Auditor General's Report

Reports of the Performance Audit of the Redevelopment of Bruce Stadium

Report 10 Stadium Hiring Agreements

USE OF THE TERMS CABINET AND EXECUTIVE

In *Report No. 10 – Stadium Hiring Agreements*, the term 'Executive' has been used in chapter and section headings on pages 5 and 20. In other parts of the Report, the term 'Cabinet' has been used to refer to the same body.

The Australian Capital Territory (Self-Government) Act 1988 is effectively the constitution of the Australian Capital Territory. Section 36 of the Act establishes the Australian Capital Territory Executive. Section 39 of the Act states that the members of the Executive are the Chief Minister and other Ministers appointed by the Chief Minister. Section 37 of the Act states that the Executive has the responsibility of governing the Territory.

The term 'Executive' is not generally used. As in other Australian jurisdictions, the term 'Cabinet' is used. That is, the committee of Ministers that governs the Territory is known as the 'Cabinet', although it is legally the 'Executive'. In addition, the office that manages the business of the 'Executive' is known as the 'Cabinet Office' and submissions to the 'Executive' and its decisions are known as 'Cabinet submissions' and 'Cabinet decisions' respectively.

As stated above, both terms have been used in this report. Readers should be aware that both terms identify the same body and the use of differing terms has no bearing on the Audit's opinions, findings or conclusions.

Auditing for the Australian Capital Territory

The Auditor-General is head of the Auditor-General's Office. He and his Office act independently of the Government. The Office assists the Auditor-General to carry out his duties, which are set out in the *Auditor-General Act 1996*, by undertaking audits of management performance and the financial statements of public sector bodies. The aim is to improve public sector management and accountability by firstly, ensuring the Legislative Assembly and the electorate are provided with accurate and useful information about the management of public sector resources and secondly, by providing independent advice and recommendations for improving the management of public resources.

PA98/11

September 2000

The Speaker
ACT Legislative Assembly
South Building
London Circuit
CANBERRA ACT 2601

Dear Mr Speaker

In accordance with *Section 17* of the *Auditor-General Act 1996*, I transmit to the Speaker my Report titled *Bruce Stadium Redevelopment: Report 10 Stadium Hiring Agreements* for presentation to the Legislative Assembly by the Speaker. This Report is one of twelve reports arising from my performance audit of the Bruce Stadium redevelopment.

Yours sincerely,

John A Parkinson

GUIDE TO THE REPORTS OF THE AUDIT

The redevelopment of Bruce Stadium project involved a wide range of activities, including construction, financing, marketing, operating the stadium and bidding for and hosting Olympic soccer. Each of these activities was important to the redevelopment project and therefore was included in the performance audit.

For convenience of compilation and publication, the results of the Audit are provided in a series of reports. It should be noted that the reports are not intended to stand alone. For a complete understanding of the Audit's outcome, readers need to refer to all reports. The Audit has been reported in a series of 12 reports as outlined below. The reports are shown diagrammatically in the accompanying chart.

Report 1 Summary Report This Report summarises all aspects of the Audit. It lists the Audit's objectives and opinions and contains chapters on the outcomes and components of the redevelopment, factors that contributed to the outcome and the Audit's methodology. The Report contains synopses of each of the other reports of the Audit.

Report 2 Value for Money The question of whether the cost incurred in redeveloping the Stadium represents value for money is most important in the overall assessment of the redevelopment project. This Report provides an opinion on whether the costs incurred in redeveloping the Stadium represent value for money for the Territory.

Report 3 Costs and Benefits This Report provides an opinion on whether the economic benefits from redeveloping and operating the Stadium and hosting Olympic soccer are, or will be, greater than the costs incurred in redeveloping and operating the Stadium and hosting Olympic soccer.

Report 4 Decision to Redevelop the Stadium In July 1996, SOCOG invited the Territory to submit a bid to host Olympic soccer. In September 1996 the Cabinet agreed to submit a bid and to upgrade the Stadium should the bid be successful. This Report provides an opinion on whether the decision to redevelop the Stadium was made with the aid of relevant, accurate and complete information. The Report discusses

redevelopment proposals in 1993 and 1994, the bids in 1995 and September 1996 and related capital works proposals.

Report 5 Selection of the Project Manager This Report provides an opinion on whether the selection of the project manager was based on sound management practices. The Report summarises the Government's purchasing policy and includes a comparison of the selection process used with the policy. It discusses the tendering process, the probity review and the project management agreement.

Report 6 Financing Arrangements The total cost of the redevelopment was originally estimated at $27m. This was to be financed by a $12m appropriation with the balance to be provided by sales of Stadium products (e.g. a passholder program, naming rights and corporate suites) and borrowings. Considerable work was undertaken and costs incurred in efforts to have a financing structure developed. This Report provides an opinion on whether the management of the financing arrangements to meet the costs of redeveloping the Stadium was effective. The Report outlines the financial structures contemplated and comments on the utility of the final structure developed.

Report 7 Stadium Financial Model The Stadium financial model was a key document referred to in the decision to redevelop the Stadium and was used as an indicator of the commercial viability of the redeveloped Stadium and as a justification for several major decisions. This Report provides an opinion on whether it was reasonable to use the model as a reliable primary document for decision making.

Report 8 Actual Costs and Cost Estimates This Report provides an opinion on whether the actual costs of the redevelopment were contained within the cost estimates on which Cabinet decisions were based. It also includes reference to costs which were met from funds appropriated for other purposes and identifies the major items that contributed to cost increases. It explains some of the major factors that contributed to the actual costs being significantly in excess of original estimates.

Report 9 Market Research and Marketing In mid-1998, a consortium was appointed to market and sell the Stadium's products. Only a fraction of the forecast revenue was raised. This Report provides an opinion on whether the management of market research and marketing has contributed to the commercial viability of the Stadium's operations.

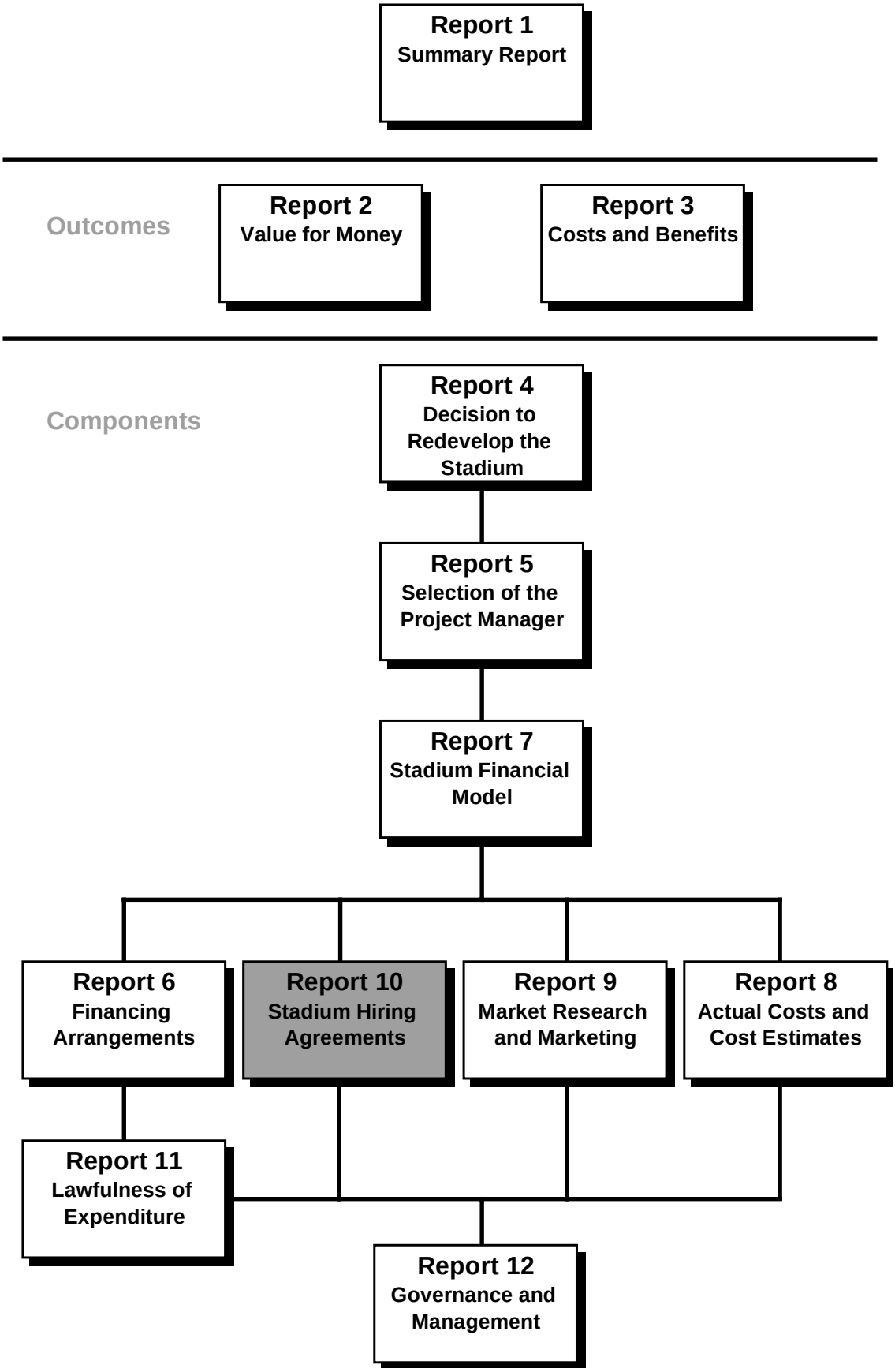
Comments are provided on marketing research and the selection and monitoring of the marketing consortium.

Report 10 Stadium Hiring Agreements The redevelopment plan included negotiation of new hiring agreements with the major hirers of the Stadium. Negotiations with the hirers commenced in July 1997 and continued throughout 1998. The agreements included large revenue assurance guarantees, particularly for one hirer. This Report provides an opinion on whether the negotiation of the Stadium hiring agreements has contributed, or will contribute, to the commercial viability of the Stadium's operations. The Report discusses the Heads of Agreements settled with the teams, negotiation principles agreed by the Cabinet and the revenue assurance guarantees.

Report 11 Lawfulness of Expenditure After funds appropriated for the redevelopment were exhausted, funds were provided from the Central Financing Unit of the Chief Minister's Department. This Report provides an opinion on whether the payments made for the redevelopment in excess of the amounts appropriated were lawful and whether the overnight borrowing on 30 June 1998 was lawful.

Report 12 Governance and Management This Report comments on the governance framework in the Territory and those arrangements specifically set up to oversight and manage all aspects of the project to redevelop and operate the Stadium. The Report provides an opinion on whether governance and management arrangements for the redevelopment project were effective. It comments on submissions to the Cabinet, operational management and human resourcing arrangements.

REPORTS OF THE AUDIT



REPORT 10

STADIUM HIRING AGREEMENTS

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1 OVERVIEW — STADIUM HIRING AGREEMENTS

INTRODUCTION

1.1 This Report contains comments on the agreements between the Territory and the major hirers for the hire of the Stadium. The major hirers are the Canberra based football clubs playing in the National Rugby League (Canberra Raiders) and Rugby Super 12 (ACT Brumbies) competitions.

1.2 The Canberra Cosmos play in the National Soccer League and also hire the Stadium, however, the revenue and expense impact of the Canberra Cosmos on the overall financial outcome of the Stadium is very limited in comparison to the financial impacts of the other major hirers. For this reason the hiring agreement for the Cosmos has not been reviewed in the Audit and no comments are provided on that agreement in this Report.

1.3 The Audit objective addressed in this Report is to provide an independent opinion to the Legislative Assembly on whether the negotiation of the Stadium hiring agreements has contributed, or will contribute, to the commercial viability of the Stadium's operations.

1.4 This Chapter of the Report presents an overview of the results of the Audit and the opinion on the Audit objective. More details are provided in the following Chapters of this Report. Readers should be aware that some comments in this overview Chapter are repeated in the following Chapters.

BACKGROUND

Pre-existing Agreements

1.5 It is normal practice for agreements to be in place for the hire of Stadiums by long term tenants. Hiring arrangements for Stadiums vary greatly. Variations range between a club being paid by the Stadium owner to use the Stadium with the owner retaining all revenues arising from games, to a club paying a fixed rental to the owner for the hire of

the Stadium and the club retaining all the revenues. It is often the case that the revenues from gate receipts and the sale of the Stadium's products (such as corporate suites, advertising at the ground, etc) are shared between the owners of the Stadium and the hirers.

1.6 Agreements for the hire of the Stadium by the Raiders and the Brumbies (the major hirers) have been in place for a number of years.

1.7 A hiring agreement with the Raiders commenced in 1992. This agreement gave the Raiders the right to almost all revenue raised from naming rights, corporate suites, open boxes and food and beverage sales. The agreement provided for the gate receipts to be shared. The Stadium received a minor percentage of the gate receipts. Although the Raiders had the right to sell naming rights for the Stadium, the right was never exercised. For 1998 the Raiders entered into an annual rental agreement for the use of the Stadium.

1.8 To 1998, hiring agreements with the Brumbies had been negotiated on an annual basis. The Brumbies paid a per game rental for the use of the Stadium and retained most of the revenue generated from their use of the Stadium.

Need for New Agreements

1.9 The Stadium financial model for the redevelopment projected substantially increased revenues being generated from the redeveloped Stadium's operations (see *Report 7 — Stadium Financial Model*). This revenue was to be used to meet a significant portion of the redevelopment's construction cost and to cover the Stadium's ongoing operations.

1.10 As well as the Stadium earning substantially more from its operations, the Stadium was also to share in revenue streams which it did not have access to under previous arrangements. These were the revenue streams from sales of products which had been fully retained by the hirers in the past. As well as the Stadium earning substantially more, the financial model projected that the hirers would also earn substantially more than in the past.

1.11 A major intention of the new agreements was to settle how the Stadium and the hirers would share the projected substantially increased revenues.

1.12 For the new agreements to be settled, the Raiders had to be persuaded to forgo the rights which they held through their old agreement. The Brumbies also had to be persuaded to enter into arrangements which were new to them.

1.13 During the hiring agreement negotiations, the possibility was raised that if a new agreement was not in place superseding the Raiders 1992 agreement, the 1992 agreement would set the terms and conditions for the Raiders' future hire of the redeveloped Stadium. This issue had an influence on the negotiations.

NEGOTIATION COMPONENTS

Heads of Agreement Documents

1.14 New hiring agreements reflecting the arrangements for sharing the Stadium's projected increased revenues had to be settled. To achieve this, the major hirers had to be persuaded to accept firstly that the revenue projections in the Stadium financial model could be achieved, and secondly, that the revenue sharing arrangements in relation to that revenue would place the major hirers in as good, or a better, financial position than they had been under the old agreements.

1.15 The first step in the process was to negotiate Heads of Agreements documents. These negotiations began in April 1997 and were completed in September 1997 for the Raiders, and December 1997 for the Brumbies.

1.16 The Heads of Agreement documents, although not legally binding, were commitments to negotiate in good faith. The Heads of Agreement documents contained the principles to be addressed in detailed hiring agreement negotiations.

Hiring Agreements

1.17 Once the Heads of Agreement were finalised, hiring agreement negotiations commenced. The hiring agreements, which the Raiders signed in December 1998 and the Brumbies signed in September 1998, set out in detail the hirers' and the Territory's legal rights and obligations in relation to the Stadium including the sharing of revenue generated through the Stadium's operations. The hiring agreements cover an eight to ten year period.

Revenue Assurance Guarantee Negotiations

1.18 Under the pre-existing agreements there had been no guarantees by the Government in relation to any of the hirers' revenues. The new agreements, however, introduced revenue assurance guarantees.

1.19 The major hirers had reservations about whether the revenues projected in the Stadium's financial model could be generated. For negotiations not to stall, revenue assurance guarantees were proposed and accepted. Reference to the revenue assurance guarantees were included in the Heads of Agreements documents. Following considerable negotiation on the assurance guarantees, the agreed terms of the guarantees were incorporated into the final hiring agreements.

1.20 The revenue assurance guarantees are limited to the first five years of the agreements.

1.21 There are provisions in the hiring agreements intended to provide for the Stadium to 'claw back' guarantee payments made if sales of the products covered by the guarantees improve in subsequent years.

1.22 The annual guarantee for the Raiders was eventually agreed at a maximum fixed $1.37m annually. For the Brumbies, the amount agreed was approximately $300,000. The Brumbies amount can vary according to each season's attendances at Brumbies' games and the gate revenue from the games.

Completion of Negotiations

1.23 The finalised hiring agreement for the Raiders covers the period 1999 to 2008 and for the Brumbies 1999 to 2006. The agreements can be extended by 10 and 8 years respectively by mutual agreement between the parties.

EXECUTIVE AGREEMENT TO NEGOTIATIONS

1.24 A submission to the Cabinet titled *Bruce Stadium Redevelopment — Hiring Agreements* was signed by the Chief Minister on 18 December 1997. A Cabinet decision which was informed by the submission was made on 22 December 1997. The submission and the decision set out the principles to be followed in negotiations with the hirers, particularly in relation to the revenue assurance guarantees. The Heads of Agreement documents are referred to in the submission and the decision.

1.25 Principles to be used for setting the revenue assurance guarantee amounts were included in the Cabinet submission. Other negotiating principles related to the guarantees were also included in the submission. These were agreed to by the Cabinet. The principles in relation to the guarantees included:

- that the agreements were to contain options for claw back of revenue guarantee payments in certain circumstances;
- that the guarantees were to be limited to 5 years; and
- that the guarantees were to be 'shortfall' guarantees.

1.26 There were no other Cabinet submissions or decisions made in relation to the hiring agreements.

CONCLUSION

Opinion on Audit Objective

1.27 The Audit opinion on the Audit objective addressed is that the negotiation of the Stadium hiring agreements has not contributed, and will not contribute, to the commercial viability of the Stadium's operations.

General Comments

1.28 It should have been foreseeable from the commencement of negotiations that there would be difficulties in negotiating the new agreements. This was because the hirers' pre-existing agreements contained terms and conditions which were quite different to the proposed new revenue sharing arrangements. The hirers had to be convinced that their financial position would be at least maintained if they accepted the new arrangements.

1.29 The major hirers had obligations to their various stakeholders to maintain the revenue positions which they had in the past. From their point of view, there was no sensible reason to take the risks of having their available revenues reduced if the Stadium financial model's projections were not achieved.

1.30 In August 1997 the Chief Minister was advised of the sensitiveness and difficulties being encountered in the negotiations in relation to progress with the Heads of Agreement.

Revenue Assurance Guarantees

1.31 In the first stages of the negotiations, completion of the Heads of Agreement documents depended on the major hirers accepting the revenue sharing principles underlying the Stadium financial model and the revenue projections in the model. The major hirers were concerned that the projected revenues could not be generated.

1.32 Initial drafts of the Heads of Agreement, prepared by the consultant who produced the Stadium financial model, did not include any provision for revenue assurance guarantees. The hirers, however, were not prepared to accept the revenue sharing principles without assurances that their revenue shares as projected in the model would be guaranteed. The major hirers signed the Heads of Agreement after the introduction of revenue guarantee clauses.

1.33 The clause included in the formal hiring agreements assures the hirers that if their share of the Stadium's revenue from the sale of certain products is below their guaranteed amount the Stadium will make up the difference.

1.34 The Audit was advised by the Under Treasurer[1] that he discussed the Raiders guarantee with the Chief Minister and explained the consequences as he saw them before the hiring agreement was finalised.

1.35 The Audit has not sighted documentation which shows that the Chief Minister provided direction in relation to the Raiders' guarantee or that the Chief Minister was provided with information in relation to the guarantee during the negotiations. The Audit, however, has sighted a minute signed by the Under Treasurer, dated 5 January 1999 (several days after the signing of the agreement) which advised the Chief Minister of the guarantee.

1.36 In summary the minute indicated that to continue to operate at 1998 levels the Raiders needed financial assistance to augment the amount they could generate from the use of the Stadium. The minute also advised that this assistance could be provided through setting an annual revenue assurance guarantee amount of $1.37m. The minute indicated that while the guarantee amount would be $1.37m, the shortfall to be actually paid under the guarantee clauses would be around $400,000. The actual amount for the 1999 calendar year was approximately $1.2m.

1.37 In effect, the executives[2] agreed that the revenue assurance guarantee provisions in the Raiders' hiring agreement would be used to provide financial assistance to the Raiders.

Outcomes of the Negotiations on the Commercial Viability of the Stadium

1.38 The outcomes of the negotiations have resulted in the Stadium being entitled to the major revenue share from mostly new Stadium products which have not sold well. In contrast the major hirers receive the bulk of the revenue share from mainly existing products which have sold well in the past and continue to sell well.

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[1] Mick Lilley, Under Treasurer, 16 February 2000

[2] Mick Lilley, Under Treasurer, Andrew Clark, Director of Finance Office of Financial Management

1.39 As the agreements are structured (with revenue guarantees to the major hirers) the Stadium (i.e. the Territory) bears all the risk in the event of poor sale results for the products covered by the guarantees.

1.40 The Audit has calculated that the Raiders attendance figures and/or revenue from the sale of the Stadium's products would have to increase several fold over the current position to avoid the Stadium paying at least some part of the estimated $1.37m maximum revenue assurance guarantees each year. The Audit's calculations show that, unless there is a considerable improvement in the sale of stadium products some portion of the Brumbies guarantee will need to be paid in all years that the guarantee clause applies.

1.41 The Audit's calculations show that the size of the guarantee payments will have a major negative effect on the Stadium's finances. The need to make the guarantee payments is a significant contributor to ensuring the Stadium's operations are not commercially viable.

1.42 At commencement of negotiations the successful settling of hiring agreements, which were consistent with the revenue sharing principles underlying the Stadium financial model and the model's revenue projections, was believed essential to achievement of commercial viability for the Stadium.

1.43 In the Audit opinion, based on 1999 results and current information, the revenue which can be generated from the Stadium's operations is insufficient to support the viability of the hirers as well as the Stadium. The Stadium's actual revenue generating capacity is much less than the model's projections. Consequently, if the terms of the concluded hiring agreements had assured the Stadium's viability, the viability of the hirers would have been jeopardised. Alternatively, if the terms of the signed agreements supported the hirers' viability then the Stadium's commercial viability would be severely jeopardised. The alternative occurred.

1.44 Ensuring the major hirers remained at the Stadium was an essential objective as the Stadium would have no viability, commercial or otherwise, without the hirers. Consequently the negotiating task, particularly in relation to the Raiders, became to induce the hirers to complete long term hiring agreements at the least cost to the Stadium and

at the lowest revenue assurance guarantee amounts to which they would be agreeable.

1.45 The outcome of the negotiations is that the major hirers have been provided with a major financial incentive to remain in Canberra, in the form of revenue assurance guarantees, which heavily impact on the commercial viability of the Stadium.

1.46 It must be pointed out that the Audit did not see any evidence during the conduct of the Audit to indicate that the Raiders or the Brumbies had any intention to leave Canberra. The Audit has sighted the media speculation on this issue. It appears, however, that no evidence was gathered to assess whether the media speculation had any basis.

Negotiations with the Raiders

1.47 For most of the period the executives generally attempted to negotiate an outcome consistent with the Cabinet agreed principles. As the principles, however, were derived from the Stadium financial model's projections with which the major hirers did not agree, the negotiations were difficult.

1.48 The Government negotiating team changed from October 1998. In order to bring the negotiation to a conclusion, the new executives[3] diverged from the Cabinet agreed principles particularly in regard to the revenue assurance guarantee for the Raiders. The Audit agrees that, in recognition of realities, a new negotiating position had to be adopted.

1.49 The Audit is of the opinion that the executives[4] who conducted the negotiations to October 1998 were diligent in the performance of their duties. These Executives attempted to negotiate generally within the Cabinet's agreed principles, however, the outcome they were seeking was unachievable.

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[3] Mick Lilley, Under Treasurer and Andrew Clark, Director of Finance Office of Financial Management

[4] Mainly Moiya Ford, Executive Director Office of Business Development and Tourism, CMD to October 1998.

1.50 The executives who completed the negotiations, diverged from the Cabinet agreed principles by agreeing to a revenue assurance guarantee for the Raiders which far exceeded the amount originally envisaged.

Compliance with the Cabinet's Principles

1.51 The amounts of the revenue guarantees, eventually included in the final agreements signed in late 1998, far exceeded the amounts proposed in the relevant submission to the Cabinet. The amounts included in the submission were around $239,000 annually for the Raiders and $140,000 annually for the Brumbies. As previously stated the guarantee amounts in the finalised agreements are $1.37m for the Raiders and approximately $300,000 for the Brumbies.

1.52 According to the Cabinet submission and decision, the revenue assurance guarantee amounts were to be linked to the attendance and revenue performances of the hirers. While the Brumbies' finalised agreement provides for the guarantee amount to be linked to performance, the Raiders guaranteed amount is not linked. The Raiders amount is a fixed amount.

1.53 The other principles agreed to by the Cabinet were included in the agreements. While claw back clauses are contained in the hiring agreements they will not have the effects which the Cabinet submission indicated the clauses would have.

1.54 According to the Audit's calculations, the circumstances which would allow recovery of guarantee assurance payments (i.e. the claw back) from the Raiders will not eventuate. In the case of the Brumbies, the Audit's calculations show that if considerable improvements in the sale of Stadium products over 1999 levels occur, some recovery may be possible in the future.

1.55 Readers' attention is drawn to a matter contained in *Chapter 2* which relates to certain information which could potentially have misguided the Cabinet included in the submission to the Cabinet on the hiring agreements.

DEPARTMENTAL RESPONSE

1.56 In accordance with *Section 18* of the Auditor-General Act 1996, a final draft of this Report was provided to the Chief Executive of the Chief Minister's Department for his consideration and comments. The Chief Executive's response is set out following.

1. As the report acknowledges, the securing of the continued presence of the major hirers (the Raiders and the Brumbies) was a major component of achieving and sustaining a commercially viable Stadium operation. The hirers therefore held a major advantage in the negotiations on the hiring agreements. This advantage is reflected in the outcomes of the negotiations. However, the negotiations did secure the continued presence of the Raiders and the Brumbies at the only venue in Canberra which meets the standards required by the competitions in which these teams compete. (Bruce Stadium, pre-redevelopment, did not meet the explicit standards set down by the National Rugby League.)

2. The key audit finding in this report understates this achievement. It is true that the negotiated outcome represents a net cost to the financial operations of the Stadium, at least in the short to medium term, but this cost would be very much greater if the Brumbies and the Raiders were not at the Stadium. In addition, the Stadium stands to be the predominant beneficiary from any future improvements in revenue in areas such as naming rights and corporate suites. Selection of a naming rights sponsor is expected in the next few months, while there has already been some improvement in revenue from corporate suites. In addition, and importantly, the Stadium receives the revenue from food and beverage sales.

3. While not given prominence in the report, it should be noted that the revenue guarantees which impact particularly on the net financial position of the Stadium only run to 2004, while the hiring agreements continue beyond that date – to 2006 for the Brumbies and to 2008 for the Raiders.

4. The report is critical of the comprehensiveness of the Heads of Agreement which were agreed by the Executive and which formed the basis of the negotiations with the major hirers. Such comments misunderstand the nature of Heads of Agreement which are, by definition general in nature. The Heads of Agreements signed by the hirers were commitments to negotiate in good faith to establish hiring agreements.

The Agreements provided a basis from which to begin to negotiate hiring agreements, which become the detailed documents.

5. The report also contains two significant errors which need to be addressed. These errors relate to unsupported assertions which are made about the content and implications of the Executive Submission of 18 December 1997 "Bruce Stadium Redevelopment – Hiring Arrangements".

6. The third of the significant findings listed after ***paragraph 2.3*** *incorrectly states that the "Executive Submission implied that the major hirers has signified their agreement in the Head of Agreement documents to the principles to be followed for the calculation of revenue assurance guarantee amounts". There is no such statement or implication in the Submission. The Executive decision of 22 December 1997 relating to the consideration of that Submission is quite explicit about the principles set out in the Heads of Agreement. None of the principles listed go to the "calculation of revenue assurance guarantee amounts."*

7. Similarly, the assertion at ***paragraph [2.33]*** *is not supported by the Submission. Greater care needed to be exercised in distinguishing between factual statements, and the presentation of arguments and opinions in the report.*

CONCLUDING COMMENT

1.57 The Chief Executive's responses to the Report identifies various issues for specific comment. The audit's views on these issues are discussed in the following paragraphs.

1.58 *Paragraph 1* of the Chief Executive's response refers to the hirers holding a major advantage in negotiations. The Audit agrees with this statement. The Audit also makes the point that this was apparently not recognised at the time it was decided that new agreements with the hirers were necessary and that once construction commenced the hirers would hold an advantage. If it had been recognised the negotiations may have progressed quite differently. Strategies could have been developed to offset the hirers' advantages. An obvious approach, which could have been adopted prior to construction commencing, would have been to conduct the negotiations on the basis that construction as proposed would not go ahead unless the hirers agreed to the Territory's terms. The Olympic commitment of course would have complicated this approach.

Once construction commenced the hirers' advantage, and the Territory's disadvantage, crystallised.

1.59 In relation to *paragraph 2* of the Chief Executive's response the Audit agrees that the Stadium needed the major hirers. It must be pointed out, however, that there is no evidence that either major hirer had any intention of not staying in Canberra and continuing to use the Stadium. The Audit Report includes that the Stadium now receives the revenue from food and beverage sales which it did not in the past.

1.60 The Audit agrees with the statement made in *paragraph 3* of the Chief Executive's response. The Report clearly states that the hiring agreements do not require that the revenue guarantees be paid after 2004.

1.61 In relation to *paragraphs 4, 5, 6* and *7* of the Chief Executive's response, the Audit Report is not being critical of the comprehensiveness of the heads of agreement documents. The point being made by the Audit relates to the content of the Cabinet submission on the hiring agreements, not the heads of agreement documents. In summary the purpose of the hiring agreements submission was stated in the submission as being to explain the basis of the heads of agreement. The heads of agreement documents contained a number of clearly stated principles and these were accurately explained in the submission. The submission, however, goes on to also explain proposed terms of revenue assurance guarantees for the hirers which are not in the heads of agreement documents. Proposed amounts of the guarantees are provided in the submission. The submission, through its structure and terminology, clearly implies that there was the same detailed level of agreement in the heads of agreement documents on the guarantees as there was for the other principles. This was not so.

1.62 Each of the matters raised by the Chief Executive were identified during the Audit and carefully considered. On receipt of the Chief Executive's response they were reconsidered. The Audit conclusion is that the content of the Chief Executive's response does not change the Audit's opinion.

2 PRINCIPLES AGREED FOR NEGOTIATION OF HIRING AGREEMENTS

INTRODUCTION

2.1 While the revenue assurance guarantees were only one aspect addressed in the heads of agreements documents and the hirers' agreements, the guarantees were a major focus of the negotiations. This Chapter of the Report mainly comments on principles related to the revenue assurance guarantees because of their significance to the commercial viability of the Stadium operations.

2.2 Negotiations of the hiring agreements between the Raiders, Brumbies and the Territory were concluded in December 1998 when the Raiders' hiring agreement was signed. The matters described in this Chapter occurred between December 1997 and December 1998.

2.3 The Audit examined files, held discussions with the hirers and prepared calculations of the impacts of the revenue assurance and revenue sharing clauses in the agreements. These procedures were undertaken to enable a full understanding of the negotiation process.

SIGNIFICANT FINDINGS FROM THIS CHAPTER

- ***The formal Heads of Agreement documents negotiated during 1997 contained revenue assurance guarantee clauses for both the Raiders and the Brumbies.***

- ***The wording of the revenue assurance guarantee clauses was general in nature and unclear as to its meaning.***

- ***A submission to the Cabinet implied that the major hirers had signified their agreement in the Heads of Agreement documents to the principles to be followed for the calculation of revenue assurance guarantee amounts; the Heads of Agreement document only stated that guarantees would be given.***

- ***The Cabinet agreed to revenue assurance guarantees based on the submission which implied that only small amounts would need to be guaranteed.***

REVENUE SHARING ASSURANCE PROVISIONS IN THE HEADS OF AGREEMENTS

2.4 The principles in the Heads of Agreements included the terms of the agreement, revenue sharing percentages, proposals for revenue assurance guarantees and a claw back clause in respect of guarantee assurance payments made.

2.5 The Audit reviewed the Heads of Agreement documents and identified the following principles:

- the agreement would extend for an 8 or 10 year period;
- corporate suite revenue would be shared between the hirers and the Stadium with the Stadium receiving the major share;
- premium seating revenue would be shared between the hirers and the Stadium with the Stadium receiving the major share;
- naming rights revenue would be shared between the hirers and the Stadium with the Stadium receiving the major share;
- the hirers would pay for match day costs associated with hire of the Stadium and a minor percentage of gate takings would go to the Stadium;
- a revenue assurance guarantee would be payable by the Stadium to the hirers in certain circumstances; and
- 'claw back' rights would be provided for the Stadium to recover, in subsequent years, any payments made under the revenue assurance guarantee provision in earlier years.

2.6 As stated a revenue assurance clause was included in the signed Heads of Agreement documents. The clause included the Territory guaranteeing, during the years 1999 to 2003, that if the major hirers achieved their sales targets as set out in a table contained in the Heads of Agreement document, the hirers would receive the amount of revenue predicted by the Stadium financial model.

2.7 The wording of the revenue assurance guarantee clauses in the Heads of Agreement documents are general in nature. They are unclear as to their scope and their meaning. It is not possible to derive exactly how the guarantee amounts were to be calculated. The actual wording contains no mention of which products were to be the subject of the guarantee.

Audit Comment

2.8 As reported elsewhere, the major hirers had strong reservations over whether the revenue projections in the Stadium financial model for sales of certain Stadium products could be achieved. To keep the negotiations progressing revenue assurance guarantee clauses expressed in general terms were added to the Heads of Agreement documents.

2.9 The issue of the need for revenue assurance guarantees to be given was included in a submission to the Cabinet in December 1997. The Submission's content is commented on in the following paragraphs.

CABINET SUBMISSION — *DECEMBER 1997*

Principles in Cabinet Submission

2.10 A submission, titled *Bruce Stadium Redevelopment — Hiring Agreements,* signed by the Chief Minister, was provided to the Cabinet on 18 December 1997. Involved in the preparation and clearance of the submission were Moiya Ford and Annabelle Pegrum.

2.11 The Audit reviewed the submission to identify if the principles outlined in the submission were consistent with the Heads of Agreement documents and whether the principles in the submission were addressed in the draft hiring agreements.

2.12 The Submission's purpose was stated in the submission as follows.

> 'The Cosmos and the Raiders have signed Heads of Agreement outlining the principles under which they will use the Stadium for 10 years. By the time Cabinet considers this submission, the Brumbies will also have signed a Heads of Agreement. The agreements are not legally binding at this stage. The purpose of

this submission is to explain the basis of the agreements and seek Cabinet's agreement to incorporate the principles into legally binding contracts which will ultimately be novated to the new Stadium management.'

2.13 In relation to guarantees, the submission described a proposed system which would guarantee the hirers an amount of revenue in relation to certain Stadium products based on the hirers' attendance performances irrespective of the actual sales of the products.

2.14 The recommended principles in the submission related to the revenue assurance guarantees were that:

- the Stadium would guarantee to the Raiders and the Brumbies a share of revenues from the sale of naming rights, corporate suites and video replay board rights;
- the guarantee would be for the first five years of the hiring period;
- guarantees would be linked to each hirer's contribution to the revenue performance of the Stadium; and
- an option would be included in the hiring agreements for the Stadium to claw back revenue guarantees over the length of the agreement.

2.15 The submission described the guarantees as being a top up of any shortfall between the hirers revenue shares as estimated in the relevant version of the Stadium financial model and the revenue and revenue shares actually generated for the hirers. Any 'top-up' paid under the guarantee was intended to be recoverable through a 'claw back' arrangement in years when the hirers' actual revenue shares exceeded the model's projections.

2.16 In discussing the revenue assurance guarantees, the submission states that the revenue concerned is that associated with the sale of naming rights, corporate suites and the video replay board. The Heads of Agreement documents did not mention specific products to be covered by the revenue assurance guarantees.

2.17 Following consideration of the submission's content and recommendations, the Cabinet agreed:

> 'That the contracts incorporate the principles set out in the Heads of Agreement signed by the potential hirer, namely:
>
> (i) assurances that the revenue estimated by the Business Plan from the sale of naming rights, corporate suites and video replay board rights will flow to the Canberra Raiders and the ACT Milk Brumbies for the first five years of the hiring period, noting that these assurances are linked to each team's contribution to the revenue performance of the Stadium;
>
> (ii) …
>
> (iii) recovery provisions for any subsidies paid as a result of revenue assurance'

2.18 The submission to the Cabinet contained estimated amounts proposed to be guaranteed to the major hirers. According to the submission, if the major hirers each attracted 6000 paying patrons per game, the assurance guarantees would be $239,000 annually in total for the Raiders and $140,000 annually for the Brumbies.

2.19 A briefing note provided to the Chief Minister in relation to the submission contained the following:

- the current version of the Business Plan predicts that the Stadium will generate $11.7m in its first year ($7.15m as one-off revenue and $4.55m as annual revenue).
- of this, the Raiders will receive around $2.87m based on 6,000 paying patrons per game. The assurance relates to only $0.239m of this. The Brumbies are estimated to receive $1.56m if they perform to similar levels (they will play less games). The amount to be assured is $0.140m.

2.20 The Cabinet decision which arose from the submission did not identify the exact amounts of guarantees. A large portion of the submission, however, dealt with the proposed amounts to be assured to the hirers. On this basis it can reasonably be accepted that the Cabinet's agreement to the principles to be included in the hiring agreements covered approximate amounts to be assured.

Audit Comment

2.21 The Heads of Agreements were unclear as to the scope of the guarantees. The major hirers had therefore not formally agreed to any clear principles in relation to the guarantees other than that there would be guarantees.

2.22 The guarantee amounts quoted in the submission were not mentioned in the Heads of Agreement documents and also cannot be derived from the content of the Heads of Agreements.

2.23 The submission, by describing the proposed terms of the guarantees including the amounts estimated to be assured, and other information, implied that the hirers had agreed to defined principles for the revenue assurance guarantees in the Heads of Agreements documents. This was clearly not so.

2.24 In a response to the Audit[5], advice was provided that the content of the submission to the Cabinet in relation to the revenue assurance guarantees represented the respondent's understanding of verbal agreements made between the hirers and the negotiating executives. As there is no documentary evidence of the verbal agreements the Audit cannot confirm the respondent's advice.

2.25 The submission's recommendation refers to naming rights, corporate suites and video replay board rights as the products to be covered by the guarantee. The revenue assurance guarantee clauses in the signed hiring agreements, however, include revenue from passholder memberships[6] and signage as well as the products identified in the submission. As the major hirers share of these products was projected to be approximately $1.5m over the five years of the guarantee, this is a significant difference between the signed agreements and the principles agreed to by the Cabinet.

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[5] Moiya Ford, 14 July 2000.

[6] Passholder Memberships were a program for premium stadium seating proposed in the Stadium financial model. The membership entitles the holder to a seat in a preferred seating area of the Stadium for a number of years and for a range of game and event options.

THE DRAFT HIRING AGREEMENTS

2.26 Draft hiring agreements were provided to the Raiders and the Brumbies in May 1998. As agreed by the Cabinet the draft agreements contained a guarantee to the Raiders and the Brumbies for revenues from the sale of naming rights, corporate suites and video replay board rights. This was generally in agreement with the Cabinet agreement. Stadium premium passes, however, were included in one of the draft agreements. As previously stated premium passes were not part of the Cabinet agreement.

2.27 The draft agreements limited the guarantee to the first five years of the hiring period, and the guarantees were linked to each hirer's contribution to the revenue performance of the Stadium. The draft agreements also included an option to claw back revenue guarantees over the length of the agreement.

Audit Comment

2.28 The draft agreements offered to the Raiders and Brumbies generally complied with the principles agreed to in the relevant Cabinet submission. There was, however, an additional product to be covered by the revenue assurance guarantees included in one of the agreements.

INACCURATE STATEMENT IN EXECUTIVE SUBMISSION

2.29 The Cabinet submission titled *Bruce Stadium Redevelopment – Hiring Agreements* stated that it was unlikely that the revenue assurance guarantees would affect the Stadium's commercial viability. The major reason put forward was that the projections in the Stadium financial model had been 'vigorously' tested by IMG and Arthur Andersen and therefore were very reliable estimates.

2.30 The Audit has examined the Report produced by IMG. The Audit considers, on the basis of the methodology used by IMG, that the testing was not 'vigorous'. For more information refer to *Report 9 — Market Research and Marketing.*

2.31 In *Report 7 – Stadium Financial Model* the Audit has concluded that the Andersen Review Report should not have been accepted by or presented as providing an assurance about the Stadium financial model.

CONCLUSION

2.32 The Heads of Agreement documents for the hire of the redeveloped Stadium contained revenue assurance guarantees for the hirers. These were a central inducement to the major hirers to sign the documents.

2.33 Although the Heads of Agreement documents contained revenue assurance guarantee clauses the terminology of the clauses was unclear as to their scope and meaning. Nevertheless a submission was prepared for the Cabinet which implied that the Heads of Agreement documents contained revenue assurance guarantee clauses which had been agreed to by the hirers and which were clear as to their scope and meaning.

2.34 The submission identified amounts which were likely to be involved in the guarantees. The amounts were small and unlikely to significantly concern the Cabinet. The draft contracts prepared for consideration by the major hirers contained small revenue assurance amounts and were seemingly based on the content of the Cabinet submission.

2.35 When the Raiders reviewed the draft contract they rejected the revenue assurance clauses as unacceptable. The Brumbies, however, considered the proposed revenue assurance clauses could be acceptable but with modification.

2.36 Further discussion on the negotiations with the major hirers from this point are provided in later Chapters.

3 REVENUE SHARING ARRANGEMENTS AND EFFECTS

INTRODUCTION

3.1 This Chapter reviews the revenue sharing arrangements between the major hirers and the Stadium. The sharing arrangements are contained in hiring agreements signed between the major hirers and the Territory. The Stadium hiring agreement with the Raiders covers the period 1999 to 2008 and with the Brumbies 1999 to 2006. The agreements can be extended by 10 and 8 years respectively by mutual agreement between the parties.

3.2 While there is a small degree of overlap between the products marketed by the major hirers and those marketed by the Stadium, on the whole the Stadium and the major hirers sell separate products. The revenue is shared in most cases irrespective of who sells the product.

SIGNIFICANT FINDINGS FROM THIS CHAPTER

- ***The Stadium is entitled to 8-15% of ticket sales revenue; the Stadium's revenue therefore is only slightly affected by attendance variations and/or increased ticket prices.***

- ***The Stadium is entitled to a major share (43-93%) of the revenue from the sale of corporate suites, the passholder program, naming rights and advertising from the video replay board (referred to as Stadium revenues); the Stadium would therefore receive a significant improvement in revenues from increases in the sale of these products.***

- ***Few of the products for which the Stadium is entitled to the major revenue share have sold well to date.***

- ***The hirers retain approximately 90% of the proceeds from the sale of products which have always enjoyed a high level of demand and historically were marketed successfully by the major hirers; the major hirers bear the risk from poor sales of***

these products. The Stadium, however, has benefited from increased catering revenue.

REVENUE SHARING ARRANGEMENTS

Outline

3.3 In line with usual stadium management practice there are contractual agreements in place between the major hirers and the Stadium for the hire of the Stadium. These agreements include the arrangements for the sharing of Stadium revenue between the major hirers and the Territory. They also specify the costs arising from the major hirers' use of the Stadium which are to be met by the major hirers.

3.4 The arrangements are outlined in the following paragraphs. The outline is in general terms and is not intended to be a precise description of all arrangements.

3.5 Revenues from ticket sales are collected by the Stadium through a private ticketing agency. The Stadium deducts match day expenses from the gross ticket revenue and retains a small percentage of gross takings. The balance is forwarded to the major hirers.

3.6 Revenues from the sale of Stadium naming rights, passholder memberships, corporate suites, video replay board rights and signage sold by the Stadium are shared between the Stadium and the hirers. The Stadium receives the major share from the sale of these products.

3.7 Season passes, advertising and signage sold by the hirers and corporate boxes are marketed by the major hirers. The major hirers retain the majority of revenue from these products with the Stadium receiving a small share.

3.8 Merchandise is sold by the Stadium on consignment from the hirers. The Stadium retains a share of the revenue.

Significant Effects of the Revenue Sharing Arrangements

3.9 The Stadium receives most of the revenue from the sale of the newly introduced or remodeled Stadium products (43-93%). These products are the Stadium naming rights, corporate suites, video replay

board rights, passholder memberships and certain signage. A result of the arrangements is that if there were to be significant improvement in revenues from these products the Stadium would receive a significant boost to its revenue. Some of these products, however, have as yet not sold or only sold in small quantities.

3.10 On the other hand the major hirers retain approximately 90% of the proceeds from the sale of the products which they marketed in the old Stadium e.g. open corporate boxes, season passes and advertising. These products have always enjoyed a high level of demand and continue to enjoy a high level of demand.

3.11 Under the agreements the hirers retain the majority of the Stadium's gate revenue. The Stadium receives 8-15% of gate revenue. The consequence of this is that increases in revenue from ticket sales and/or increases in the number of paying patrons benefit the major hirers significantly but are not a great benefit to the Stadium.

Audit Comment

3.12 The Stadium is entitled to most of the revenue from the sale of certain Stadium products, however, these products have not sold well and therefore little revenue has been received. The effects of revenue assurance guarantees, as described in the following Chapter, ensure the major hirers are not financially disadvantaged if these products do not sell. On the other hand the major hirers receive the major share, and the Stadium receives a minimal share from the sale of products, which have always had a relatively high rate of market acceptance and sale, and continue to do so.

CONCLUSION

3.13 It is clear that the current revenue sharing arrangements (including the revenue assurance guarantees) are heavily weighted in favour of the major hirers, with the Stadium bearing the greater share of the risk from the arrangements.

3.14 The major hirers retain approximately 90% of the revenues from the sale of products which are mostly marketed by the major hirers and have sold well in the past and continue to sell well.

3.15 On the other hand, for other Stadium products which have been difficult to sell, the Stadium is entitled to up to 93% of the sales revenue. As sales have been low the Stadium has received relatively little revenue from these products. As the Stadium guarantees the hirers' revenue share of these products the major hirers are not financially disadvantaged if the products do not sell.

4 REVENUE ASSURANCE GUARANTEES

INTRODUCTION

4.1 This Chapter considers the risks and benefits from the revenue guarantees contained in agreements between the major hirers and Stadium management.

4.2 The Audit prepared calculations using data from the Stadium financial model and information used to prepare the Stadium's 1998-99 financial statements. The impacts and outcomes of the revenue assurance guarantees and whether the clawback provisions in the hiring agreements could be effective were assessed.

4.3 The Audit also performed calculations to estimate the numbers of paying patrons required to cover the payment of guaranteed revenue to the major hirers. How much income from naming rights, corporate suites sales, video replay board rights and passholder subscriptions would have to increase by to cover the revenue assurance guarantee was also estimated.

SIGNIFICANT FINDINGS FROM THIS CHAPTER

Raiders

- ***The Raiders' hiring agreement revenue guarantee provisions ensure that the Raiders bear no risks from poor sales of certain Stadium products until 2004; the Territory bears all the risks.***

- ***The Raiders are guaranteed that their share in relation to the relevant products will be $1.37m per annum until 2004 irrespective of sales of the products.***

- ***Although the hiring agreement has a provision for 'claw back' of revenue assurance guarantee payments the provision is inoperative.***

- ***Guarantee payments will have to be made from other Stadium revenues if the sale of Stadium products does not improve considerably.***

- ***Revenue from the sales of the Stadium's products would have to increase several fold for the revenue guarantee payments to be zero.***

Brumbies

- ***The Brumbies' hiring agreement revenue guarantee provisions ensure that the Brumbies bear no risks from poor sales of certain Stadium products until 2004; the Territory bears all the risks.***

- ***Based on 1999 outcomes the Brumbies are guaranteed approximately $300,000 per annum after 1999 irrespective of sales of Stadium products; if the Brumbies outcome improves from 1999 the amount of the revenue guarantee will also increase.***

- ***Although the hiring agreement has a provision for 'claw back' of revenue assurance guarantee payments the provision is inoperative unless Stadium product sales significantly improve on 1999 sales.***

- ***Guarantee payments will have to be made from other Stadium revenues if the sale of Stadium products does not improve considerably.***

RAIDERS — EFFECT OF THE REVENUE ASSURANCE GUARANTEES

The Raiders Revenue Assurance Guarantee

4.4 The Stadium's product revenues which are to be shared between the hirers (including the Raiders) and are the subject of the revenue guarantees, consist of Stadium naming rights, corporate suites, passholder memberships and subscriptions, and certain signage.

4.5 The revenue guarantee does not include ticket sales, corporate boxes, perimeter advertising and some signage. The Raiders receive their share of the sales of these products in addition to the revenue assurance guarantee payments.

4.6 The existence of the revenue assurance guarantee provisions in the Raiders' hiring agreement ensure the Raiders will receive a fixed amount in the first five years of their hiring agreement irrespective of the level of sales of the products which are subject to the revenue guarantee.

Audit Comment

4.7 The revenue assurance guarantee provisions in the Raider's hiring agreement guarantees that the Raiders' will be paid $1.37m annually between 1999 and 2003 irrespective of the amount of revenues actually generated from the sale of products subject to the guarantee. This amounts to a maximum commitment for the Territory of $6.85m over 5 years.

4.8 The guarantee amount equates to $124,000 per game if the 11 games minimum required by the agreement is played, or $105,000 if the Raiders play 13 games as they will in the current season. In 2000 the Raiders played a home preliminary final which reduces the average per game to $97,900.

4.9 The guarantee is a shortfall based arrangement. That is, the amount of revenue guarantee that the Stadium has to pay to the Raiders will be reduced by the Raiders' share of the revenues actually received for the guaranteed products (e.g. the maximum revenue guarantee for the Raiders is $1.37m; if the Raiders share of the sales of the guaranteed products in a season was $170,000, the revenue guarantee payable would be approximately $1.2m). This is a simplified example to illustrate the shortfall nature of the guarantee arrangement.

4.10 In the Audit view, the Stadium will have to pay substantial guarantee amounts to the Raiders in each of the five years which the guarantee operates.

‘Claw Back’ Provision

4.11 The hiring agreements include recovery provisions for any payments made to the hirers as a result of the revenue assurance guarantee. The Audit sought a legal opinion on the effects of the ‘claw back’ clause contained within the negotiated hiring agreements.

4.12 The legal advice was that recovery from the Raiders of ‘top up’ paid for a year can only occur when the amount payable to the Raiders in a later year, as their share of the revenue from the sale of the guaranteed products, is greater than $1.37m.

Audit Comments

4.13 Calculations performed by the Audit show that the ‘claw back’ clause in the Raiders’ agreement is inoperative and will remain inoperative. This is because the Raiders share of the revenue from the sale of the guaranteed products will not exceed $1.37m in any year in the foreseeable future.

4.14 Revenue assurance guarantee payments will undoubtedly be made to the Raiders. The only source for these payments is the Stadium’s other operating revenues. The likely size of the revenue assurance guarantee payments (around $1m annually or more) obviously has serious implications for the current and future commercial viability of the Stadium. The existence of the revenue guarantee is a significant contributing factor to the Stadium’s operating results remaining negative at least for the next few years.

4.15 If, as seems most likely, the Stadium has insufficient cash flows to meet the guarantee payments the Government will be called upon to meet the shortfalls by making cash payments to the Stadium.

BRUMBIES — EFFECT OF THE REVENUE ASSURANCE GUARANTEE

The Brumbies Revenue Assurance Guarantee

4.16 The Stadium product revenues which are to be shared between the Stadium and the Brumbies and are subject to a revenue assurance guarantee are almost identical to the Raiders i.e. sale of naming rights,

corporate suites, video replay board rights, passholder memberships and subscriptions and signage other than the hirers.

4.17 The guarantee is a 'top-up' arrangement. The size of any revenue guarantee payment is dependent on the difference between the Brumbies share of Stadium product revenue and the amount guaranteed.

Audit Comment

4.18 Based on 1999 outcomes, the Brumbies annual revenue assurance guarantee amount would be around $300,000. The actual amount of the guarantee, however, will vary from year to year depending upon the Brumbies revenue and attendance performance. The actual revenue guarantee amount for the Brumbies is calculated using a formula based on attendance and revenue at Brumbies' games in relation to the total revenue and attendance at both major hirers games. Should the Brumbies revenue and attendance performance increase from their 1999 outcome the amount of their revenue guarantee will be greater than $300,000. If it falls the guarantee will be less than $300,000.

4.19 The Brumbies usually play five or six games each year at the Stadium. On the basis of six games the per game guarantee is $50,000 approximately based on 1999 revenue and attendance.

4.20 During the five years between 1999 and 2003 the total maximum commitment for the Territory to the Brumbies is approximately $1.5m (or higher should their revenue and attendance performance be higher than that of 1999).

4.21 The arrangements are such that, in years where Stadium product sales do not increase in line with increases in attendance, the Brumbies overall revenue earned through their use of the Stadium may increase while at the same time they may be paid an increased revenue guarantee amount.

'Claw Back' Provision

4.22 Calculations performed by the Audit show that, unless there is a considerable and sustained improvement in the sale of Stadium products from 1999 levels the claw back clause in the Brumbies' agreement will be inoperative.

Audit Comments

4.23 The Audit's comments on the Brumbies' revenue assurance guarantee are similar to those made about the Raiders' guarantee.

4.24 As with the Raiders, the existence of the requirement to make revenue assurance guarantee payments to the Brumbies has a negative effect on the Stadium's commercial viability. However, because of the smaller amount involved, the effect is less than that of the Raiders guarantee payments.

CONCLUSION

4.25 The Audit concluded that the need to meet the revenue assurance guarantee payments will contribute to the Stadium's operating results remaining negative for at least the next several years.

4.26 If sales of the products subject to the guarantee remain at low levels, increases in attendance alone will not generate any significant revenues for the Stadium to be used towards covering the guarantees. Alternatively, revenue from the sales of the Stadium's products would have to increase several fold for the revenue guarantee payments to be zero. Until such time as this occurs the requirements to pay the revenue assurance guarantees will continue to have a significant negative effect on the Stadium's financial results and consequently its commercial viability.

5 NEGOTIATIONS WITH THE RAIDERS

INTRODUCTION

5.1 In this Chapter the progress of the negotiations with the Raiders are outlined from the completion of the Heads of Agreement to the signing of the hiring agreements. This period extended from September 1997 to December 1998.

SIGNIFICANT FINDINGS FROM THIS CHAPTER

- ***The Raiders did not accept the draft hiring agreement provided to them as a basis for negotiations principally due to the amounts reflected in the revenue assurance guarantee provisions contained in the draft.***

- ***With the introduction of different executives to the negotiations in October the position from which the previous executive had been negotiating was abandoned.***

- ***The final negotiated revenue assurance guarantee amount is 5.7 times the amount proposed in the relevant Cabinet submission.***

OVERVIEW

5.2 When, in May 1998, the Raiders were furnished with the draft of the hiring agreement referred to in *Chapter 2* the Raiders did not accept the draft because they believed it did not reflect the signed Heads of Agreement. This was particularly in relation to the amounts of the revenue assurance guarantees reflected in the draft agreement.

5.3 Negotiations continued unsuccessfully until 12 October 1998 when the Raiders advised that they did not propose to relinquish their rights in their 'old' agreement to market Stadium naming rights, corporate boxes, corporate suites, catering revenues, exclusive beer and beverage rights and advertising and signage.

5.4 During the negotiations for the Heads of Agreement the Raiders had expressed a need to receive $3m through their use of the Stadium.

5.5 An executive[7] had attempted to negotiate a revenue guarantee of less than $300,000 with the Raiders for a number of months. Negotiations were eventually handed from this executive to the Office of Financial Management (OFM) in October 1998. OFM executives[8] subsequently negotiated a maximum annual revenue guarantee of $1.37m for a five year period.

Audit Comments

5.6 By October 1998 several months had elapsed since the Raiders were provided with a draft agreement as the basis for negotiations. There apparently existed wide divergence between the revenue assurance provisions in the draft agreement and the Raiders' expectations.

5.7 Attempts were made to negotiate using the principles for the revenue assurance guarantee amounts contained in the Cabinet submission referred to in *Chapter 2*. These principles were reflected, in the most part, in the draft hiring agreement. The attempts were fruitless as the Raiders' and the official positions were far apart. Upon the introduction of OFM executives to the negotiation process the proposed revenue assurance guarantee amount in the draft hiring agreement was abandoned.

5.8 The Audit agrees that, in recognition of realities, a new negotiating position had to be adopted. The Audit, however, does not consider that the proposed amounts of assurance previously advised to the Cabinet should have been abandoned without the matter being advised in writing to the Minister and the Minister's agreement in writing obtained.

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[7] Moiya Ford, Executive Director Office of Business Development and Tourism, CMD

[8] Mick Lilley, Under Treasurer and Andrew Clark, Director of Finance Office of Financial Management

5.9 The Under Treasurer advised during the Audit[9] that discussions were held between himself and the Chief Minister to explain the consequences of the guarantee prior to the agreement being signed.

5.10 The Audit has not sighted documentation which shows that the Chief Minister provided direction in relation to the guarantee or that the Chief Minister was provided with information in relation to the guarantee prior to the signing of the Raiders' hiring agreement. The Audit, however, has sighted a minute signed by the Under Treasurer, dated 5 January 1999 (several days after the signing of the agreement) which contained information on the guarantee for the Chief Minister to note. The minute was addressed to the Treasurer. Information on this minute is provided from paragraph *5.16* to paragraph *5.21*.

FINAL NEGOTIATIONS

5.11 The Raiders wrote to the Under Treasurer on 24 November 1998 outlining the revenue assurance terms for the hiring agreement as they now understood them. The revenue assurance was now to be a per game guarantee of $130,000 for 10 games – or $1.3m per annum.

5.12 On 30 November drafting instructions for the hiring agreement were prepared. These instructions included the new revenue assurance figure of $1.3m.

5.13 A hiring agreement with the Raiders which included a revenue assurance guarantee of $1.37m was signed on 17 December 1998. The revenue assurance guarantee amount for the Raiders had increased to $1.37m in return for the Raiders playing 11 instead of 10 games at the Stadium.

5.14 The agreement also provided for revised percentage shares for gate revenue. In the draft agreement the Stadium's share was to be 15% (and in the Heads of Agreement and the Cabinet submission). In the final agreement this had reduced to 8%.

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[9] Mick Lilley, 16 February 2000.

Audit Comments

5.15 In regard to the revenue assurance guarantee amount, the signed agreement differed significantly from the principles for the revenue assurance guarantee amounts described in the Cabinet submission (see *Chapter 2*). The $1.37m assurance for the Raiders eventually agreed was equivalent to 5.7 times the amounts estimated and proposed in the Cabinet submission.

RATIONALE FOR THE REVENUE ASSURANCE GUARANTEE AMOUNT

5.16 The minute referred to in paragraph *5.10* dealt with the final negotiations for the hiring agreements. Mention was made in the minute of the Cabinet decision of December 1997 and the modest revenue assurances that the Cabinet had agreed for inclusion in the hiring contracts. The minute went on to discuss the final phase in the hiring agreement negotiations.

5.17 The minute advised the Treasurer that the issue addressed in the minute was:

> 'the Raiders must generate income of $3m from other sources in order to continue to operate at 1998 levels.'

5.18 The minute also advised:

> 'After detailed examination of the Raiders current operating position, OFM has confirmed that the Raiders must generate $3.37m from the team's use of the Stadium for 11 games in 1999. The Raiders are expected to generate around $2m from the sale of their products (tickets, season passes etc.). The Raiders are therefore seeking a guarantee of $1.37m or around $125,000 per game for five years, under the same revenue and attendance targets.'

5.19 The minute also advised:

> 'The reworking of the business plan to include the pricing and products recommended by NVM indicates that there may be a shortfall of around $400,000…..This additional amount will therefore have to be funded from the Stadium operations.'

Audit Comments

5.20 In summary the minute indicated that to continue to operate at 1998 levels the Raiders had advised they needed $1.37m additional to the amount which they estimated would be generated from their use of the redeveloped Stadium ($2m). The minute also advised that OFM executives[10] considered the amount which the Stadium would need to actually pay the Raiders under the guarantee provision (i.e. the 'top up') would be $400,000. This statement must have been based on a version of the Stadium financial model which projected that the Raiders share of revenue from the Stadium products covered by the guarantee provisions would be $970,000 leaving a shortfall of $400,000. There is doubt about this statement. The Audit has sighted no version of the financial model which projects an amount anywhere near as high as $970,000 as the Raiders' revenue share from products covered by the guarantee.

5.21 As stated the minute indicated that the shortfall to be met under the guarantee clauses would be around $400,000. The actual amount for the 1999 calendar year was approximately $1.2m.

GENERAL COMMENTS ON THE HIRING AGREEMENT SIGNED BY THE RAIDERS.

5.22 During its review the Audit identified that there were differences between the relevant Cabinet submission and the concluded hiring agreement. These are summarised as follow:

- the revenue sharing percentages specified in the hiring agreement resemble the percentages set out in the Cabinet submission, however, there are some significant differences;
- as previously explained the Cabinet submission indicated that the revenue guarantee amount would be only $239,000. The $1.37m revenue guarantee amount included in the Raiders Hiring Agreement was not based on the principles in the Cabinet submission;

[10] Mick Lilley, Andrew Clark

- passholder subscriptions and memberships and some advertising are guaranteed in the hiring agreement but were not products identified in the submission to be guaranteed.

5.23 In accordance with the submission the guarantee was written as a 'shortfall guarantee' in the hiring agreement. A clause to allow 'claw back' of revenue guarantee payments over the length of the agreement (10 years) was included in the agreement and the guarantee was limited to 5 years. However, as previously stated the claw back provision, although in the agreement, is inoperative.

5.24 In the submission the revenue guarantee was to be linked to the revenue and attendance performance of the hirer. The guaranteed amount, however, in the agreement is not linked to a revenue and attendance formula. The guarantee is a fixed maximum amount not connected in any way to revenue and attendance performance.

CONCLUSION

5.25 In the final stages of the negotiations the main objective of the executives' negotiations with the Raiders became to ensure the Raiders would remain as long term Stadium tenants. This was an essential objective, as the Stadium without the Raiders, would have no viability, commercial or otherwise. Consequently the negotiating task was to induce the Raiders to complete long term hiring agreements at the least cost to the Stadium and at the lowest revenue assurance guarantee amount agreeable to the Raiders.

5.26 The outcome of the negotiations, in the Audit view, was the result of the OFM executives involved in the final stages of the negotiations accepting that the Raiders required financial assistance in order for them to continue to operate at 1998 levels. The executives assessed that the amount required was $1.37m reduced by the Raiders share of the sales of the products covered by the revenue assurance guarantee.

5.27 Without this assistance the executives perceived that the Raiders would be forced to consider options for their future which could have included playing half their home games away from Canberra. The executives were apparently of the view that a revenue assurance guarantee amount of $1.37m would provide a sufficient financial incentive to include the Raiders to remain in Canberra.

6 NEGOTIATIONS WITH THE BRUMBIES

INTRODUCTION

6.1 This Chapter outlines the progress of the negotiations with the Brumbies during the period which followed the completion of the Heads of Agreement to the signing of the hiring agreement. This period extended from December 1997 to September 1998.

SIGNIFICANT FINDINGS FROM THIS CHAPTER

- ***The Brumbies accepted the draft hiring agreement provided to them as a basis for further negotiations.***

- ***The final negotiated revenue assurance guarantee amount was double the amount proposed in the relevant Cabinet submission.***

DRAFT CONTRACT SUPPLIED TO BRUMBIES

6.2 The draft agreement provided to the Brumbies contained most of the detailed principles in relation to revenue guarantee payments set out in the relevant Cabinet submission and the Heads of Agreement document.

6.3 The draft agreement limited the guarantee to the first five years of the hiring period. This was a principle that had been agreed to by the Cabinet and the guarantee amounts were linked to the Brumbies' contribution to the revenue performance of the Stadium.

6.4 The draft also included an option to claw back revenue guarantees over the length of the agreement.

Audit Comment

6.5 The draft agreement initially offered to the Brumbies generally complied with the principles detailed in the relevant Cabinet submission which had been agreed to by the Cabinet.

Negotiation Outcomes

6.6 The Audit has not sighted documentation of the matters addressed in the final stages of negotiations. It is obvious, however, that some changes were negotiated before the final agreement was signed.

6.7 The Audit compared the revenue sharing percentages in the Cabinet submission with the percentages in the hiring agreement signed on 30 September 1998. Although there were some variations, the comparison demonstrated that the revenue sharing percentages in the completed hiring agreement closely follows the revenue sharing percentages in the Cabinet submission.

6.8 Using 1999 outcomes as a basis for comparison under the signed agreement the revenue guarantee amount will be around $300,000 annually compared to $140,000 proposed in the Cabinet submission.

6.9 The Brumbies and the negotiating executive[11] negotiated an amount of guarantee that was greater than identified in the draft contract and in excess of that advised to the Cabinet as being the amounts proposed to be assured.

Audit Comment

6.10 The Territory guarantees the revenue assurance payments to the Brumbies — thereby bearing the risk if the relevant products do not sell. However, unlike the Raiders whose guarantee amount is fixed, the Brumbies revenue assurance guarantee amount is affected by the Brumbies actual revenue and attendance performance. The Brumbies guaranteed amount will therefore vary each year.

6.11 Based on attendance and revenues in 1999 the estimated amounts of the revenue assurance for the Brumbies is around $300,000 which is around twice the figure put forward in the Cabinet submission of $140,000.

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[11] Moiya Ford, Executive Director Office of Business Development and Tourism, CMD

CONCLUSION

6.12 The negotiations with the Brumbies, in the most part, resulted in the Cabinet's agreed outcomes being achieved. The major difference was with the revenue assurance guarantee where the method agreed to calculate the amount of the guarantee payments results in the guarantee being greater than the amount originally anticipated.

Annexure

Reports Published in 1993

1 Management of Capital Works Projects

2 Asbestos Removal Program

3 Various Performance Audits Conducted to 30 June 1993
- **Debt Recovery Operations by the ACT Revenue Office**
- **Publicity Unaccountable Government Activities**
- **Motor Vehicle Driver Testing Procedures**

4 Various Performance Audits
- **Government Home Loans Program**
- **Capital Equipment Purchases**
- **Human Resources Management System (HRMS)**
- **Selection of the ACT Government Banker**

5 Visiting Medical Officers

6 Government Schooling Program

7 Annual Management Report for the Year Ended 30 June 1993

8 Redundancies

9 Overtime and Allowances

10 Family Services Sub-Program

11 Financial Audits with Years Endings to 30 June 1993

Reports Published in 1994

1 Overtime and Allowances - Part 2

2 Department of Health
- **Health Grants**
- **Management of Information Technology**

3 Public Housing Maintenance

4 ACT Treasury
- **Gaming Machine Administration**
- **Banking Arrangements**

5 Annual Management Report for Year Ended 30 June 1994

6 Various Agencies
- **Inter-Agency Charging**
- **Management of Private Trust Monies**

7 Various Agencies
- **Overseas Travel - Executives and Others**
- **Implementation of Major IT Projects**

12 Reports were issued prior to 1992. Details can be obtained from the ACT Auditor-General's Office or the ACT Auditor-General's homepage: http://www.audit.act.gov.au.

Annexure (continued)

8 Financial Audits with Years Ending to 30 June 1994

9 Performance Indicators Reporting

Reports Published in 1995

1 Government Passenger Cars

2 Whistleblower Investigations Completed to 30 June 1995

3 Canberra Institute of Technology - Comparative Teaching Costs and Effectiveness

4 Government Secondary Colleges

5 Annual Management Report for Year Ended 30 June 1995

6 Contract for Collection of Domestic Garbage/Non-Salary Entitlements for Senior Government Officers

7 ACTEW Benchmarked

8 Financial Audits With Years Ending to 30 June 1995

Reports Published in 1996

1 Legislative Assembly Members - Superannuation Payments/Members' Staff - Allowances and Severance Payments

2 1995 Taxi Plates Auction

3 VMO Contracts

4 Land Joint Ventures

5 Management of Former Sheep Dip Sites

6 Collection of Court Fines

7 Annual Management Report For Year Ended 30 June 1996

8 Australian International Hotel School

9 ACT Cultural Development Funding Program

10 Implementation of 1994 Housing Review

11 Financial Audits with Years Ending to 30 June 1996

12 Reports were issued prior to 1992. Details can be obtained from the ACT Auditor-General's Office or the ACT Auditor-General's homepage: http://www.audit.act.gov.au.

Annexure (continued)

Reports Published in 1997

1 Contracting Pool and Leisure Centres

2 Road and Streetlight Maintenance

3 1995-96 Territory Operating Loss

4 ACT Public Hospitals - Same Day Admissions
Non Government Organisation - Audit of Potential Conflict of Interest

5 Management of Leave Liabilities

6 The Canberra Hospital Management's Salaried Specialists Private Practice

7 ACT Community Care - Disability Program and Community Nursing

8 Salaried Specialists' Use of Private Practice Privileges

9 Fleet Leasing Arrangements

10 Public Interest Disclosures - Lease Variation Charges
- Corrective Services

11 Annual Management Report for Year Ended 30 June 1997

12 Financial Audits with Years Ending to 30 June 1997

13 Management of Nursing Services

Reports Published in 1998

1 Management of Preschool Education

2 Lease Variation Charges - Follow-up Review

3 Major IT Projects - Follow-up Review

4 Annual Management Report for Year Ended 30 June 1998

5 Management of Housing Assistance

6 Assembly Members' Superannuation and Severance Payments to Former Members' Staffers

7 Magistrates Court Bail Processes

8 Territory Operating Losses and Financial Position

9 Financial Audits with Years Ending To 30 June 1998

12 Reports were issued prior to 1992. Details can be obtained from the ACT Auditor-General's Office or the ACT Auditor-General's homepage: http://www.audit.act.gov.au.

Annexure (continued)

10 Management of Schools Repairs and Maintenance

11 Overtime Payment To A Former Legislative Assembly Member's Staffer

Reports Published in 1999

1 Stamp Duty on Motor Vehicle Registrations

2 The Management of Year 2000 Risks

3 Annual Management Report for the Year Ended 30 June 1999

4 Financial Audits with Years Ending To 30 June 1999

Reports Published in 2000

1. Bruce Stadium Redevelopment — Summary Report

2. Bruce Stadium Redevelopment — Value for Money

3. Bruce Stadium Redevelopment — Costs and Benefits

4. Bruce Stadium Redevelopment — Decision to Redevelop the Stadium

5. Bruce Stadium Redevelopment — Selection of the Project Manager

6. Bruce Stadium Redevelopment — Financing Arrangements

7. Bruce Stadium Redevelopment —Stadium Financial Model

8. Bruce Stadium Redevelopment — Actual Costs and Cost Estimates

9. Bruce Stadium Redevelopment — Market Research and Marketing

10. Bruce Stadium Redevelopment — Stadium Hiring Agreements

11. Bruce Stadium Redevelopment — Lawfulness of Expenditure

12. Bruce Stadium Redevelopment — Governance and Management

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