

## CHAPTER 4

### THE SALE PROCESS

#### **Defence's decision that the Artillery Barracks site is surplus to requirements**

4.1 The decision by the Department of Defence that the Artillery Barrack is surplus to its current requirements was criticised during the Committee's inquiry. The Department's view in this regard was put succinctly by the Acting Head of the Defence Estate, Mr Ross Bain, in his evidence to the Committee:

Artillery Barracks has been identified as surplus to defence requirements. The property is underutilised and its retention for defence purposes can no longer be justified.<sup>1</sup>

4.2 Defence's reasons are set out in more detail in its submission to the Committee.

The long-term costs of maintaining Artillery Barracks are significant given the age and type of buildings and their heritage status. Justification of this ongoing expenditure needs to be considered in the context of the limited utilisation of the facilities by Defence.

The Report of the Defence Efficiency Review which was released in 1997 noted that there are important efficiency gains to be made by consolidating into a smaller number of larger and, where possible, joint service bases and recommended acceleration of the program of rationalising the defence estate. Department of Defence strategic planning developed during 1998 identified the need to rationalise and consolidate defence property in the Perth area with consolidation of Army functions at Irwin Barracks at Karrakatta. This planning identified that Artillery Barracks should be sold at the earliest opportunity and that planning should commence for disposal of Artillery Barracks for relocation of the Army Museum and WAUR. Army strategic Guidance also recommends disposal of the property subject to development of suitable alternate locations for the Army Museum and the WAUR.<sup>2</sup>

4.3 The decision of the Department was strongly criticised by the Army Museum of Western Australia Foundation:

The committee is also looking to find the reasons for the disposal of this piece of property. To be frank, we would like to know as well. If you read the letters that have been written and even the defence submission itself, it always has that euphemistic 'surplus to requirements'. That is a statement of

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1 Mr Ross Bain, Acting Head, Defence Estate, *Committee Hansard*, 10 November 2000, p 166.

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

outcome, not of reason. We have no idea why this piece of property is now surplus to requirements ... That decision can just as easily be reconsidered and somebody could say, 'Yes, we can find a use for the Artillery Barracks and it is not surplus to requirements.'<sup>3</sup>

The site is currently used for the museum and as a home for the University of Western Australia Regiment. There is potential to use it for a place for recruitment. The 1128 reserves have been negotiating with the university regiment for some time to put a rifle platoon in here. The Pilbara Regiment has a presence out at Irwin barracks. They could be moved here. There are a number of cadet units. There is an air training corps unit that runs out of Leeuwin barracks which would be happy to move here. There is a growing number of schools, not only in this area but in this state, which have military cadet units. It is an obvious place for education.<sup>4</sup>

4.4 Major General Ken Taylor (Retired) also addressed this issue when he gave evidence to the Committee:

We hear the term, 'surplus to requirement'. What does that really mean? I will tell you what I think it means in practice. It means that the Defence Estate Organisation have been told to sell off all the assets that they can possibly get their hands on. They advise Army that a particular site is up for consideration for sale 'Army, do you want it or would you hang on to it?' Army makes a case and the DEO says, 'No, that's not good enough. Try again.' So Army digs deeper and makes another case. The Defence Estate Organisation says, 'No, we're going to sell it.' Then the Army says, 'But it's got big heritage value.' The DEO says, 'That might lower the price a little bit.' That is how the business works. The problem is that the ownership of the territory or property is in the wrong hands. The decisions for disposal are, in effect, made by the Defence Estate Organisation which have an entirely different brief to everybody else. It is not made by those who own and understand the needs.<sup>5</sup>

4.5 The RSL was also critical of the decision; particularly in the context of the reduced Defence presence within the community and its ramifications for Defence recruiting:

At a time when the ADF is trying hard to attract young Australians to its ranks, the Defence Department is selling off the best advertisements it has; a high profile presence amongst it's recruiting base.

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3 Mr James Dalton, Board Member, Army Museum of Western Australia Foundation, *Committee Hansard*, 19 October 2000, pp. 51-52.

4 Mr James Dalton, Board Member, Army Museum of Western Australia Foundation, *Committee Hansard*, 19 October 2000, pp. 51-52.

5 Major General Ken Taylor (Retired), *Committee Hansard*, 19 October 2000, p. 110.

Rather than spending millions of dollars on media advertising for recruitment, it is logical that such expenditure might partially be better spent on maintaining high profile Defence facilities within metropolitan areas.

The retention of Defence facilities in metropolitan and regional areas would provide dual benefits of offering young people greater access to the ADF and Australians would again be able to see sailors, soldiers and airmen and women on the streets of cities and towns.<sup>6</sup>

The retention of Fremantle Artillery Barracks for use by Army would help reverse this trend and retain military heritage in the hands of the military. In conjunction with the use of the Barracks by units such as the University Regiment, and the housing of the Army Museum, consideration could also be given to the Barracks being used as a base for the Army component of the School Cadet movement in Western Australia.<sup>7</sup>

The ADF must again be visible in cities and towns throughout the nation and form part of the general community. If the ADF wishes to recruit well educated, intelligent young men and women it must ensure closer interaction with the wider community and offer posting options other than Tindal, Darwin and Townsville.<sup>8</sup>

4.6 These points are well made, as Defence is clearly interested in maximising revenue rather than in the concept of the broader long-term outlook expressed by witnesses. Nevertheless, the Committee acknowledges that Defence has responsibility for deciding which properties are no longer required for operational purposes and are therefore surplus to requirements.

### **Decision to dispose of the property**

4.7 The earliest indication that the property might be sold was in 1981. According to the City of Fremantle:

City of Fremantle records show that the Department of Administrative Services advised the Council that the site was surplus to requirements in 1981. This was part of an overall review of army owned land in the metropolitan area. Addition housing on the site had previously been considered and discarded within defence. The City of Fremantle at that time expressed interest in acquiring the site.<sup>9</sup>

4.8 The matter then appears to have lapsed. The Considine and Griffiths Conservation Plan indicates that there was further speculation about the site in 1987.

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6 The Returned and Services League of Australia Western Australia Branch, submission no. 33, p. 3.

7 The Returned and Services League of Australia Western Australia Branch, submission no. 33, p. 4.

8 The Returned and Services League of Australia Western Australia Branch, submission no. 33, p. 4.

9 City of Fremantle, submission no. 16, p. 4.

In 1987, there was speculation as to whether or not the Army would dispose of the Fremantle Artillery Barracks, following a defence spending review commenced in the previous year. The story was followed in the state press, but the command in Western Australia was of the view that disposal should not be considered in the light of likely continued use, cultural heritage significance and the difficult terrain which would not favour development.<sup>10</sup>

4.9 In 1989, the then Minister for Defence, the Hon Kim Beazley, was approached by the University of Notre Dame Australia about the availability of the Artillery Barracks as a possible site for the University. The Museum was not located at its present site at this time. The correspondence indicates that the University was exploring what options it might have for the location of its first campus. In subsequent correspondence, the University indicated that it was interested in the property either as a second stage for student accommodation or as a self-contained teaching area for one of its colleges. It went on to say that:

Our immediate problem is that while the University would wish to secure this property for growth in the 1995–2000 period, it is unlikely to have the financial resources to purchase the property outright in the next three years.<sup>11</sup>

4.10 In response, the then Minister indicated that the Commonwealth had not finalised its position with respect to the availability of the Artillery Barracks but was prepared to consider a firm proposal for the Barracks.<sup>12</sup> Acting Deputy Secretary, Mr Rod Corey, told the Committee:

I think that we had not made a firm decision at that stage in 1989 to dispose of the barracks. It was probably something we were looking at; we knew that it was underutilised. I suggest that the response from Mr Beazley was probably couched in those terms. It was saying, ‘Yes, we understand your interest; we will look at it when you come forward with a firm proposal.’<sup>13</sup>

4.11 The University did not pursue the matter further at that time.

4.12 The Department of Defence tabled a letter during the Committee’s hearings which showed that the Army was examining its future options with respect to the site in 1991. It had held discussions with both the Fremantle Town Council and the school which then leased the Tuckfield Street oval and it was considering selecting

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10 Artillery Barracks Fremantle Conservation Plan, Considine and Griffiths Architects, March 1996, p. 18.

11 Letter from Professor Geoffrey Kiel, Planning Vice-Chancellor, University of Notre Dame Australia to the Hon Kim Beazley MHR, Minister for Defence, dated 11 July 1989.

12 Letter from the Hon Kim Beazley, Minister for Defence, to Professor Geoffrey Kiel, Planning Vice Chancellor, University of Notre Dame Australia, dated 4 October 1989.

13 Mr Rod Corey, Acting Deputy Secretary, Department of Defence, *Committee Hansard*, 10 November 2000, p. 160.

consultants to develop options for rezoning and marketing the property.<sup>14</sup> Pressed by the Committee to say when the property had been determined as being surplus to requirements, Mr Corey replied:

The determination of it being surplus was made in the context of the 1994–99 public green book, so it would have been in about 1993, I guess. We had been looking at properties around Australia generally for some time, identifying ones that were potentially surplus. I guess the first formal notification of its status was in that green book.<sup>15</sup>

4.13 The Green Book lists facilities and property for procurement and disposal.<sup>16</sup> In that book the property was listed under the heading of “Disposals Yet to be Contracted/Initiated”. The Green Book indicated that the proposed decommissioning date for the property was in late 1997.

4.14 However, the status of the property still remained unclear when the current sale process began. In the papers arising from the Defence Efficiency Review, published in 1997, the Artillery Barracks is not listed among those properties, which are part of the On-going Defence Property Disposal Plan.<sup>17</sup> However, in its submission, the Department indicated that strategic planning developed during 1998 identified the need to rationalise and consolidate Defence property in the Perth area, with consolidation of Army functions at Irwin Barracks and the sale of the Artillery Barracks at the earliest opportunity.<sup>18</sup>

4.15 The current sale process began with a letter from the University of Notre Dame Australia to the Minister of Defence on 16 November 1998.<sup>19</sup> In that letter, and in subsequent correspondence, the University sought to acquire the site through a priority sale. In response, the Department agreed to examine the eligibility of the University for a priority sale. With respect to the availability of the property for sale the Department said that:

With respect to the Artillery Barracks property itself, as stated by the Minister for Defence in his letter of 23 December 1998, defence is about to commence a review of its property holdings in the Perth metropolitan area. While indications are that the Barracks will be identified as being surplus to Defence’s requirements, this can not be confirmed until the review is

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14 Letter from A J Fanowrios, Headquarters Fifth military district to Australian Property Group, dated 30 August 1991.

15 Mr Rod Corey, Acting Deputy Secretary, Department of Defence, *Committee Hansard*, 10 November 2000, p. 189.

16 Facilities and Property Procurement and Disposal Plan 1994–1999, June 1994 Edition, p. 16.

17 Defence Efficiency Review, Future Directions for the Management of Australia’s Defence, Addendum to the Report of the Defence Efficiency Review, p. 249.

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

19 Letter from Dr Peter Tannock, Vice Chancellor, University of Notre Dame Australia to Mr John Moore, Minister for Defence, dated 16 November 1998.

completed. Current planning is for the review to be completed by mid 1999.<sup>20</sup>

4.16 The Defence Department's submission indicated that the final decision was taken in late 1999.

Following a study of Defence's strategic development options for Artillery, Leeuwin and Irwin Barracks and the former fuel installation at Fremantle, it was confirmed in late 1999 that Artillery Barracks was surplus to Defence requirements and the property was programmed for disposal in 2000–01.<sup>21</sup>

4.17 Mr Bain explained the process to the Committee:

...With all our properties, before we put them to the market, even though we may be undertaking some preliminary studies just to understand what the issues are with a particular property, we will go to the minister or the parliamentary secretary and seek his agreement to proceed with the disposal of the property and outline the issues involved. Normally that would include a letter to the local federal member and the local senator or senators responsible for that particular area. In this particular instance, in order to understand how to go forward with the property the issue was whether or not Notre Dame qualified for a priority sale. That was pretty central to how we would deal with the property in the future.<sup>22</sup>

...I suppose formally at the end of 1999 when the parliamentary secretary signed off. The next step, really, was clarifying the Notre Dame issue so that we understood the issues we were dealing with on the future of the property.<sup>23</sup>

4.18 This sequence of events raises some important issues about how the Department of Defence identifies surplus properties and manages their sale. It would appear from the above sequence that the property was, more or less, considered to be surplus for some eighteen years. During that time, the Department did not initiate any active sale process to dispose of the property. In effect, the decision to sell the property appears to have been directly stimulated by the University of Notre Dame Australia approaching Defence with a view to acquiring the property.

### **The sale process**

4.19 The current sale process is taking place in accordance with the terms of the Lands Acquisition Act 1989 and the Commonwealth Property Disposal Policy. That Policy generally requires that:

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20 Letter from Ms Liz Clark, Director Property Disposals to Dr Peter Tannock, Vice Chancellor, The University of Notre Dame Australia, dated 27 January 1999.

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

22 Mr Ross Bain, Acting Head, Defence Estate, *Committee Hansard*, 10 November 2000, p. 200.

23 Mr Ross Bain, Acting Head, Defence Estate, *Committee Hansard*, 10 November 2000, p. 202.

Commonwealth Property, having no alternative efficient use, is to be sold on the open market at full market value.<sup>24</sup>

4.20 However, exceptions are made under the policy in certain circumstances for priority sales:

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

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

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

(iii) where Commonwealth funded organisation seek special consideration in the disposal of surplus property and have the support of the relevant portfolio Minister and the Minister for Finance and Administration, the sale is to be negotiated on the basis of intended use.<sup>25</sup>

4.21 The University of Notre Dame Australia wrote to the Minister for Defence on 16 November 1998 asking that the University be considered as a special case for the acquisition of the site. Initially, the Minister for Defence responded that advice available to him was that the University was a private institution and, as such, did not qualify for a direct priority sale. The University pursued its claim for priority sale in subsequent correspondence. On 1 February 1999, the Department of Defence sought advice from the Department of Education, Training and Youth Affairs, and the Department of Finance and Administration about the eligibility of the University for priority status and whether its claim for priority status would be supported.

4.22 These enquiries revealed that the University was eligible for priority status and that its acquisition of the property would be supported by the Minister for Education Training and Youth Affairs. On 15 May 2000, the Minister for Finance and Administration agreed in principle to the proposed priority sale of the Artillery Barracks to the University of Notre Dame Australia.

4.23 Concerns have been raised about some aspects of the handling of the sale by the Department of Defence. These concerns led to a complaint being made to the Commonwealth Ombudsman by the Army Museum of Western Australia Foundation. The Ombudsman examined that complaint and responded on 21 September 2000. The Ombudsman's letter concluded by saying that:

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24 Commonwealth Property Disposals Policy, Agree by Government Decision 7174 of 17 February 1986.

25 Commonwealth Property Disposals Policy, Agree by Government Decision 7174 of 17 February 1986.

I am satisfied that, in this case, Defence is acting within both the law and policy guidelines in proposing a priority sale of the Artillery Barracks to the University of Notre Dame. The proposal has the approval in principle of the Minister for Finance and Administration and he must approve the final sale, if that is to take place.

In the circumstances, we consider that Defence is not acting unreasonably in this matter. Accordingly, we do not propose to make and further enquiries.<sup>26</sup>

### **Consultations with interested parties**

4.24 One of the three objectives Defence seeks to meet in property disposals is ‘To consult with stakeholders’. The Defence submission goes on to say that the ‘property disposal process includes ... consultation with Federal, State and local government agencies and other appropriate stakeholders ...’<sup>27</sup> In this case, Defence added the occupants of the property and Army as stakeholders.<sup>28</sup>

#### *Criticism of lack of consultation*

4.25 Many of the witnesses were very critical of the lack of consultation by Defence with other interested parties. The Army Museum of Western Australia Foundation was particularly critical in this respect:

When you read the chronology attached to the department’s submission, what is missing? What is missing is any reference to any discussions, any negotiations, any consultation with the current occupant us. It is as though we are phantoms. Yet I would have thought from the hue and cry that has been raised that one of the most important issues to address us on was the nature and role of the museum, but we were not. We became aware from the newspaper of the actual decision to sell. In fact, all of the information that we have had until very recently we have got from either newspapers or friends who have phoned us up.<sup>29</sup>

I think what irked us most all through this, made all of us angry and started us off on the path that we quite deliberately chose to take was that all the assurances of consultation, the process of time lines, evaporated. We had the Minister for Veterans’ Affairs opening our POW gallery downstairs and assuring everyone present that he would make sure that there was consultation before anything happened. The consultation that did happen and only once was a meeting held on 14 September, which was attended by Liz Clarke, the local representatives of DEO, a host of consultants from

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26 Letter from the Commonwealth Ombudsman to Board Chairman and Deputy Board Chairman, The Army Museum of Western Australia, dated 21 September 2000.

27 Defence, submission no. 37, p. 3.

28 Mr Rod Corey, Acting Deputy Secretary, Department of Defence, *Committee Hansard*, 10 November 2000, p. 198.

29 Mr James Dalton, Board Member, Army Museum of Western Australia Foundation, *Committee Hansard*, 19 October 2000, p. 53.



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Knight Frank, Dr Roger Lee from the Army History Unit and ourselves from the museum.<sup>30</sup>

4.26 Local residents and members of the broader community were similarly concerned about the inadequacy of the consultation process. Mr Stephen Anstey told the Committee:

It seems clear that at the very least the disposal process should have incorporated a comprehensive community consultation program. However, the level of community consultation to date has been minimal, with a local resident also representing the Arts Centre Precinct of the City of Fremantle summoned at extremely short notice to a meeting with Defence Estates personnel.<sup>31</sup>

People here are upset at the idea not just of the site being disposed of but also by the process which has been followed which, clearly, has not involved consultation.<sup>32</sup>

4.27 During the Committee's hearings, the Mayor of the City of Fremantle, Mr Richard Utting, was asked about the consultation process.

We have not been consulted; we have been told. I do not think I am stating it too baldly by saying that. We were never asked what our views would be. We were never asked whether we were in a position to purchase the site, either ourselves or in conjunction with the state government or with whatever. The land was bought from Fremantle Town Trust originally. We were not consulted; we were told and that is something that we as a city and a community find particularly arrogant by the Department of Defence.

4.28 The condemnation of the consultation process was almost universal. It should not, however, have been unexpected. In its submission, the Australian Heritage Commission<sup>33</sup> stated that community concern over such matters is common and drew the attention of the Committee to the report of the Committee of Review—Commonwealth Owned Heritage Properties.

The effect of insensitive Commonwealth disposal or adaptation on local communities should not be underestimated. In many cases the criticism to which the Commonwealth has been subjected in recent years is a result of strong community attachments to Commonwealth places and inadequate consultation between property managers and their local community.

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30 Mr James Dalton, Board Member, Army Museum of Western Australia Foundation, *Committee Hansard*, 19 October 2000, p. 54.

31 Mr Stephen Anstey, submission no. 29.

32 Dr Ian Alexander, *Committee Hansard*, 19 October 2000, p. 154

33 Australian Heritage Commission, submission no. 46, p. 6.

Local communities have a valuable contribution to make in finding solutions to property managers' problems. They need to understand the reasons behind the Commonwealth's decisions, they need to be given the time to consider these decisions, and they need to be given the opportunity to contribute to the debate on the future use of the property. For these reasons, the Committee considers that Commonwealth entities should seek the views of their local community in any decisions relating to the future of heritage properties in their control.<sup>34</sup>

4.29 Interested parties only found out about the impending priority sale when news of it appeared in the Western Australian media in January 2000. Despite the fact that Defence had been pursuing Notre Dame's priority sale application for more than 12 months, it had not extended to the Army Museum of Western Australia Foundation the courtesy of being notified of the proposed sale and the prospective move of the Museum to another Defence establishment. Defence had also not notified the City of Fremantle or the local residents, both groups of which had an interest in the future of the site, of its plans.

4.30 Although the Defence Estate Organisation is required by its objectives to consult stakeholders, it did not even notify its stakeholders, let alone consult them. By 'consult', the Committee expects an exchange of views and the taking into account by Defence of the expressed views of the stakeholders. This obviously did not happen and Defence seems to have taken the position that its course of action was a *fait accompli*.

4.31 Undoubtedly, the current course of action would not have been received well by stakeholders even with early consultation. Nevertheless, the lack of notification and consultation by Defence Estate Organisation served only to exacerbate the ill will generated by Defence's decision to sell the property and move the Army Museum.

4.32 The Committee did not receive any evidence that Defence publicised the proposed sale of the property, explored other methods of disposing of the property or sought other buyers. While the Commonwealth Property Disposal Policy provides for priority sales, it does not, in the view of the Committee, prevent other avenues of disposal from being explored once an application for priority sale has been received.

4.33 The Committee took up this matter with Defence, drawing attention to the contents of a letter of 19 May 2000 from Mr Fanowrios of the DEO Office in Perth to the Mayor of the City of Fremantle, which said:

Prior to the normal disposal process being activated, the University of Notre Dame lodged an application with Defence to purchase the property claiming priority sale status.

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34 A Presence for the Past; A report by the committee of Review—Commonwealth Owned Heritage Properties, October 1996, p. 63.

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If the claim fails the property will, subject to the necessary approvals, be disposed of in accord with standard disposal practice.

4.34 The Committee put to Defence that an inference could be drawn from Mr Fanowrios's letter that, if an eligible organisation got in early and its claim was approved, it could finesse any other possible bids for a Defence property declared surplus to requirements. Mr Corey responded:

Defence would have to recommend to the minister for finance that this was the most appropriate way to go. The reason we made the judgment about Notre Dame was that, if the sale to Notre Dame fell through and some other eligible organisation came forward with a proposal that we were prepared to support and to recommend to the minister for finance that this was the way to go, that would be the case. If it was something that was not attractive to us and we thought there was greater value in going to the open market, we would not necessarily support that.<sup>35</sup>

4.35 The Committee sought to find out why Defence did not try to identify other possible buyers of the property, such as other universities or the City of Fremantle. With regard to other universities, Mr Corey replied:

None of those have come forward and expressed an interest. As I said, priority sale is an exception. We only do it when somebody comes up with a case and a case makes sense. Our preference and policy from the department of finance for disposal of Commonwealth lands is to put it on the open market and obtain the highest and best value for it.<sup>36</sup>

4.36 It is hardly surprising that there has been a dearth of competing bids for the property as Defence had not publicised its availability for sale. After 15 May 2000, the announcement that approval in principle had been given to the University of Notre Dame to buy the property would have given the impression of a *fait accompli* and would have discouraged other bids.

4.37 Nevertheless, the Army Museum of Western Australia Foundation put forward a proposal to lease and manage the property, provided that it remained in public ownership. It obviously does not have sufficient funds to buy the property. Defence is studying the Foundation's proposal.

*City of Fremantle's interests in the property*

4.38 Media reports that the property may be sold led to a petition being sent by local residents to the City of Fremantle in January 2000 requesting that the City Council acquire the vacant land on Tuckfield Street for community recreation. On

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35 Mr Rod Corey, Acting Deputy Secretary, Department of Defence, *Committee Hansard*, 10 November 2000, p. 217.

36 Mr Rod Corey, Acting Deputy Secretary, Department of Defence, *Committee Hansard*, 10 November 2000, pp. 217-218.

3 February 2000, the City Council wrote to Defence to secure the Tuckfield Street oval for community purposes.

4.39 It took Defence three and a half months to reply by letter dated 19 May 2000. With regard to this delay, Mr Corey said, ‘I think that is because we were waiting; at that stage we had already submitted the priority sale proposal; our minister has signed the letter to Minister Fahey seeking his agreement to the priority sale and we were awaiting a response before we went back to that’.<sup>37</sup> On the other hand, a little later, Mr Corey said that the writer of the letter did not know the outcome of the Minister’s decision until a day after the letter was signed.<sup>38</sup>

4.40 In evidence to the Committee, the City of Fremantle said that:

There has never been any invitation for the City of Fremantle to make an offer for the site, on any conditions whatsoever. The only communication it has had with the Department of Defence have always been along the lines that the site is surplus to requirements and that it emerged that Notre Dame were the preferred purchaser.<sup>39</sup>

4.41 Defence told the Committee that ‘I do not think anybody twigged that the City of Fremantle would have had an interest. We were dealing with Notre Dame. We were not necessarily dealing with the City of Fremantle. The City of Fremantle had never come forward and expressed any interest.’<sup>40</sup> The fact that the City of Fremantle owns the Cantonment Hill Reserve, which borders on, and is largely surrounded by, the Defence property should have, at the very least, been a signal to Defence that the Council might have had an interest in the rest of the property or part of it. Apart from that factor, the site was originally owned by the Council, before its compulsory acquisition by the Commonwealth in 1909 and, moreover, it would obviously have an interest in the future use of the site, even if it did not want to buy it.

4.42 Defence said that since the City of Fremantle had been informed in 1991 that Defence was considering disposing of the property at some stage, the City Council had not expressed any interest in the property. As the Council had not heard anything further from Defence for almost a decade, it is not surprising that it had not put forward any proposals. Moreover, the relocation of the Army Museum to the Artillery Barracks in 1995 would have possibly signalled a longer-term commitment by Defence to the property. In any event, the fact that the Museum is currently located in the Barracks changes the equation to some extent from what it was in the early 1990s. The property now has a public drawcard that it did not have a decade ago.

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37 Mr Rod Corey, Acting Deputy Secretary, Department of Defence, *Committee Hansard*, 10 November 2000, p. 222.

38 Mr Rod Corey, Acting Deputy Secretary, Department of Defence, *Committee Hansard*, 10 November 2000, p. 223.

39 Mr Richard Utting, Mayor, City of Fremantle, *Committee Hansard*, 18 October 2000, p. 6.

40 Mr Rod Corey, Acting Deputy Secretary, Department of Defence, *Committee Hansard*, 10 November 2000, p. 220.

4.43 The Department told the Committee:

The council has also objected that Defence did not offer the property to the council first when the property was determined as surplus to Defence requirements. It should be noted that, under the Lands Acquisition Act 1989, interest in the land can only be offered first to a former owner where disposal would be likely to occur within seven years of the current owner acquiring the land and where the current owner has not made substantial improvements to that land. In the case of Artillery Barracks, the main area of the site was purchased in 1909, and Defence has made substantial improvements, with the main construction of the barracks occurring between 1910 and 1913.<sup>41</sup>

4.44 Section 121 of the Act says that:

Interest in land to be offered first to former owner

(1) Where:

- (a) an acquiring authority acquired an interest in land by the vesting of the interest in the acquiring authority by paragraph 41(4)(a) of this Act or paragraph 10(4)(a) of the *Lands Acquisition Act 1955*;
- (b) the acquiring authority has not made substantial improvements to the land;
- (c) the Minister proposes to authorise the disposal of the interest; and
- (d) if authorised, the disposal would be likely to occur before the end of 7 years after the acquisition of the interest by the acquiring authority;

the Minister shall, in authorising the disposal, have regard to the general principle that the interest should, if practicable, be first offered for sale to the former owner at the market value of the interest at the time the offer is made.<sup>42</sup>

4.45 There is, therefore, no legal obligation upon Defence to offer the land to the City of Fremantle. Nevertheless, the Committee believes that the Department should have contacted the Council at an early stage in the sale process to determine whether it was interested in acquiring part or all of the property.

*Timing of commencement of consultation*

4.46 During the Committee's public hearing with the Department of Defence on 10 November 2000, the Committee sought to clarify at what stage in the disposal process Defence would begin the consultation process.

4.47 The Committee questioned Defence witnesses at length about their trigger for beginning the consultation process with stakeholders. After considerable discussion, the Defence witnesses agreed that the consultation process would normally begin

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41 Mr Ross Bain, Acting Head, Defence Estate, *Committee Hansard*, 10 November 2000, p. 167.

42 *Lands Acquisition Act 1989*, section 121.

when the Minister or Parliamentary Secretary approved the sale of the property (late 1999 for the Artillery Barracks) or in this case, when the Minister for Finance and Administration approved the priority sale (15 May 2000).

4.48 In this case, the Strategic Plan for the Defence Estate, including identification of Artillery Barracks as surplus to Defence requirements, was endorsed by the Defence Executive on 21 December 1998. On 1 February 1999, after an exchange of correspondence between the University of Notre Dame and the Minister for Defence, the Defence Estate Organisation began investigating the University's eligibility for a priority sale. The question is whether Defence should have begun consulting interested parties at that time or later.

4.49 When this was put to Defence, Mr Bain responded that 'the property had not formally been declared surplus to Defence needs'. As to when it was formally declared, Mr Bain said:

With all our properties, before we put them to the market, even though we may be undertaking some preliminary studies just to understand what the issues are with a particular property, we will go to the minister or the parliamentary secretary and seek his agreement to proceed with the disposal of the property and outline the issues involved. Normally that would include a letter to the local federal member and the local senator or senators responsible for that particular area. In this particular instance, in order to understand how to go forward with the property the issue was whether or not Notre Dame qualified for a priority sale. That was pretty central to how we would deal with the property in the future.<sup>43</sup>

4.50 Nevertheless, that was still presupposing that Notre Dame was likely to be granted priority sale status and, if Notre Dame was deemed eligible for a priority sale, it virtually foreclosed on other possible options, which had not been considered in the absence of any consultation. By beginning its consultation process early in the sale process, Defence would have given stakeholders an opportunity to express their views about the disposal of the property and given other organisations an opportunity to bid for it, if so inclined. This procedure might bring forward other options, thereby giving Defence, as well as the Minister or Parliamentary Secretary, a wider choice when making the final decision. By waiting in this case until 15 May 2000 for the Minister for Finance and Administration's decision before beginning consultations with stakeholders, it made it more difficult for another organisation to make a bid for the property.

4.51 With respect to priority sales, Mr Corey said that as 'a principle we do not encourage priority sales and we do not look for priority sales. Our principle is to dispose of properties, maximising the revenue to Defence. In that process, if somebody comes forward with a request for a priority sale, we give it consideration

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43 Mr Ross Bain, Acting Head, Defence Estate, *Committee Hansard*, 10 November 2000, p. 200.

and forward it to the minister for finance for his decision.<sup>44</sup> That process, as outlined, may work well for non-sensitive sites but creates difficulties when applied to the sale of an historic site with significant heritage values and very high public interest, as in this case. The perceived secretive process for this sale has frustrated and angered the community, which is not in the best interests of Defence.

#### *Possible transfer to a Commonwealth agency*

4.52 The Department could also have explored other options for keeping the property in government hands. In this regard, the Heritage Commission submitted:

Unless the property is found to be surplus to requirements, the Commission would generally prefer to see Commonwealth heritage properties retained in Commonwealth ownership.

Retaining a place in Commonwealth ownership can sometimes be achieved by offering such places to other Commonwealth departments and agencies to see whether they can make an efficient use of the property.

Recent examples of the application of the exception to the general disposal policy are the transfer of former lightstations to State Governments and state agencies such as National Parks and wildlife Services.<sup>45</sup>

4.53 Although the likelihood of another Commonwealth agency wishing to buy the property is probably remote, there is no evidence that Defence even considered the proposition, in the same way it did not seek any other alternative buyer.

#### **The application for priority status by the University of Notre Dame, Australia**

4.54 The Committee wishes to make it clear that it does not believe that the University of Notre Dame Australia has acted improperly in any way in this matter. The University has sought to purchase from its current owner a site, which it has identified as being suitable for its future needs. In seeking to secure the property through a priority sale process, it has simply taken advantage of the guidelines set out in the Commonwealth Property Disposal Policy. The University has made it clear that it is prepared to pay market value to secure the property.

4.55 The Committee has also not received any evidence to suggest that the University would be an unsuitable user of the property. The University already owns heritage-listed buildings in Fremantle and its restoration of, and care for, those buildings has been acknowledged.

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44 Mr Rod Corey, Acting Deputy Secretary, Department of Defence, *Committee Hansard*, 10 November 2000, p. 212.

45 Australian Heritage Commission, submission no. 46, p. 5.

## **Defence Annual Report and performance outcomes**

4.56 The Committee notes that one of the performance outcomes identified for the Defence Estate Organisation in Defence's Annual Report for 1998–1999 was:

*Appropriate state and local government consultative mechanisms are utilised in order to satisfy stakeholder expectations.*

... The Group is also involved in ongoing consultation with state and local government planning authorities regarding current and future use of Defence properties, particularly in respect of those properties identified for disposal. Due to their local significance and/or location, state and local governments are interested in acquiring some Defence properties under a priority sale arrangement.<sup>46</sup>

4.57 In this case, Defence, clearly, has not met its own performance outcomes. In the view of the Committee, Defence, having clearly determined that the property was surplus to requirements, should have engaged in a consultation process before approving in principle any particular potential purchaser. Similarly, once Defence began proceeding down the priority sale road, it should have begun consulting stakeholders about the sale.

4.58 The Committee notes that, in its Annual Report for 1999–2000, Defence, in setting out key challenges for 2000–01, has said that:

Our immediate imperative is to build the confidence of the Government and the public in the way Defence does business.<sup>47</sup>

4.59 The Committee looks forward to Defence meeting this imperative.

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46 Annual Report 1998–1999, Department of Defence, p. 290.

47 Annual Report 1999–2000, Department of Defence, p. 7.