

Auditing for the Australian Capital Territory

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AUDITOR-GENERAL
AUSTRALIAN CAPITAL TERRITORY



PA 01/07

10 December 2001

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

Dear Mr Speaker

In accordance with the Authority contained in the *Auditor-General Act 1996*, I transmit to the Legislative Assembly my Report titled "*Canberra Tourism and Events Corporation - Relocation to Brindabella Business Park*".

This Audit was managed by Rod Nicholas of this office.

Yours sincerely

A handwritten signature in black ink, appearing to read 'John A Parkinson'.

John A Parkinson

**CANBERRA TOURISM AND EVENTS CORPORATION
RELOCATION TO BRINDABELLA BUSINESS PARK**

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1. REPORT SUMMARY

INTRODUCTION

1.1 The Canberra Tourism and Events Corporation (CTEC) is an ACT statutory authority established under the *Canberra Tourism and Events Corporation Act 1997* (the CTEC Act) to market the Australian Capital Territory as a tourism and events destination.

1.2 CTEC announced in a media release on 21 February 2001 that it was relocating from its office in the city to Brindabella Business Park at the Canberra Airport. CTEC advised that the new offices had been selected after a public tender process, based on the outcomes of a consultancy regarding accommodation options.

1.3 At its meeting on Wednesday 28 March 2001, the Legislative Assembly passed the following resolution:

That in respect to the decision of the Canberra Tourism and Events Corporation (CTEC) to relocate to Brindabella Park Commercial Centre at Canberra Airport the Assembly draws the attention of the ACT Auditor-General to this issue, and asks him to conduct a performance audit of this decision of the Corporation.

1.4 The resolution followed Assembly discussion in which concern was expressed regarding aspects of the relocation, including the possible failure of the CTEC Board to comply with the requirements of the CTEC Act regarding 'disclosure of interest'. The Audit was conducted as a result of the Assembly resolution.

1.5 The focus of the Audit was on the decision by CTEC to relocate to Brindabella Business Park. The Audit also considered whether any actual, apparent or potential conflict of interest existed in relation to CTEC's relocation, and if so, whether the conflict was appropriately managed in accordance with legislation, policy, principles and guidelines.

AUDIT OBJECTIVES

1.6 The Audit's objectives were to provide an independent opinion to the Legislative Assembly on:

- whether the decision by CTEC to relocate to Brindabella Business Park was soundly based; and
- whether any actual, apparent or potential conflict of interest existed for the CTEC Board Chairman in relation to the relocation, and if so, whether the conflict was managed in accordance with the CTEC Act and ACT Government policy, principles and guidelines.

AUDIT OPINIONS

1.7 The independent opinions drawn against the audit objectives are set out in the shaded box on page 3.

AUDIT OPINIONS

The Relocation of CTEC to Brindabella Business Park

The decision to relocate to Brindabella Business Park was soundly based.

Disclosure of Interest Issues

No actual or apparent conflict of interest existed in relation to the CTEC Board Chairman. The Chairman did not fail to make proper disclosure in accordance with section 15 of the CTEC Act.

Although no actual conflict of interest situation existed, there was a public perception that a conflict of interest existed for the Chairman. The CTEC Board took reasonable steps to manage the perception.

BASES FOR AUDIT OPINIONS

Opinion on the Decision to Relocate to Brindabella Business Park

1.8 The opinion that *the decision to relocate to Brindabella Business Park was soundly based* is supported by the following positive findings.

- CTEC considered the accommodation issues in a timely manner, allowing sufficient time to determine its accommodation requirements and consider options.
- CTEC engaged a qualified consultant, following a competitive tender process, to assess space and facilities requirements, and advertised publicly for expressions of interest in providing accommodation options for the Corporation.
- A wide range of options was received and analysed by a consultant competitively engaged for the purpose.
- Properties were short-listed on an appropriate basis and the short-list was subject to financial analyses that considered the key costs of each proposal.
- Accommodation options were considered by a sub-committee of the CTEC Board, and the recommendation of the sub-committee was ratified by a proper quorum of the Board.
- The decision to relocate to Brindabella Business Park was consistent with the outcomes of the financial analyses; that is, the Brindabella Business Park option provided accommodation that best suited CTEC's requirements and was least expensive overall.

Audit Comments

1.9 The Audit has concluded that the process applied by CTEC in the decision to relocate to Brindabella Business Park was generally consistent with public sector policies and guidelines. The decision was supported by satisfactory documentation and relevant matters were taken into account. There were, however, some shortcomings in the assessment processes leading to the decision. These are summarised as follows:

- a methodology for short-listing and selecting the accommodation proposals was not approved by CTEC or documented beyond the specification of broad selection criteria. Documentation of the criteria and sub-criteria employed by the accommodation

consultant, and approval of the methodology by CTEC, may have reduced the subjectivity of methodology;

- CTEC did not fully document the selection process. More thorough documentation would have improved the accountability trail for the selection and decision process;
- the financial analyses underpinning the relocation decision included debatable assumptions and methodological errors. A more thorough review of the analyses by CTEC could have identified these deficiencies;
- CTEC did not seek, or undertake, sensitivity analyses to test the reliability of the conclusions reached by the analyses. Sensitivity analyses would have provided additional assurance regarding the outcomes of the analyses under alternative conditions;
- operational costs associated with the relocation were not examined in detail. Examination of operational costs would have ensured all relevant costs of relocation were considered for each option and improved overall reliability of the relocation decision; and
- CTEC did not consider an alternative lease option, involving a shorter term of lease, which may have offered a more operationally suited accommodation outcome and value for money to the ACT Government.

1.10 The Audit also notes that CTEC did not formally approach the Department of Urban Services to determine whether suitable accommodation was available within the Government portfolio, in keeping with the intentions of the Government Office Accommodation strategy. Although suitable accommodation did not prove to be available, a formal approach to the Department of Urban Services would have at least offered the opportunity to contribute to achieving the government-wide office accommodation objectives.

Opinion on Conflict of Interest Issues

1.11 The opinion that *no actual or apparent conflict of interest existed for the CTEC Board Chairman* and that *the Chairman did not fail to make proper disclosure in accordance with section 15 of the CTEC Act* was based on the following positive findings.

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- The Chairman did not have a direct or indirect pecuniary or personal interest in the lease from Canberra International Airport Pty Limited to CTEC.
- As the Chairman had no interest which required disclosure within the meaning of the CTEC Act, the Chairman did not fail to make proper disclosure in accordance with section 15 of the Act.

Audit Comments

1.12 The Audit noted legal advice obtained by CTEC to the effect that the Chairman had no interest to disclose and consequently was entitled to participate in deliberations regarding the proposed lease and to take part in any subsequent decision. The Audit sought legal advice from the ACT Government Solicitor who was also of the view that the Chairman did not have a direct or indirect pecuniary or personal interest in the lease from Canberra International Airport Pty Limited to CTEC. The Government Solicitor concluded that the Chairman had not failed to make proper disclosure in accordance with section 15 of the CTEC Act.

1.13 The opinion that ***although no actual conflict of interest situation existed there was a public perception that a conflict of interest existed for the Chairman, and that the CTEC Board took reasonable steps to manage the perception*** was based on the following findings.

- Debate in the Legislative Assembly and subsequent media comment led to a public perception of a conflict of interest.
- The potential for a public perception of a conflict of interest was considered by the Board in a timely manner and handled in a manner designed to suitably distance Mr Service from the relocation decision. The Board, however, did not record its deliberations and subsequent decision in the Board minutes.

Audit Comments

1.14 The Audit has concluded that there was a public perception that a conflict of interest existed with respect to the Chairman's role in the relocation decision. That such a perception could arise was, in the Audit's view, reasonably foreseeable. The CTEC Board considered the possibility of a public perception of a conflict of interest arising and took reasonable steps to distance Mr Service from the relocation decision, while recognising the contributions Mr Service could make to the deliberations.

1.15 The Board failed to record its deliberations on the issue, and its subsequent decisions (including the decision to establish a sub-committee, which did not involve Mr Service, to make an ‘in principle’ decision for ratification by the Board) in the Board minutes or elsewhere. Consequently, in forming its opinions, the Audit relied substantially on statutory declarations provided by Board members to the Audit.

1.16 The Board’s actions were sound in the circumstances and were consistent with the CTEC Act and other guidelines. However, better practice, consistent with sound public sector management practice, would have been to properly record these matters in the Board minutes. Such action could have helped reduce the negative public attention to the relocation decision.

SUGGESTED FUTURE ACTIONS

1.17 As summarised in this Chapter and explained in more detail in later Chapters, the Audit identified aspects related to the relocation decision which could have been better addressed. The following suggestions are made with the intention of contributing towards ensuring better practice is adopted if future similar situations arise. The suggestions arise directly from this Audit. However, they are made for consideration of the Government and all statutory authorities.

ACT Government Office Accommodation Strategy

By the Government

- (1) The whole-of-government nature of the Government’s asset management strategy should be emphasised and strengthened by requiring all ACT Government statutory authorities to comply with the accommodation strategy. (Chapter 2)

Purchasing Goods and Services

By Statutory Authorities

- (2) Authorities should review their procedures to ensure suitable arrangements are in place to ensure the quality of work provided for the authority by consultants and contractors. This would include mechanisms to adequately define the

work and expected products, agree the methodology, supervise the activities and critically review the products. (Chapter 5)

- (3) Authorities should review their procedures for purchasing goods and services to ensure they are consistent with best purchasing practice in the public sector. Although this is an expected outcome of introduction of the new Procurement Accreditation System, attention should be given to purchases below Accreditation Level 1 (that is, below \$50,000) to ensure appropriate processes are applied. In particular:
 - officers involved in purchasing activities should ensure acquisitions have regard for guidelines on the preparation of requests for offers (which include guidance on preparing an evaluation plan and methodology, determining the procurement method and preparing documentation) (Chapter 2); and
 - officers involved in purchasing activities should ensure acquisitions have regard for guidelines on the evaluation of offers (which include guidance on the evaluation process and documentation). (Chapter 3)

Addressing Potential Conflicts of Interest Issues

By the Government

- (4) Public Sector guidance on ethics and Public Service values, including guidelines on the ethical requirements for appointees to boards and committees, should be expanded to reflect the broader view that in the public sector environment the perception of a conflict of interest can be as damaging as an actual conflict. (Chapter 4)

By Statutory Authorities

- (5) All boards and committees should adopt a code of conduct that specifically deals with conflict of interest issues and embraces a broad interpretation of the term 'conflict of interest'. (Chapter 4)

CTEC RESPONSE TO THE REPORT

1.18 In accordance with Section 18 of the *Auditor-General Act 1996*, a final draft of this report was provided to CTEC for consideration and comments. The Board's response is set out below.

The Audit report into the relocation of Canberra Tourism & Events Corporation (CTEC) to Brindabella Business Park highlights areas of opportunity for better practice for the Corporation, predominantly in the areas of improved documentation and methodology.

The Corporation has already commenced improvements in this regard with the adoption and development of the procurement processes and methodology provisions outlined in the *Government Procurement ACT 2001*. CTEC is also well advanced on a self-initiated review of governance and operational processes undertaken to improve and strengthen CTEC's business practice and performance. As a result of the review, the Board will consider implementing a Code of Conduct for members in the New Year. In addition, the introduction of a number of recommendations made in the Auditor General's '*Enhancing Professionalism and Accountability*' Report will also have commenced by early 2002.

DEPARTMENT OF TREASURY RESPONSE

1.19 The Department of Treasury, as part of the Government's Public Service Renewal Program, is reviewing governance arrangements for ACT statutory authorities. This Report included an assessment of conflict of interest matters. It also includes suggested future actions arising from the assessment. The manner in which statutory authorities manage conflict of interest issues is a governance matter. Accordingly the Department of Treasury has been asked to respond generally in relation to the conflict of interest issues in the Report. The Chief Executive's response is set out on the following page.

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Treasury notes the Audit's finding that no actual or apparent conflict of interest existed in relation to the Canberra Tourism and Events Corporation (CTEC) Board Chairman.

In addition to the conflict of interest issues, I note the recommendations of the Audit report regarding procurement practices. Treasury is in the process of implementing procurement reforms that commenced with the *Government Procurement Act 2001*. The reforms are directed at addressing the need for procurement processes to be properly managed and documented regardless of value and work. The Department has been promoting awareness of and facilitating compliance with, government procurement policy for all Territory entities including statutory bodies. The requirement for Territory entities to have appropriate approvals and documentation for all procurement processes is current government policy, and must be implemented.

2. RELOCATION OPTIONS: INITIAL SELECTION PROCESSES

INTRODUCTION

2.1 This Chapter describes the initial selection processes undertaken by CTEC towards reaching the decision to relocate to the Brindabella Business Park.

SIGNIFICANT FINDINGS

- *CTEC considered the accommodation issues in a timely manner, allowing sufficient time to determine its accommodation requirements and consider options.*
- *CTEC engaged a qualified consultant, following a competitive tender process, and advertised publicly for expressions of interest in providing accommodation options.*
- *A wide range of options was received and analysed by a consultant competitively engaged for the purpose. Property options were short-listed on an appropriate basis.*
- *CTEC did not formally approach the Department of Urban Services to determine whether suitable accommodation was available within the Government portfolio. Although as a statutory authority CTEC was not obliged to adopt the Government office accommodation strategy, consultation with the Department would have met the intentions of the strategy.*
- *A methodology for short-listing and selecting the accommodation proposals was not approved by CTEC or documented beyond the specification of broad selection criteria.*

BACKGROUND

2.2 Before moving to Brindabella Business Park, CTEC leased office accommodation in a high profile location in Canberra City, with additional premises at the Canberra Visitors Centre on Northbourne

Avenue. The city premises provided some 700 m² for around 70 CTEC staff, contractors and volunteer workers. The lease was due to expire on 3 April 2001.

2.3 Lease costs were around \$280,000 annually (i.e. \$400 m²). The high cost, and the pressing need for sufficient space to accommodate its permanent staff, contractors and volunteer workers, led CTEC in February 2000 to consider its accommodation options.

ACCOMMODATION REQUIREMENTS

2.4 Following consideration by the Board, CTEC advertised publicly in April 2000 for a 'space and facilities consultant' to produce a brief on CTEC's accommodation requirements. An experienced consultant was selected from the dozen responses received, and engaged in June 2000 to undertake the consultancy for a fixed fee of \$5,750.

2.5 The space and facilities consultant completed its analysis of CTEC's accommodation requirements and reported to CTEC in September 2000. Based on an analysis of CTEC's organisational arrangements and staffing profile, including consideration of contractors and volunteers, the consultant estimated that CTEC required some 1,124 m² in total (not including the Canberra Visitors Centre). This provided office and workpoint accommodation for 66 persons plus meeting rooms, a photographic library and other support facilities. The average accommodation utilisation rate was 17 m², compared to around 11 m² previously.

CALL FOR EXPRESSIONS OF INTEREST

2.6 In October 2000, CTEC placed an advertisement in The Canberra Times, seeking 'preliminary expressions of interest' for accommodation options that met the following criteria:

- a net lettable area up to 1,100 m²;
- an area over one level or two contiguous floors;
- secure parking for four spaces with adequate public car parking within the immediate vicinity; and
- the availability of space should be no later than May 2001.

SELECTION OF AN ACCOMMODATION CONSULTANT

2.7 Also in October 2000, CTEC wrote to three organisations inviting a quote 'in regards to an accommodation consultancy'. The selected consultant was to analyse the accommodation proposals received, shortlist the proposals, prepare draft tender documents and commercial conditions, act as the point of contact for tenderers' queries, analyse all tenders received and prepare a report (including financial analyses) to CTEC including recommendations for acceptance or otherwise.

2.8 Documentation does not indicate how CTEC analysed the submissions received, nor how CTEC determined that the successful proposal offered the best value for money. On 2 November 2000, CTEC appointed an accommodation consultant at a cost of \$8,800.

Audit Comments

2.9 Notwithstanding the lack of documentation for the assessment, the process adopted by CTEC for selecting an accommodation consultant generally accorded with the requirements of the ACT Government Purchasing Policy and Guidelines.

INITIAL ASSESSMENT OF ACCOMMODATION OPTIONS

2.10 CTEC received 22 responses to its request for expressions of interest in providing accommodation by the close date. Two more responses were received after the close date and were not considered further by CTEC.

2.11 The accommodation submissions were reviewed by the accommodation consultant against six criteria as well as rental costs. The criteria were:

- location (a score out of 10);
- profile (a score out of 10);
- rent relative to quality (a score out of 10);
- availability (a score out of 5);
- floor size (a score out of 5); and
- car parking (a score out of 5).

2.12 The criteria were not defined or otherwise explained. Further, the sub-criteria used to determine a particular score against each criterion were not documented. Documentation does not indicate whether the listed criteria were discussed with, or approved by, CTEC. There is no record that CTEC provided any specific guidance or instructions to the consultant when the consultant was engaged or subsequently.

2.13 The consultant prepared a brief analysis of the accommodation proposals, setting out in a table the proposals and a score against each criterion. The criteria were weighted and a total score calculated to determine the ranking. The highest ranked proposal attracted a score of 35 from a possible 45; the lowest ranked proposal scored 20. Brindabella Business Park, with a score of 29, ranked 7th after the initial analysis.

2.14 The consultant did not attempt to eliminate any properties at this stage; instead all responses were ranked, leaving CTEC to make the decisions regarding further consideration of options. It would have been immediately apparent that more than half of the properties offered failed to meet the requirements. For example, several properties offered were unavailable as they were yet to be constructed, two were of insufficient size and two offered premises split over two locations. Another property was duplicated – offered by two agents but at different rental rates. It also later proved to be unavailable.

Audit Comments

2.15 CTEC did not have, at the time it sought expressions of interest, a methodology for assessing the proposals. Nor did CTEC approve an assessment methodology. The determination of an appropriate methodology was largely within the control of the accommodation consultant. The methodology applied by the consultant was not documented, in particular, the factors taken into consideration in determining the score for each criterion, or the reason for applying the particular weightings to each criterion. For example, although CTEC's requirements defined the criteria for 'availability', 'floor size' and 'car parking', factors other than the stated requirements appear to have been taken into account during the initial assessment.

2.16 Other criteria, such as 'location' and 'profile' were not directly related to CTEC's stated requirements. There is no documentation available that indicates what CTEC's preferences were in this regard, how those preferences were determined or how they were taken into account.

2.17 The Audit was advised that the assessment process in relation to each individual criterion was largely subjective and, although the methodology was not documented, it was understood by those persons involved in the assessment and short-listing process. The Audit accepts that the methodology was understood, but notes that better practice would have been to document the methodology, particularly for matters not directly related to CTEC's stated requirements, and for CTEC to have formally approved the methodology.

SHORT-LISTING OF ACCOMMODATION OPTIONS

2.18 The consultant's initial assessment of accommodation proposals was provided to CTEC for consideration. In consultation with the Chairman of the CTEC Board, a short-list of six properties was prepared for further, detailed, review.¹ The short-list included the five highest ranked properties (excluding one highly ranked property considered unsuitable because it failed, by almost 30%, to meet CTEC's floor size criterion). Another property, ranked 12th, was included in the short-list.

2.19 With the exception of Brindabella Business Park, all properties short-listed were within the Canberra city/city fringe locality (including Northbourne Avenue). Properties in Phillip, Deakin and Belconnen were not short-listed. They had not ranked highly because of the 'out-of-the-way' location and/or the lack of 'profile' for the building.

2.20 Short-listed properties were inspected by the Chairman and several CTEC officers. The inspections were not documented, although the accommodation consultant prepared a brief strengths/weaknesses analysis highlighting the merits of the various properties. The consultant noted that Brindabella Business Park offered 'excellent floor layout' and 'innovative features', but its location 'outside the traditional business area' was a disadvantage and it was relatively expensive.

2.21 Following the inspections, it was agreed that one property was not suitable (no on-site car parking and inadequate quality) and another

¹ At the time CTEC was considering its accommodation options, it was operating without a Chief Executive Officer. The previous Chief Executive, Mr David Marshall, had resigned and the appointment of a replacement had not been concluded. The new appointee – Mr Peter Stainlay – did not officially commence until 1 February 2001, although he was involved in the relocation process from early January 2001. The Chairman of the CTEC Board, Mr James Service, took a more active part in the administration of CTEC in the absence of the Chief Executive and was remunerated accordingly.

property short-listed was withdrawn from consideration as it was no longer available. The consultant recommended that detailed proposals be sought in relation to the four remaining short-listed properties.

Audit Comments

2.22 The Audit notes that the four properties short listed for further consideration accord generally with the consultant's ranking of the proposals. However, as with the initial assessment, documentation does not show why CTEC discounted properties outside the CBD, such as properties offered in Belconnen or Phillip which otherwise met the CTEC requirements with lower rental costs.

COMPLIANCE WITH ACT GOVERNMENT OFFICE ACCOMMODATION STRATEGY

2.23 The ACT Government's office accommodation strategy requires government agencies to obtain agreement from the Department of Urban Services, Land and Property, for any accommodation moves. CTEC, as a statutory authority, was not obliged to operate within the strategy. CTEC did not formally approach Land and Property regarding the availability of suitable accommodation, although there were informal discussions prior to October 2000. Land and Property advised CTEC during those discussions that there was no accommodation available within the Government owned portfolio that met CTEC's particular needs.

2.24 The accommodation strategy also seeks to optimise utilisation of the government office accommodation portfolio. An accommodation utilisation rate of 15 m² has been targeted for achievement by 30 June 2002. In 1996-97 the achieved utilisation rate was 26.1 m². By 1999-2000, this had been reduced to 21 m². Although CTEC was not obliged to meet this utilisation rate, it is a useful benchmark. The space and facilities planning consultant considered this benchmark in its analysis of CTEC's accommodation requirements.

Audit Comments

2.25 Though not formally required to adopt the office accommodation strategy, the Audit considers it would have been appropriate for CTEC to have proper regard to the strategy in planning its relocation. This would entail formally inquiring of Land and Property regarding the availability

of accommodation and consideration of the suitability of any accommodation available from a whole of government perspective.

2.26 CTEC's proposed utilisation rate of 17 m² compared reasonably well with the target rate across the ACT Government. The new premises at Brindabella Business Park eventually leased by CTEC were smaller than the requirements estimated by the space and facilities planning consultant. The achieved accommodation utilisation rate is 15.4 m².

CONCLUSIONS

2.27 The Audit's view is that the initial procedures in the selection process were sound. In summary, CTEC addressed the accommodation issues in a timely manner allowing sufficient time to determine its accommodation requirements and consider options. CTEC engaged a qualified consultant, following a competitive tender process, to assess space and facilities requirements, and advertised publicly for expressions of interest in providing accommodation options for the Corporation. A wide range of options was received. A consultant was competitively engaged to analyse the options received. Properties were short-listed on an appropriate basis.

2.28 Although the Audit is satisfied that the overall process was sound, some negative aspects were noted. In particular:

- CTEC did not formally approach the Department of Urban Services to determine whether suitable accommodation was available within the Government portfolio, in keeping with the intentions of the Government Office Accommodation strategy. Although suitable accommodation did not prove to be available, a formal approach to the Department of Urban Services would have at least offered the opportunity to contribute to achieving the government-wide office accommodation objectives; and
- a methodology for short-listing and selecting the accommodation proposals was not approved by CTEC or documented beyond the specification of broad selection criteria. Documentation of the criteria and sub-criteria employed by the accommodation consultant, and approval of the methodology by CTEC, may have reduced the apparent subjectivity of the selection process.

3. RELOCATION OPTIONS: THE FINAL SELECTION DECISION

INTRODUCTION

3.1 The preceding Chapter described and commented on the processes undertaken to develop a short list of four potential properties to which CTEC could beneficially relocate. This Chapter describes and comments on the processes leading to the final relocation decision.

SIGNIFICANT FINDINGS

- *Short-listed properties were subjected to financial analyses that considered the key costs of each proposal.*
- *The decision to relocate to Brindabella Business Park was consistent with the outcomes of the financial analyses; that is, the Brindabella Business Park option provided accommodation that best suited CTEC's requirements and was least expensive overall.*
- *CTEC did not fully document the selection process.*

REQUEST FOR TENDER FROM SHORT LISTED PROPERTIES

3.2 Request for tender documents were drafted by the accommodation consultant and approved by the Chairman. Several important changes were made in finalising the draft, including specifying a ten-year lease and that fit-out costs were to be funded by the lessor and amortised over the term of the lease.

3.3 The request for tender documents were issued to the agents for the four short-listed properties in November 2000.

3.4 One property was withdrawn as it was no longer available. This left Brindabella Business Park and two alternatives (referred to in this Chapter as 'Alternative A' and 'Alternative B') as competing offers.

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3.5 ‘Alternative A’ was located on Northbourne Avenue, close to CTEC’s Canberra Visitors Centre. ‘Alternative B’ was located on the city fringe within walking distance of the Chief Minister’s Department and the Minister’s Office.

RESPONSES TO THE REQUEST FOR TENDER

3.6 Responses for Brindabella Business Park and the other two remaining short-listed properties were received by the consultant in December 2000, analysed, and summaries of the analyses presented to CTEC and the Chairman. A sub-committee of the Board was established to consider the proposals contained in the responses.

3.7 The sub-committee agreed to commence consultations with staff, including a survey of staff preferences, and to prepare a ‘matrix’ considering the facilities available to each of the properties, such as public transport, parking, shopping, banking, post office, and childcare.

INITIAL FINANCIAL COMPARISON

3.8 The accommodation consultant prepared analyses for CTEC which compared the costs of the alternatives. These are summarised in *Table 3.1* below. The results of the Audit’s review of the analyses are reported in Chapter 5.

Table 3.1: Initial Financial Analysis of Accommodation Proposals			
	Brindabella Business Park	Alternative A	Alternative B
Rent Review Pattern	4.5% pa	Biennial market reviews	Biennial market reviews
Rent-free Period	Rent reductions years 1 & 2	2 months	6 months
Estimated Fit-out Cost	\$746,250	\$560,280	\$813,750
Present Value Total Cost	\$3,343,995	\$3,522,689	\$3,428,201
Present Value per m²	\$3,361	\$3,145	\$3,160

3.9 In summary, the consultant’s conclusion, based on the outcome of the initial comparisons was that the Brindabella Business Park proposal was the cheapest option overall, although on the basis of cost per m², ‘Alternative A’ and ‘Alternative B’ were less expensive. The consultant

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described Brindabella Business Park as ‘an attractive offer’. The Audit notes that according to the consultant’s initial analysis the cost differential (present value over the ten-year lease) between Brindabella Business Park and ‘Alternative A’ was less than \$180,000.

Audit Comments

3.10 As discussed in Chapter 5, the financial analyses presented to CTEC and the CTEC Board included debatable assumptions and methodological errors. These influenced the cost estimates, but did not, overall, change the relativity of the two proposals – that is, Brindabella Business Park remained the least expensive option.

3.11 The Audit notes that when CTEC sought expressions of interest for its accommodation, it sought a lease for a fixed ten years or an option of ‘two of five years’. Most properties offered were available for ten years. However, the agents for ‘Alternative A’ offered a lease of only 6.3 years. CTEC’s financial analysis of this proposal treated the offer as a ten-year lease. CTEC did not consider a shorter term of lease and subsequently sought an offer on this property based on the longer lease.

3.12 The Audit carried out a brief analysis to estimate the comparative cost between Brindabella Business Park and ‘Alternative A’ if the shorter term offer for ‘Alternative A’ had been accepted. The comparison was carried out because the operational review by CTEC officials (discussed in the following section of this Chapter) indicated that ‘Alternative A’ was the most suitable accommodation option, as it offered better amenities overall, particularly because of its proximity to the Canberra Visitors Centre.

3.13 The Audit’s analysis showed that ‘Alternative A’ remained more expensive overall than the Brindabella Business Park proposal although the difference in costs was far less than for the ten-year lease options. Brindabella Business Park is less expensive largely because of the generous rent reductions offered for the first two years, which may not have been available for the shorter term of lease. Further, it could be expected that vigorous negotiation concerning ‘Alternative A’ would have resulted in reduced costs or increased allowances.

3.14 Based on the Audit’s analysis, the shorter lease results in a relatively small cost differential in favour of Brindabella Business Park (perhaps as little as \$80,000). Additional operational costs associated

with relocating to the Canberra International Airport, rather than the more central location offered by 'Alternative A' may have had a more decisive role in determining the accommodation preferences for CTEC. It is not evident that the operational costs were considered in detail by CTEC during this process.

3.15 The Audit considers that CTEC should have had more regard for this option. The Audit recognises that a shorter term of lease may have some disadvantages, but potentially such disadvantages may be outweighed by 'locking in' the ACT Government to a ten-year lease on accommodation removed from the more traditional government precinct. The Audit notes that CTEC's accommodation consultant suggested a five-year term of lease, when CTEC was initially considering the terms of the accommodation requests, commenting that 'ten years in your industry is a long time to be committed'.

OPERATIONAL ISSUES AND STAFF VIEWS

3.16 Following consideration of the initial financial analyses, CTEC undertook a review of operational issues and sought staff views in relation to the proposed relocation. The following comments are provided on the review of operational issues and staff views.

Operational Issues

3.17 A work-group of CTEC officials reviewed the short-listed properties. Operational matters identified as the highest priority issues were the capacity to provide fit-out to CTEC's requirements and to allow for expansion; the costs and availability of parking (corporate, clients and staff); safety and lighting of the parking area (particularly out of hours); availability of public transport, and the impact on fleet requirements.

3.18 The comparison noted that additional costs would be incurred in relocating to a site that was less accessible to the Chief Minister's Department and physically remote from CTEC staff located at the Canberra Visitors' Centre. Additional costs could include:

- courier costs because CTEC required more than daily contacts with the Chief Minister's Department and the Minister;
- increased strain on the car pool, possibly requiring another vehicle to be leased (i.e. additional lease and parking expenses);

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- costs for establishing communication links with the Canberra Visitors' Centre which would vary depending on the new location of CTEC's head office; and
- lost staff productivity if travel time to and from meetings with clients and others increased.

3.19 Of the properties examined in the operational review, Brindabella Business Park and 'Alternative A' rated well against the high priority criteria. 'Alternative B', however, did not rate as highly, in particular in relation to client and staff parking.

3.20 Overall, officials unanimously concluded that 'Alternative A' was 'the most suitable of the alternatives considered, subject to positive clarification of the arrangements for staff parking'. (This property offered free on-site parking for about a third of CTEC's staff and limited off-street parking in the immediate vicinity.)

3.21 Brindabella Business Park was rated as the second preference. Location at the airport was not seen as a deterrent to business, although it could potentially affect productivity due to the increased travel time needed to attend meetings and so forth. Clarification of public transport arrangements was necessary. Access by staff to facilities such as banking, food outlets and shops was satisfactory but significantly less than either of the other options. Ample staff parking was available at Brindabella Business Park.

3.22 The operational review concluded that 'Alternative B' was unsuitable from an operational perspective.

Staff Survey

3.23 CTEC also undertook a brief survey of staff. The survey was distributed by e-mail to about 80% of affected persons. Although staff were not specifically asked for comments, many submitted additional comments outlining their concerns or their desires regarding the new premises. Responses were received from some 63% of affected persons.

3.24 Respondents offered many comments – 47 were received from the various respondents. It is evident that a move from the city was not popular – almost 50% of the comments expressed reservations about such a move – but it was unclear whether an accommodation option on Northbourne Avenue was seen as a 'move from the city'. Staff concerns

related to matters such as access to CTEC by clients and staff, transport difficulties and access to facilities such as banks. Parking was also a major issue for staff, regardless of where CTEC was to move. Respondents were concerned about the cost of parking, but also its location (convenient to the office) and after-hours safety.

Audit Comments

3.25 The review by CTEC officials of operational issues concluded that 'Alternative A' was the most suitable accommodation option and the Audit notes it offered operational cost advantages over Brindabella Business Park, the second-ranked option. The CTEC operational review concluded that 'Alternative B' was unsuitable for CTEC's requirements. Although it remained in the financial analyses, it is evident that CTEC did not regard it as a preferred option.

3.26 The staff survey also indicated that staff saw advantages in relocating to accommodation more proximate to both CTEC's Canberra Visitors Centre and to general facilities than Brindabella Business Park. Access to public transport and the cost and safety of car parking were also important issues for CTEC staff.

3.27 Summaries of the operational review and the staff survey were made available to CTEC management and the Board Accommodation Sub-committee. Documentation available to the Audit does not clearly indicate how these summaries were considered, although it is evident that 'Alternative B' was dropped from further consideration following this review. This decision is not formally documented.

CONSULTANT'S RECOMMENDATION AND CTEC'S DECISION TO RELOCATE

3.28 CTEC continued to negotiate regarding Brindabella Business Park and 'Alternative A'. In particular, CTEC sought an offer on 'Alternative A' based on a ten-year lease. All offers were reviewed and analysed by the consultant. The financial analyses continued to include 'Alternative B' although it was no longer a serious consideration, having been essentially ruled out on operational grounds.

3.29 On 2 February 2001, the consultant provided a final report to CTEC, summarising the short-listing process. Based on the consultant's analyses, Brindabella Business Park was estimated to cost \$3.2m (or

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\$3,200 per m²) and 'Alternative A' was costed at \$3.9m (or \$3,500 per m²). The consultant recommended 'provided the location is suitable, that formal negotiations are conducted with [Canberra International Airport Pty Ltd] with the objective of concluding negotiations within the next four weeks'. The consultant added 'the offer as made ... is attractive and it is felt that it is unlikely to be improved substantially'.

3.30 The Board Accommodation Sub-committee considered the consultant's report on 6 February 2001. The sub-committee noted:

- 'Alternative B' was not of a suitable standard and did not meet the Corporation's needs regarding staff parking and staff safety;
- 'Alternative A' was an acceptable location but the present value of the ten-year lease was too expensive (\$0.7m higher than Brindabella Business Park) and 'car parking was grossly inadequate'; and
- Brindabella Business Park 'represented good value for money over ten years and provided good staff parking and environment'. Brindabella Business Park also offered a 'rentalised fit-out' not offered by 'Alternative A'.

3.31 The sub-committee of the Board agreed in principle that CTEC should relocate to Brindabella Business Park, and that the Chairman and Chief Executive should meet with Canberra International Airport Pty Ltd to finalise terms.

3.32 On 16 February 2001, the Board was provided with a 'Members Issues Paper' seeking a decision regarding the relocation to Brindabella Business Park. The paper, which recommended members agree to enter into a lease with 'the Capital Airport Group', was to be considered out of session. On 19 February 2001, the Chief Executive contacted Board members by telephone to obtain their decision on the Members Issues Paper. The members' agreement to the recommendation was documented on a typed note for file. The note indicates that a Board member 'declared his interest and did not get the paper'.

3.33 The decision to relocate to Brindabella Business Park was confirmed at the Board meeting on 22 February 2001. The minutes also record that the Board member who had declared a conflict of interest did not vote on the decision.

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3.34 CTEC briefed the Minister in writing on the relocation process on 21 February 2001. The brief includes no reference to any conflict of interest issues.

3.35 Also on 21 February 2001, CTEC issued a media release advising of its decision to relocate to Brindabella Business Park.

Audit Comments

3.36 The recommendation to relocate to Brindabella Business Park was based principally on the financial analyses, which showed a significant cost advantage when compared to the only other suitable property ('Alternative A'). The consultant's analyses showed a cost differential over the ten-year lease of \$0.7m in favour of Brindabella Business Park.

3.37 As discussed in Chapter 5 of this Report, the Audit considers that deficiencies in the methodology applied by the consultant inflated the cost advantage. Nevertheless, even based on the Audit's revised analyses, Brindabella Business Park was the least expensive suitable option.

3.38 The Members' Issues paper presented to the CTEC Board for consideration also highlighted the failure of 'Alternative A' to provide adequate car-parking facilities. The Audit notes that 'Alternative A' met fully CTEC's official requirements (as specified in the request for tender). It could not, however, provide on-site car-parking for more than about one third of CTEC's staff, although it was highly accessible to public transport. On the basis of the information available to the Audit, the Audit is not in a position to form a view on whether the car-parking issue was sufficiently significant to seriously effect the relocation decision.

FINAL NEGOTIATIONS WITH CANBERRA INTERNATIONAL AIRPORT PTY LTD

3.39 Shortly after the Board sub-committee agreed in principle to relocate to Brindabella Business Park, a meeting was held with Canberra International Airport Pty Ltd which led to a 'refined leasing offer to better suit [CTEC's] requirements'. The revised offer provided additional incentives in the form of rental reductions over the first two years of the lease. The number of car parks included in the agreement was reduced from ten to seven. The lettable area increased slightly from 995 m² to 1,014 m². The overall effect of the revised proposal was to reduce the

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present value cost of the ten-year lease to \$3.1m and the rate per m² to \$3,100 (per calculations by the consultant). These figures were used in the Members Issues Paper circulated to the Board.

3.40 CTEC informed Canberra International Airport Pty Ltd of the Board's decision to relocate to Brindabella Business Park, and on 19 February 2001 held a meeting to finalise the commercial terms of lease. This led to a further change to the incentives offered by Canberra International Airport Pty Ltd in CTEC's favour. CTEC confirmed acceptance of the terms offered in writing the following day.

3.41 The lease contract was signed on 17 April 2001. The terms of the lease are as agreed by CTEC on 19 February 2001, although there is a small downwards variation in the rental payments. CTEC moved into its new premises in May 2001.

3.42 The final analysis for Brindabella Business Park, reflecting the agreed terms of the lease, is shown in *Table 3.2* below.

Table 3.2: Brindabella Business Park – Final Analysis	
Area	1,014 m ²
Rent structure	Rent free (30/4 – 12/10/01) \$11,910.65 (13-31/10/01) \$18,597.33 per month (1/11/01-29/4/02) \$268,866.96 (30/4/02-29/4/03) \$321,120.87 (30/4/03-29/4/11)
Review Pattern	4.5% annually from 30/4/04
Car parking	7 spaces @ \$1,000 (increased by 4.5% annually)
Fit-out Cost	\$600,000
Fit-out amortisation	8.85%
Rent	\$2,283,593
Car parking	\$58,954
Cleaning	\$149,448
Sub-total	\$2,491,995
Fit-out	\$636,499
Present Value - Total Cost	\$3,128,494
Present Value - per m²	\$3,085

CONCLUSIONS

3.43 The short-listed properties were subjected to financial analyses which considered the key costs of each proposal. The decision to relocate to Brindabella Business Park was consistent with the outcomes of the financial analyses. That is, Brindabella Business Park provided accommodation which was the least expensive option.

3.44 Deficiencies in the financial analyses were noted. These are reported in Chapter 5. The deficiencies did not significantly effect the decision to relocate; they effected the quantum of the estimated costs of the various short-listed proposals, but did not invalidate the outcome of the analyses overall. That is, notwithstanding errors in the analyses, Brindabella Business Park remained the least-cost option.

3.45 The Audit's view is that the process applied by CTEC in the decision to relocate to Brindabella Business Park was generally consistent with public sector policies and guidelines.

3.46 The Audit also concludes that the decision was made with the aid of relevant information, although as discussed in Chapter 5, the financial information used lacked accuracy and was not complete.

3.47 However, the following aspects of the short-listing and selection process could have been improved:

- CTEC did not fully document the selection process. More thorough documentation would have improved the accountability trail for the selection and decision process; and
- CTEC did not consider an alternative lease option for the property 'Alternative A', involving a shorter term of lease, which may have offered a more operationally suited accommodation outcome and value for money to the ACT Government.

3.48 In summary, the decision by CTEC to relocate to Brindabella Business Park was arrived at through an acceptable and accountable process. The decision was adequately justified on financial grounds, although the cost differential between the Brindabella Business Park proposal and the next ranked proposal was not as great as that assessed by CTEC. Operational costs, while not fully considered by CTEC, were unlikely to reverse the decision.

4. CONFLICT OF INTEREST ISSUES

INTRODUCTION

4.1 This chapter considers the question of whether any actual, apparent or potential conflict of interest existed in relation to the relocation of CTEC to Brindabella Business Park, and if so, whether the conflict was managed in accordance with the CTEC Act and government policy, principles and guidelines.

SIGNIFICANT FINDINGS

- *A conflict of interest existed with respect to Mr Stephen Byron. The conflict was disclosed by Mr Byron in a timely manner and appropriately handled in accordance with section 15 of the CTEC Act.*
- *No actual or apparent conflict of interest existed in relation to Mr James Service. Consequently, Mr Service has not failed to make proper disclosure in accordance with section 15 of the CTEC Act.*
- *There was a public perception that a conflict of interest existed with respect to Mr Service's role in the relocation decision. This potential was considered by the Board in a timely manner and handled in a manner designed to suitably distance Mr Service from the relocation decision.*
- *The Board did not record its deliberations on the potential for a perception of a conflict of interest, and subsequent decision, in the Board minutes.*

BACKGROUND

4.2 The community has a right to expect that public sector staff and officials (including Statutory Authority Board members) will perform their duties in a fair and unbalanced way and that decisions they make are not affected by self interest or personal gain. Conflicts of interest arise where public sector staff or officials are influenced or appear to be influenced by self interest or personal gain when performing their duties.

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The perception of a conflict of interest can be as damaging as an actual conflict because it undermines confidence in the integrity of the organisation involved and its officials.²

4.3 The CTEC Act includes the following provision:

15(1) A member who has a direct or indirect pecuniary or personal interest in a matter which has been submitted for consideration by the Corporation shall disclose the nature of the interest at a meeting of the Corporation as soon as practicable after the relevant facts have come to the member's knowledge.

4.4 The CTEC Act provides for any such disclosures to be recorded in the minutes of the Board meeting. A member who discloses a conflicting interest may not be present during any deliberation of the Corporation on the relevant matter or take part in any decision with respect to that matter unless the Minister or the Corporation determines otherwise.

4.5 Shortly after CTEC announced its proposed relocation to Brindabella Business Park, questions relating to the decision were raised in the Legislative Assembly. A key issue discussed in this forum was the perception of a conflict of interest. The issue arose because one member of the CTEC Board - Mr Stephen Byron - is a Director of Canberra International Airport Pty Ltd, the lessor of Brindabella Business Park. Further, the Chairman of the CTEC Board - Mr James Service - was perceived to have connections to Canberra International Airport Pty Ltd, because his father - Mr Jim Service - is a director of Capital Airport Group Pty Ltd, the firm that manages the Canberra International Airport.

4.6 The Audit examined whether any actual, apparent or potential conflict of interest existed in relation to CTEC's relocation. In considering conflict of interest issues, the Audit examined action taken by CTEC or the CTEC Board to identify and disclose any possible conflicts and considered whether such action was in accordance with the CTEC Act, and government policy, principles and guidelines.

4.7 A failure to adequately disclose a conflict of interest by a member of the CTEC Board would be a breach of section 15 of the CTEC Act.

² NSW Independent Commission Against Corruption 'Practical Guide to Corruption Prevention' February 1996 - Chapter 9 Conflicts of Interest.

DISCLOSURE OF INTEREST – MR STEPHEN BYRON

4.8 One of the properties offered to CTEC in response to its request for expressions of interest in October 2000 was Brindabella Business Park, which is owned by Canberra International Airport Pty Ltd. At the CTEC Board meeting immediately following the advertisement for accommodation options, a Board member, Mr Stephen Byron, disclosed a conflict of interest.

4.9 The minutes of the Board meeting record the disclosure but do not indicate what action was taken in regard to Mr Byron's disclosure, for example, whether Mr Byron took part in any discussions regarding the accommodation proposals or whether he absented himself from the meeting during the discussion.

4.10 The minutes for a subsequent Board meeting at which accommodation options were discussed are annotated by the secretary to the effect that Mr Byron was absent from the meeting during relevant discussions.

4.11 Further documentation states that Mr Byron was not provided with the Board Issues Paper seeking a decision on the relocation of CTEC to Brindabella Business Park and did not vote on the matter.

Audit Comments

4.12 The disclosure of a conflict of interest by Mr Byron was required under section 15 of the CTEC Act. The disclosure was timely and clearly recorded in the minutes of the Board meeting. The Audit considers that better practice would have been to also record the subsequent action agreed by the Board in relation to the disclosure.

4.13 Mr Byron's subsequent action to absent himself during Board deliberation with respect to the accommodation options and not to take part in any decision of the Corporation on the relocation was correct and in accordance with section 15 of the CTEC Act.

CONSIDERATION OF WHETHER A CONFLICT EXISTED – MR JAMES SERVICE

Introduction

4.14 Mr James Service, the Chairman of the CTEC Board, played a significant role in the deliberations leading to the decision to relocate to Brindabella Business Park. This was a direct outcome of his position as Chairman of the Board and his increased involvement in CTEC operations while the position of Chief Executive Officer was vacant (essentially, Mr Service acted as the Chief Executive).

4.15 The question arose in the Legislative Assembly as to whether Mr Service failed to make proper disclosure in accordance with section 15 of the CTEC Act. If it were that Mr Service had contravened Section 15, the Minister would be required by the CTEC Act to terminate Mr Service's appointment to the CTEC Board.

Requirement to Disclose

4.16 Mr Service would be required to make a disclosure under section 15 of the CTEC Act if a matter had been submitted for consideration by the Corporation and Mr Service had a 'direct or indirect pecuniary or personal interest' in that matter.

4.17 The matter for consideration was the lease of premises at Brindabella Business Park by CTEC from Canberra International Airport Pty Ltd. The key issue therefore was whether Mr Service had any interest in this matter that would require disclosure.

Legal Advice – Minter Ellison Lawyers

4.18 In responding to questions regarding the disclosure of interests by Mr Service, CTEC sought legal advice from Minter Ellison Lawyers. Minter Ellison considered the circumstances leading to the lease, Mr Service's role in the decision, and Mr Service's business and personal interests with relevant parties. Minter Ellison concluded that Mr Service had no interest to declare within the meaning of section 15 of the CTEC Act. Consequently, Mr Service was entitled to participate in deliberations regarding the proposed lease and to take part in any subsequent decision.

Legal Advice – ACT Government Solicitor

4.19 The Audit also sought legal advice on the requirement to disclose interests from the ACT Government Solicitor. The Audit provided the Government Solicitor with a summary of the relocation process, a summary of other relevant matters and a copy of the Minter Ellison advice to the Chief Executive of CTEC.

4.20 The Government Solicitor concurred with the advice from Minter Ellison, stating:

(a) based on the material [provided by the Audit], Mr James Service did not have a direct or indirect pecuniary or personal interest in the lease from Canberra International Airport Pty Limited to CTEC; and

(b) it follows that Mr James Service has not failed to make proper disclosure in accordance with section 15 of the CTEC Act.

Audit Comments

4.21 Advice from Minter Ellison was that Mr James Service had no interest in the leasing of Brindabella Business Park premises to CTEC. As he had no interest requiring disclosure it could not be held that he had failed to disclose an interest as required by the CTEC Act.

4.22 The Government Solicitor found no evidence that Mr James Service or any of his family held any shares or other interests in the company leasing the Brindabella Business Park premises to CTEC or any companies associated with the leasing company. The Solicitor was further satisfied that neither Mr James Service nor any member of his family stood to gain, financially or otherwise, from CTEC's move to Brindabella Business Park.

4.23 The Solicitor considered whether other interests might arise from the lease that should have been disclosed by Mr Service. The Solicitor found no other interest and noted that 'a mere suspicion or abstract possibility of some "interest" would not be sufficient to trigger the disclosure requirement.'

4.24 The Audit considers the legal opinions satisfactorily deal with the question of whether Mr Service failed to disclose an interest within the meaning of section 15 of the CTEC Act.

PERCEPTIONS OF A CONFLICT OF INTEREST

4.25 As quoted at paragraph 4.2, the NSW Independent Commission Against Corruption posits the view that the perception of a conflict of interest can be as damaging as an actual conflict because it undermines confidence in the integrity of the organisation involved and its officials. This view is recognised by the ACT Government's Code of Ethics which states that the effects of real and apparent conflicts of interest are equally serious (an apparent conflict of interest may exist if a public employee's private interests may appear, on reasonable grounds, to influence the performance of their official duties, even if there is no actual influence).

4.26 The circumstances surrounding the relocation of CTEC to Brindabella Business Park did give rise to a public perception of a conflict of interest. This is evident from the debate in the Legislative Assembly and media reports concerning the relocation. In the Audit's view, it was reasonably foreseeable that such a perception would arise.

4.27 As discussed above, the most evident conflict of interest – that involving Mr Byron – was appropriately handled by the CTEC Board. Mr Byron disclosed his interest at the first reasonable opportunity and took no part in either the deliberations regarding the accommodation options or the decision to relocate to Brindabella Business Park.

4.28 According to statutory declarations provided to the Audit by Board members, at a meeting in December 2000 the Board considered whether a conflict of interest or a potential for a perception of a conflict existed in relation to Mr Service. The statutory declarations state that the Board agreed that no conflict or potential conflict existed for Mr Service. The Board further agreed that Mr Service should nonetheless distance himself from the decision, as a company with which he was involved (J G Service Pty Ltd) had recently leased office accommodation in Brindabella Business Park. The declarations also state the Board established a sub-committee, comprising Board members Geoff Applebee and Don Beaumont supported by the CTEC Finance Officer, to consider the short-listed accommodation proposals and to make a final decision on behalf of the Board.

4.29 No reference to discussions on the conflict of interest issue or the establishment of the sub-committee is included in the minutes of the relevant Board meeting. Board members, however, provided statutory declarations to the Audit regarding these matters. The Audit has

considered the evidence available and is satisfied that the discussions did take place as described by the Board members.

4.30 Mr Service continued to play an important advising role in the deliberations leading to the subsequent decision.

Audit Comments

4.31 The CTEC Act provides an appropriate mechanism for dealing with conflicts of interest.³ Such interests, once declared, should be noted in the Board minutes and the Board may consider whether the member may continue to take part in the deliberations and the decision on the relevant matter. A decision in this respect should be recorded in the minutes.

4.32 Applying the framework set up by the CTEC Act, the Board should have, on the disclosure of an interest by Mr Byron in Brindabella Business Park, considered whether any other member should also disclose that potential existed for a perception of a conflict of interest. Such consideration, and any decision of the Board in this regard, should have been recorded in the minutes of the Board meeting. Evidence presented to the Audit shows that the potential for a conflict of interest involving Mr Service was considered at an appropriate time. It was not, however, documented in the Board minutes, particularly any actions proposed to minimise the perception of a conflict.

4.33 The most effective action to minimise any perception of conflict of interest would have been for Mr Service to absent himself from Board meetings during discussion of accommodation matters (after receipt of the proposal from Canberra International Airport Pty Ltd). Mr Service would not then have taken any further part in any deliberations or decision regarding a lease from Canberra International Airport Pty Ltd. The practicality of this option, however, is limited. Mr Service's role as Chairman of the Board, his temporary role as 'Acting Chief Executive' and the importance to the new Chief Executive Officer of his experience and advice during the first months of the new CEO's appointment, combine to emphasise the contributions Mr Service could make to the relocation decision.

³ Section 15 of the CTEC Act refers specifically to *actual* conflicts of interest, but the framework it sets up is also appropriate for dealing with apparent, potential or perceived conflicts.

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4.34 The decision of the Board to establish a sub-committee, not involving Mr Service, to take main carriage of the assessment of the accommodation options and to make an ‘in principle’ decision for ratification by the Board, was sound in the circumstances. Clearly, however, better practice would have been for the Board to have ensured its deliberations and decisions regarding the perceptions of a conflict of interest were recorded in the Board minutes. The Audit considers this would have helped to avoid the public perception that a conflict of interest existed.

CONCLUSIONS

4.35 The Audit concludes that a conflict of interest existed in relation to the lease of Brindabella Business Park premises from Canberra International Airport Pty Ltd with respect to Mr Stephen Byron. The conflict was disclosed by Mr Byron in a timely manner and appropriately handled in accordance with section 15 of the CTEC Act.

4.36 The Audit also concludes that no actual or apparent conflict of interest existed in relation to Mr James Service. Mr Service had no interest in the leasing of Brindabella Business Park premises to CTEC. Consequently, Mr Service has not failed to make proper disclosure in accordance with section 15 of the CTEC Act.

4.37 The Audit further concludes that there was a public perception that a conflict of interest existed with respect to Mr Service’s role in the relocation decision. The potential for such a perception was considered by the Board in a timely manner and handled in a manner designed to suitably distance Mr Service from the relocation decision. Better practice would have been for the Board to record its deliberations on the issue, and subsequent decision, in the Board minutes.

5. FINANCIAL ANALYSES OF PROPERTIES

INTRODUCTION

5.1 A major determinant in CTEC's decision to relocate to Brindabella Business Park was the Park's cost advantage over other competing properties. This Chapter reviews the financial analyses undertaken which identified the cost advantage.

SIGNIFICANT FINDINGS

- *The decision to relocate CTEC to Brindabella Business Park was made with the aid of financial analyses that offered adequate indicative cost data for informed decision-making.*
- *The financial analyses were relevant, although they lacked accuracy and were not complete because of debatable assumptions and methodological errors.*
- *A more thorough review by CTEC of the financial analyses could have identified the shortcomings in methodology and calculation.*
- *CTEC did not seek, or undertake, sensitivity analyses to test the reliability of the conclusions reached by the analyses.*
- *Operational costs of relocating were not examined in detail.*

INITIAL FINANCIAL ANALYSES

5.2 In providing advice to CTEC, the accommodation consultant engaged by CTEC prepared cost analyses of the short-listed properties. The initial analyses were presented to CTEC as a 'working draft'. They were simple spreadsheets, showing the major costs of the accommodation options over the proposed term of the lease. The costs were discounted to illustrate the present value of each option.

5.3 The initial analyses presented to CTEC are summarised in *Table 5.1* on the following page.

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Table 5.1: Summary of Initial Financial Analyses Proposals

	Brindabella Business Park	Alternative A	Alternative B
Floor Area	995 m ²	1,120 m ²	1,085 m ²
Rent Review Pattern	4.5% pa	Biennial market reviews	Biennial market reviews
Rent-free Period	Rent reductions years 1 & 2	2 months	6 months
Fit-out Allowance	Nil	Nil	Nil
Fit-out Cost	\$746,250	\$560,280	\$813,750
Present Value - Total Cost	\$3,343,995	\$3,522,689	\$3,428,201
Present Value - per m²	\$3,361	\$3,145	\$3,160

5.4 Brindabella Business Park was presented as the ‘cheapest option ... although it provides the least space’ and was described as ‘an attractive offer’. The cheapest option comment refers to Brindabella Business Park having the lowest total present value over the ten-year lease of the options considered.

Audit Comments

5.5 The Audit reviewed the analyses and noted the outcomes were dependent, to varying degrees, on several assumptions made by the consultant. For example:

- assumptions regarding the market growth rate would influence the valuations of those accommodation options with rental reviews based on ‘market valuations’.

The financial analyses assumed a market growth rate of 6.0%. This rate is noted by CTEC during the initial draft analysis as ‘a bit hot’, but no change is made to this factor in subsequent analyses. The Audit notes that market growth for office accommodation in the ACT has been much lower than 6.0% pa over recent years and is expected to average 3.5% to 4.0% over the next six years.⁴

⁴ The proposal for Brindabella Business Park was not effected by market growth as the lessor proposed to apply a fixed rate for rental reviews of 4.5% annually, based on an annual adjustment equivalent to movements in the consumer price index plus 2.0%. Proposals for other properties reflected rent reviews based on market valuations.

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- the assumed cost of fit-out of premises and the method by which it was funded could have a significant effect.

CTEC sought to have the cost of fit-out (estimated to be \$750-1,000 per m²) to be initially met by the property owner and then charged to CTEC like rent at a rate amortised over the ten-year term of the lease. Essentially, this arrangement meant that CTEC would borrow the cost of the fit-out from the owner and repay it over the term of the lease. The advantage for CTEC with this arrangement was that it was unnecessary to fund a large up-front capital cost. The disadvantage was that the overall cost of the fit-out would be higher than if CTEC was able to fund the fit-out from within its budget or borrow the funds directly.

The financial analyses assumed this arrangement applied, amortised at a rate of 9.0%. The proposal relating to 'Alternative A' clearly stated that this option was not available for this property. If CTEC wished to consider this property further, alternative methods for funding the fit-out would be necessary. The proposal regarding 'Alternative B' offered to fund the fit-out, but at a higher rate (9.75%).

- all analyses assumed a ten-year lease.

The proposal for 'Alternative A' was for a sub-lease for only 6.3 years. This was noted by the consultant, but the property was analysed as if the lease was for ten years, assuming that the terms of the shorter lease offered would still apply. Later developments showed that costs for a ten-year lease on 'Alternative A' would be significantly different to those used in these analyses.

5.6 The Audit also noted errors in the methodology applied during the financial analyses and in the calculations. These included using the wrong discount rate or inflation factor and not taking into account the timing of some payments.

5.7 Documentation indicates that the analyses were reviewed by CTEC and some matters were raised with the consultant for attention, but it is evident that the review by CTEC considered only the consultant's report and did not examine in detail the methodology applied.

Initial Financial Analysis – Conclusion

5.8 In the Audit’s view the initial financial analyses presented to CTEC as a ‘working draft’ contained a number of assumptions that were debatable and errors in methodology and calculation. It is not evident from the documentation available to the Audit that the consultant’s analyses, and in particular the assumptions and methodology, were reviewed in detail by CTEC. The Audit considers that many of the matters noted above could have been identified by CTEC had a more comprehensive review been undertaken.

5.9 The consultant presented Brindabella Business Park as the cheapest option overall, although on the basis of cost per m², ‘Alternative A’ and ‘Alternative B’ were less expensive. The Audit recalculated the financial analyses, correcting the errors in methodology identified by the Audit, and applying a market growth rate of 4.5% (rather than 6.0%) but for comparative purposes otherwise applied the same assumptions applied by the consultant. The results are shown in *Table 5.2*.

Table 5.2: Audit Recalculation of Initial Financial Analysis of Accommodation Proposals			
	Brindabella Business Park	Alternative A	Alternative B
Fit-out Cost	\$796,742	\$597,890	\$896,891
Present Value - Total Cost	\$3,314,631	\$3,346,571	\$3,152,755
Present Value - per m²	\$3,331	\$2,988	\$2,906

5.10 The Audit’s analysis results in lower costs overall, and a lower cost per m², for all proposals. The relative order of the proposals changes (based on the present value of total costs), with ‘Alternative B’ becoming the least expensive option, and Brindabella Business Park ranked second. Importantly, the difference in total costs between the proposals, particularly between Brindabella Business Park and ‘Alternative A’ becomes significantly less.

FINANCIAL CONSIDERATIONS OF THE FINAL SHORT-LISTED PROPERTIES

5.11 Following the operational review and staff survey described in Chapter 3, consideration of accommodation options focussed on Brindabella Business Park and ‘Alternative A’.

Brindabella Business Park

5.12 CTEC obtained further information to resolve staff concerns regarding public transport, access to facilities and car parking. The response from Canberra International Airport Pty Ltd did not fully resolve all matters – for example, a public bus service was planned but was ‘dependant on a current review of the airline timetables’.⁵

5.13 Canberra International Airport Pty Ltd confirmed that fit-out could be funded as preferred by CTEC at a rate of 8.85% over the ten-year lease and that this cost could be added to the monthly rent.

5.14 No other financial details changed for this option at this time, although further negotiations with Canberra International Airport Pty Ltd after the Board’s ‘in principle’ decision to relocate led to additional incentives (in the form of rental discounts) being offered to CTEC.

‘Alternative A’

5.15 The initial proposal relating to this property offered a sub-lease of around six years. CTEC’s preference was for a ten-year lease, and consequentially CTEC sought a revised offer for this property on that basis. A revised proposal was received on 31 January 2001.

5.16 The revised proposal was more expensive than that initially offered. Rental for the premises and for undercover car parking increased significantly, although CTEC was offered a reduced cost of cleaning, increased rent-free incentives, and rent reviews on two alternative bases – two-yearly to market or annual adjustments at CPI plus 1.5%. Consistent with the initial offer, fit-out by the lessor was not an option.

5.17 The accommodation consultant prepared a report for CTEC summarising a financial analysis of the new proposal, concluding that ‘overall, the revised proposal is not considered attractive’. The analysis indicated that the cost of this accommodation option had risen (in present value over ten years) by almost \$0.5m. This was \$0.6m more than the

⁵ An airport bus service, operating several times a day from Canberra City, has since been introduced, and offers discount fares to persons employed at Brindabella Business Park. The Audit also notes that during later negotiations, Canberra International Airport Pty Ltd agreed to meet the cost of taxis from Canberra City to Brindabella Business Park for the CTEC staff who would normally use public transport to travel to and from work pending the commencement of the bus service.

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current offer regarding Brindabella Business Park. The consultant also indicated that car parking for staff would remain a concern.

Consultant's Recommendation to CTEC

5.18 The consultant's report to CTEC, which recommended that final negotiations commence regarding Brindabella Business Park, included financial analyses for the properties short-listed, summarising the final two options as shown in *Table 5.3*.

Table 5.3: Brindabella Business Park		
	Brindabella Business Park	Alternative A
Review Pattern	4.50% pa	Biennially to market
Rent free period	- ^a	6 months
Fit-out Allowance	-	-
Fit-out Cost	\$600,000	\$600,000
Present Value - Total Cost	\$3,183,751	\$3,918,424
Present Value - per m²	\$3,200	\$3,499

^a Brindabella Business Park offered rental incentives that were equivalent to more than eight months rent-free.

Audit Comments

5.19 The final comparative analysis showed that Brindabella Business Park offered a financially appealing proposal in comparison to the other options, largely a result of lower rental costs per m² and an incentive package equivalent to more than eight months rent-free. Funding of fit-out as offered by Canberra International Airport Pty Ltd was also attractive to CTEC, as it avoided the need to seek capital supplementation through the Budget. It was, however, a relatively expensive option as CTEC could undoubtedly borrow the required funds in its own right (with a government guarantee) at a significantly cheaper rate.⁶

⁶ CTEC sought the Treasurer's approval to borrow the necessary funds for fit-out in March 2001, shortly after agreeing to relocate to Brindabella Business Park. CTEC was advised in May 2001, shortly before their move into the Brindabella Business Park premises, that the Treasurer had not approved the borrowing, suggesting that CTEC should renegotiate with Canberra International Airport Pty Ltd 'to reduce their margin compared to the market rate'. CTEC has advised that negotiations at this late stage of the process were not successful.

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5.20 The financial analysis for ‘Alternative A’ was in the same format as previous analyses, and as previously, contained several errors that collectively exaggerated the cost of the proposal. Importantly, the analysis continued to assume a market growth rate of 6.0%, and based on only one of the two rent review options (i.e. the option for two-yearly to market adjustments). This was not questioned by CTEC.

5.21 The analysis also continued to assume the cost of the fit-out would be met initially by the lessors and amortised over the lease at 9.0%. The offer clearly stated that this was not an option. If ‘Alternative A’ was to remain in serious consideration, CTEC would need to find alternative means of funding fit-out, perhaps by seeking Treasury approval for borrowing before the contract was finalised.

5.22 CTEC was not offered any sensitivity analyses. Sensitivity analyses based on alternative market growth rates, or based on the alternative rent review arrangements (CPI plus 1.5%) could have presented CTEC with a range of costs for this accommodation proposal, potentially strengthening the decision-making process. CTEC did not ask for sensitivity analyses.

5.23 The Audit undertook a financial analysis of the revised proposal for ‘Alternative A’, including a brief sensitivity analysis. For comparative purposes, the Audit’s analysis assumes the cost of fit-out is funded in the same manner as for the Brindabella Business Park proposal. However, if CTEC was able to borrow the funds directly the costs would likely be less. The results are presented in the *Table 5.4*.

Table 5.4: Audit Analysis of Revised Proposal for ‘Alternative A’				
	CTEC Analysis	Audit Corrections	CPI Option	Slower Market
Review Pattern	Biennially to market	Biennially to market	CPI +1.5%	Biennially to market
Rent free period	6 months	6 months	6 months	6 months
Fit-out Allowance	Nil	Nil	Nil	Nil
Fit-out amortisation	9.0%	8.85%	8.85%	8.85%
Market Growth/CPI	6.0%	6.0%	2.5%	3%
Fit-out cost	\$624,582	\$569,267	\$569,267	\$569,267
Present Value - Total Cost	\$3,918,424	\$3,759,291	\$3,582,243	\$3,411,377
Present Value - per m²	\$3,499	\$3,357	\$3,198	\$3,046

5.24 The Audit's analysis illustrates that the present value of the lease for this accommodation alternative was significantly influenced by the assumptions used in the analysis. The analysis presented by the consultant would inevitably show a high cost proposal in comparison to the proposal for Brindabella Business Park because the consultant assumed a higher inflationary factor applied (6.0% against 4.5%). The consultant's assumption regarding the funding of fit-out under the 'Alternative A' proposal also inflated the outcome of the analysis.

5.25 Notwithstanding the above, the Audit's analysis confirms that 'Alternative A' remained a more expensive accommodation option overall than Brindabella Business Park under all scenarios. However, as the differential in costs between the two options narrows, the relative importance of other factors, such as operational arrangements, staff preferences or organisational arrangements, which may be less quantifiable, increases. The extent to which these factors were overtly considered is not documented.

CONCLUSIONS

5.26 The financial analyses undertaken for and by CTEC were relatively straightforward spreadsheet calculations presented to CTEC initially as a 'working draft' but largely unchanged during the course of the accommodation selection process. The analyses considered the key costs associated with a lease of the properties under consideration. As such, they offered adequate indicative cost data for informed decision-making.

5.27 However, the Audit noted deficiencies in the financial analyses - debatable assumptions and methodological errors - that effected the quantum of the estimated costs of the various short-listed proposals, although they did not have a significant effect on the decision to relocate.. In the Audit's view, a more thorough review of the analyses by CTEC could have identified these deficiencies.

5.28 Further, CTEC did not seek, or undertake, sensitivity analyses to test the reliability of the conclusions reached by the analyses. Sensitivity analyses would have provided additional assurance regarding the outcomes of the analyses under alternative conditions.

5.29 The Audit also notes that operational costs associated with the relocation were not examined in detail. Examination of operational costs

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would ensure that all relevant costs of relocation were considered for each option and improve the overall reliability of the relocation decision.

5.30 The Audit concludes that the decision to relocate CTEC to Brindabella Business Park was made with the aid of relevant information, although, the information lacked accuracy and was not complete.

APPENDIX A

AUDIT APPROACH

This Appendix describes the approach followed in the conduct of the performance audit.

Professional Auditing Standards

The Audit was performed in accordance with the principles, procedures and guidance contained in Australian Auditing Standards relevant to performance audits.

The Standards required the Audit to be properly planned and supervised. Sufficient appropriate audit evidence was required to be obtained to enable Audit opinions to be drawn. The reliability and nature of the evidence was taken into account when drawing opinions. Where available, documents prepared at the time when actions were taken or decisions made were considered the most reliable form of evidence. Evidence and conclusions were checked through circulation of draft reports.

Professional scepticism and judgement, as required by the Standards, were applied throughout the Audit. Where a representation to the Audit contradicted other audit evidence the circumstances were investigated.

The Audit was performed to provide a high level of assurance that the results are reliable. Because of the nature of auditing an absolute level of assurance cannot be achieved.

Audit Focus

The focus of the Audit was on the decision by CTEC to relocate to Brindabella Park. In that regard, the Audit examined the justification for the decision, the reliability of the information used in making the decision, and whether relevant matters were taken into account. In considering the relevance and reliability of the information used by/available to CTEC, the Audit examined consultants' reports, tendering processes etc, but did not subject them to in-depth scrutiny unless observations indicated a more detailed examination was necessary.

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The Audit also considered whether any actual, apparent or potential conflict of interest existed in relation to CTEC's relocation. This was an issue specifically raised in the Legislative Assembly (and subsequently in the media). In considering conflict of interest issues, the Audit examined action taken by CTEC or the CTEC Board to identify any possible conflicts and considered whether such action was in accordance with the Canberra Tourism and Events Corporation Act, and ACT Government policy, principles and guidelines.

Matters raised in the Legislative Assembly concerned, specifically, access to CTEC's new premises by clients and staff, and whether the commercial development at the airport 'contradicts the spirit of the Territory Plan'. Access to Brindabella Park was considered in general in examining the decision-making process. However, the question of whether the development of Brindabella Park was consistent with the 'spirit' of the Territory Plan (or the National Capital Plan) was not a matter considered in the Audit.

General Methodology

In undertaking this work, the Audit included:

- an examination of CTEC legislation, CTEC policy and guidelines and other relevant policy, principles and guidelines to identify better practices in relation to relocation of office accommodation and management of disclosure of interest/conflict of interest issues;
- examination of documentation relevant to the decision to relocate CTEC's offices to Brindabella Business Park; and
- discussions with CTEC staff, relevant Board members and consultants involved in considering CTEC's space and facilities requirements and the decision to relocate to Brindabella Business Park.

Annexure

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**

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 and 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**

Annexure (continued)

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
- 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 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

Annexure (continued)

- 10. Bruce Stadium Redevelopment — Stadium Hiring Agreements**
- 11. Bruce Stadium Redevelopment — Lawfulness of Expenditure**
- 12. Bruce Stadium Redevelopment — Governance and Management**
- 13. Annual Management Report for the Year Ended 30 June 2000**

Reports Published in 2001

- 1. Financial Audits with Years Ending to 30 June 2000**
- 2. Enhancing Professionalism and Accountability**
- 3. Market Research and Marketing (Second Report)**
- 4. Peer-Based Drug Support Services Tender – 1998**
- 5. The Administration of Payroll Tax**
- 6. Annual Management Report for the Year Ended 30 June 2001**
- 7. Managing Canberra Urban Parks and Open Spaces**

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