14_23800 - Ministerial-Block 13 Section 33 Acton - Development of West Basin Mark Flint \(obo Martin Shanahan and Jillian Edwards\).obr](#)

Good afternoon

Please see the attached ministerial correspondence for brief and reply, due to GS COB 8 October 2014 in order to meet the deadline set by the MO.

Kind regards

Rebecca Butchart | Ministerial Liaison Officer

Ph: (02) 6207 5804 | **Email:** rebecca.butchart@act.gov.au

Communications, Government Services & Executive Support | Environment and Planning | ACT Government Level 3 South, Dame Pattie Menzies House, Challis Street, Dickson | GPO Box 158 Canberra ACT 2601
www.environment.act.gov.au

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Ministerial Correspondence / Brief Request Form

Objective Number: 14/23800

Date due Ministerial Services: 8 October 2014

Date due Deputy Director-General: 9 October 2014

Date due Director-General: 10 October 2014

Date due MINISTER'S OFFICE: 10 October 2014

Priority: Urgent / Normal

Critical Date:

**Subject: Block 13 Section 33 Acton - Development of West Basin Mark Flint
(oboMartin Shanahan and Jillian Edwards)**

To:

Strategic

Planning

Sustainability and Climate

Change

Construction and Services

Director-General

X Planning Delivery

Deputy Director-General

Environment

Other

Response by:

X Minister

Chief Minister

Director-General ESDD

Minister Chief of Staff

Adviser

Other:

Action required:

X Reply to correspondence

Directorate Input

Media Release / Media Alert **(Produced in Consultation with Communications)**

X Information brief

Dept Officer to attend

Speech / Speaking Notes **(Produced in Consultation with Communications)**

Information only / NFA

Functions Brief (inc arrangements brief)

Questions and Answers

Phone constituent

For appropriate action

Other

Meeting / Event:

Time:

Date:

Location:

Event Contact/Organiser:

Equipment:

Further Information:

From: [GENTLEMAN](#)
To: [Carter, Tania](#)
Subject: FW: Martin Shanahan and Jillian Edwards - Development of West Basin
Date: Tuesday, 30 September 2014 3:23:41 PM
Attachments: [DOC300914-30092014155757.pdf](#)

Natasha Apostoloski | Office Manager
Office of Mick Gentleman MLA | Member for Brindabella
Minister for Planning,
Minister for Community Services,
Minister for Workplace Safety and Industrial Relations,
Minister for Children and Young People,
Minister for Ageing
t: 620 50218 | e: natasha.apostoloski@act.gov.au |

-----Original Message-----

From: [REDACTED]
Sent: Tuesday, 30 September 2014 3:21 PM
To: GENTLEMAN; GALLAGHER
Cc: Mark Flint; [REDACTED]
Subject: Martin Shanahan and Jillian Edwards - Development of West Basin

Confidential Communication

Good afternoon,

Please find attached our letter of today's date for your attention.

Kindly contact Mark Flint on [REDACTED] or [REDACTED] should you wish to discuss.

Regards

[REDACTED] (on behalf of Mark Flint)

[REDACTED] | Senior Executive Assistant T [REDACTED] | F [REDACTED] Level 3, 1 Farrell Place,
Canberra City ACT 2601 [REDACTED]

2014 & 2013 REI ACT Solicitor of the Year - Archie Tsirimokos
2014 Property Council ACT Allan Wylucki Property Professional of the Year - Archie Tsirimokos

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MEYER VANDENBERG
LAWYERS

30 September 2014

Mr Mick Gentleman MLA
Minister for Planning
Legislative Assembly Building
Civic Square, London Circuit
CANBERRA CITY ACT 2601

And by Email: gentleman@parliament.act.gov.au

Dear Minister,

Martin Shanahan and Jillian Edwards – Development of West Basin

We act for Mr Martin Shanahan and Ms Jillian Edwards.

Our clients are the Crown Lessee's of Block 13 Section 33 Division of Acton in the Australian Capital Territory. They operate a business on and from the land known as "Mr Spokes Bike Hire".

Our clients have been informed by the Land Development Agency, and otherwise have been made aware through press reports, of plans by the ACT Government to develop the area known as West Basin. The most developed iteration of these plans is contained in an Estate Development Plan entitled "City to the Lake" dated December 2012 ("EDP"). Artists impressions in the EDP convey that substantial redevelopment is to be undertaken on the land comprising our clients land (figure 4).

Our clients met with representatives of the Land Development Agency ("LDA") on 13 June 2014 at which time the LDA presented an aerial artist's impression of the City to Lake Precinct and stated that the West Basin Estate Plan would be primarily apartments with some commercial space. It was further stated that the land was likely to be packaged and sold on the lines of Section 5 in Campbell. This is not inconsistent with statements made recently by the Chief Minister, as reported in the Canberra Times on 16 September 2014.

The EDP indicative program says that is proposed to submit an application for works approval on or by 26 September 2014 and that works approval is expected by 28 November 2014. During the course of the meeting with the LDA on 13 June 2014 it was stated that the time frame for works approval was more realistically early 2015. During this meeting it was also agreed that the works approval must be obtained from the National Capital Authority and that consent from our clients is a necessary prerequisite to the lodgement of the works approval with the National Capital Authority. This is consistent with advice from the National Capital Authority. No such consent has been sought or obtained.

You will appreciate that the proposed development is of great concern to our clients. In early 2014 a tender was awarded for "Design Consultancy Services – City to the Lake - Estate Development Plan". The request for tender states at para 3.2.1 that the successful tenderer will be required to prepare certain plans to enable the Project Officer 4 months' notice to withdraw the land from lease. This document does not make clear whether our clients' land is included in the proposed lease withdrawal program. A letter from the LDA dated 16 April

2014 stated that redevelopment would "extinguish" our clients lease. The clear effect of this letter is that the Government proposes development that it considers will result in cessation of our clients' business.

Plans to redevelop appear to be gathering pace with no or inadequate explanation of how the Government intends to deal with our clients land or to compensate our clients in the event their land cannot be used. The LDA invited our clients to prepare valuations for its [LDA's] consideration. It is not obvious to us what power the LDA has or has been delegated to treat with our clients. Further, the suggestion to prepare valuations is too vague to be actioned in any meaningful way and, in the context of a time table where works approval has not yet been sought from the National Capital Authority, it is premature to be requiring our clients to undertake that expense.

It is tolerably clear that the ACT Government intends to proceed with the development of the West Basin. It is not clear how it proposes to do that without our clients' consent or land. We are instructed to invite you to contact the writer for the purposes of convening a meeting between you or your staff and our clients. The purpose of the meeting will be to discuss the following issues:

- 1 What is the nature of the proposed development?
- 2 What is the time table for the commencement of works, including preliminary works?
- 3 How will the works impact on our clients' business?
- 4 Does the Government propose to compensate our clients?
- 5 If so, what are the principles, processes, and steps which it intends to implement to achieve that end?
- 6 What information is required from our clients to be provided to the ACT to assist in this process?
- 7 What are the time frames for each step in the process?

If there are other matters which you would wish to address, please let us know. We look forward to your response.

Yours faithfully,
Meyer Vandenberg

Mark Flint

Partner

Direct Line:

Email:

CC. GALLAGHER@act.gov.au

Our Ref: 1102916:MFL:MFL

From: [Harmer, Sharon](#)
To: [Chapman, Maggie](#); [Saad, Monica](#)
Subject: FW: Compulsory Acquisition
Date: Friday, 21 November 2014 10:20:01 AM

Heads up!!!!

Sharon Harmer | Assistant Manager | Lease Administration

Phone 02 6207 1790 | Fax 02 6207 8265

Planning Delivery Division | ACTPLA | Environment and Planning | **ACT Government**

Dame Pattie Menzies House, Challis Street, Dickson | GPO Box 158 Canberra ACT 2601 | www.actpla.act.gov.au

From: Hutch, Richard
Sent: Thursday, 20 November 2014 4:11 PM
To: Harmer, Sharon
Subject: Compulsory Acquisition

Sharon,

Thank you for your time this morning.

I've re-considered and will need to clear the formal request to Maggie with appropriate persons.

I will also need to clear that I am proposing to initiate two formal processes (Mr Spokes and Block 16 Section 33).

I intend to get that to you as soon as possible – hopefully tomorrow.

Regards

Richard

Richard Hutch | Assistant Project Director | City to the Lake |

Land Development Agency | Chief Minister, Treasury and Economic Development Directorate |
ACT Government |

☎ 02 6207 9956 |  | ✉ richard.hutch@act.gov.au

TransACT House, 470 Northbourne Ave, Dickson | GPO Box 158 Canberra ACT 2601 |

www.citytolake.com.au



From: [Chapman, Maggie](#)
To: [Hutch, Richard](#)
Cc: [Roncon, Pamela](#); [Xirakis, Tim](#); [ACTPLA DA Leasing](#); [Leasing](#); [Baeta, Sandra](#); [Cargill, James](#); [Clarkson, Sonja](#); [Cootes, Nicky](#); [Gianakis, Anna](#); [Gibson, Roger](#); [Gravitis, Jason](#); [Harmer, Sharon](#); [Hurst, Jackie](#); [Kanapati, Bala](#); [Lacey, Natalie](#); [Marsh, Sherridan](#); [Messer, Sue](#); [Myers, Rhonda](#); [Pankhurst, Owen](#); [Podmore, Bronwyn](#); [Ross, Marilyn](#); [Saad, Monica](#); [Sare, Irma](#); [Stephenson, Maggie](#); [Tankey, Lyn](#); [Taylor, Bob](#); [Towart, Mark](#); [Trelloggen, Jacob](#); [Walker, Karen](#)
Subject: RE: Section 33 Acton - Blocks 13 and 16
Date: Wednesday, 17 December 2014 12:55:12 PM
Attachments: [image001.jpg](#)
[image002.gif](#)

Noted, thanks Richard.

I will make sure all units in Lease Administration are aware of your request and have notations placed on the appropriate files.

Regards
Maggie

Maggie Chapman | Senior Manager - Lease Administration
Phone 02 6207 1885 | Fax 02 6207 1856 | Mobile [REDACTED]
Planning Delivery Division | ACTPLA | Environment and Planning | **ACT Government**
Dame Pattie Menzies House, Challis Street, Dickson | GPO Box 158 Canberra ACT 2601 | www.actpla.act.gov.au

From: Hutch, Richard
Sent: Wednesday, 17 December 2014 12:34 PM
To: Chapman, Maggie
Cc: Gibson, Roger; Roncon, Pamela; Xirakis, Tim
Subject: Section 33 Acton - Blocks 13 and 16

Maggie,

I represent the LDA's interests in Blocks 13 (Mr Spokes) and Block 16 (Dobel Pty Ltd) Section 33 Acton.

You may be aware the negotiations are ongoing with the lessees of these blocks to acquire their interests to permit the redevelopment of the West Basin Waterfront to proceed.

This email is to request that you notify myself, or the persons cc'd to this email, of any request to vary the lease agreements, prior to making any formal or binding decision in relation to any request.

Please let me know if you have any concerns with this request. My details, including mobile, are underneath.

Regards

Richard Hutch | Assistant Project Director | City to the Lake |
Land Development Agency | Chief Minister, Treasury and Economic Development Directorate |
ACT Government |
☎ 02 6207 9956 | [REDACTED] | ✉ richard.hutch@act.gov.au
TransACT House, 470 Northbourne Ave, Dickson | GPO Box 158 Canberra ACT 2601 |
www.citytolake.com.au



From: [Hutch, Richard](#)
To: [Chapman, Maggie](#)
Cc: [Harmer, Sharon](#)
Subject: RE: Section 33 Acton - Blocks 13 and 16
Date: Wednesday, 17 December 2014 1:08:43 PM

Maggie – we have briefed the Minister, asking him to note that the process is an option, but also noting that it would not be commenced without his agreement.

I'll keep you informed.

Richard

From: Chapman, Maggie
Sent: Wednesday, 17 December 2014 1:04 PM
To: Hutch, Richard
Cc: Harmer, Sharon
Subject: RE: Section 33 Acton - Blocks 13 and 16

Richard

 please let us know when you want us to commence the acquisition process.

Regards
Maggie.

From: Hutch, Richard
Sent: Wednesday, 17 December 2014 12:58 PM
To: Chapman, Maggie
Subject: RE: Section 33 Acton - Blocks 13 and 16

Thanks Maggie

From: Chapman, Maggie
Sent: Wednesday, 17 December 2014 12:55 PM
To: Hutch, Richard
Cc: Roncon, Pamela; Xirakis, Tim; ACTPLA DA Leasing; Leasing; Baeta, Sandra; Cargill, James; Clarkson, Sonja; Cootes, Nicky; Gianakis, Anna; Gibson, Roger; Gravitis, Jason; Harmer, Sharon; Hurst, Jackie; Kanapati, Bala; Lacey, Natalie; Marsh, Sherridan; Messer, Sue; Myers, Rhonda; Pankhurst, Owen; Podmore, Bronwyn; Ross, Marilyn; Saad, Monica; Sare, Irma; Stephenson, Maggie; Tankey, Lyn; Taylor, Bob; Towart, Mark; Trelodgen, Jacob; Walker, Karen
Subject: RE: Section 33 Acton - Blocks 13 and 16

Noted, thanks Richard.

I will make sure all units in Lease Administration are aware of your request and have notations placed on the appropriate files.

Regards
Maggie

Maggie Chapman | Senior Manager - Lease Administration

Phone 02 6207 1885 | Fax 02 6207 1856 | Mobile [REDACTED]

Planning Delivery Division | ACTPLA | Environment and Planning | **ACT Government**

Dame Pattie Menzies House, Challis Street, Dickson | GPO Box 158 Canberra ACT 2601 | www.actpla.act.gov.au

From: Hutch, Richard

Sent: Wednesday, 17 December 2014 12:34 PM

To: Chapman, Maggie

Cc: Gibson, Roger; Roncon, Pamela; Xirakis, Tim

Subject: Section 33 Acton - Blocks 13 and 16

Maggie,

I represent the LDA's interests in Blocks 13 (Mr Spokes) and Block 16 (Dobel Pty Ltd) Section 33 Acton.

You may be aware the negotiations are ongoing with the lessees of these blocks to acquire their interests to permit the redevelopment of the West Basin Waterfront to proceed.

This email is to request that you notify myself, or the persons cc'd to this email, of any request to vary the lease agreements, prior to making any formal or binding decision in relation to any request.

Please let me know if you have any concerns with this request. My details, including mobile, are underneath.

Regards

Richard Hutch | Assistant Project Director | City to the Lake |

Land Development Agency | Chief Minister, Treasury and Economic Development Directorate |
ACT Government |

☎ 02 6207 9956 | [REDACTED] | ✉ richard.hutch@act.gov.au

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Richard Hutch
Deputy Project Director (CtTL)
Land Development Agency
GPO Box 158
Canberra ACT 2601

19 January 2015

Dear Mr Hutch

Re: ACT Government Purchase OF DOBEL BOAT HIRE Pty Limited

I refer to your email of 6 January 2015 seeking "*business documentation (annual accounts, tax returns etc.) that will be of assistance to the LDA's valuers in establishing an independent valuation*".

[REDACTED]

The below costing were requested by the 'City to the Lake' Project Team on behalf of the Land Development Agency. It represents the costs incurred by Dobel Boat Hire Pty Limited from the time of purchase of the Crown Lease in 1997 and future lost revenue.

[REDACTED]

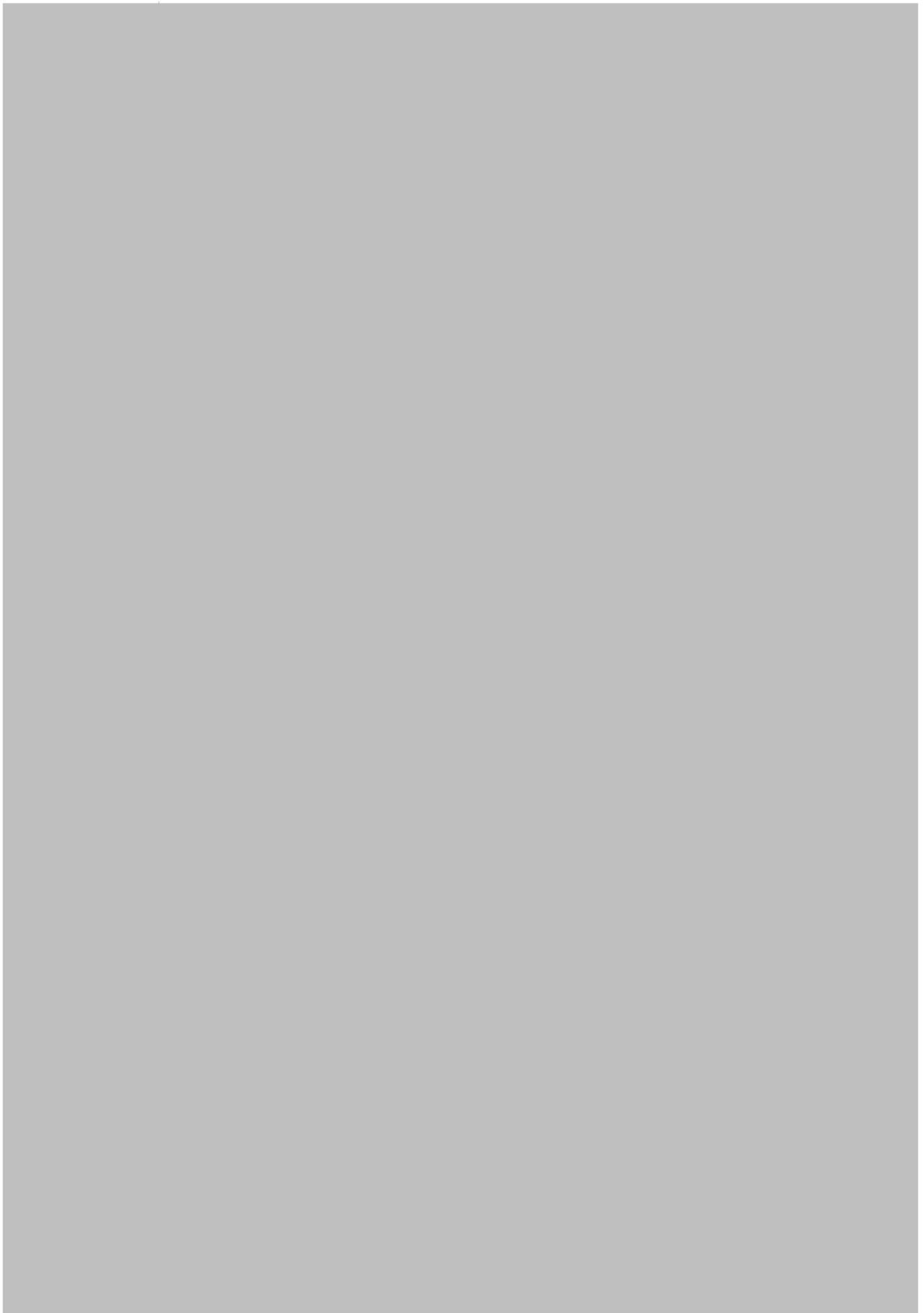
The Annual Net Rental Revenue has been deleted as it is no longer applicable. In addition and upon second review, consultancy fees pre 2008 have been reduced. Consultancy Fees post 2008 have been itemised yearly in Table B.

Proposal: ACT Government Purchase Dobell Boat Hire for a sum of \$2,650,170.

Sincerely

[REDACTED]

Patrick Seears
Director
Dobel Boat Hire Pty Limited



From: [Wilson, Chris](#)
To: [Holt, Nicholas](#)
Cc: [LDABoard](#); [Dawes, David](#); [Ponton, Ben](#)
Subject: CTTL update for Board
Date: Monday, 9 November 2015 1:21:12 PM

Hi Nicholas,

Ross Barrett has asked about the status of the various elements of the CTTL project, including expected design and construction timings, status of point park process, budget expenditure etc etc.

Is this something that could be prepared for the November (or December) Board meeting?

Chris

Chris Wilson | Director | Office of the Director-General, Economic Development and Chief Executive Officer, Land Development Agency
Chief Minister, Treasury and Economic Development Directorate | Land Development Agency | ACT Government
☎ 02 6205 2697 | Fax: 02 6205 0386 | ✉ chris.wilson@act.gov.au
Level 7 TransACT House, 470 Northbourne Ave, Dickson | GPO Box 158 Canberra ACT 2601

From: [Holt, Nicholas](#)
To: [Dawes, David](#)
Cc: [Hutch, Richard](#)
Subject: Mr Spokes Valuation - Discussion with Valuers
Date: Monday, 9 November 2015 10:01:59 AM
Attachments: [image001.jpg](#)

Good morning David,

Following up with our discussion re the valuations for Mr Spokes, we arranged a meeting with the three valuers who provided the initial valuation.

On Tuesday 3 November we met with [REDACTED] (PWC), [REDACTED] (Herron Todd White) and [REDACTED] (MMJ Valuers).



In summary, they felt that they were unable to reconsider their valuations based on the above items. The points that were made in regard to each item were



In conclusion all the valuers felt that they had interpreted the LDA's instructions to date and had sought to attribute the highest/fairest possible defensible value to the differing elements of Mr Spokes. This was also the case for inventory, improvements and any component for the land.

The valuers did suggest that a way to advance the negotiations may be to request that Mr Spokes present their own valuation. This is commonly done (LDA is doing with NCA regarding the land reclamation at West Basin) and may assist facilitate a mutual agreement. I am not sure if this has been discussed with [REDACTED]

Happy to brief you in more detail if you wish.

Regards,

Nicholas Holt - Director Infill

Land Development Agency | Chief Minister, Treasury and Economic Development Directorate | ACT

Government

Level 7, TransACT House, 470 Northbourne Avenue Dickson ACT 2602

T: 02 6207 9646 | F: 02 6207 6110 | email: nicholas.holt@act.gov.au | W: www.lda.act.gov.au

email-sig-kingston-arts



<http://www.lda.act.gov.au/kingston/kingston-arts-precinct>

From: [Dawes, David](#)
To: [REDACTED]
Cc: [Pirani, Yuka](#); [Wilson, Chris](#)
Subject: RE: Mr Spokes
Date: Thursday, 12 November 2015 10:01:59 PM

Hi [REDACTED]

Unfortunately nothing is easy as it were. The 3 firms that we have engaged are/have had difficulties in reviewing their valuations. They are all very comfortable with the advice that they have provided the LDA.

I have asked for additional information and should have that next week. I do apologise for the delay. But as I said to you it is public money and I need to be able to justify any purchases.

I will ask Yuka to set up a time.

Regards DD

David Dawes | Director-General, Economic Development | Chief Executive Officer, Land Development Agency
Land Development Agency | Chief Minister, Treasury and Economic Development Directorate | ACT Government
Phone [02 6207 3331](tel:02 6207 3331) | Fax [02 6205 0386](tel:02 6205 0386) | david.dawes@act.gov.au
Level 7 TransACT House, [470 Northbourne Ave](#), Dickson | GPO [Box 158 Canberra ACT 2601](#)

From: [REDACTED]
Sent: Thursday, 12 November 2015 12:31 PM
To: Dawes, David <David.Dawes@act.gov.au>
Subject: RE: Mr Spokes

David

Based on our meeting 3 weeks ago tomorrow and your email of 23 October indicating you had “put the wheels in motion” and would get back to me the following week I had provided a positive report to Jillian and Martin.

I am now feeling the pressure from them to let them know what is happening and why progress is slower than I had lead them to believe would be the case.

So I can manage (and hopefully reduce) their understandable anxiety I would appreciate it if you could provide me with an update.

Thanks.

Regards

[REDACTED]

From: [REDACTED]
Sent: Monday, 9 November 2015 9:18 AM
To: 'Dawes, David'
Subject: RE: Mr Spokes

Hi David

I hope you had a good weekend.

I was following up to see if you could provide me with a short status update.

Thanks.

Regards

[REDACTED]

From: [REDACTED]
Sent: Friday, 23 October 2015 10:51 PM
To: 'Dawes, David'
Subject: RE: Mr Spokes

David

Excellent – thanks.

Regards

[REDACTED]

From: Dawes, David [<mailto:David.Dawes@act.gov.au>]
Sent: Friday, 23 October 2015 10:47 PM
To: [REDACTED]
Subject: Re: Mr Spokes

Thanks [REDACTED]

I have put the wheels in motion and will get back to you next week.

Regards DD.

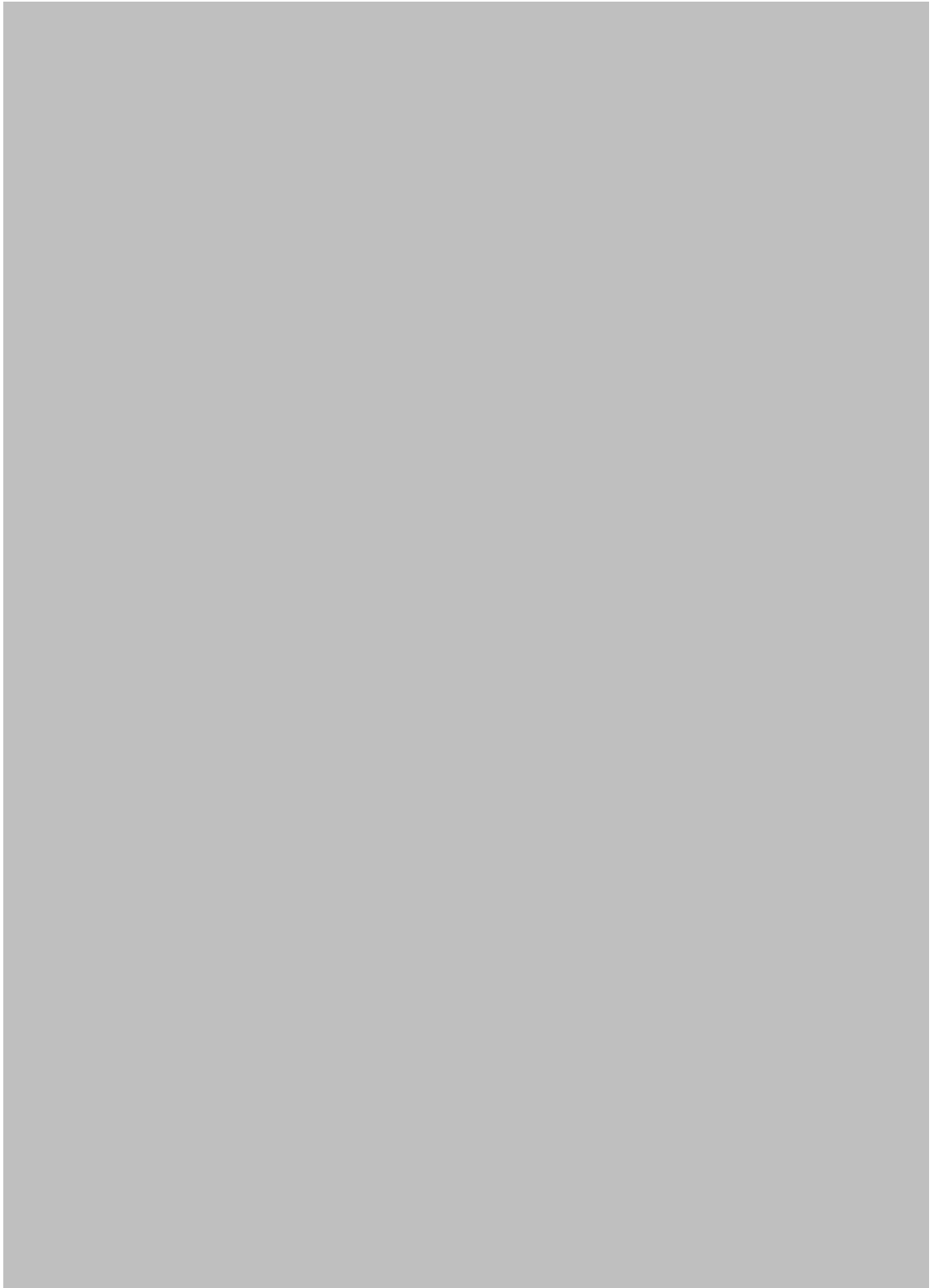
David Dawes | Director-General, Economic Development | Chief Executive Officer, Land Development Agency
Land Development Agency | Chief Minister, Treasury and Economic Development Directorate | ACT Government
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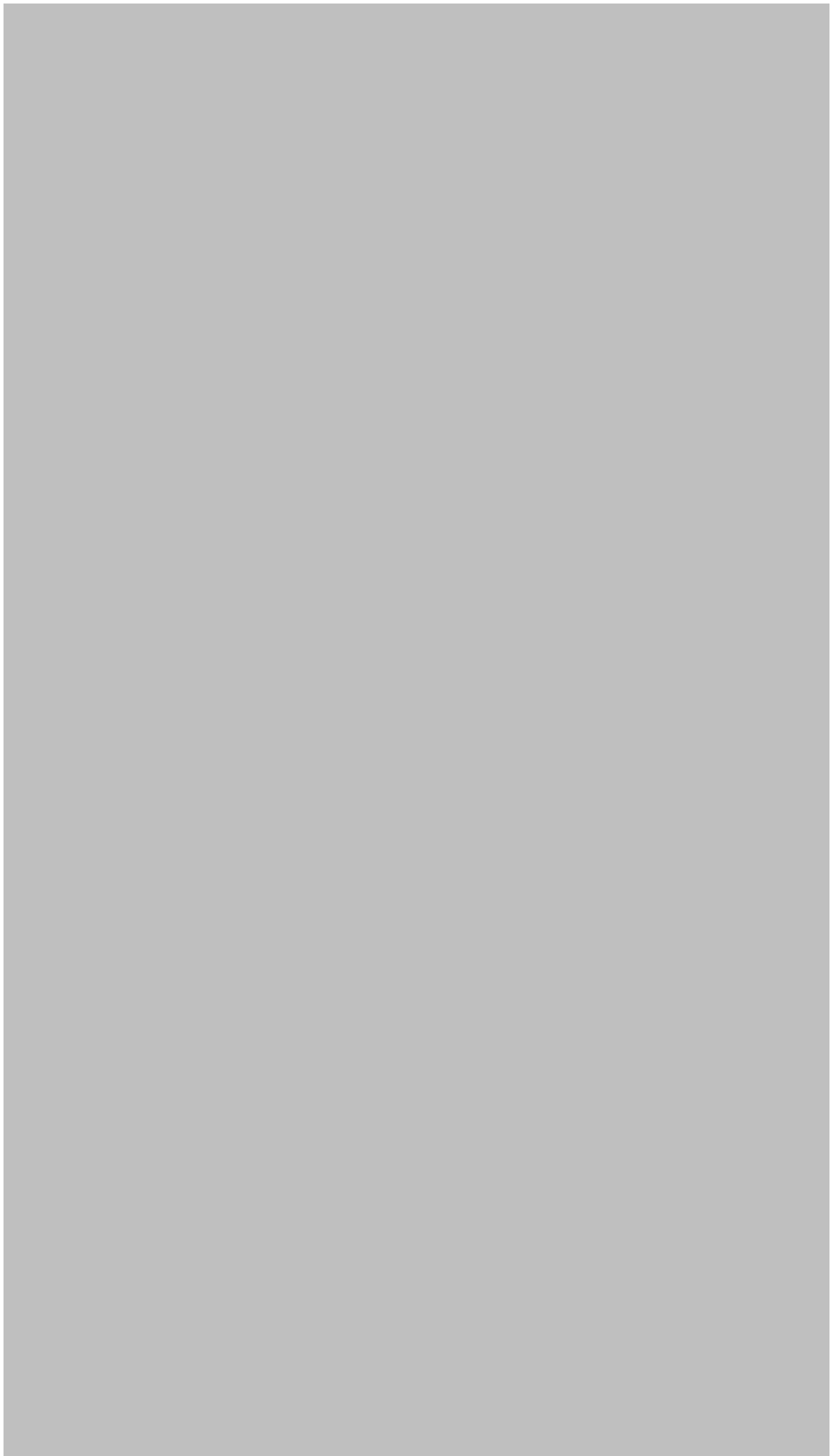
On 23 Oct 2015, at 10:41 PM, [REDACTED] wrote:

David

Thanks for making the time to meet me earlier today.

I appreciate that you were going to examine ways to increase the amount that you were able to offer as compensation. Some of the matters we discussed were:







In our meeting you indicated that you were going to have some discussions with the valuers and that you would try and get back to me next week. I repeat the offer I made in the meeting to discuss any matters with the valuers.

Regards



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From: [REDACTED]
To: [Dawes, David](#)
Subject: Acton land
Date: Monday, 30 November 2015 3:37:39 PM
Attachments: [image001.jpg](#)
[VCan3076 Acton 033 016 Letter Draft.pdf](#)

David, once you have read the draft advice give me a call.

Regards.

[REDACTED]
State Chief Executive | ACT
National Director | Valuation

Dir [REDACTED] | **Mob** [REDACTED]
Main [REDACTED] | **Fax** [REDACTED]
[REDACTED]

Colliers International

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Pirani, Yuka

Subject: Pre-meeting - Negotiation with [REDACTED]
Location: David Dawes' Office, Level 7 TransACT House, 470 Northbourne Ave, Dickson
Start: Wed 18/11/2015 3:30 PM
End: Wed 18/11/2015 4:00 PM
Recurrence: (none)
Meeting Status: Meeting organizer
Organizer: Dawes, David
Required Attendees: Dawes, David; Gray, David; Holt, Nicholas; Ponton, Ben; Hutch, Richard
Optional Attendees: Hudson, Nicholas

As per attached e-mail, I need to arrange a time for David Dawes to speak with [REDACTED] but David would like to speak with you first.



RE: Mr Spokes

Regards,
Yuka
X53143

Pirani, Yuka

Subject: Pre-meeting before [REDACTED]
Location: David Dawes' Office, Level 7 TransACT House
Start: Fri 27/11/2015 11:00 AM
End: Fri 27/11/2015 11:30 AM
Recurrence: (none)
Meeting Status: Meeting organizer
Organizer: Dawes, David
Required Attendees: Gray, David
Optional Attendees: Hutch, Richard; Hudson, Nicholas

Hi all

David asked for another pre-meeting with David Gray.

Nicholas/Richard: not sure if you attendance is required but for information.

Regards,
Yuka

Pirani, Yuka

Subject: Meeting with [REDACTED] / David Dawes
Location: David Dawes' Office, Level 7 TransACT House 470 Northbourne Ave, Dickson
Start: Fri 27/11/2015 11:30 AM
End: Fri 27/11/2015 12:30 PM
Recurrence: (none)
Organizer: Dawes, David

CONFIRMED

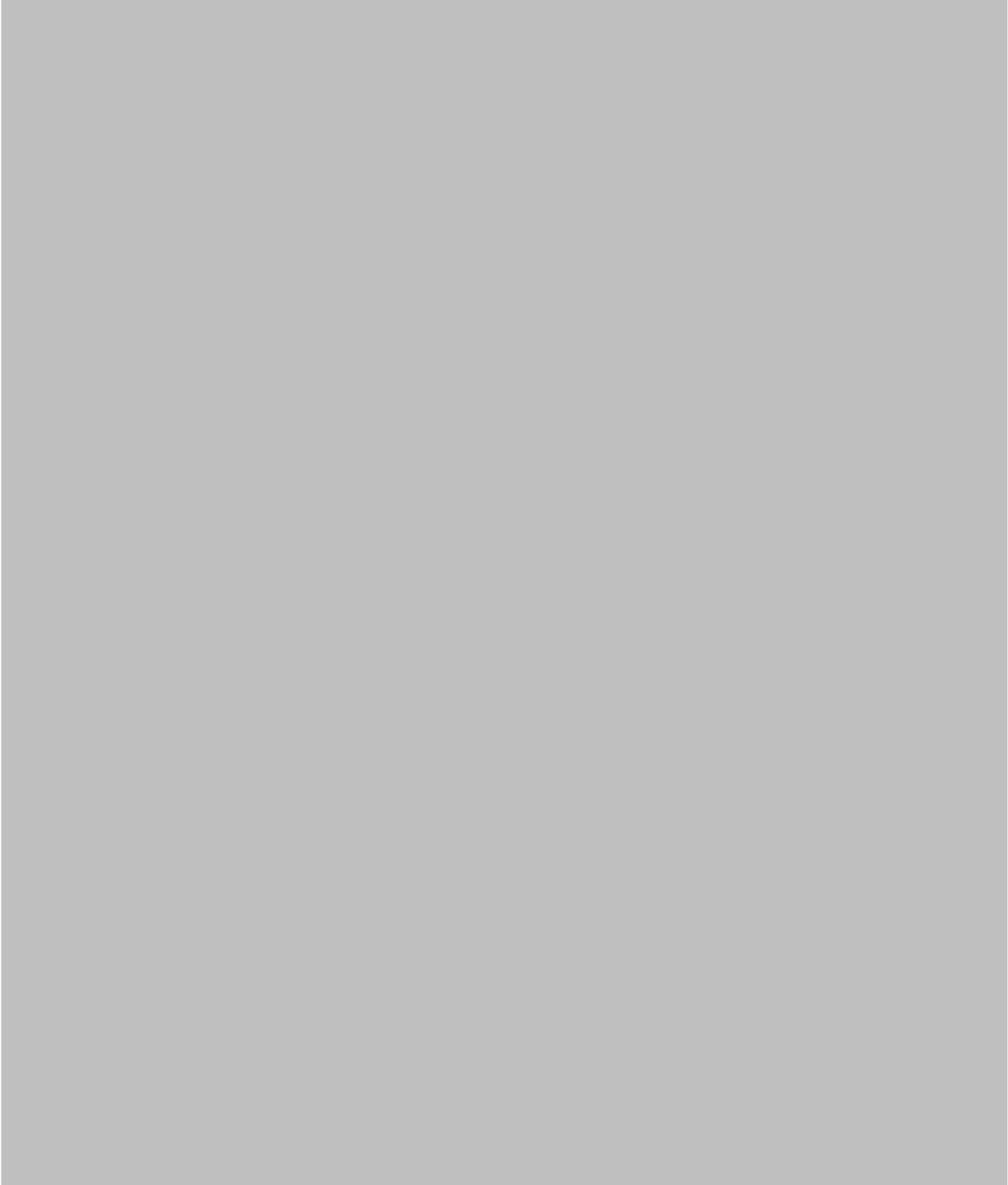
+ David Gray.

141.4.1 CHIEF EXECUTIVE'S REPORT

APRIL 2015



CEO Overview

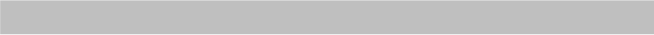





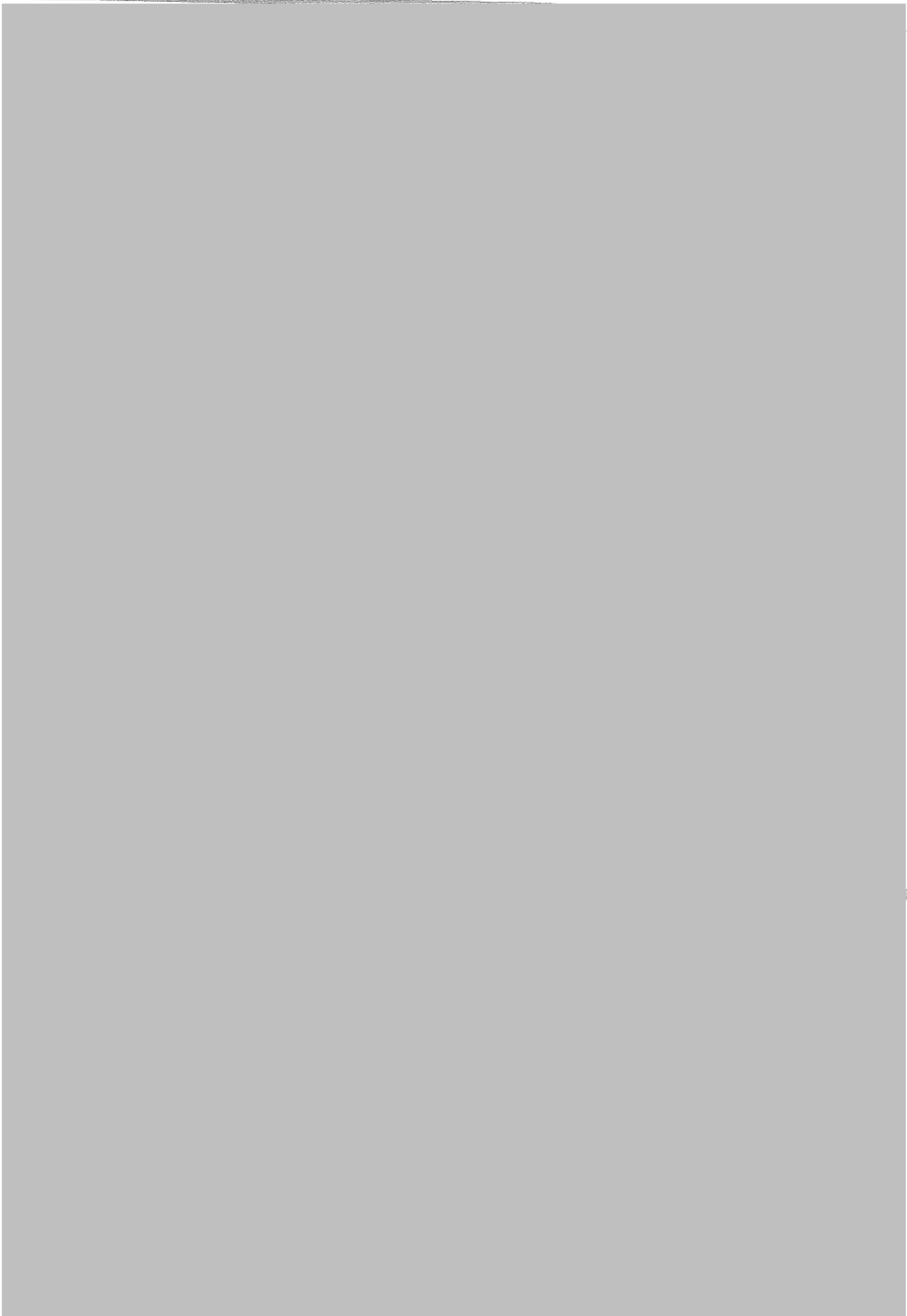


• **West Basin Compulsory Acquisition**

ACTN - B13 & B16

- The LDA is continuing to work closely with the West Basin lease holders (specifically Dobel Boat Hire and Mr Spokes) to reach terms that would see them vacate the site to enable development to proceed. 

- Contact with the lessees has, to date, not enabled agreement to be reached on relocation. While there has been some interest in exploring a negotiated settlement, initial discussions suggest there is likely to be a gap between what could be offered and what would be deemed acceptable by the lessees.







«

Gary Rake
Acting Chief Executive Officer
April 2015

«

From: [Roncon, Pamela](#)
To: [Saad, Monica](#)
Subject: RE: Blocks 13 and 16 Section 33 Acton
Date: Monday, 16 February 2015 4:02:54 PM

Thank you Monica

From: Saad, Monica
Sent: Monday, 16 February 2015 4:01 PM
To: Roncon, Pamela
Cc: Chapman, Maggie
Subject: RE: Blocks 13 and 16 Section 33 Acton

Dear Pamela

Audited statements are usually sought by the valuer when undertaking the rent reappraisal, however as the valuer does not require the audited statements for these 2 properties to undertake the rent reappraisal, they were not sought.

Regards

Monica Saad | Manager - General Leasing | Lease Administration

Phone 02 6207 2112

Planning Delivery Division | Environment and Planning | **ACT Government**

Dame Pattie Menzies House, Challis Street, Dickson | GPO Box 158 Canberra ACT 2601 | www.planning.act.gov.au

From: Roncon, Pamela
Sent: Monday, 16 February 2015 12:12 PM
To: Saad, Monica
Cc: Gray, David
Subject: RE: Blocks 13 and 16 Section 33 Acton

Hey Monica

The LDA has instructed Valuers to value both leases and businesses at West Basin. Can you please advise if EPD requested audited statements from either lessees at West Basin (Dobell Boat Hire and MS&JE Shanahan) for their latest rent reviews.

I look forward to hearing from you.

Pam

Pamela Roncon

Manager| City to the Lake

Land Development and Corporate

Phone 612 620 75378 | Fax 612 620 76110

Land Development Agency

Chief Minister Treasury & Economic Development Directorate | ACT Government

Level 7 | TransACT Building | 470 Northbourne Avenue Dickson ACT 2601

GPO Box 158 Canberra ACT 2601 | www.lda.act.gov.au

From: [Saad, Monica](#)
To: [Roncon, Pamela](#)
Subject: RE: West Basin Leases
Date: Thursday, 19 February 2015 3:12:00 PM

Dear Pamela

As the two blocks lie within Designated Land all building approvals would be lodged with the National Capital Authority (NCA) for approval. Therefore, NCA should have the information regarding improvements.

Sorry I can't be of any further assistance.

Regards

Monica Saad | Manager - General Leasing | Lease Administration

Phone 02 6207 2112

Planning Delivery Division | Environment and Planning | **ACT Government**

Dame Pattie Menzies House, Challis Street, Dickson | GPO Box 158 Canberra ACT 2601 | www.planning.act.gov.au

From: Roncon, Pamela
Sent: Wednesday, 18 February 2015 2:46 PM
To: Saad, Monica
Cc: Gray, David
Subject: West Basin Leases

Hey Monica

The LDA have now engaged three valuers ([REDACTED] MMJ, [REDACTED] PWC and [REDACTED] HTW) to undertake valuations of the existing Crown leases at West Basin. It is anticipated that the valuations will be complete by the end of the week.

I have been asked by one of the valuers if either lessee has undertaken improvements on the properties and if they are approved improvements (in accordance with the lease terms and conditions) Can you please advise me if either lessee MS&JE Pty Ltd (Block 13/33 Acton or Dobel Boat Hire Pty Ltd(Lake Burley Griffin Boat Hire) Block 16/33 Acton) have undertaken approved improvements.

I look forward to hearing from you

Pamela Roncon

Manager| City to the Lake

Land Development and Corporate

Phone 612 620 75378 | Fax 612 620 76110

Land Development Agency

Chief Minister Treasury & Economic Development Directorate | ACT Government

Level 7 | TransACT Building | 470 Northbourne Avenue Dickson ACT 2601

GPO Box 158 Canberra ACT 2601 | www.lda.act.gov.au

From: [Hutch, Richard](#)
To: [Saad, Monica](#)
Subject: FW: Rent Reappraisal - BLOCK 13 SECTION 33 ACTON
Date: Thursday, 19 March 2015 5:29:43 PM

Monica – just reviewing some emails cc'd to me from Pam [REDACTED] I think she's asked for the same information a few weeks ago.

If you've responded to her – apologies. [REDACTED], so if you could forward any response to me, that would help.

Thanks

Richard

From: Hutch, Richard
Sent: Monday, 16 March 2015 5:40 PM
To: Saad, Monica
Subject: RE: Rent Reappraisal - BLOCK 13 SECTION 33 ACTON

Monica – thank you. This has been very helpful.

Some questions if I may.

These financial records appear to relate to determination for the lease period 2009-2012. I'm in possession of a letter from Sharon Harmer to JE & MS Pty (16 May 2012) in relation to the determination for the period 1/7/2012 to 31/5/2015. Were you provided with financial records for that determination and are you able to provide them to me?

Similarly – I understand from our discussion that the annual rental is assessed based on a valuation of the lease (not the business). If I'm correct, are you able to provide me with a copy of the valuation for the period to 31/5/2015?

Separately – are you able to provide me with financial records for Dobel (Block 16 - if they were provided) and the valuation, for the 3 year period concluding 25 August 2017?

These would greatly assist me and would be treated with the appropriate sensitivity.

Regards

Richard

From: Saad, Monica
Sent: Monday, 16 March 2015 4:12 PM
To: Hutch, Richard
Subject: RE: Rent Reappraisal - BLOCK 13 SECTION 33 ACTON

Dear Richard

As discussed, please find attached the audited statement for Block 13 Section 33 Acton for the year 2009.

Regards

Monica Saad | Manager - General Leasing | Lease Administration

Phone 02 6207 2112

Planning Delivery Division | Environment and Planning | **ACT Government**

Dame Pattie Menzies House, Challis Street, Dickson | GPO Box 158 Canberra ACT 2601 | www.planning.act.gov.au

From: Hutch, Richard

Sent: Monday, 16 March 2015 2:20 PM

To: Saad, Monica

Cc: Xirakis, Tim

Subject: FW: Rent Reappraisal - BLOCK 13 SECTION 33 ACTON

Monica – could you please call me to discuss as soon as you have a moment?

Regards

Richard Hutch | Deputy Project Director | City to the Lake |

Land Development Agency | Chief Minister, Treasury and Economic Development Directorate |

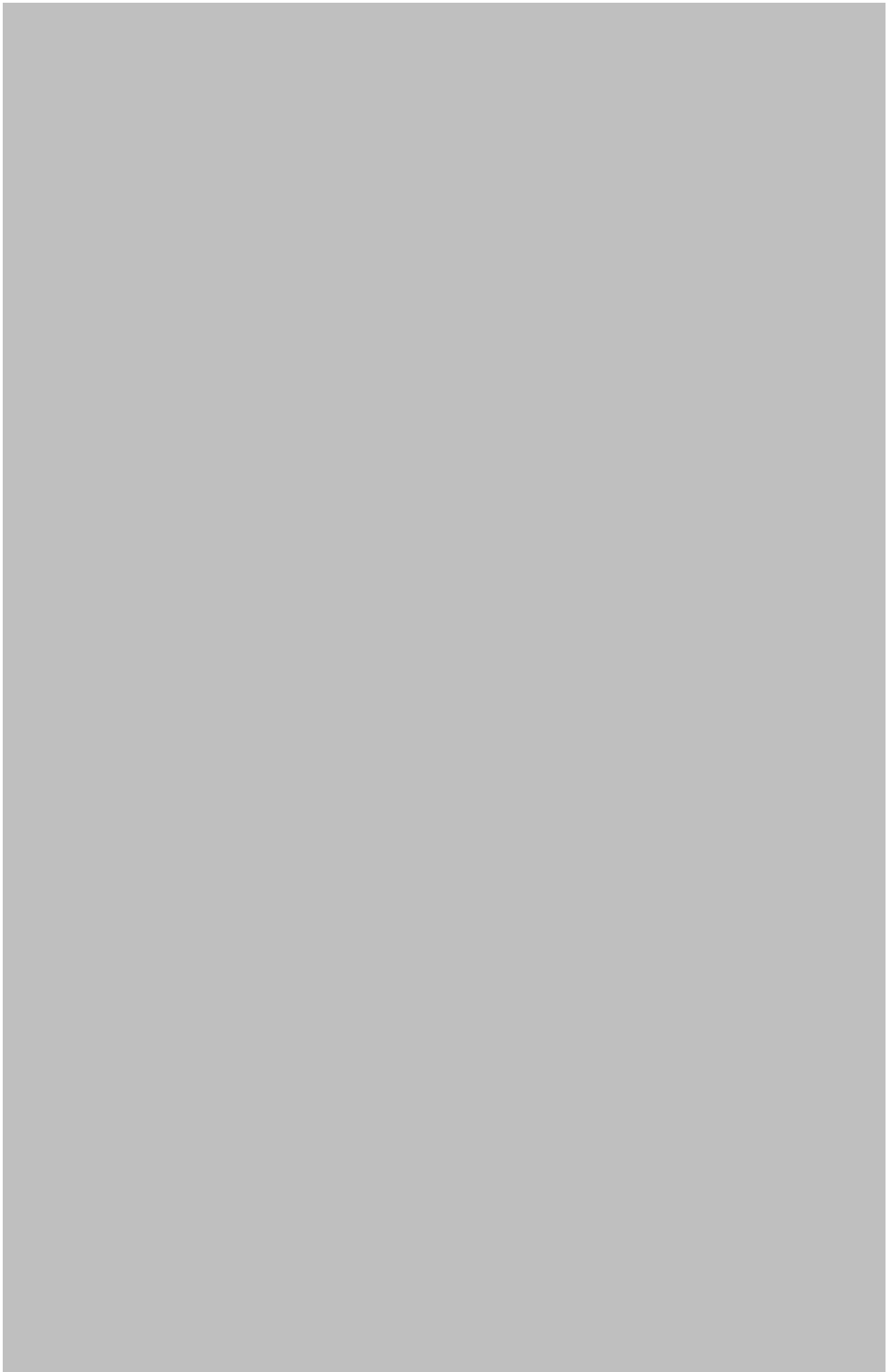
ACT Government |

(BH) ☎ 02 6207 9956 | (M) ☎ [REDACTED] | ✉ richard.hutch@act.gov.au

TransACT House, 470 Northbourne Avenue, Dickson | GPO Box 158 Canberra ACT 2601 |

www.citytolake.com.au





From: Stephenson, Maggie
Sent: Monday, 23 February 2015 3:41 PM
To: [REDACTED]
Subject: Rent Reappraisal - BLOCK 13 SECTION 33 ACTON

Hi Jillian

As discussed, please see attached financial statements in regards to your 2009 reappraisal.

If you require anything further please do not hesitate to call me on my direct line 6207 1657.

Many thanks

Maggie Stephenson | Lease Administration

Phone 02 6207 1657 |

Planning Delivery Division | Environment and Planning | **ACT Government**

Dame Pattie Menzies House, Challis Street, Dickson | GPO Box 158 Canberra ACT 2601 |

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ACT
Government

DEED OF SURRENDER OF CROWN LEASE

Dated

17 December 2015

Parties

AUSTRALIAN CAPITAL TERRITORY

**THE PLANNING AND LAND
AUTHORITY**

**DOBEL BOAT HIRE PTY LTD
ACN 008 492 144**

Prepared by

ACT Government Solicitor
Level 6, 12 Moore Street
Canberra ACT 2601
Australia
Ph: (02) 6205 3494
Fax: (02) 6207 0650
Ref: 626510:KA

Version

Final 14/12/2015

CONTENTS

1.	Interpretation	1
2.	Consideration	4
3.	Agreement to surrender Lease.....	5
4.	Parties' Costs	7
5.	GST.....	7
6.	Notices and other communications	8
7.	General	9
	SCHEDULE 1 – Reference Schedule	11
	SCHEDULE 2 – Crown lease.....	13
	SCHEDULE 3 - Condition and use terms	14

PARTIES: **AUSTRALIAN CAPITAL TERRITORY**, the body politic established by section 7 of the *Australian Capital Territory (Self-Government) Act 1988* (Cth) (**Territory**) represented by the Chief Minister, Treasury and Economic Development Directorate.

PLANNING AND LAND AUTHORITY, the body corporate established by section 10 of the *Planning and Environment Act 2007* (ACT) for and on behalf of the Commonwealth of Australia (**Authority**).

DOBEL BOAT HIRE PTY LTD ACN 008 492 144



BACKGROUND

- A. Pursuant to the Lease, the Authority (on behalf of the Commonwealth of Australia) leases the Land to the Lessee.
- B. The Lessee has agreed to surrender the Lease with effect from the Surrender Date.
- C. The parties have otherwise agreed to the surrender of the Lease on the terms of this Deed.

IT IS AGREED by the parties as follows.

1. Interpretation

1.1 Definitions

The following definitions apply in this Deed, unless the context otherwise requires. Additional definitions also appear in the Reference Schedule.

ACT Building Legislation means the *Building Act 1972* (ACT), the *Building Act 2004* (ACT), the *City Area Leases Act 1936* (ACT), the *Leases Act 1918* (ACT), the *Leases (Special Purposes) Act 1925* (ACT), the *Buildings (Design and Siting) Act 1964* (ACT), the *Land (Planning and Environment) Act 1991* (ACT), the *Planning and Development Act 2007* (ACT), the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth) and the *National Lands Ordinance 1989* (Cth) (and any laws having effect by virtue of that Ordinance), and regulations made pursuant to that legislation, and their predecessors and substitutes.

Authorised Officer means a director or secretary of a party or any other person appointed by a party to act as an authorised officer for the purposes of this Deed.

Business Day	means a day on which banks are open for general banking business in the capital city of the State or Territory in which the Land is situated (not being a Saturday, Sunday or public holiday in that city).
Claim	means a claim, notice, demand, action, proceeding, litigation, investigation or judgment however arising, whether present or future, actual or contingent, and whether involving a third party or a party to this Deed.
Completion	means completion of the surrender of the Lease in accordance with this Deed.
Costs	includes costs, charges and expenses, including those incurred in connection with advisers.
Corporations Act	means the <i>Corporations Act 2001</i> (Cth).
Deed	means this deed and all schedules and attachments annexed to it.
Deposit	means the amount set out at Item 5 of the Reference Schedule.
Deposit Date	means the date set out at Item 6 of the Reference Schedule.
Goods	means plant, equipment, chattels, fixtures and fittings on the Land.
GST Act	means <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
Land	means the land set out at Item 2 of the Reference Schedule.
Land Charges	means general rates and water and sewerage rates.
Lease	means the lease set out at Item 3 of the Reference Schedule.
Planning Act	means the <i>Planning and Development Act 2007</i> (ACT).
Property	means the Lease, the Goods and the Land.
Reference Schedule	means the reference schedule contained in Schedule 1.

Stakeholder	means Aulich Civil Law.
Sublease	means the sublease entered into between the Lessee and Jim and Cony Seears in respect of the Land.
Surrender Sum	means the amount set out at Item 7 of the Reference Schedule
Territory	means: <ul style="list-style-type: none"> (a) when used in a geographical sense, the Australian Capital Territory; and (b) when used in any other sense, the body politic established by section 7 of the <i>Australian Capital Territory (Self-Government) Act 1988</i> (Cth).

1.1 References to certain general terms

Unless the contrary intention appears in this Deed:

- (1) a reference to a document (including this Deed) includes any variation or replacement of it;
- (2) a reference to a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this Deed;
- (3) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re enactments or replacements of any of them;
- (4) the word “law” includes common law, principles of equity, and laws made by parliament (and laws made by parliament include State, Territory and Commonwealth laws and regulations and other instruments under them, and consolidations, amendments, re enactments or replacements of any of them);
- (5) the singular includes the plural and vice versa;
- (6) the word “person” includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association, or any authority;
- (7) a reference to a particular person includes a reference to the person’s executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (8) a reference to a body or authority includes a reference, if that body or authority ceases to exist, to the body or authority which has substantially the same functions and objects as the first body or authority;

- (9) an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and each of them individually;
- (10) an agreement, representation or warranty by two or more persons binds them jointly and each of them individually;
- (11) a reference to a group of persons or things is a reference to any two or more of them jointly and to each of them individually;
- (12) a reference to Australian dollars, dollars, A\$ or \$ is a reference to the lawful currency of Australia;
- (13) if a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (14) a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (15) a reference to accounting standards is a reference to the accounting standards as defined in the Corporations Act, and a reference to an accounting term is a reference to that term as it is used in those accounting standards, or, if not inconsistent with those standards, in accounting principles and practices generally accepted in Australia;
- (16) the words “including”, “for example” or “such as” when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind;
- (17) if an act under this Deed to be done by a party on or by a given day is done after 5.00pm on that day, it is taken to be done on the next day;
- (18) a reference to time is a reference to time in the State or Territory in which the Land is situated; and
- (19) a reference to anything (including any amount) is a reference to the whole and each part of it.

1.2 Headings

Headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this Deed.

2. Consideration

2.1 Valuable Consideration

Each party acknowledges entering into this Deed and incurring obligations and giving rights under this Deed for valuable consideration received from each other party.

3. Agreement to surrender Lease

3.1 Surrender of Lease

With effect from the Surrender Date, the Lessee as beneficial owner agrees to surrender to the Authority free of encumbrances all the Lessee's estate, title and interest in the Lease and the Land.

3.2 Acceptance of surrender of Lease

The Authority agrees to accept the surrender of the Lease from the Surrender Date under section 293 of the Planning Act.

3.3 Lessee Acknowledgement

The Lessee:

- (1) acknowledges that the Surrender Sum and all amounts payable by the Territory under clauses 3.7 ("Deposit"), 3.10 ("Obligations on Completion") and 3.11 ("Adjustments"), constitute payment by the Territory and the Authority of every amount payable to the Lessee upon surrender of the Lease, including for the improvements on the Land, in particular any amounts due to be paid to the Lessee under sections 291 and 293 of the Planning Act; and
- (2) agrees not to make any Claim for, or take any action against, the Territory or the Authority to recover any monies in addition to those amounts regarding the surrender of the Lease, including any Claim under sections 291 or 293 of the Planning Act.

3.4 Lessee's goods and improvements

The Goods located on the Land at Completion become the property of the Territory except any which are not owned by the Lessee.

3.5 No warranties by Lessee

The Lessee does not make any representation or warranty in relation to the condition of the Land and the Goods, and the Territory accepts them in their state of repair and condition at Completion.

3.6 Condition and use

The parties agree that the Lease is surrendered subject to the terms in **Schedule 3**.

3.7 Deposit

On the Deposit Date:

- (1) The Territory must pay the Deposit to the Stakeholder; and
- (2) The Lessee must provide the Territory with the forms for the surrender of the Lease, executed by the Lessee and any other document or consent required to register the forms of surrender to be held in escrow by the Territory pending

Completion.

3.8 Date for Completion

The parties will complete the surrender of the Lease on or before the Surrender Date.

3.9 Place and time for Completion

Unless otherwise agreed Completion is to take place:

- (1) at the ACT Settlement Rooms, being the rooms designated for property settlements located at Level 1, 1 Farrell Place, Canberra; and
- (2) at a time before 3.00pm nominated by the Territory.

3.10 Obligations on Completion

On Completion:

provided the Lessee has complied with its obligations under clause 3.7(2), the Territory must provide the Lessee with a copy of the forms for surrender of the Lease executed by the Territory and endorsed by the Authority;

- (1) the Territory must pay the Surrender Sum (minus the Deposit paid) to the Lessee:
 - (a) by cheque drawn on the Territory's bank account; and
 - (b) as the Lessee or the Stakeholder directs;
- (3) the Lessee must pay all rent due to be paid under the Lease to the Authority as at the Completion date; and
- (4) the Territory must pay \$15,336 (including GST) together with an apportionment for December 2015 rental as agreed between the parties towards the payment of outstanding rental arrears owed to the Lessee under the Sublease.

3.11 Adjustments

The Territory and the Lessee agree to make all necessary adjustments of amounts payable by the Lessee for Land Charges, on the Surrender Date as if the Territory were responsible for Land Charges arising after the Surrender Date. If an amount cannot be adjusted because it is not known, the Territory and the Lessee agree to make the adjustment within 14 days after the amount is known.

3.12 Release

- (1) The Territory and the Authority agrees to release and forever discharge the Lessee from all Claims and Costs concerning the Lessee's obligations under the Lease arising on and from the Surrender Date.
- (2) The Lessee agrees to release and forever discharge the Territory and the Authority from all Claims and Costs concerning the Lease, the use or occupation of the

Premises or any incidental matter, arising up to the Surrender Date.

3.13 Obligations after Completion

The Lessee agrees to provide all reasonable assistance to enable the Territory to register the surrender of the Lease after completion, including answering any requisitions raised by Access Canberra (Land Titles and Rental Bonds) or the Authority.

4. Parties' Costs

The parties agree to bear their own costs in connection with the preparation and negotiation of this Deed and any document or matter in connection with it.

5. GST

5.1 GST definitions

In this clause:

GST, Taxable Supply, Input Tax Credit, Supply and Tax Invoice have the same meaning as in the Act;

GST Rate means 10% or if the rate at which GST is calculated under the GST Act changes, the rate applicable at the relevant time.

Payment includes consideration in the form of money given or received and in a form other than money given or received.

5.2 Payment of GST

A party making Payment to another party for a Taxable Supply under this Deed must pay to the other party at the same time, an additional amount equal to the amount of the Payment multiplied by the GST Rate.

5.3 Reimbursements

When calculating the amount of:

- (a) any reimbursement to a party under this Deed; and
- (b) the indemnification under this Deed of an expense, loss or liability incurred or to be incurred by that party,

the other party may include the GST paid or payable on the Supply giving rise to the amount, but if that party includes the GST that party must deduct the amount of any Input Tax Credit from the amount paid.

5.4 Tax invoice

A party receiving a Payment of GST under this clause must provide a Tax Invoice to the party making the Payment before or at the same time as the Payment is received.

6. Notices and other communications

6.1 Form

Unless expressly stated otherwise in this Deed, all notices, certificates, consents, approvals, waivers and other communications in connection with this Deed must be in writing, signed by the sender (if an individual) or an Authorised Officer, or the solicitor, of the sender and marked for the attention of the person identified in the Reference Schedule or, if the recipient has notified otherwise, then marked for attention in the way last notified.

6.2 Delivery

Communications must be:

- (1) left at the address set out or referred to in the Reference Schedule; or
- (2) sent by prepaid ordinary post (airmail, if appropriate) to the address set out or referred to in the Reference Schedule; or
- (3) sent by fax to the fax number set out or referred to in the Reference Schedule; or
- (4) given in any other way permitted by law.

However, if the intended recipient has notified a changed address or changed fax number, then communications must be to that address or number.

6.3 When effective

Communications take effect from the time they are received or taken to be received under clause 6.4 (“When taken to be received”) (whichever happens first) unless a later time is specified.

6.4 When taken to be received

Communications are taken to be received:

- (1) if left at the address set out or referred to in the Reference Schedule, on that day;
- (2) if sent by post, three days after posting (or seven days after posting if sent from one country to another); or
- (3) if sent by fax, at the time shown in the transmission report as the time that the whole fax was sent.

6.5 Receipt outside business hours

Despite clauses 6.3 (“When effective”) and 6.4 (“When taken to be received”), if communications are received or taken to be received under clause 6.4 after 5.00pm in the place of receipt or on a non-Business Day, they are to be taken to be received at 9.00am on the next Business Day and take effect from that time unless a later time is specified.

7. General

7.1 Payments

The parties agree to make payments under this Deed in full without set-off (including equitable set-off) or counterclaim and without any deduction.

7.2 No merger

The warranties, undertakings and indemnities in this Deed do not merge on the Surrender Date.

7.3 Variation and waiver

A provision of this Deed, or a right created under it, may not be waived or varied except in writing signed by the party or parties to be bound.

7.4 Confidentiality

Each party agrees not to disclose information provided by any other party that is not publicly available (including the existence or contents of this Deed) except:

- (1) to any person in connection with an exercise of rights or a dealing with rights or obligations under the Lease or this Deed; or
- (2) to officers, employees, legal and other advisers and auditors of the parties; or
- (3) with the consent of the party who provided the information (such consent not to be unreasonably withheld); or
- (4) as required by any law or stock exchange; or
- (5) as required by law; or
- (6) in the case of the Territory and the Authority, to any Minister of the Territory or to the Legislative Assembly or any of its bodies or committees; or
- (7) as required to give effect to the surrender of the Lease.

Each party consents to disclosures made in accordance with this clause 7.4 however for the avoidance of doubt the Territory and the Lessee expressly agrees not to disclose the detail of the Surrender Sum to any party except in accordance with this clause.

7.5 Counterparts

This Deed may consist of a number of copies, each signed by one or more parties to this Deed. If so, the signed copies are treated as making up the one document.

7.6 Entire agreement

This Deed constitutes the entire agreement of the parties about the surrender of the Lease and supersedes all previous agreements, understandings and negotiations. The Territory

and the Authority agree that in entering into this Deed they have not relied on any representation or warranty about its subject matter except those included in this Deed.

7.7 Construction

No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, this Deed any part of it.


7.8 Further assurances

Each party agrees, at its own expense, on the request of another party, to do everything reasonably necessary to give effect to this Deed and the transactions contemplated by it, including by signing documents.

SCHEDULE 1 – Reference Schedule

- Item 1:** Lessee: Dobel Boat Hire Pty Ltd ACN 008 492 144
ABN 79 008 492 144
- Item 2:** Land: Block 16 Section 33 Division of Acton
- Item 3:** Lease: Lease granted pursuant to the *Land (Planning and Environment) Act 1991 (ACT)* by the Commonwealth to the Lessee over the Land and entered in register Book Volume 1866 Folio 11, a copy of which is contained in Schedule 2.
- Item 4:** Surrender Date: The date which is 30 days after the date of this Deed (or such earlier date as is agreed between the parties)
- Item 5:** Deposit: \$10 (receipt of which is acknowledged)
- Item 6:** Deposit Date: the date of this Deed.
- Item 7:** Surrender Sum: \$1,000,000.00 (excluding GST) comprising:
(a) all statutory compensation payable under sections 291 and 293 of the Planning Act; and
(b) consideration for the surrender of the Lease.
- Item 8:** Governing law: Australian Capital Territory
- Item 9:** Address for Notices: **Territory:**
Chief Minister, Treasury and Economic
Development Directorate
Ground Floor, TransACT House
470 Northbourne Avenue
Dickson ACT 2602

Contact Officer: Nicholas Hudson

Lessee:
Dobel Boat Hire Pty Ltd


Contact Officer: Pat Sears

Authority:
Dame Pattie Menzies House
16 Challis Street

Dickson ACT 2602

Contact Officer: Maggie Chapman

SCHEDULE 2 – Crown lease

SCHEDULE 3 - Condition and use terms

Item 1 As is, where is

The Territory and the Authority acknowledge that the Lessee surrenders the Property on an “as is, where is” basis, in its present state and condition, including:

- (1) any legal and physical defects; and
- (2) any matter referred to in this Deed.

Item 2 Inspection

The Territory confirms it:

- (1) is satisfied as to the nature, quality, condition and state of repair of the Property; and
- (2) accepts the Property as it is including all defects (latent or patent) including any matter referred to in this Deed; and
- (3) is satisfied about the purposes for which the Property may be used and about all restrictions and prohibitions on its use and development.

Item 3 Due Diligence

The Territory acknowledges and agrees that:

- (1) before entering into this Deed, the Lessee gave the Territory a reasonable opportunity to inspect the Property; and
- (2) the Territory has entered into this Deed on the basis that it has carried out, or had the opportunity to carry out, its due diligence of the Property.

Item 4 Territory has satisfied itself about specific matters

The Territory acknowledges that it has satisfied itself in connection with the matters arising from its due diligence, including in connection with and enquiries about:

- (1) the title to the Property, including easements, restrictions on use and other encumbrances which benefit or burden the Property; and
- (2) the Lessee’s title to the Property and its rights and obligations in connection with it, including the terms of the Lease; and
- (3) the accuracy of the description of the Property; and
- (4) the matters referred to in Item 1 (“As is, where is”) and Item 2 (“Inspection”) of this schedule; and

- (5) the use, fitness or suitability of the Property for any purpose; and
- (6) the means of access to the Property; and
- (7) whether the walls or fences on the land that should not be on the boundaries of the Property, as the case may be, are not and the existence of any encroachments onto the Property or by the Property onto adjacent land (and whether the encroachments are subject to any registered easement or other agreement burdening or benefitting the Property); and
- (8) whether the Property complies with any laws and requirements of Authorities affecting the Property (including any use) and any non-compliance including the ACT Building Legislation; and
- (9) the existence or otherwise of any requirements of any Authority in connection with the Property, including resumptions, road dedications, road widenings and similar things; and
- (10) the existence or otherwise of necessary consents, approvals, licences or requirements of Authorities in connection with the Property (including its use) and any non-compliance with those consents, approvals, licences or requirements; and
- (11) whether there are any notices or orders by any Authority, including a notice or order requiring work to be done or money spent in connection with the Property; and
- (12) the existence of any claim for an interest in the Property under the *Native Title Act 1993* (Cth), the *Native Title Act 1994* (ACT) or any other native title law; and
- (13) the existence of easements or other rights in respect of a service for the Property (including air, communication, drainage, electricity, garbage, gas, oil, radio, sewerage, telephone, television or water) which is a joint service or which passes through another property, or any service for another property which passes through the Property; and
- (14) the condition or existence or non-existence of services; and
- (15) any approval, application for an approval or order under any law; and
- (16) the terms and conditions of the Lease and any non-compliance with those terms and conditions; and
- (17) the ownership or location of any fuel storage tank or facility.

Item 5 No claims or requisitions

The Territory accepts the surrender of the Lease subject to the matters referred to, disclosed or described under this Deed.

SIGNED AS A DEED ON 17 December 2015 2015

SIGNED for and on behalf of the
AUSTRALIAN CAPITAL
TERRITORY in the presence of:

) [Redacted]
) [Redacted]
) Signature of Territory delegate

[Redacted]
Signature of witness

) LIZ LOPA
) Print name

) NICHOLAS HUDSON
) Print name

EXECUTED by the authorised
representative for THE PLANNING
AND LAND AUTHORITY in the
presence of:

) [Redacted]
) [Redacted]
) By executing this Deed the
) signatory warrants that the signatory
) is duly authorised to execute this
) Deed on behalf of The Planning and
) Land Authority

[Redacted]
Signature of witness

) Monica Saad
) Name of witness

) Maggie Chapman
) Print name

EXECUTED by the DOBEL
BOAT HIRE PTY LTD ACN 008
492 144 in accordance with section
127 of the Corporations Act 2001:

)
) Signature of Director
)
) Print name

)
) Signature of Director/Company
) Secretary
)
) Print name



ACT
Government

DEED OF SURRENDER OF CROWN LEASE

Dated

17 December 2015

Parties

AUSTRALIAN CAPITAL TERRITORY

**THE PLANNING AND LAND
AUTHORITY**

**DOBEL BOAT HIRE PTY LTD
ACN 008 492 144**

Prepared by

ACT Government Solicitor
Level 6, 12 Moore Street
Canberra ACT 2601
Australia
Ph: (02) 6205 3494
Fax: (02) 6207 0650
Ref: 626510:KA

Version

Final 14/12/2015

CONTENTS

1.	Interpretation	1
2.	Consideration	4
3.	Agreement to surrender Lease.....	5
4.	Parties' Costs	7
5.	GST.....	7
6.	Notices and other communications	8
7.	General	9
	SCHEDULE 1 – Reference Schedule	11
	SCHEDULE 2 – Crown lease.....	13
	SCHEDULE 3 - Condition and use terms	14

PARTIES: **AUSTRALIAN CAPITAL TERRITORY**, the body politic established by section 7 of the *Australian Capital Territory (Self-Government) Act 1988* (Cth) (**Territory**) represented by the Chief Minister, Treasury and Economic Development Directorate.

PLANNING AND LAND AUTHORITY, the body corporate established by section 10 of the *Planning and Environment Act 2007* (ACT) for and on behalf of the Commonwealth of Australia (**Authority**).

DOBEL BOAT HIRE PTY LTD ACN 008 492 144



BACKGROUND

- A. Pursuant to the Lease, the Authority (on behalf of the Commonwealth of Australia) leases the Land to the Lessee.
- B. The Lessee has agreed to surrender the Lease with effect from the Surrender Date.
- C. The parties have otherwise agreed to the surrender of the Lease on the terms of this Deed.

IT IS AGREED by the parties as follows.

1. Interpretation

1.1 Definitions

The following definitions apply in this Deed, unless the context otherwise requires. Additional definitions also appear in the Reference Schedule.

ACT Building Legislation means the *Building Act 1972* (ACT), the *Building Act 2004* (ACT), the *City Area Leases Act 1936* (ACT), the *Leases Act 1918* (ACT), the *Leases (Special Purposes) Act 1925* (ACT), the *Buildings (Design and Siting) Act 1964* (ACT), the *Land (Planning and Environment) Act 1991* (ACT), the *Planning and Development Act 2007* (ACT), the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth) and the *National Lands Ordinance 1989* (Cth) (and any laws having effect by virtue of that Ordinance), and regulations made pursuant to that legislation, and their predecessors and substitutes.

Authorised Officer means a director or secretary of a party or any other person appointed by a party to act as an authorised officer for the purposes of this Deed.

Business Day	means a day on which banks are open for general banking business in the capital city of the State or Territory in which the Land is situated (not being a Saturday, Sunday or public holiday in that city).
Claim	means a claim, notice, demand, action, proceeding, litigation, investigation or judgment however arising, whether present or future, actual or contingent, and whether involving a third party or a party to this Deed.
Completion	means completion of the surrender of the Lease in accordance with this Deed.
Costs	includes costs, charges and expenses, including those incurred in connection with advisers.
Corporations Act	means the <i>Corporations Act 2001</i> (Cth).
Deed	means this deed and all schedules and attachments annexed to it.
Deposit	means the amount set out at Item 5 of the Reference Schedule.
Deposit Date	means the date set out at Item 6 of the Reference Schedule.
Goods	means plant, equipment, chattels, fixtures and fittings on the Land.
GST Act	means <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
Land	means the land set out at Item 2 of the Reference Schedule.
Land Charges	means general rates and water and sewerage rates.
Lease	means the lease set out at Item 3 of the Reference Schedule.
Planning Act	means the <i>Planning and Development Act 2007</i> (ACT).
Property	means the Lease, the Goods and the Land.
Reference Schedule	means the reference schedule contained in Schedule 1.

Stakeholder	means Aulich Civil Law.
Sublease	means the sublease entered into between the Lessee and Jim and Cony Seears in respect of the Land.
Surrender Sum	means the amount set out at Item 7 of the Reference Schedule
Territory	means: <ul style="list-style-type: none"> (a) when used in a geographical sense, the Australian Capital Territory; and (b) when used in any other sense, the body politic established by section 7 of the <i>Australian Capital Territory (Self-Government) Act 1988</i> (Cth).

1.1 References to certain general terms

Unless the contrary intention appears in this Deed:

- (1) a reference to a document (including this Deed) includes any variation or replacement of it;
- (2) a reference to a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this Deed;
- (3) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re enactments or replacements of any of them;
- (4) the word "law" includes common law, principles of equity, and laws made by parliament (and laws made by parliament include State, Territory and Commonwealth laws and regulations and other instruments under them, and consolidations, amendments, re enactments or replacements of any of them);
- (5) the singular includes the plural and vice versa;
- (6) the word "person" includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association, or any authority;
- (7) a reference to a particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (8) a reference to a body or authority includes a reference, if that body or authority ceases to exist, to the body or authority which has substantially the same functions and objects as the first body or authority;

- (9) an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and each of them individually;
- (10) an agreement, representation or warranty by two or more persons binds them jointly and each of them individually;
- (11) a reference to a group of persons or things is a reference to any two or more of them jointly and to each of them individually;
- (12) a reference to Australian dollars, dollars, A\$ or \$ is a reference to the lawful currency of Australia;
- (13) if a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (14) a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (15) a reference to accounting standards is a reference to the accounting standards as defined in the Corporations Act, and a reference to an accounting term is a reference to that term as it is used in those accounting standards, or, if not inconsistent with those standards, in accounting principles and practices generally accepted in Australia;
- (16) the words “including”, “for example” or “such as” when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind;
- (17) if an act under this Deed to be done by a party on or by a given day is done after 5.00pm on that day, it is taken to be done on the next day;
- (18) a reference to time is a reference to time in the State or Territory in which the Land is situated; and
- (19) a reference to anything (including any amount) is a reference to the whole and each part of it.

1.2 Headings

Headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this Deed.

2. Consideration

2.1 Valuable Consideration

Each party acknowledges entering into this Deed and incurring obligations and giving rights under this Deed for valuable consideration received from each other party.

3. Agreement to surrender Lease

3.1 Surrender of Lease

With effect from the Surrender Date, the Lessee as beneficial owner agrees to surrender to the Authority free of encumbrances all the Lessee's estate, title and interest in the Lease and the Land.

3.2 Acceptance of surrender of Lease

The Authority agrees to accept the surrender of the Lease from the Surrender Date under section 293 of the Planning Act.

3.3 Lessee Acknowledgement

The Lessee:

- (1) acknowledges that the Surrender Sum and all amounts payable by the Territory under clauses 3.7 ("Deposit"), 3.10 ("Obligations on Completion") and 3.11 ("Adjustments"), constitute payment by the Territory and the Authority of every amount payable to the Lessee upon surrender of the Lease, including for the improvements on the Land, in particular any amounts due to be paid to the Lessee under sections 291 and 293 of the Planning Act; and
- (2) agrees not to make any Claim for, or take any action against, the Territory or the Authority to recover any monies in addition to those amounts regarding the surrender of the Lease, including any Claim under sections 291 or 293 of the Planning Act.

3.4 Lessee's goods and improvements

The Goods located on the Land at Completion become the property of the Territory except any which are not owned by the Lessee.

3.5 No warranties by Lessee

The Lessee does not make any representation or warranty in relation to the condition of the Land and the Goods, and the Territory accepts them in their state of repair and condition at Completion.

3.6 Condition and use

The parties agree that the Lease is surrendered subject to the terms in **Schedule 3**.

3.7 Deposit

On the Deposit Date:

- (1) The Territory must pay the Deposit to the Stakeholder; and
- (2) The Lessee must provide the Territory with the forms for the surrender of the Lease, executed by the Lessee and any other document or consent required to register the forms of surrender to be held in escrow by the Territory pending

Completion.

3.8 Date for Completion

The parties will complete the surrender of the Lease on or before the Surrender Date.

3.9 Place and time for Completion

Unless otherwise agreed Completion is to take place:

- (1) at the ACT Settlement Rooms, being the rooms designated for property settlements located at Level 1, 1 Farrell Place, Canberra; and
- (2) at a time before 3.00pm nominated by the Territory.

3.10 Obligations on Completion

On Completion:

provided the Lessee has complied with its obligations under clause 3.7(2), the Territory must provide the Lessee with a copy of the forms for surrender of the Lease executed by the Territory and endorsed by the Authority;

- (1) the Territory must pay the Surrender Sum (minus the Deposit paid) to the Lessee:
 - (a) by cheque drawn on the Territory's bank account; and
 - (b) as the Lessee or the Stakeholder directs;
- (3) the Lessee must pay all rent due to be paid under the Lease to the Authority as at the Completion date; and
- (4) the Territory must pay \$15,336 (including GST) together with an apportionment for December 2015 rental as agreed between the parties towards the payment of outstanding rental arrears owed to the Lessee under the Sublease.

3.11 Adjustments

The Territory and the Lessee agree to make all necessary adjustments of amounts payable by the Lessee for Land Charges, on the Surrender Date as if the Territory were responsible for Land Charges arising after the Surrender Date. If an amount cannot be adjusted because it is not known, the Territory and the Lessee agree to make the adjustment within 14 days after the amount is known.

3.12 Release

- (1) The Territory and the Authority agrees to release and forever discharge the Lessee from all Claims and Costs concerning the Lessee's obligations under the Lease arising on and from the Surrender Date.
- (2) The Lessee agrees to release and forever discharge the Territory and the Authority from all Claims and Costs concerning the Lease, the use or occupation of the

Premises or any incidental matter, arising up to the Surrender Date.

3.13 Obligations after Completion

The Lessee agrees to provide all reasonable assistance to enable the Territory to register the surrender of the Lease after completion, including answering any requisitions raised by Access Canberra (Land Titles and Rental Bonds) or the Authority.

4. Parties' Costs

The parties agree to bear their own costs in connection with the preparation and negotiation of this Deed and any document or matter in connection with it.

5. GST

5.1 GST definitions

In this clause:

GST, Taxable Supply, Input Tax Credit, Supply and Tax Invoice have the same meaning as in the Act;

GST Rate means 10% or if the rate at which GST is calculated under the GST Act changes, the rate applicable at the relevant time.

Payment includes consideration in the form of money given or received and in a form other than money given or received.

5.2 Payment of GST

A party making Payment to another party for a Taxable Supply under this Deed must pay to the other party at the same time, an additional amount equal to the amount of the Payment multiplied by the GST Rate.

5.3 Reimbursements

When calculating the amount of:

- (a) any reimbursement to a party under this Deed; and
- (b) the indemnification under this Deed of an expense, loss or liability incurred or to be incurred by that party,

the other party may include the GST paid or payable on the Supply giving rise to the amount, but if that party includes the GST that party must deduct the amount of any Input Tax Credit from the amount paid.

5.4 Tax invoice

A party receiving a Payment of GST under this clause must provide a Tax Invoice to the party making the Payment before or at the same time as the Payment is received.

6. Notices and other communications

6.1 Form

Unless expressly stated otherwise in this Deed, all notices, certificates, consents, approvals, waivers and other communications in connection with this Deed must be in writing, signed by the sender (if an individual) or an Authorised Officer, or the solicitor, of the sender and marked for the attention of the person identified in the Reference Schedule or, if the recipient has notified otherwise, then marked for attention in the way last notified.

6.2 Delivery

Communications must be:

- (1) left at the address set out or referred to in the Reference Schedule; or
- (2) sent by prepaid ordinary post (airmail, if appropriate) to the address set out or referred to in the Reference Schedule; or
- (3) sent by fax to the fax number set out or referred to in the Reference Schedule; or
- (4) given in any other way permitted by law.

However, if the intended recipient has notified a changed address or changed fax number, then communications must be to that address or number.

6.3 When effective

Communications take effect from the time they are received or taken to be received under clause 6.4 (“When taken to be received”) (whichever happens first) unless a later time is specified.

6.4 When taken to be received

Communications are taken to be received:

- (1) if left at the address set out or referred to in the Reference Schedule, on that day;
- (2) if sent by post, three days after posting (or seven days after posting if sent from one country to another); or
- (3) if sent by fax, at the time shown in the transmission report as the time that the whole fax was sent.

6.5 Receipt outside business hours

Despite clauses 6.3 (“When effective”) and 6.4 (“When taken to be received”), if communications are received or taken to be received under clause 6.4 after 5.00pm in the place of receipt or on a non-Business Day, they are to be taken to be received at 9.00am on the next Business Day and take effect from that time unless a later time is specified.

7. General

7.1 Payments

The parties agree to make payments under this Deed in full without set-off (including equitable set-off) or counterclaim and without any deduction.

7.2 No merger

The warranties, undertakings and indemnities in this Deed do not merge on the Surrender Date.

7.3 Variation and waiver

A provision of this Deed, or a right created under it, may not be waived or varied except in writing signed by the party or parties to be bound.

7.4 Confidentiality

Each party agrees not to disclose information provided by any other party that is not publicly available (including the existence or contents of this Deed) except:

- (1) to any person in connection with an exercise of rights or a dealing with rights or obligations under the Lease or this Deed; or
- (2) to officers, employees, legal and other advisers and auditors of the parties; or
- (3) with the consent of the party who provided the information (such consent not to be unreasonably withheld); or
- (4) as required by any law or stock exchange; or
- (5) as required by law; or
- (6) in the case of the Territory and the Authority, to any Minister of the Territory or to the Legislative Assembly or any of its bodies or committees; or
- (7) as required to give effect to the surrender of the Lease.

Each party consents to disclosures made in accordance with this clause 7.4 however for the avoidance of doubt the Territory and the Lessee expressly agrees not to disclose the detail of the Surrender Sum to any party except in accordance with this clause.

7.5 Counterparts

This Deed may consist of a number of copies, each signed by one or more parties to this Deed. If so, the signed copies are treated as making up the one document.

7.6 Entire agreement

This Deed constitutes the entire agreement of the parties about the surrender of the Lease and supersedes all previous agreements, understandings and negotiations. The Territory

and the Authority agree that in entering into this Deed they have not relied on any representation or warranty about its subject matter except those included in this Deed.


7.7 Construction

No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, this Deed any part of it.

7.8 Further assurances

Each party agrees, at its own expense, on the request of another party, to do everything reasonably necessary to give effect to this Deed and the transactions contemplated by it, including by signing documents.

SCHEDULE 1 – Reference Schedule

- Item 1:** Lessee: Dobel Boat Hire Pty Ltd ACN 008 492 144
ABN 79 008 492 144
- Item 2:** Land: Block 16 Section 33 Division of Acton
- Item 3:** Lease: Lease granted pursuant to the *Land (Planning and Environment) Act 1991* (ACT) by the Commonwealth to the Lessee over the Land and entered in register Book Volume 1866 Folio 11, a copy of which is contained in Schedule 2.
- Item 4:** Surrender Date: The date which is 30 days after the date of this Deed (or such earlier date as is agreed between the parties)
- Item 5:** Deposit: \$10 (receipt of which is acknowledged)
- Item 6:** Deposit Date: the date of this Deed.
- Item 7:** Surrender Sum: \$1,000,000.00 (excluding GST) comprising:
- (a) all statutory compensation payable under sections 291 and 293 of the Planning Act; and
 - (b) consideration for the surrender of the Lease.
- Item 8:** Governing law: Australian Capital Territory
- Item 9:** Address for Notices: **Territory:**
Chief Minister, Treasury and Economic
Development Directorate
Ground Floor, TransACT House
470 Northbourne Avenue
Dickson ACT 2602
- Contact Officer: Nicholas Hudson
- Lessee:**
Dobel Boat Hire Pty Ltd

- Contact Officer: Pat Seears
- Authority:**
Dame Pattie Menzies House
16 Challis Street

Dickson ACT 2602

Contact Officer: Maggie Chapman

SCHEDULE 2 – Crown lease

SCHEDULE 3 - Condition and use terms

Item 1 As is, where is

The Territory and the Authority acknowledge that the Lessee surrenders the Property on an “as is, where is” basis, in its present state and condition, including:

- (1) any legal and physical defects; and
- (2) any matter referred to in this Deed.

Item 2 Inspection

The Territory confirms it:

- (1) is satisfied as to the nature, quality, condition and state of repair of the Property; and
- (2) accepts the Property as it is including all defects (latent or patent) including any matter referred to in this Deed; and
- (3) is satisfied about the purposes for which the Property may be used and about all restrictions and prohibitions on its use and development.

Item 3 Due Diligence

The Territory acknowledges and agrees that:

- (1) before entering into this Deed, the Lessee gave the Territory a reasonable opportunity to inspect the Property; and
- (2) the Territory has entered into this Deed on the basis that it has carried out, or had the opportunity to carry out, its due diligence of the Property.

Item 4 Territory has satisfied itself about specific matters

The Territory acknowledges that it has satisfied itself in connection with the matters arising from its due diligence, including in connection with and enquiries about:

- (1) the title to the Property, including easements, restrictions on use and other encumbrances which benefit or burden the Property; and
- (2) the Lessee’s title to the Property and its rights and obligations in connection with it, including the terms of the Lease; and
- (3) the accuracy of the description of the Property; and
- (4) the matters referred to in Item 1 (“As is, where is”) and Item 2 (“Inspection”) of this schedule; and

- (5) the use, fitness or suitability of the Property for any purpose; and
- (6) the means of access to the Property; and
- (7) whether the walls or fences on the land that should not be on the boundaries of the Property, as the case may be, are not and the existence of any encroachments onto the Property or by the Property onto adjacent land (and whether the encroachments are subject to any registered easement or other agreement burdening or benefitting the Property); and
- (8) whether the Property complies with any laws and requirements of Authorities affecting the Property (including any use) and any non-compliance including the ACT Building Legislation; and
- (9) the existence or otherwise of any requirements of any Authority in connection with the Property, including resumptions, road dedications, road widenings and similar things; and
- (10) the existence or otherwise of necessary consents, approvals, licences or requirements of Authorities in connection with the Property (including its use) and any non-compliance with those consents, approvals, licences or requirements; and
- (11) whether there are any notices or orders by any Authority, including a notice or order requiring work to be done or money spent in connection with the Property; and
- (12) the existence of any claim for an interest in the Property under the *Native Title Act 1993* (Cth), the *Native Title Act 1994* (ACT) or any other native title law; and
- (13) the existence of easements or other rights in respect of a service for the Property (including air, communication, drainage, electricity, garbage, gas, oil, radio, sewerage, telephone, television or water) which is a joint service or which passes through another property, or any service for another property which passes through the Property; and
- (14) the condition or existence or non-existence of services; and
- (15) any approval, application for an approval or order under any law; and
- (16) the terms and conditions of the Lease and any non-compliance with those terms and conditions; and
- (17) the ownership or location of any fuel storage tank or facility.

Item 5 No claims or requisitions

The Territory accepts the surrender of the Lease subject to the matters referred to, disclosed or described under this Deed.

SIGNED AS A DEED ON 17 December 2015

SIGNED for and on behalf of the)
AUSTRALIAN CAPITAL)
TERRITORY in the presence of:) Signature of Territory delegate

.....
Signature of witness) Print name

.....
Print name

EXECUTED by the authorised)
representative for THE PLANNING)
AND LAND AUTHORITY in the)
presence of:) By executing this Deed the

.....) signatory warrants that the signatory
Signature of witness) is duly authorised to execute this
.....) Deed on behalf of The Planning and
.....) Land Authority

.....)
Name of witness)
.....) Print name

EXECUTED by the DOBEL)
BOAT HIRE PTY LTD ACN 008)
492 144 in accordance with section)
127 of the Corporations Act 2001:)

.....)
.....)
Signature of Director)

PATRICK SEARS)
.....)
Print name)



Signature of Director/Company)
Secretary)

Maura Sears)
.....)
Print name)



ACT

Government

Justice and Community Safety

LAND TITLES
OFFICE OF REGULATORY SERVICES
ACT Justice and Community Safety Directorate

DETERMINATION / SURRENDER OF A CROWN LEASE

Form 057 - DCL

Land Titles Act 1925

IMPORTANT INFORMATION

This form is to be used to lodge a determination/surrender of a crown lease under the *Land Titles Act 1925* (the Act). You can access the Act at www.legislation.act.gov.au. You may also obtain further information and forms at www.ors.act.gov.au.

PRIVACY INFORMATION

The Act authorises the Registrar-General to collect the information required by this form. The Registrar-General provides identifiable information to various agencies including, but not limited to, the ACT Environment and Sustainable Development Directorate, ACT Treasury Directorate, Canberra Connect and ACTEWAGL for conveyancing, municipal account administrative, statistical and valuation purposes. These agencies may also use this information to prepare and sell property sales reports to commercial organisations concerned with the development, sale or marketing of land.

CONTACT INFORMATION

Lodge in person at the **Office of Regulatory Services:** 255 Canberra Avenue, Fyshwick ACT 2609
Office Hours: 9:00am to 4:30pm Monday to Friday
General enquiries telephone number: (02) 6207 0491
Website address: www.ors.act.gov.au

INSTRUCTIONS FOR COMPLETION

- The certificate of title or production of title consenting to the registration of this document is required for lodgement.
- All information should be typed or clearly printed. If completing this form by hand please use a solid black pen only.
- This office will not accept lodgement of this form if it is not completed in full.
- Any alteration to information provided on this form must be struck through with a black pen. Substitute information must be clear and all parties must sign in the margin. Do not use correction fluid or tape.
- Ensure all required documents are attached. If there is insufficient space in any panel, please use an Annexure Sheet.
- Execution by:
 - a) **A Natural Person** – Should be witnessed by an adult person who is not a party to the document.
 - b) **Attorney** – if this document is executed by an Attorney pursuant to a registered power of attorney, it must set out the full name of the attorney and the form of execution must indicate the source of his/her authority e.g. "AB by his/her attorney XY pursuant to Power of Attorney ACT Registration No..... of which he/she has no notice of revocation". (This execution requires a witness).
 - c) **Corporation** – Section 127 of the *Corporations Act* provides that a company may now validly execute a document with or without using a Common Seal if the document is signed by:
 - i. Two directors of the company;
 - ii. A director and a secretary of the company; or
 - iii. Where the company is a proprietary company and has a sole director who is also the sole company secretary, that director. (This execution does not require a witness).
- The following forms of execution are suggested –
 - a) **With A Common Seal**
The common seal of ABC Pty Ltd/Ltd ACN.....
was affixed in the presence of-
.....(signature)
.....(director/secretary)*
(*repeat if necessary i.e. if two directors signing. If signing as sole director and sole secretary, state 'director/secretary') – (This execution does not require a witness).
 - b) **Without A Common Seal**
Signed by ABC Pty Ltd/Ltd ACN.....
.....(signature)
.....(director/secretary)*
(*repeat if necessary i.e. if two directors signing. If signing as sole director and sole secretary, state 'director/secretary') – (This execution does not require a witness).



ACT
Government

Justice and Community Safety

LAND TITLES
OFFICE OF REGULATORY SERVICES
ACT Justice and Community Safety Directorate

DETERMINATION / SURRENDER OF A CROWN LEASE

Form 057 - DCL

Land Titles Act 1925

LODGING PARTY DETAILS

Name	Postal Address	Contact Telephone Number

TITLE AND LAND DETAILS

Volume & Folio	District/Division	Section	Block
1866:11	Acton	33	16

FULL NAME AND ADDRESS OF REGISTERED PROPRIETOR/LESSEE (Surname Last) (ACN required for all Companies)

Dobel Boat Hire Pty Limited ACN 008 492 144
care of Bonsella Business Solutions, Level 1, 28-36 Ainslie Place, Canberra ACT 2601

CONSIDERATION (Please provide monetary sum and/or reason for surrender)

\$1,000,000.00

CONSENTING PARTY – SUPPORTING DOCUMENTATION

(One form required for each party required to consent)

Please complete and attach – Form 042 – C – Consent

DATE

LESSEE/S EXECUTION

Print full name of Lessee

Executed by Dobel Boat Hire Pty Limited ACN 008 492 144
in accordance with section 127 of the Corporations Act
2001

Signature of Director

Name of Director

PAT SEARS

Signature of Director/Company Secretary

Name of Director/Company Secretary

[Redacted Signature]

Maura Sears

LESSOR'S EXECUTION

Signed by the person duly authorised by ACT Planning and Land Authority (Please print full name of authorised signatory).

Print full name and address of witness

Signature of authorised person

Signature of witness

OFFICE USE ONLY

Lodged by		Certificate of title lodged	
Data entered by		Certificates attached to title	
Registered by		Attachments / Annexures	
Registration date		Vol & Folio of further lease	

ACTON

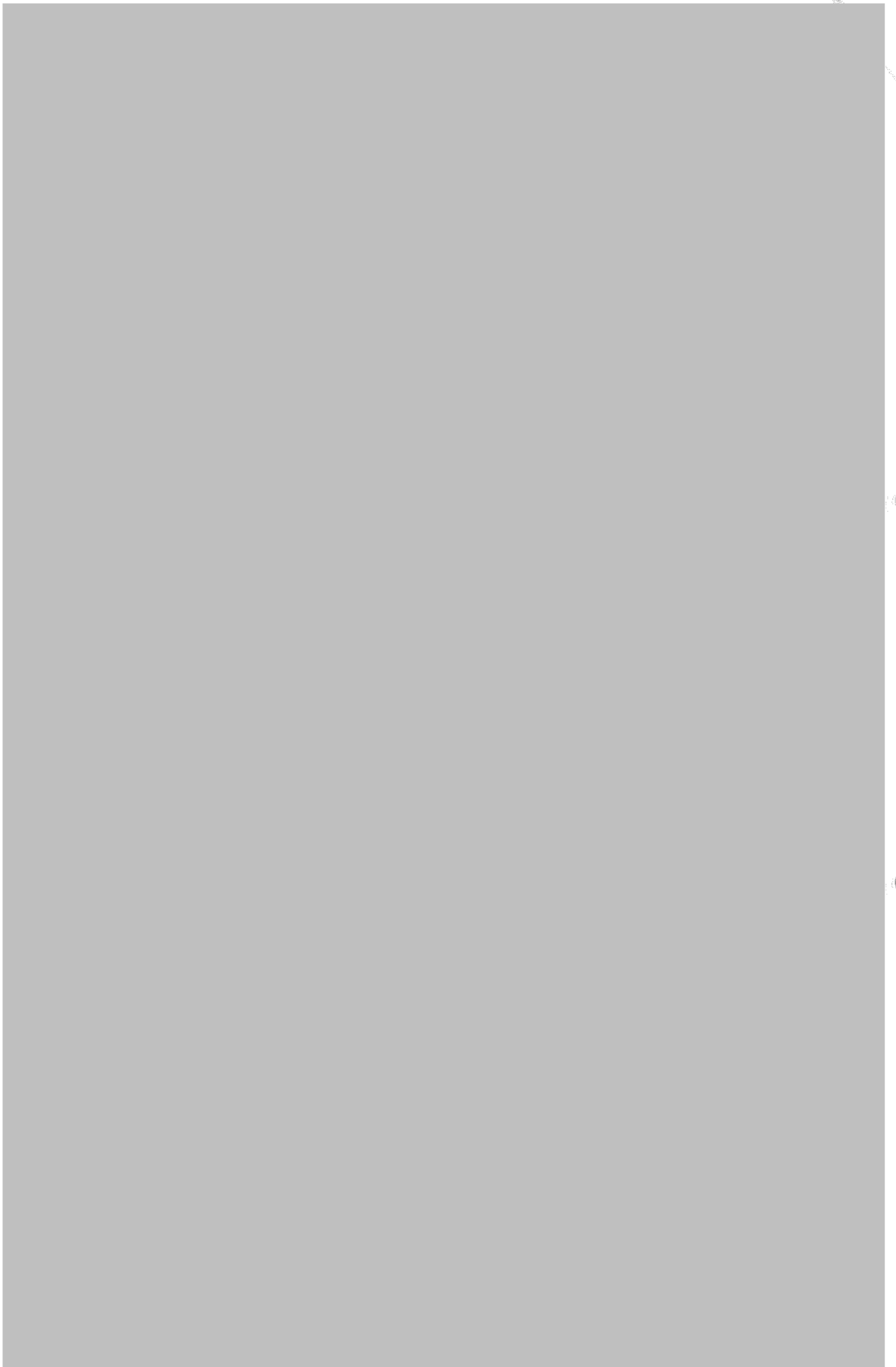
25 AUGUST 2016.

156.3.1 CHIEF EXECUTIVE OFFICER'S REPORT



CANBERRA FIRST





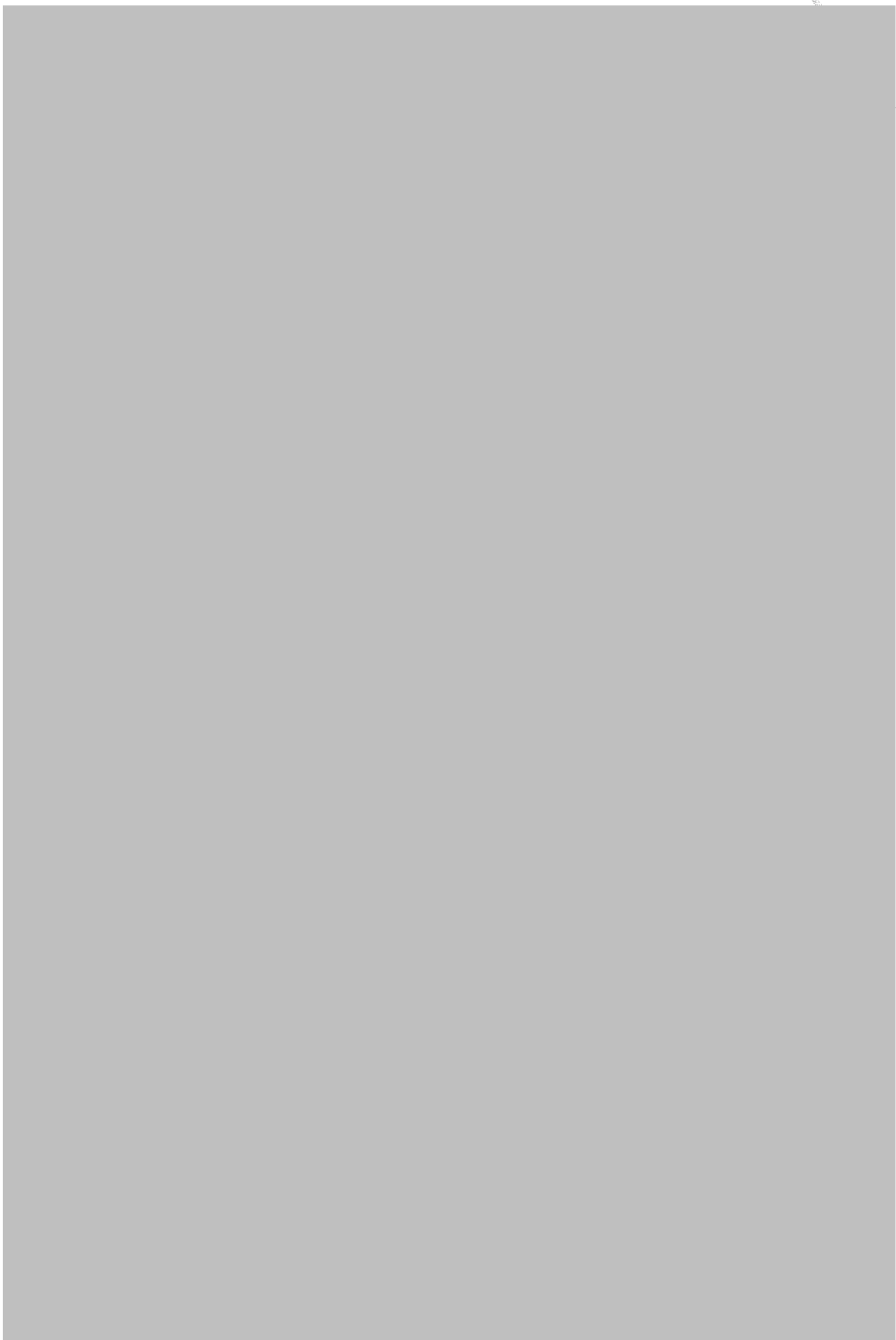
2. Matters of Note

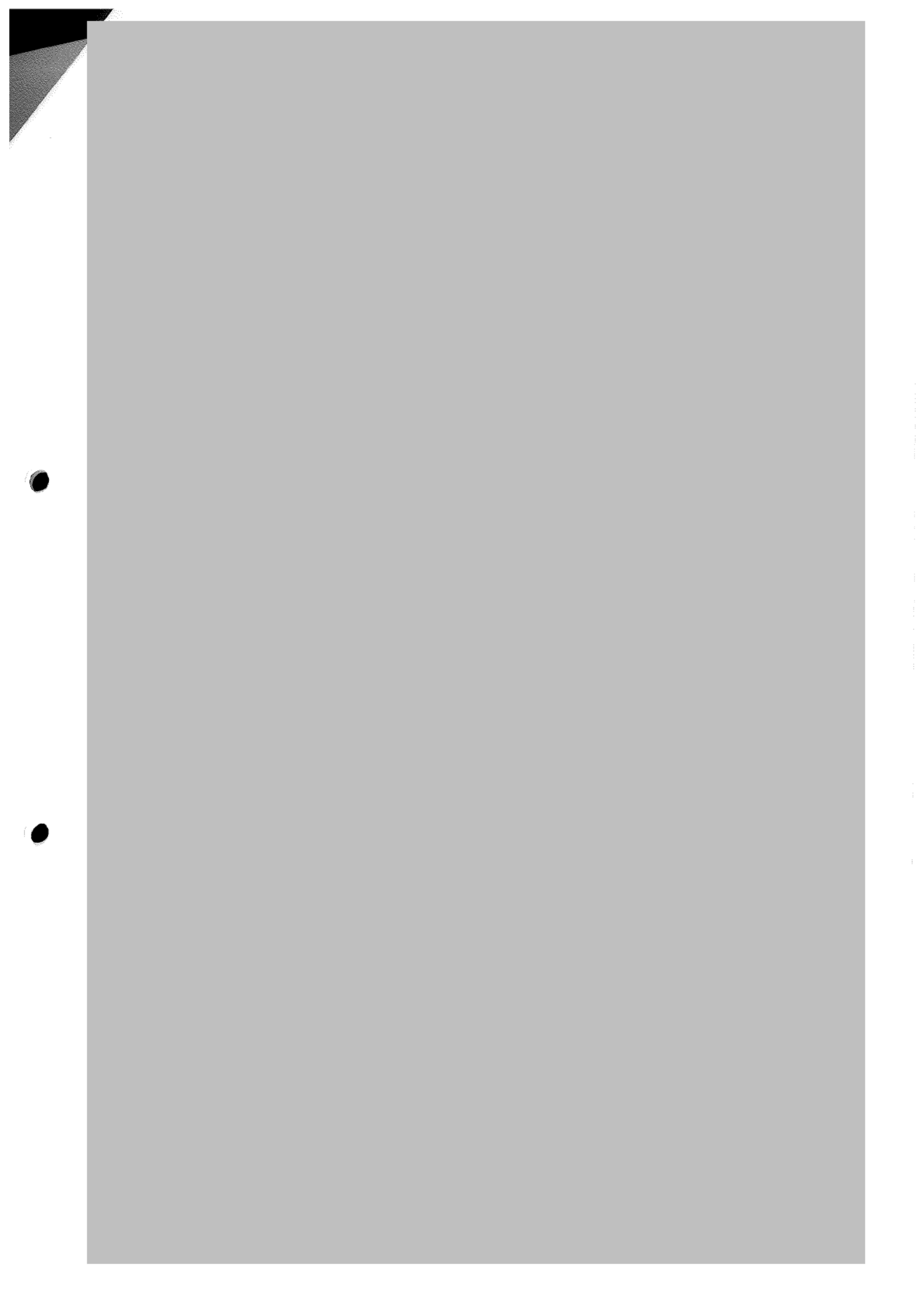
- West Basin Acquisitions - correction

I provided a verbal update at the 10 December 2015 LDA Board meeting (Agenda item 149.3.1 - CEO's Report) about the West Basin Acquisitions. In my update, I advised the Board that the Lake Burley Griffin Boat Hire had been acquired for \$1 million. I wish to correct the record of that meeting by advising the following:

The *Crown Lease* over Block 16 Section 33 Acton was surrendered to the Territory for a Surrender Sum of \$1 million (excl GST), paid by the LDA to the lessee (Dobel Boat Hire Pty Ltd).

The *boat hire business* that operated on that land (Lake Burley Griffin Boat Hire) was purchased by the LDA for \$575,000 (excl GST).





Question time – a number of questions were asked over the duration of the sitting fortnight about the following:

- Land development policies and the sale of land in the Lake Burley Griffin foreshore area
- Acquisition of block 24, section 65, City (Glebe Park)



Recommendation

The Board notes the Chief Executive Officer's report.

David Dawes
Chief Executive Officer
18 August 2016

ACTON

FOR OFFICIAL USE ONLY



LAND DEVELOPMENT AGENCY BOARD MEETING 157, 29 September 2016
Draft Minutes

Present: Mr Ross Barrett OAM (Chair), Ms Sandra Lambert AM (Deputy Chair), Mr David Dawes, Ms Yvonne von Hartel AM, Mr Con Kourpanidis, Ms Cherelle Murphy, Ms Chris Purdon and Mr Jim Shonk

In Attendance: Mr Ben Ponton (Deputy Chief Executive Officer), Ms Anita Hargreaves (Chief Financial Officer) – part, Mr Tom Gordon (Executive Director, Greenfields), Ms Liz Lopa (Executive Director, Urban Renewal), Mr Chris Wilson (Director, Office of the Chief Executive Officer), Ms Lucy Devitt (A/g Board Secretary)

Apologies: Nil

Secretary: Mr Chris Wilson

MEETING OPENING



FOR OFFICIAL USE ONLY

157.1.4

Confirmation of Minutes of the Previous Meeting/s

The minutes of Board Meeting 156, held on 25 August 2016, were considered by the Board, who requested the following amendments:



- 156.3.1 - page 7 – in respect of *Chief Executive Officer's Report*, paragraph 4 to read:
Mr Dawes drew the Board's attention to the correction to an earlier report and the use of language around the acquisition of Lake Burley Griffin Board Hire. Mr Dawes clarified that the Crown Lease over Block 16 Section 33 Acton was surrendered to the Territory for a sum of \$1 million (excl GST), paid by the LDA to the lessee, *Dobel Boat Hire Pty Ltd*. Mr Dawes stated that the boat hire business operating on that land, *Lake Burley Griffin Boat Hire*, was purchased by the LDA for \$575,000 (excl GST). This was a complex and separate negotiation of both crown lease and business which was achieved at significantly less than the vendors' starting prices.



RESOLUTION

The Board approved the minutes for meeting 156 held on 29 August 2016, subject to amendment as detailed above.



DEED OF SURRENDER OF CROWN LEASE

Dated

8 January ~~2015~~ 2016

Parties

AUSTRALIAN CAPITAL TERRITORY

**THE PLANNING AND LAND
AUTHORITY**

**JE & MS PTY LTD ACN 118 844 885 AS
TRUSTEE FOR THE JE & MS TRUST
ABN 70 783 414 557**

Prepared by

ACT Government Solicitor
Level 6, 12 Moore Street
Canberra ACT 2601
Australia
Ph: (02) 6205 3494
Fax: (02) 6207 0650
Ref: 626515:KA

Version

Final 22/12/2015

CONTENTS

1.	Interpretation	1
2.	Consideration	4
3.	Agreement to surrender Lease.....	4
4.	Parties' Costs	7
5.	GST.....	7
6.	Notices and other communications	8
7.	General	9
	SCHEDULE 1 – Reference Schedule	11
	SCHEDULE 2 – Crown lease.....	12
	SCHEDULE 3 - Condition and use terms	13

PARTIES: **AUSTRALIAN CAPITAL TERRITORY**, the body politic established by section 7 of the *Australian Capital Territory (Self-Government) Act 1988* (Cth) (**Territory**) represented by the Chief Minister, Treasury and Economic Development Directorate.

PLANNING AND LAND AUTHORITY, the body corporate established by section 10 of the *Planning and Environment Act 2007* (ACT) for and on behalf of the Commonwealth of Australia (**Authority**).

JE & MS PTY LTD ACN 118 844 885 in its own capacity and as trustee for the **JE & MS TRUST ABN 70 783 414 557** ()

BACKGROUND

- A. Pursuant to the Lease, the Authority (on behalf of the Commonwealth of Australia) leases the Land to the Lessee.
- B. The Lessee has agreed to surrender the Lease with effect from the Surrender Date.
- C. The parties have otherwise agreed to the surrender of the Lease on the terms of this Deed.

IT IS AGREED by the parties as follows.

1. Interpretation

1.1 Definitions

The following definitions apply in this Deed, unless the context otherwise requires. Additional definitions also appear in the Reference Schedule.

ACT Building Legislation

means the *Building Act 1972* (ACT), the *Building Act 2004* (ACT), the *City Area Leases Act 1936* (ACT), the *Leases Act 1918* (ACT), the *Leases (Special Purposes) Act 1925* (ACT), the *Buildings (Design and Siting) Act 1964* (ACT), the *Land (Planning and Environment) Act 1991* (ACT), the *Planning and Development Act 2007* (ACT), the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth) and the *National Lands Ordinance 1989* (Cth) (and any laws having effect by virtue of that Ordinance), and regulations made pursuant to that legislation, and their predecessors and substitutes.

Authorised Officer

means a director or secretary of a party or any other person appointed by a party to act as an authorised officer for the purposes of this Deed.

Business Agreement	means the Sale of Business Assets between the Land Development Agency and the Lessee dated on or about the date of this Deed.
Business Day	means a day on which banks are open for general banking business in the capital city of the State or Territory in which the Land is situated (not being a Saturday, Sunday or public holiday in that city).
Claim	means a claim, notice, demand, action, proceeding, litigation, investigation or judgment however arising, whether present or future, actual or contingent, and whether involving a third party or a party to this Deed.
Completion	means completion of the surrender of the Lease in accordance with this Deed.
Costs	includes costs, charges and expenses, including those incurred in connection with advisers.
Corporations Act	means the <i>Corporations Act 2001</i> (Cth).
Deed	means this deed and all schedules and attachments annexed to it.
Goods	means plant, equipment, chattels, fixtures and fittings on the Land.
GST Act	means <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
Land Charges	means general rates and water and sewerage rates.
Planning Act	means the <i>Planning and Development Act 2007</i> (ACT).
Property	means the Lease, the Goods and the Land.
Reference Schedule	means the reference schedule contained in Schedule 1.
Territory	means: <ul style="list-style-type: none"> (a) when used in a geographical sense, the Australian Capital Territory; and (b) when used in any other sense, the body politic established by section 7 of the <i>Australian Capital Territory (Self-Government) Act 1988</i> (Cth).

1.1 References to certain general terms

Unless the contrary intention appears in this Deed:

- (1) a reference to a document (including this Deed) includes any variation or replacement of it;
- (2) a reference to a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this Deed;
- (3) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re enactments or replacements of any of them;
- (4) the word "law" includes common law, principles of equity, and laws made by parliament (and laws made by parliament include State, Territory and Commonwealth laws and regulations and other instruments under them, and consolidations, amendments, re enactments or replacements of any of them);
- (5) the singular includes the plural and vice versa;
- (6) the word "person" includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association, or any authority;
- (7) a reference to a particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (8) a reference to a body or authority includes a reference, if that body or authority ceases to exist, to the body or authority which has substantially the same functions and objects as the first body or authority;
- (9) an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and each of them individually;
- (10) an agreement, representation or warranty by two or more persons binds them jointly and each of them individually;
- (11) a reference to a group of persons or things is a reference to any two or more of them jointly and to each of them individually;
- (12) a reference to Australian dollars, dollars, A\$ or \$ is a reference to the lawful currency of Australia;
- (13) if a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (14) a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;

- (15) a reference to accounting standards is a reference to the accounting standards as defined in the Corporations Act, and a reference to an accounting term is a reference to that term as it is used in those accounting standards, or, if not inconsistent with those standards, in accounting principles and practices generally accepted in Australia;
- (16) the words “including”, “for example” or “such as” when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind;
- (17) if an act under this Deed to be done by a party on or by a given day is done after 5.00pm on that day, it is taken to be done on the next day;
- (18) a reference to time is a reference to time in the State or Territory in which the Land is situated; and
- (19) a reference to anything (including any amount) is a reference to the whole and each part of it.

1.2 Headings

Headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this Deed.

2. Consideration

2.1 Valuable Consideration

Each party acknowledges entering into this Deed and incurring obligations and giving rights under this Deed for valuable consideration received from each other party.

3. Agreement to surrender Lease

3.1 Surrender of Lease

With effect from the Surrender Date, the Lessee as beneficial owner agrees to surrender to the Authority free of encumbrances all the Lessee’s estate, title and interest in the Lease and the Land.

3.2 Acceptance of surrender of Lease

The Authority agrees to accept the surrender of the Lease from the Surrender Date under section 293 of the Planning Act.

3.3 Lessee Acknowledgement

The Lessee:

- (1) acknowledges that the Surrender Sum and all amounts payable by the Territory under clauses 3.7 (“Deposit”), 3.10 (“Obligations on Completion”) and (3)(a) (“Adjustments”), constitute payment by the Territory and the Authority of every

amount payable to the Lessee upon surrender of the Lease, including for the improvements on the Land, in particular any amounts due to be paid to the Lessee under sections 291 and 293 of the Planning Act; and

- (2) agrees not to make any Claim for, or take any action against, the Territory or the Authority to recover any monies in addition to those amounts regarding the surrender of the Lease, including any Claim under sections 291 or 293 of the Planning Act.

3.4 Lessee's goods and improvements

The Goods located on the Land at Completion become the property of the Territory except for the following items:

- (1) any which are not owned by the Lessee;
- (2) are sold by the Lessee under the Business Agreement; or
- (3) are an Excluded Assets as defined in the Business Agreement.

3.5 No warranties by Lessee

The Lessee does not make any representation or warranty in relation to the condition of the Land and the Goods, and the Territory accepts them in their state of repair and condition at Completion.

3.6 Condition and use

The parties agree that the Lease is surrendered subject to the terms in **Schedule 3**.

3.7 Deposit

On the Deposit Date:

- (1) The Territory must pay the Deposit to the Lessee; and
- (2) The Lessee must provide the Territory with the forms for the surrender of the Lease, executed by the Lessee.

3.8 Date for Completion

The parties will complete the surrender of the Lease on or before the Surrender Date.

3.9 Place and time for Completion

Unless otherwise agreed Completion is to take place:

- (1) at the ACT Settlement Rooms; and
- (2) at a time before 3.00pm nominated by the Territory.

3.10 Obligations on Completion

On Completion:

- (1) provided the Lessee has complied with its obligations under clause 3.7(2), the Territory must provide the Lessee with a copy of the forms for surrender of the Lease executed by the Territory and endorsed by the Authority;
- (2) the Territory must pay the Surrender Sum (minus the Deposit paid) to the Lessee:
 - (a) by cheque drawn on the Territory's bank account; and
 - (b) as the Lessee directs; and
- (3) the Lessee must:
 - (a) pay all rent due to be paid under the Lease to the Authority as at the Completion date; and
 - (b) provide the Territory with the original certificate of title for the Land and any other document or consent required to register the forms of surrender of Lease

3.11 Adjustments

The Territory and the Lessee agree to make all necessary adjustments of amounts payable by the Lessee for Land Charges, on the Surrender Date as if the Territory were responsible for Land Charges arising after the Surrender Date. If an amount cannot be adjusted because it is not known, the Territory and the Lessee agree to make the adjustment within 14 days after the amount is known.

3.12 Release

- (1) The Territory and the Authority agrees to release and forever discharge the Lessee from all Claims and Costs concerning the Lessee's obligations under the Lease arising on and from the Surrender Date.
- (2) The Lessee agrees to release and forever discharge the Territory and the Authority from all Claims and Costs concerning the Lease, the use or occupation of the Premises or any incidental matter, arising up to the Surrender Date.

3.13 Obligations after Completion

- (1) The Territory must arrange to register the surrender of Lease with Access Canberra (Land Titles and Rental Bonds) as soon as reasonably practicable after Completion.
- (2) The Lessee agrees to provide all reasonable assistance to enable the Territory to register the surrender of the Lease after completion, including answering any requisitions raised by Access Canberra (Land Titles and Rental Bonds) or the Authority.

4. Parties' Costs

The parties agree to bear their own costs in connection with this Deed and any document or matter in connection with it with the exception of:

- (1) the Lessee's fees from [REDACTED] (up to a maximum of \$43,000 plus GST);
- (2) the Lessee's legal fees for reviewing this Deed and the Business Agreement (up to a maximum of \$1,500 plus GST);
- (3) the Lessee's accounting and tax fees for advising on structure and reviewing this Deed and the Business Agreement (up to a maximum of \$3,388 plus GST),

which will in each case be paid by the Territory on Completion on the provision of valid tax invoices to the Territory.

5. GST

5.1 GST definitions

In this clause:

GST, **Taxable Supply**, **Input Tax Credit**, **Supply** and **Tax Invoice** have the same meaning as in the Act;

GST Rate means 10% or if the rate at which GST is calculated under the GST Act changes, the rate applicable at the relevant time.

Payment includes consideration in the form of money given or received and in a form other than money given or received.

5.2 Payment of GST

A party making Payment to another party for a Taxable Supply under this Deed must pay to the other party at the same time, an additional amount equal to the amount of the Payment multiplied by the GST Rate.

5.3 Reimbursements

When calculating the amount of:

- (a) any reimbursement to a party under this Deed; and
- (b) the indemnification under this Deed of an expense, loss or liability incurred or to be incurred by that party,

the other party may include the GST paid or payable on the Supply giving rise to the amount, but if that party includes the GST that party must deduct the amount of any Input Tax Credit from the amount paid.

5.4 Tax invoice

A party receiving a Payment of GST under this clause must provide a Tax Invoice to the party making the Payment before or at the same time as the Payment is received.

6. Notices and other communications

6.1 Form

Unless expressly stated otherwise in this Deed, all notices, certificates, consents, approvals, waivers and other communications in connection with this Deed must be in writing, signed by the sender (if an individual) or an Authorised Officer, or the solicitor, of the sender and marked for the attention of the person identified in the Reference Schedule or, if the recipient has notified otherwise, then marked for attention in the way last notified.

6.2 Delivery

Communications must be:

- (1) left at the address set out or referred to in the Reference Schedule; or
- (2) sent by prepaid ordinary post (airmail, if appropriate) to the address set out or referred to in the Reference Schedule; or
- (3) sent by fax to the fax number set out or referred to in the Reference Schedule; or
- (4) given in any other way permitted by law.

However, if the intended recipient has notified a changed address or changed fax number, then communications must be to that address or number.

6.3 When effective

Communications take effect from the time they are received or taken to be received under clause 6.4 ("When taken to be received") (whichever happens first) unless a later time is specified.

6.4 When taken to be received

Communications are taken to be received:

- (1) if left at the address set out or referred to in the Reference Schedule, on that day;
- (2) if sent by post, three days after posting (or seven days after posting if sent from one country to another); or
- (3) if sent by fax, at the time shown in the transmission report as the time that the whole fax was sent.

6.5 Receipt outside business hours

Despite clauses 6.3 (“When effective”) and 6.4 (“When taken to be received”), if communications are received or taken to be received under clause 6.4 after 5.00pm in the place of receipt or on a non-Business Day, they are to be taken to be received at 9.00am on the next Business Day and take effect from that time unless a later time is specified.

7. General

7.1 Payments

The parties agree to make payments under this Deed in full without set-off (including equitable set-off) or counterclaim and without any deduction.

7.2 No merger

The warranties, undertakings and indemnities in this Deed do not merge on the Surrender Date.

7.3 Variation and waiver

A provision of this Deed, or a right created under it, may not be waived or varied except in writing signed by the party or parties to be bound.

7.4 Confidentiality

Each party agrees not to disclose information provided by any other party that is not publicly available (including the existence or contents of this Deed except:

- (1) to any person in connection with an exercise of rights or a dealing with rights or obligations under the Lease or this Deed; or
- (2) to officers, employees, legal and other advisers and auditors of the parties; or
- (3) with the consent of the party who provided the information (such consent not to be unreasonably withheld); or
- (4) as required by any law or stock exchange; or
- (5) as required by law; or
- (6) in the case of the Territory and the Authority, to any Minister of the Territory or to the Legislative Assembly or any of its bodies or committees; or
- (7) as required to give effect to the surrender of the Lease.

Each party consents to disclosures made in accordance with this clause 7.4.

7.5 Counterparts

This Deed may consist of a number of copies, each signed by one or more parties to this Deed. If so, the signed copies are treated as making up the one document.

7.6 Entire agreement

This Deed and the Business Agreement constitutes the entire agreement of the parties about the surrender of the Lease and supersedes all previous agreements, understandings and negotiations. The Territory and the Authority agree that in entering into this Deed they have not relied on any representation or warranty about its subject matter except those included in this Deed.

7.7 Construction

No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, this Deed any part of it.


7.8 Further assurances

Each party agrees, at its own expense, on the request of another party, to do everything reasonably necessary to give effect to this Deed and the transactions contemplated by it, including by signing documents.

7.9 Interdependency with Business Agreement

- (1) This Deed is interdependent and conditional upon the Business Agreement.
- (2) If either party breaches any provisions of this Deed that will constitute a breach of the Business Agreement.
- (3) If either party breaches any provision of the Business Agreement that will constitute a breach of this Deed.
- (4) If either party is entitled to rescind or terminate this Deed then that party will be entitled to rescind or terminate (as the case may be) the Business Agreement.
- (5) If either party is entitled to rescind or terminate the Business Agreement then that party will be entitled to rescind or terminate (as the case may be) this Deed.
- (6) Completion of this Deed must take place simultaneously with the Business Agreement.

SCHEDULE 1 – Reference Schedule

- Item 1:** Lessee: JE & MS Pty Ltd ACN 118 844 885 in its own capacity and as trustee for JE & MS Trust
ABN 70 783 414 557
- Item 2:** Land: Block 13 Section 33 Division of Acton
- Item 3:** Lease: Lease granted pursuant to the *Land (Planning and Environment) Act 1991* (ACT) by the Commonwealth to the Lessee over the Land and entered in register Book Volume 1627 Folio 69, a copy of which is contained in Schedule 2.
- Item 4:** Surrender Date: 1 February 2016
- Item 5:** Deposit: \$10 (receipt of which is acknowledged).
- Item 6:** Deposit Date: the date of this Deed.
- Item 7:** Surrender Sum: \$1,099,999.00 (excluding GST) comprising:
- (a) all statutory compensation payable under sections 291 and 293 of the Planning Act; and
 - (b) consideration for the surrender of the Crown lease.
- Item 8:** Governing law: Australian Capital Territory
- Item 9:** Address for Notices: **Territory:**
Chief Minister, Treasury and Economic
Development Directorate
Ground Floor, TransACT House
470 Northbourne Avenue
Dickson ACT 2602
- Contact Officer: Nicholas Hudson
- Lessee:**
JE & MS Pty Ltd

- Contact Officer: Jillian Edwards
- Authority:**
Dame Pattie Menzies House
16 Challis Street
Dickson ACT 2602
- Contact Officer: Maggie Chapman

SCHEDULE 2 – Crown lease

SCHEDULE 3 - Condition and use terms

Item 1 As is, where is

The Territory and the Authority acknowledge that the Lessee surrenders the Property on an “as is, where is” basis, in its present state and condition, including:

- (1) any legal and physical defects; and
- (2) any matter referred to in this Deed.

Item 2 Inspection

The Territory confirms it:

- (1) is satisfied as to the nature, quality, condition and state of repair of the Property; and
- (2) accepts the Property as it is including all defects (latent or patent) including any matter referred to in this Deed; and
- (3) is satisfied about the purposes for which the Property may be used and about all restrictions and prohibitions on its use and development.

Item 3 Due Diligence

The Territory acknowledges and agrees that:

- (1) before entering into this Deed, the Lessee gave the Territory a reasonable opportunity to inspect the Property; and
- (2) the Territory has entered into this Deed on the basis that it has carried out, or had the opportunity to carry out, its due diligence of the Property.

Item 4 Territory has satisfied itself about specific matters

The Territory acknowledges that it has satisfied itself in connection with the matters arising from its due diligence, including in connection with and enquiries about:

- (1) the title to the Property, including easements, restrictions on use and other encumbrances which benefit or burden the Property; and
- (2) the Lessee’s title to the Property and its rights and obligations in connection with it, including the terms of the Lease; and
- (3) the accuracy of the description of the Property; and
- (4) the matters referred to in Item 1 (“As is, where is”) and Item 2 (“Inspection”) of this schedule; and

- (5) the use, fitness or suitability of the Property for any purpose; and
- (6) the means of access to the Property; and
- (7) whether the walls or fences on the land that should not be on the boundaries of the Property, as the case may be, are not and the existence of any encroachments onto the Property or by the Property onto adjacent land (and whether the encroachments are subject to any registered easement or other agreement burdening or benefitting the Property); and
- (8) whether the Property complies with any laws and requirements of Authorities affecting the Property (including any use) and any non-compliance including the ACT Building Legislation; and
- (9) the existence or otherwise of any requirements of any Authority in connection with the Property, including resumptions, road dedications, road widenings and similar things; and
- (10) the existence or otherwise of necessary consents, approvals, licences or requirements of Authorities in connection with the Property (including its use) and any non-compliance with those consents, approvals, licences or requirements; and
- (11) whether there are any notices or orders by any Authority, including a notice or order requiring work to be done or money spent in connection with the Property; and
- (12) the existence of any claim for an interest in the Property under the *Native Title Act 1993* (Cth), the *Native Title Act 1994* (ACT) or any other native title law; and
- (13) the existence of easements or other rights in respect of a service for the Property (including air, communication, drainage, electricity, garbage, gas, oil, radio, sewerage, telephone, television or water) which is a joint service or which passes through another property, or any service for another property which passes through the Property; and
- (14) the condition or existence or non-existence of services; and
- (15) any approval, application for an approval or order under any law; and
- (16) the terms and conditions of the Lease and any non-compliance with those terms and conditions; and
- (17) the ownership or location of any fuel storage tank or facility.

Item 5 No claims or requisitions

The Territory accepts the surrender of the Lease subject to the matters referred to, disclosed or described under this Deed.

SIGNED AS A DEED ON 8 January 2016 ~~2015~~

SIGNED for and on behalf of the [REDACTED] AUSTRALIAN CAPITAL TERRITORY in the presence of:)

) Signature of Territory delegate

[REDACTED]

Signature of witness

[Handwritten Signature]
Print name

Laura Marcantonio
Print name

EXECUTED by the authorised representative for THE PLANNING AND LAND AUTHORITY in the presence of:

) [REDACTED]

) By executing this Deed the signatory warrants that the signatory is duly authorised to execute this Deed on behalf of The Planning and Land Authority

[REDACTED]

Signature of witness

Monica Saad

Maggie Chapman

Name of witness

) Print name

EXECUTED by the JE & MS Pty Ltd ACN 118 844 885 in accordance with section 127 of the Corporations Act 2001:

) [REDACTED]

[REDACTED]

Signature of Director

) Signature of Director/Company Secretary

Jillian Edwards

[Handwritten Signature]

Print name

) Print name



ACI
Government

Justice and Community Safety

OFFICE OF REGI
ACT Justice and Community

LAND TITLES



DCL\$2017863 23/02/2016 11:09

DETERMINATION / S OF A CROWN LEASE

2017863

Form 057 - DCL

Land Titles Act 1925

LODGING PARTY DETAILS

Name	Settlements ACT	Postal Address	Contact Telephone Number
	GPO Box 2193 CANBERRA ACT 2601 Tel: (02) 6248 5797		

TITLE AND LAND DETAILS

Volume & Folio	District/Division	Section	Block
1627:69	Acton	33	13

FULL NAME AND ADDRESS OF REGISTERED PROPRIETOR/LESSEE (Surname Last) (ACN required for all Companies)

JE & MS Pty Ltd ACN 118 844 885
76A Wakefield Gardens Ainslie ACT 2602

CONSIDERATION (Please provide monetary sum and/or reason for surrender)

\$1,099,999.00

CONSENTING PARTY – SUPPORTING DOCUMENTATION

(One form required for each party required to consent)

Please complete and attach – Form 042 – C – Consent

DATE

8 January 2016

LESSEE/S EXECUTION

Print full name of Lessee
Executed by JE & MS Pty Ltd ACN 118 844 885
in accordance with section 127 of the *Corporations Act*
2001 (Cth):

Signature of Director

Name of Director

Jillian Edwards

Signature of Director/Company Secretary

Name of Director/Company Secretary

MARTIN SHANAHAN

LESSOR'S EXECUTION

Signed by the person duly authorised by ACT Planning and Land Authority (Please print full name of authorised signatory).

Maggie Chapman

Signature of authorised person

Print full name and address of witness

Monica Saad




16 Challis Street

Dickson Act 2602



Signature of witness

OFFICE USE ONLY

Lodged by		Certificate of title lodged	1627:69 (2)
Data entered by		Certificates attached to title	-
Registered by		Attachments / Annexures	-
Registration date	24 FEB 2016	Vol & Folio of further lease	

From: [Saad, Monica](#)
To: [Sivalingam, Shiva](#)
Subject: Block 16 Section 33 Acton
Date: Thursday, 31 March 2016 2:41:00 PM

Dear Shiva

Please find attached the signed surrender form dated 17 December 2015 for Block 16 Section 33 Acton.

Please find attached the signed surrender form dated 8 January 2016 for Block 13 Section 33 Acton which was also a rental lease.

Sorry.....

Could you please amend your records accordingly.

Thanks

Monica Saad | Manager - General Leasing | Lease Administration

Phone 02 6207 2112

Planning Delivery Division | Environment and Planning | **ACT Government**

Dame Pattie Menzies House, Challis Street, Dickson | GPO Box 158 Canberra ACT 2601 | www.planning.act.gov.au

From: [Saad, Monica](#)
To: [Harding, Barbara \(ACTPLA\)](#)
Subject: FW: Block 2 Section 55 Duffy - Land Custodianship [SEC=UNCLASSIFIED]
Date: Friday, 2 September 2016 1:24:00 PM

Dear Barbara

The Crown lease granted over Block 13 Section 33 Acton was surrendered on 8 January 2016. The Lessee was JE & MS Pty Ltd.

The Crown lease granted over Block 16 Section 33 Acton was surrendered on 17 December 2015. The Lessee was Dobel Boat Hire Pty Ltd.

The Land Development Agency has agreed to be the Land Custodian for both blocks.

Could you please arrange for ACTMAPi to reflect this.

Any problems, please do not hesitate to contact me.

Regards

Monica Saad | Manager - General Leasing | Lease Administration

Phone 02 6207 2112

Planning Delivery Division | Environment and Planning | **ACT Government**

Dame Pattie Menzies House, Challis Street, Dickson | GPO Box 158 Canberra ACT 2601 | www.planning.act.gov.au

SETTLEMENT STATEMENT TAX INVOICE

Lessee: Dobel Boat Hire Pty Limited
ABN 79 008 492 144

Buyer: Australian Capital Territory represented by Chief
Minister, Treasury and Economic Development
ABN 204 199 255 79

Land: Block 16 Section 33 Acton

Date and time of Settlement: Thursday 17 December 2015 at 2.30pm

Place of Settlement: ACT Law Society Settlements Rooms

PAYABLE BY BUYER

Surrender Sum (GST exclusive)	\$1,000,000.00
GST	\$100,000.00
Less Deposit	<u>\$0.00</u>
Subtotal	\$1,100,000.00
Adjustments:	
Rental Arrears Repayment, 8 months @ \$1917.00 (GST inclusive)	+\$15,336.00
Rental Arrears Repayment for December \$1917.00 per month, 17/31 days	+1,051.26
Revenue Rates \$1,094.30 per quarter Adjusted as unpaid Lessee allows 78/92 days	-\$927.78
Land Rent \$3,575.00 per quarter Adjusted as paid Buyer allows 14/92 days	+\$544.02

AMOUNT PAYABLE ON COMPLETION

\$1,116,003.50

CHEQUE DIRECTION

1. Dobel Boat Hire Pty Limited	\$1,116,003.50
Total	\$1,116,003.50

SETTLEMENT STATEMENT TAX INVOICE

Seller: Jim and Cony Seears
ABN

Buyer: Land Development Agency
ABN 204 199 255 79

Land: Block 16 Section 33 Acton

Date and time of Settlement: Thursday 17 December 2015 at 11.00am

Place of Settlement: Level 6, 12 Moore Street

PAYABLE BY BUYER

Purchase Price of the Business (GST exclusive)	\$575,000.00
GST	\$57,500.00
Less deposit paid	-\$50,000.00

AMOUNT PAYABLE ON COMPLETION **\$582,500.00**

CHEQUE DIRECTION

1. Jim and Cony Seears	\$582,240.00
2. Jim and Cony Seears (contribution to legal and accountancy fees)	\$10,000.00
3. Access Canberra	\$260.00
Total	\$592,500.00

Note:

Payment of payable 8 months rental arrears (\$1,742.75 per month plus GST) plus rent for 17 days in December remitted directly to Dobel Boat Hire Pty Ltd **\$16,387.47**



DEED OF SURRENDER OF CROWN LEASE

Dated

8 January ~~2015~~ 2016

Parties

AUSTRALIAN CAPITAL TERRITORY

THE PLANNING AND LAND
AUTHORITY

JE & MS PTY LTD ACN 118 844 885 AS
TRUSTEE FOR THE JE & MS TRUST
ABN 70 783 414 557

Prepared by

ACT Government Solicitor
Level 6, 12 Moore Street
Canberra ACT 2601
Australia
Ph: (02) 6205 3494
Fax: (02) 6207 0650
Ref: 626515:KA

Version

Final 22/12/2015

CONTENTS

1.	Interpretation	1
2.	Consideration	4
3.	Agreement to surrender Lease.....	4
4.	Parties' Costs	7
5.	GST.....	7
6.	Notices and other communications	8
7.	General	9
	SCHEDULE 1 – Reference Schedule	11
	SCHEDULE 2 – Crown lease.....	12
	SCHEDULE 3 - Condition and use terms	13

PARTIES:

AUSTRALIAN CAPITAL TERRITORY, the body politic established by section 7 of the *Australian Capital Territory (Self-Government) Act 1988* (Cth) (**Territory**) represented by the Chief Minister, Treasury and Economic Development Directorate.

PLANNING AND LAND AUTHORITY, the body corporate established by section 10 of the *Planning and Environment Act 2007* (ACT) for and on behalf of the Commonwealth of Australia (**Authority**).

JE & MS PTY LTD ACN 118 844 885 in its own capacity and as trustee for the JE & MS TRUST ABN 70 783 414 557 of [REDACTED]

BACKGROUND

- A. Pursuant to the Lease, the Authority (on behalf of the Commonwealth of Australia) leases the Land to the Lessee.
- B. The Lessee has agreed to surrender the Lease with effect from the Surrender Date.
- C. The parties have otherwise agreed to the surrender of the Lease on the terms of this Deed.

IT IS AGREED by the parties as follows.

1. Interpretation

1.1 Definitions

The following definitions apply in this Deed, unless the context otherwise requires. Additional definitions also appear in the Reference Schedule.

ACT Building Legislation

means the *Building Act 1972* (ACT), the *Building Act 2004* (ACT), the *City Area Leases Act 1936* (ACT), the *Leases Act 1918* (ACT), the *Leases (Special Purposes) Act 1925* (ACT), the *Buildings (Design and Siting) Act 1964* (ACT), the *Land (Planning and Environment) Act 1991* (ACT), the *Planning and Development Act 2007* (ACT), the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth) and the *National Lands Ordinance 1989* (Cth) (and any laws having effect by virtue of that Ordinance), and regulations made pursuant to that legislation, and their predecessors and substitutes.

Authorised Officer

means a director or secretary of a party or any other person appointed by a party to act as an authorised officer for the purposes of this Deed.

Business Agreement	means the Sale of Business Assets between the Land Development Agency and the Lessee dated on or about the date of this Deed.
Business Day	means a day on which banks are open for general banking business in the capital city of the State or Territory in which the Land is situated (not being a Saturday, Sunday or public holiday in that city).
Claim	means a claim, notice, demand, action, proceeding, litigation, investigation or judgment however arising, whether present or future, actual or contingent, and whether involving a third party or a party to this Deed.
Completion	means completion of the surrender of the Lease in accordance with this Deed.
Costs	includes costs, charges and expenses, including those incurred in connection with advisers.
Corporations Act	means the <i>Corporations Act 2001</i> (Cth).
Deed	means this deed and all schedules and attachments annexed to it.
Goods	means plant, equipment, chattels, fixtures and fittings on the Land.
GST Act	means <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
Land Charges	means general rates and water and sewerage rates.
Planning Act	means the <i>Planning and Development Act 2007</i> (ACT).
Property	means the Lease, the Goods and the Land.
Reference Schedule	means the reference schedule contained in Schedule 1.
Territory	means: <ul style="list-style-type: none"> (a) when used in a geographical sense, the Australian Capital Territory; and (b) when used in any other sense, the body politic established by section 7 of the <i>Australian Capital Territory (Self-Government) Act 1988</i> (Cth).

1.1 References to certain general terms

Unless the contrary intention appears in this Deed:

- (1) a reference to a document (including this Deed) includes any variation or replacement of it;
- (2) a reference to a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this Deed;
- (3) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re enactments or replacements of any of them;
- (4) the word "law" includes common law, principles of equity, and laws made by parliament (and laws made by parliament include State, Territory and Commonwealth laws and regulations and other instruments under them, and consolidations, amendments, re enactments or replacements of any of them);
- (5) the singular includes the plural and vice versa;
- (6) the word "person" includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association, or any authority;
- (7) a reference to a particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (8) a reference to a body or authority includes a reference, if that body or authority ceases to exist, to the body or authority which has substantially the same functions and objects as the first body or authority;
- (9) an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and each of them individually;
- (10) an agreement, representation or warranty by two or more persons binds them jointly and each of them individually;
- (11) a reference to a group of persons or things is a reference to any two or more of them jointly and to each of them individually;
- (12) a reference to Australian dollars, dollars, A\$ or \$ is a reference to the lawful currency of Australia;
- (13) if a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (14) a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;

- (15) a reference to accounting standards is a reference to the accounting standards as defined in the Corporations Act, and a reference to an accounting term is a reference to that term as it is used in those accounting standards, or, if not inconsistent with those standards, in accounting principles and practices generally accepted in Australia;
- (16) the words "including", "for example" or "such as" when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind;
- (17) if an act under this Deed to be done by a party on or by a given day is done after 5.00pm on that day, it is taken to be done on the next day;
- (18) a reference to time is a reference to time in the State or Territory in which the Land is situated; and
- (19) a reference to anything (including any amount) is a reference to the whole and each part of it.

1.2 Headings

Headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this Deed.

2. Consideration

2.1 Valuable Consideration

Each party acknowledges entering into this Deed and incurring obligations and giving rights under this Deed for valuable consideration received from each other party.

3. Agreement to surrender Lease

3.1 Surrender of Lease

With effect from the Surrender Date, the Lessee as beneficial owner agrees to surrender to the Authority free of encumbrances all the Lessee's estate, title and interest in the Lease and the Land.

3.2 Acceptance of surrender of Lease

The Authority agrees to accept the surrender of the Lease from the Surrender Date under section 293 of the Planning Act.

3.3 Lessee Acknowledgement

The Lessee:

- (1) acknowledges that the Surrender Sum and all amounts payable by the Territory under clauses 3.7 ("Deposit"), 3.10 ("Obligations on Completion") and (3)(a) ("Adjustments"), constitute payment by the Territory and the Authority of every

amount payable to the Lessee upon surrender of the Lease, including for the improvements on the Land, in particular any amounts due to be paid to the Lessee under sections 291 and 293 of the Planning Act; and

- (2) agrees not to make any Claim for, or take any action against, the Territory or the Authority to recover any monies in addition to those amounts regarding the surrender of the Lease, including any Claim under sections 291 or 293 of the Planning Act.

3.4 Lessee's goods and improvements

The Goods located on the Land at Completion become the property of the Territory except for the following items:

- (1) any which are not owned by the Lessee;
- (2) are sold by the Lessee under the Business Agreement; or
- (3) are an Excluded Assets as defined in the Business Agreement.

3.5 No warranties by Lessee

The Lessee does not make any representation or warranty in relation to the condition of the Land and the Goods, and the Territory accepts them in their state of repair and condition at Completion.

3.6 Condition and use

The parties agree that the Lease is surrendered subject to the terms in **Schedule 3**.

3.7 Deposit

On the Deposit Date:

- (1) The Territory must pay the Deposit to the Lessee; and
- (2) The Lessee must provide the Territory with the forms for the surrender of the Lease, executed by the Lessee.

3.8 Date for Completion

The parties will complete the surrender of the Lease on or before the Surrender Date.

3.9 Place and time for Completion

Unless otherwise agreed Completion is to take place:

- (1) at the ACT Settlement Rooms; and
- (2) at a time before 3.00pm nominated by the Territory.

3.10 Obligations on Completion

On Completion:

- (1) provided the Lessee has complied with its obligations under clause 3.7(2), the Territory must provide the Lessee with a copy of the forms for surrender of the Lease executed by the Territory and endorsed by the Authority;
- (2) the Territory must pay the Surrender Sum (minus the Deposit paid) to the Lessee:
 - (a) by cheque drawn on the Territory's bank account; and
 - (b) as the Lessee directs; and
- (3) the Lessee must:
 - (a) pay all rent due to be paid under the Lease to the Authority as at the Completion date; and
 - (b) provide the Territory with the original certificate of title for the Land and any other document or consent required to register the forms of surrender of Lease

3.11 Adjustments

The Territory and the Lessee agree to make all necessary adjustments of amounts payable by the Lessee for Land Charges, on the Surrender Date as if the Territory were responsible for Land Charges arising after the Surrender Date. If an amount cannot be adjusted because it is not known, the Territory and the Lessee agree to make the adjustment within 14 days after the amount is known.

3.12 Release

- (1) The Territory and the Authority agrees to release and forever discharge the Lessee from all Claims and Costs concerning the Lessee's obligations under the Lease arising on and from the Surrender Date.
- (2) The Lessee agrees to release and forever discharge the Territory and the Authority from all Claims and Costs concerning the Lease, the use or occupation of the Premises or any incidental matter, arising up to the Surrender Date.

3.13 Obligations after Completion

- (1) The Territory must arrange to register the surrender of Lease with Access Canberra (Land Titles and Rental Bonds) as soon as reasonably practicable after Completion.
- (2) The Lessee agrees to provide all reasonable assistance to enable the Territory to register the surrender of the Lease after completion, including answering any requisitions raised by Access Canberra (Land Titles and Rental Bonds) or the Authority.

4. Parties' Costs

The parties agree to bear their own costs in connection with this Deed and any document or matter in connection with it with the exception of:

- (1) the Lessee's fees from [REDACTED] (up to a maximum of \$43,000 plus GST);
- (2) the Lessee's legal fees for reviewing this Deed and the Business Agreement (up to a maximum of \$1,500 plus GST);
- (3) the Lessee's accounting and tax fees for advising on structure and reviewing this Deed and the Business Agreement (up to a maximum of \$3,388 plus GST),

which will in each case be paid by the Territory on Completion on the provision of valid tax invoices to the Territory.

5. GST

5.1 GST definitions

In this clause:

GST, Taxable Supply, Input Tax Credit, Supply and Tax Invoice have the same meaning as in the Act;

GST Rate means 10% or if the rate at which GST is calculated under the GST Act changes, the rate applicable at the relevant time.

Payment includes consideration in the form of money given or received and in a form other than money given or received.

5.2 Payment of GST

A party making Payment to another party for a Taxable Supply under this Deed must pay to the other party at the same time, an additional amount equal to the amount of the Payment multiplied by the GST Rate.

5.3 Reimbursements

When calculating the amount of:

- (a) any reimbursement to a party under this Deed; and
- (b) the indemnification under this Deed of an expense, loss or liability incurred or to be incurred by that party,

the other party may include the GST paid or payable on the Supply giving rise to the amount, but if that party includes the GST that party must deduct the amount of any Input Tax Credit from the amount paid.

5.4 Tax invoice

A party receiving a Payment of GST under this clause must provide a Tax Invoice to the party making the Payment before or at the same time as the Payment is received.

6. Notices and other communications

6.1 Form

Unless expressly stated otherwise in this Deed, all notices, certificates, consents, approvals, waivers and other communications in connection with this Deed must be in writing, signed by the sender (if an individual) or an Authorised Officer, or the solicitor, of the sender and marked for the attention of the person identified in the Reference Schedule or, if the recipient has notified otherwise, then marked for attention in the way last notified.

6.2 Delivery

Communications must be:

- (1) left at the address set out or referred to in the Reference Schedule; or
- (2) sent by prepaid ordinary post (airmail, if appropriate) to the address set out or referred to in the Reference Schedule; or
- (3) sent by fax to the fax number set out or referred to in the Reference Schedule; or
- (4) given in any other way permitted by law.

However, if the intended recipient has notified a changed address or changed fax number, then communications must be to that address or number.

6.3 When effective

Communications take effect from the time they are received or taken to be received under clause 6.4 ("When taken to be received") (whichever happens first) unless a later time is specified.

6.4 When taken to be received

Communications are taken to be received:

- (1) if left at the address set out or referred to in the Reference Schedule, on that day;
- (2) if sent by post, three days after posting (or seven days after posting if sent from one country to another); or
- (3) if sent by fax, at the time shown in the transmission report as the time that the whole fax was sent.

6.5 Receipt outside business hours

Despite clauses 6.3 ("When effective") and 6.4 ("When taken to be received"), if communications are received or taken to be received under clause 6.4 after 5.00pm in the place of receipt or on a non-Business Day, they are to be taken to be received at 9.00am on the next Business Day and take effect from that time unless a later time is specified.

7. General

7.1 Payments

The parties agree to make payments under this Deed in full without set-off (including equitable set-off) or counterclaim and without any deduction.

7.2 No merger

The warranties, undertakings and indemnities in this Deed do not merge on the Surrender Date.

7.3 Variation and waiver

A provision of this Deed, or a right created under it, may not be waived or varied except in writing signed by the party or parties to be bound.

7.4 Confidentiality

Each party agrees not to disclose information provided by any other party that is not publicly available (including the existence or contents of this Deed except:

- (1) to any person in connection with an exercise of rights or a dealing with rights or obligations under the Lease or this Deed; or
- (2) to officers, employees, legal and other advisers and auditors of the parties; or
- (3) with the consent of the party who provided the information (such consent not to be unreasonably withheld); or
- (4) as required by any law or stock exchange; or
- (5) as required by law; or
- (6) in the case of the Territory and the Authority, to any Minister of the Territory or to the Legislative Assembly or any of its bodies or committees; or
- (7) as required to give effect to the surrender of the Lease.

Each party consents to disclosures made in accordance with this clause 7.4.

7.5 Counterparts

This Deed may consist of a number of copies, each signed by one or more parties to this Deed. If so, the signed copies are treated as making up the one document.

7.6 Entire agreement

This Deed and the Business Agreement constitutes the entire agreement of the parties about the surrender of the Lease and supersedes all previous agreements, understandings and negotiations. The Territory and the Authority agree that in entering into this Deed they have not relied on any representation or warranty about its subject matter except those included in this Deed.

7.7 Construction

No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, this Deed any part of it.


7.8 Further assurances

Each party agrees, at its own expense, on the request of another party, to do everything reasonably necessary to give effect to this Deed and the transactions contemplated by it, including by signing documents.

7.9 Interdependency with Business Agreement

- (1) This Deed is interdependent and conditional upon the Business Agreement.
- (2) If either party breaches any provisions of this Deed that will constitute a breach of the Business Agreement.
- (3) If either party breaches any provision of the Business Agreement that will constitute a breach of this Deed.
- (4) If either party is entitled to rescind or terminate this Deed then that party will be entitled to rescind or terminate (as the case may be) the Business Agreement.
- (5) If either party is entitled to rescind or terminate the Business Agreement then that party will be entitled to rescind or terminate (as the case may be) this Deed.
- (6) Completion of this Deed must take place simultaneously with the Business Agreement.

SCHEDULE 1 – Reference Schedule

- Item 1:** Lessee: JE & MS Pty Ltd ACN 118 844 885 in its own capacity and as trustee for JE & MS Trust ABN 70 783 414 557
- Item 2:** Land: Block 13 Section 33 Division of Acton
- Item 3:** Lease: Lease granted pursuant to the *Land (Planning and Environment) Act 1991* (ACT) by the Commonwealth to the Lessee over the Land and entered in register Book Volume 1627 Folio 69, a copy of which is contained in Schedule 2.
- Item 4:** Surrender Date: 1 February 2016
- Item 5:** Deposit: \$10 (receipt of which is acknowledged).
- Item 6:** Deposit Date: the date of this Deed.
- Item 7:** Surrender Sum: \$1,099,999.00 (excluding GST) comprising:
- (a) all statutory compensation payable under sections 291 and 293 of the Planning Act; and
 - (b) consideration for the surrender of the Crown lease.
- Item 8:** Governing law: Australian Capital Territory
- Item 9:** Address for Notices: **Territory:**
Chief Minister, Treasury and Economic
Development Directorate
Ground Floor, TransACT House
470 Northbourne Avenue
Dickson ACT 2602
- Contact Officer: Nicholas Hudson
- Lessee:**
JE & MS Pty Ltd

- Contact Officer: Jillian Edwards
- Authority:**
Dame Pattie Menzies House
16 Challis Street
Dickson ACT 2602
- Contact Officer: Maggie Chapman

SCHEDULE 2 – Crown lease

SCHEDULE 3 - Condition and use terms

Item 1 As is, where is

The Territory and the Authority acknowledge that the Lessee surrenders the Property on an "as is, where is" basis, in its present state and condition, including:

- (1) any legal and physical defects; and
- (2) any matter referred to in this Deed.

Item 2 Inspection

The Territory confirms it:

- (1) is satisfied as to the nature, quality, condition and state of repair of the Property; and
- (2) accepts the Property as it is including all defects (latent or patent) including any matter referred to in this Deed; and
- (3) is satisfied about the purposes for which the Property may be used and about all restrictions and prohibitions on its use and development.

Item 3 Due Diligence

The Territory acknowledges and agrees that:

- (1) before entering into this Deed, the Lessee gave the Territory a reasonable opportunity to inspect the Property; and
- (2) the Territory has entered into this Deed on the basis that it has carried out, or had the opportunity to carry out, its due diligence of the Property.

Item 4 Territory has satisfied itself about specific matters

The Territory acknowledges that it has satisfied itself in connection with the matters arising from its due diligence, including in connection with and enquiries about:

- (1) the title to the Property, including easements, restrictions on use and other encumbrances which benefit or burden the Property; and
- (2) the Lessee's title to the Property and its rights and obligations in connection with it, including the terms of the Lease; and
- (3) the accuracy of the description of the Property; and
- (4) the matters referred to in Item 1 ("As is, where is") and Item 2 ("Inspection") of this schedule; and

- (5) the use, fitness or suitability of the Property for any purpose; and
- (6) the means of access to the Property; and
- (7) whether the walls or fences on the land that should not be on the boundaries of the Property, as the case may be, are not and the existence of any encroachments onto the Property or by the Property onto adjacent land (and whether the encroachments are subject to any registered easement or other agreement burdening or benefitting the Property); and
- (8) whether the Property complies with any laws and requirements of Authorities affecting the Property (including any use) and any non-compliance including the ACT Building Legislation; and
- (9) the existence or otherwise of any requirements of any Authority in connection with the Property, including resumptions, road dedications, road widenings and similar things; and
- (10) the existence or otherwise of necessary consents, approvals, licences or requirements of Authorities in connection with the Property (including its use) and any non-compliance with those consents, approvals, licences or requirements; and
- (11) whether there are any notices or orders by any Authority, including a notice or order requiring work to be done or money spent in connection with the Property; and
- (12) the existence of any claim for an interest in the Property under the *Native Title Act 1993* (Cth), the *Native Title Act 1994* (ACT) or any other native title law; and
- (13) the existence of easements or other rights in respect of a service for the Property (including air, communication, drainage, electricity, garbage, gas, oil, radio, sewerage, telephone, television or water) which is a joint service or which passes through another property, or any service for another property which passes through the Property; and
- (14) the condition or existence or non-existence of services; and
- (15) any approval, application for an approval or order under any law; and
- (16) the terms and conditions of the Lease and any non-compliance with those terms and conditions; and
- (17) the ownership or location of any fuel storage tank or facility.

Item 5 No claims or requisitions

The Territory accepts the surrender of the Lease subject to the matters referred to, disclosed or described under this Deed.

SIGNED AS A DEED ON.....

8 January 2016
-2015-

SIGNED for and on behalf of the
AUSTRALIAN CAPITAL
TERRITORY in the presence of:

[Redacted]

) Signature of Territory delegate

[Redacted]

Signature of witness

[Handwritten Signature]

Print name

Laura Marcantonio

Print name

EXECUTED by the authorised
representative for THE PLANNING
AND LAND AUTHORITY in the
presence of:

) [Redacted]

[Redacted]

Signature of witness

) By executing this Deed the
) signatory warrants that the signatory
) is duly authorised to execute this
) Deed on behalf of The Planning and
) Land Authority

Maggie Chapman

Monica Saad

Name of witness

) Print name

EXECUTED by the JE & MS Pty
Ltd ACN 118 844 885 in
accordance with section 127 of the
Corporations Act 2001:

[Redacted]

Signature of Director

Jillian Edwards

Print name

[Redacted]

Signature of Director/Company
Secretary

MARTIN SHANAHAN

Print name