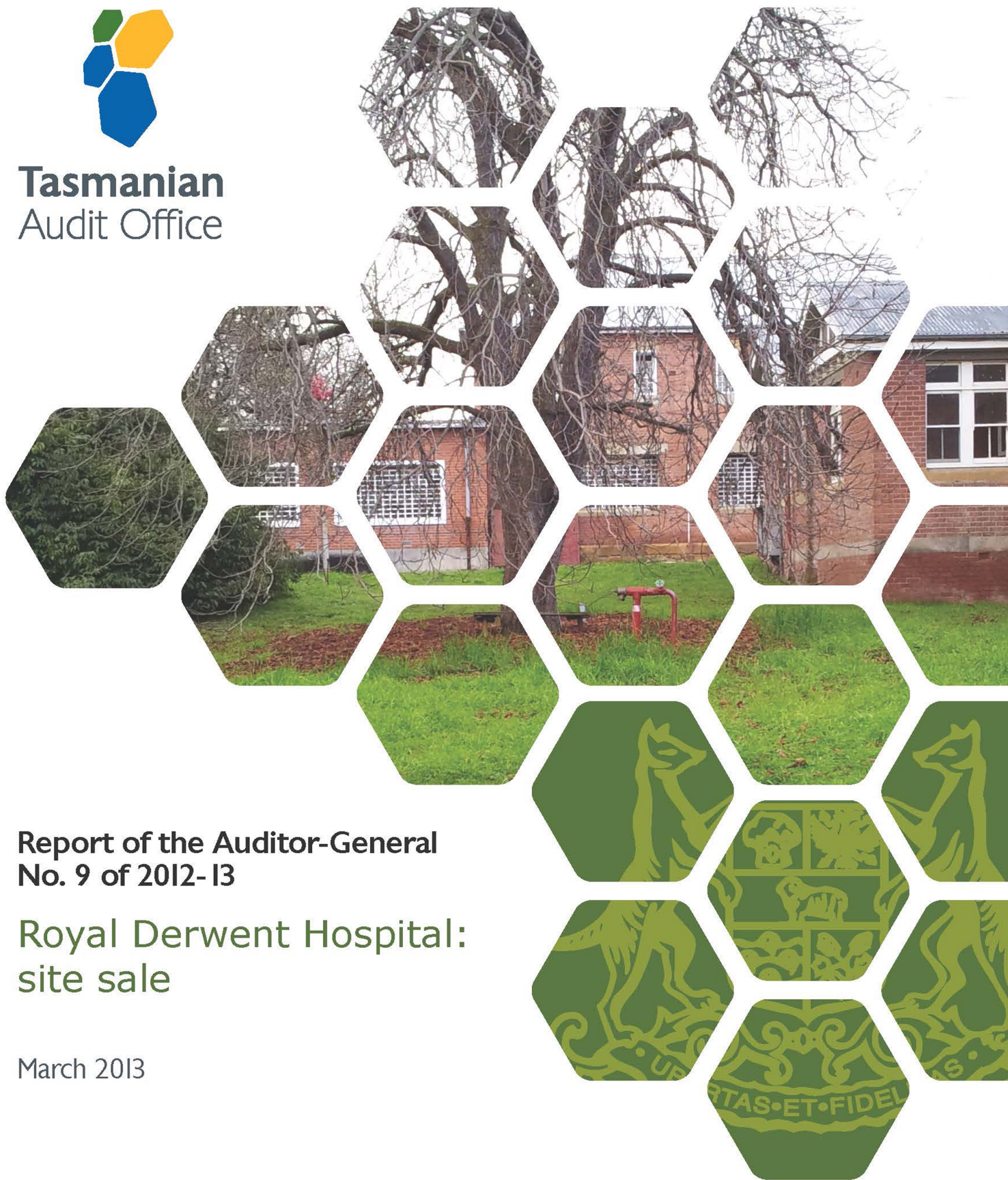




Tasmanian
Audit Office



**Report of the Auditor-General
No. 9 of 2012-13**

**Royal Derwent Hospital:
site sale**

March 2013

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2013

No. 4



2013

PARLIAMENT OF TASMANIA

**REPORT OF THE
AUDITOR-GENERAL
No. 9 of 2012-13**

Royal Derwent Hospital: site sale

March 2013

Presented to both Houses of Parliament in accordance with the provisions of Audit Act 2008

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For further information please contact:

Tasmanian Audit Office

GPO Box 851

Hobart

TASMANIA 7001

Phone: (03) 6226 0100, Fax (03) 6226 0199

Email: admin@audit.tas.gov.au

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Tasmanian
Audit Office

Level 4, Executive Building, 15 Murray Street, Hobart, Tasmania, 7000
Postal Address GPO Box 851, Hobart, Tasmania, 7001
Phone: 03 6226 0100 | Fax: 03 6226 0199
Email: admin@audit.tas.gov.au
Web: www.audit.tas.gov.au

19 March 2013

President
Legislative Council
HOBART

Speaker
House of Assembly
HOBART

Dear Madam President
Dear Mr Speaker

REPORT OF THE AUDITOR-GENERAL
No. 9 of 2012–13
Royal Derwent Hospital: site sale

This report has been prepared consequent to examinations conducted under section 23 of the *Audit Act 2008*. The performance audit determined whether the objectives of the Expression of Interest were achieved, the sale proceeds were reasonable and whether the purchaser held to account to deliver on the terms of the sale agreement.

Yours sincerely

H M Blake
AUDITOR-GENERAL

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Foreword

In recent years, a number of members of the public have written to me raising concerns about matters relating to the Royal Derwent Hospital (RDH) and Willow Court sites. This resulted in audit work being done as it related to Willow Court and inclusion of findings in my *Report No 1 of June 2010, Volume 2, Local Government Authorities 2008-09*. I had been reluctant to pursue this further but the request from the Public Accounts Committee in June 2012 persuaded me to examine matters relating to the sale of the RDH site, a process which commenced in 1998.

This Report outlines my findings and conclusions in addition to which I note, based on the evidence obtained, that:

- The sites were not in good condition and valuation by the Valuer-General I regard as persuasive.
- Management of the sites was costly, the RDH site was no longer functioning as a mental health institution and there seemed a clear intention to dispose of the sites and not to activate reversionary rights.
- The decision to sell the sites, which included intentions for appropriate development, seemed, even now, to have been reasonable.

However, certain outcomes had been identified though the expression of interest process and the community had, and still have, high expectations regarding those. While parts of the sites were developed for the benefit of the region, the sale agreement has not resulted in the purchaser delivering all specified outcomes on the site which is disappointing.

My Report highlights some reasons why this occurred noting the need for State entities responsible for asset sales to ensure that performance clauses within contracts are clear and unambiguous. Monitoring clauses should be practical and workable to ensure compliance conditions are capable of being met. Failure to do so can set unwanted precedents and lead to unintended consequences.

H M Blake

Auditor-General

19 March 2013

List of acronyms and abbreviations

DEDTA	Department of Economic Development, Tourism and the Arts
DELM	Department of Environment and Land Management
DHHS	Department of Health and Human Services
DSD	Department of State Development
DVC	Derwent Valley Council
EoI	Expressions of Interest
LRCH	Lachlan River Community Holdings Pty Ltd
RDH	Royal Derwent Hospital

Executive summary

Executive summary

Background

The Royal Derwent Hospital (RDH) was a former mental health facility in Southern Tasmania. Located at New Norfolk, 32 km north-west of Hobart, it includes buildings that date back to the 1820s, making the site culturally and historically significant. With an area of approximately 250 hectares, the property comprised more than 40 major buildings, 46 residential houses plus a number of minor buildings.

As a consequence of a move away from institutionalised mental health care, government called for Expressions of Interest (EoI) for the purchase of the Royal Derwent Hospital–Willow Court complex in 1998¹. The site was expensive to maintain and in divesting itself of the property government also hoped that the sale would stimulate economic activity and employment in New Norfolk and ensure preservation of the heritage attributes of the estate.

After a two-year negotiation, sale was agreed to the Lachlan River Community Holdings Pty Ltd: a consortium of Derwent Valley Council and a private company, Mototo Business Group Pty Ltd.

While it was a large property, the Valuer-General established a value of just \$500 000, taking into account heritage constraints as well as the poor state of many of the buildings. Furthermore, significant industrial contamination, including asbestos and hospital waste, existed at the site.

Concerns have been expressed in the media, individual complainants and by some Members of Parliament that the sale price was too low. Additional concerns included that there was little or no action to protect, maintain or develop the site in line with expressed intentions. There were allegations that a number of heritage buildings had been damaged or destroyed due to vandalism and fire, exacerbated by neglect.

Acting on a request from the Public Accounts Committee, the Auditor-General approved a performance audit to examine relevant aspects of the sale such as determining whether the objectives of the EoI were achieved, if the sale proceeds were

¹ The RDH site includes an area now referred to as the Willow Court Barracks Precinct that encompasses a number of significant heritage-listed buildings.

reasonable and whether the purchaser was held to account against the terms of the sale agreement.

The audit's time scope was from January 1998 to June 2012 and involved contact with a number of present and former state employees.

The scope excluded any involvement of Crown Law with respect to the sale agreement. We accept that any services or advice provided by Crown Law were on the basis of client instructions, and any criticisms or recommendations regarding the agreement are not aimed at Crown Law.

Detailed audit conclusions

These audit conclusions are based on criteria that we developed in support of the audit's objective and align with the chapter structure of the Report.

1 Were objectives of the EoI achieved?

We found that the objectives of the EoI were largely achieved. The EoI was circulated, submissions considered, there were no conflicts of interest with the selection panel and the level of documentation was satisfactory. However, we believe that due diligence checking should have been more thorough.

2 Were the sale proceeds reasonable?

The valuation was almost two years old at the time of settlement. A more up-to-date assessment should have been made. However, the site's deterioration due to neglect and vandalism had worsened and a lower valuation would be likely.

We consider that the sale proceeds of \$550 000, even after taking into account the \$200 000 reimbursement, were fair and reasonable.

3 Was the purchaser held to account to deliver on the terms of the sale agreement?

The terms and conditions of the Agreement for Sale were such that enforcement and monitoring were either non-binding or inconclusive. Consequently, without clearly defined roles and responsibilities, there was no carry through. At this point, many of the original intentions remain unfulfilled.

Recommendation

The Report contains the following recommendations.

Rec	Section	We recommend that ...
1	1.7	... before finalising agreements, entities responsible for asset

		<p>sales ensure that financial commitments of all parties be outlined and estimated, and that assurance of financial capacity, commensurate with materiality and risk, be obtained beforehand.</p> <p>Where sufficient persuasive information is not available on a company's financial capacity, further investigation should be conducted.</p>
2	2.2	... requests for valuation from entities responsible for asset sales not include information regarding offers under consideration.
3	2.2	... where more than six months has elapsed since a valuation by the Valuer-General, entities responsible for asset sales seek a reassessment.
4	3.2	... entities responsible for future asset sales seek timely advice from Crown Law to ensure that, as far as is practical, the terms used in sales contracts are made prescriptive and performance clauses used to ensure compliance.
5	3.2	... entities responsible for future asset sales ensure clearly defined roles and responsibilities are included in agreements, stating who is responsible for control and monitoring of the terms of sale.
6	3.3	... entities responsible for future asset sales seek timely advice from Crown Law to ensure that, as far as is practical, performance clauses within contracts are clear and unambiguous. Monitoring clauses should be practical and workable to ensure compliance conditions are capable of being met.
7	3.4	... entities responsible for future asset sales seek timely advice from Crown Law as to whether sales agreements should contain enforceable conditions or assets be sold on an 'as is where is' basis.
8	3.5	... when major Government assets are scheduled for future disposal, responsible Government entities should prepare or update asset management plans to minimise loss of value for those assets.
9	3.6	... DVC does a stock take of cultural artefacts of the RDH site and negotiates with DEDTA about future custody and display of the items.

Audit Act 2008 section 30 — Submissions and comments received

Audit Act 2008 section 30 — Submissions and comments received

Introduction

In accordance with section 30(2) of the *Audit Act 2008*, a copy of this Report was provided to the following government departments:

- Economic Development, Tourism and the Arts
- Health and Human Services
- Primary Industry, Parks, Water and Environment
- Justice.

A summary of findings, with a request for comments or submissions, was also provided to the:

- Treasurer
- Minister for Economic Development
- Minister for Primary Industry
- Minister of Justice
- Minister for Health.

Comments and submissions provided are not subject to the audit nor the evidentiary standards required in reaching an audit conclusion. Responsibility for the accuracy, fairness and balance of these comments rests solely with those who provided the response or comment.

Department of Economic Development, Tourism and the Arts (DEDTA)

DEDTA is satisfied with the report and has no further comment to make.

Mark Kelleher
Secretary

Department of Health and Human Services (DHHS)

DHHS is satisfied with the report and has no further comment to make.

Matthew Daly
Secretary

Department of Primary Industry, Parks, Water and Environment (DPIPWE)

DPIPWE has no comment to make.

Kim Evans
Secretary

Department of Justice

The Department of Justice is satisfied with the report and has no further comment to make.

Simon Overland
Secretary

Introduction

Introduction

Background

The former RDH site is located at New Norfolk, 32 km north-west of Hobart. Dating back to the 1820s, the site had a long history as a mental health care facility; consequently, it has considerable cultural and historical significance. The property comprised more than 40 major buildings, 46 residential houses as well as a number of minor buildings on approximately 250 hectares. The site was owned and managed by the Department of Health and Human Services (DHHS).

In early 1998, government sought Expressions of Interest (EoI) for the purchase of the Royal Derwent Hospital–Willow Court complex². The invitation for EoI listed several objectives that submissions needed to address, namely to:

- facilitate and stimulate economic activity and employment opportunities in New Norfolk
- preserve cultural heritage attributes of the estate
- make the best use of available land and buildings
- contribute to the development of Tasmania
- develop the estate in a manner that capitalises upon the existing facilities and infrastructure.

The initial EoI process did not produce a clear winner. Following two years of negotiations, an agreement was reached with Lachlan River Community Holdings Pty Ltd (LRCH): a consortium of Derwent Valley Council (DVC) and Mototo Business Group Pty Ltd (Mototo). The government had sought the developers of the site to involve DVC.

While it was a large property, the Valuer-General established a value of \$500 000. That valuation took into account heritage constraints on many of the buildings as well as their state of disrepair. Furthermore, significant industrial contamination, including asbestos and hospital waste, existed at the site.

Concerns have been expressed in the media, individual complainants and by some Members of Parliament that the sale price was too low. Additional concerns include that there was little or no action to protect, maintain or develop the site in line with expressed intentions. There were allegations that a number

² The RDH site includes an area now referred to as the Willow Court Barracks Precinct that encompasses a number of significant heritage-listed buildings.

of heritage buildings had been damaged or destroyed due to vandalism and fire, exacerbated by neglect.

LRCH was split a short while after most of the land and a number of properties had been subdivided and sold. DVC became the surviving partner acquiring the remaining unsold Willow Court buildings and surrounding properties for \$1 from Mototo.

Why the audit was selected

Following a request by the Public Accounts Committee that the Tasmanian Audit Office initiate an investigation of these matters, the Auditor-General decided to proceed with a performance audit examining relevant aspects of the sale of the RDH site.

Audit objective

The audit objective focused on whether:

- the objectives of the EoI were achieved
- the sale proceeds were reasonable
- the purchaser was held to account to deliver on the terms of the sale agreement.

Audit scope

The audit scope mainly centred on the Department of Economic Development, Tourism and the Arts (that was the Department of State Development — DSD — at the time of the transaction) but there was also some involvement with:

- The Valuer-General
- Department of Treasury and Finance (Treasury)
- DHHS (as previous owner of the RDH site)
- DVC.

The audit's time scope was from January 1998 to June 2012. It covered planning of the EoI, evaluation, and the post-agreement period.

The scope excluded any involvement of Crown Law with respect to the sale agreement. We accept that any services or advice provided by Crown Law were on the basis of client instructions, and any criticisms or recommendations regarding the agreement are not aimed at Crown Law.

Audit approach

To conduct this audit, we:

- reviewed documentation

- interviewed relevant staff, decision-makers and stakeholders
- visited the RDH site.

Planning for this audit began in August 2012. Fieldwork was completed in November 2012 and the report was finalised in March 2013.

Resources

The audit plan recommended 700 hours and a budget, excluding production costs, of \$100 300. Total hours were 854 and actual costs, excluding production, were \$129 580, which was in excess of our budget.

1 Were objectives of the EoI achieved?

1 Were objectives of the EoI achieved?

1.1 Background

The nature of health care and treatment of mental health issues was evolving from hospital- or institutional-based services to decentralised community programs. As such, the site was no longer considered suitable or applicable for the needs of DHHS. Prior to sale of the RDH site, government was incurring considerable costs to keep the site open and maintain basic services.

Government sought EoI for the purchase of the RDH–Willow Court complex. Submissions had to address several objectives, namely to stimulate economic activity, preserve heritage assets, develop the site and contribute to the development of Tasmania.

Initially, none of the submissions received were considered fully suitable even after additional information was obtained from short-listed proponents. The Minister then instructed DSD to negotiate a combined solution; a process that led to a sale agreement being signed with the LRCH consortium (between a private developer and DVC) in 2001.

In making an assessment as to whether the objectives of the EoI were achieved, we sought to determine whether:

- the request for EoI was appropriately circulated
- all submissions were considered
- the selection panel was free from conflicts of interest
- there was adequate documentation of the EoI process
- due diligence checks were performed.

1.2 Was the request for EoI appropriately circulated?

The request for EoI was preceded by the introduction, debating and enacting of the *Royal Derwent Hospital (Sale of Land) Act 1995*; an Act which gave authority for the sale and defined what was to be sold.

The EoI process included:

- preparation of a package of relevant information, which included engineering, architectural, environmental and heritage information
- well attended public meetings
- establishment of a telephone hotline to answer questions

- Tasmanian newspaper articles advising of the forthcoming advertisements for EoI
- a national and local advertising campaign
- specified criteria that proponents were asked to address
- a three-month period for proponents to prepare submissions.

There were suggestions that not all of the information was appropriately circulated and that some proponents were therefore disadvantaged. Whilst we were unable to establish with certainty what information was provided directly, it was clear that information had been made available to the community with contact telephone numbers to deal with any queries.

We considered the request for EoI to have been appropriately publicised and circulated.

1.3 *Were all submissions considered?*

The EoI were categorised into entire-estate or part-of-estate bids. Our review of documentation indicated that all expressions of interest submitted were considered with commentary prepared in respect of each.

Based on the comments and categorisations, preferred proponents were identified and asked to provide further particulars. Some proponents were then given a further opportunity to provide additional information to strengthen their submissions before the panel commenced the final assessment.

We conclude that all EoI and additional information provided throughout the process was appropriately considered.

1.4 *Was the selection panel free from conflicts of interest?*

Originally, the selection panel chairman was a Member of Parliament (MP). The MP was joined on the panel by representatives of the local community, the DVC, the Department of Environment and Land Management (DELM) and DSD³.

³ Throughout the Report we use the department names as they existed at the time of the EoI process. The then Department of State Development is now the Department of Economic Development Tourism and the Arts. The then Department of Environment and Land Management became Department of Primary Industry, Parks, Water and Environment and Land Management is now the Department of Primary Industries, Parks, Water and Environment.

Current practice would be for panellist to declare at the commencement of meetings whether they had a conflict of interest. No evidence was found that the practice was adopted by the panel.

However, the role of chair of the panel was finally assigned to an officer from DELM. We believe that the panel was broadly representative of various interest groups, which made it unlikely that any one member or viewpoint would have been able to dominate proceedings. Based on interviews with significant parties and review of papers, no conflicts of interest arose.

1.5 *Was there adequate documentation of the EoI process?*

As previously noted, the selection panel prepared notes on:

- the initial 19 submissions and their respective pros and cons
- subsequent requests for additional information and responses
- further evaluations.

Evaluation documentation included assessment against the selection criteria and the relevant experience and financial capacity of the proponents. Evidence on file indicated that the due diligence report concluded that financial capacity was ‘unascertained’ for one proponent.

The final stage in which senior department officers negotiated with individual proponents to form a consortium was largely external to the selection panel. The file did, however, include the Minister’s approval for the LRCH consortium to purchase the RDH site.

Notwithstanding the concern about due diligence (which is further discussed in Section 1.6), we are satisfied that documentation of the EoI process was satisfactory.

1.6 *Were due diligence checks performed?*

The purpose of due diligence enquiries is to determine whether proponents are able to meet the financial commitments inherent in a contract or deed. Typically, due diligence reports are based on proponents’ experience and financial history. Financial assurance can be obtained in many forms such as financial guarantees, lines of credit, financial history and net worth.

In this case, the additional objectives of the sale — that the heritage assets be maintained and the site developed — added to the importance of obtaining assurance of financial capacity. A DSD report in November 1998 estimated an investment of \$38m

would be needed for restoration, refurbishment and development.

We found that not all proponents were surveyed by the selection panel; no review of DVC's financial capacity was undertaken. This was important because DVC had declared that it was not prepared to use ratepayer funds to improve or maintain the RDH site, severely limiting future financial support.

We also found a limitation in that the due diligence focussed on publicly available information available from company and insolvency searches. Such searches are useful for well established companies, but are not useful for recently established companies such as LRCH. Consequently, the due diligence report of October 1999 did not provide any certainty or affirmation of financial capacity or ability and financial capacity was documented as 'unascertained'.

In our view, the objectives of protecting heritage assets and developing the site required a thorough and rigorous due diligence review on all of the final proponents. That should have included obtaining privately held financial information.

Recommendation 1

We recommend that, before finalising agreements, entities responsible for asset sales ensure that financial commitments of all parties be outlined and estimated, and that assurance of financial capacity, commensurate with materiality and risk, be obtained beforehand.

Where sufficient persuasive information is not available on a company's financial capacity, further investigation should be conducted.

1.7 Conclusion

We found that the objectives of the EoI were largely achieved. The EoI was circulated, submissions considered, there were no conflicts of interest with the selection panel and the level of documentation was satisfactory. However, we believe that due diligence checking should have been more thorough.

2 Were the sale proceeds reasonable?

2 Were the sale proceeds reasonable?

2.1 *Background*

In this Chapter, we examine whether the proceeds from the sale of the RDH site were reasonable. We noted that the determination of a reasonable sale price in this instance was a complex task that needed to take into account many factors including land values in the area, environmental contamination, possible future uses and developments of the site, condition of property, heritage considerations and ongoing maintenance costs. A further important consideration was that the primary use of the site (namely as a psychiatric hospital) had been discontinued.

To determine the reasonableness of the sale proceeds, we considered the following:

- Was a timely and persuasive independent valuation obtained?
- Was the price paid less than the independent valuation?
- Was the EoI process likely to provide a reasonable offer?
- Did other valuations indicate that a reasonable price was not achieved?

2.2 *Was a timely and persuasive independent valuation obtained?*

We found that an in depth, independent valuation had been performed by the Valuer-General in June 1999, when the valuation was determined as \$500 000⁴.

With respect to property valuations, our predisposition was to accept a valuation from the Valuer-General, where available. Our position relies on the specific expertise and independence of the statutory position. Nonetheless, we reviewed the timeliness and persuasiveness of the valuation.

Timeliness

We believed that two factors detracted from the persuasiveness of the valuation, namely:

⁴ We use the current title of 'Valuer-General' throughout this Report for simplicity, although the title of the equivalent position at the time of the sale was Director-General Crown Lands.

- The valuation was not sought until June 1999 and the requesting letter indicated the value of offers under consideration.
- The June 1999 valuation had not been updated or reassessed prior to signing an agreement for sale in May 2001 (that is, almost two years later).

The first matter is not good practice, since it is not desirable that the Valuer-General take into account an available offer when determining a valuation which is to be used to determine the adequacy of that offer. On the other hand, Valuer-General worksheets that we sighted were clearly based on factors unrelated to the advised offer — such as recent sales and likely development costs.

The length of time between the valuation and subsequent sale was also not ideal. However, there was strong evidence of substantial damage to the site which made it likely that the site value deteriorated over the period between the Valuer-General's valuation and the signing of the sale agreement. We were less concerned about that possibility since any offer in excess of a high estimated value would also exceed the 'correct value' and represent an advantage for the Crown.

Recommendation 2

We recommend that requests for valuation from entities responsible for asset sales not include information regarding offers under consideration.

Recommendation 3

We recommend that where more than six months has elapsed since a valuation by the Valuer-General, entities responsible for asset sales seek a reassessment.

Persuasiveness

In the case of the sale of vacant blocks of land at New Norfolk, our research suggested returns of \$20 000–\$30 000 per title based on sales. That suggests revenue from the 800 lots between \$16m to \$24m.

On the cost side, though, a consultant's 1999 estimate of upgrade and remediation costs indicated a total potential cost of \$38m. There is doubt that some of that expenditure was effectively mandated under the sale agreement (for example, repair of buildings \$22m). However, at least \$16m expense for service upgrades, sub-division, demolition of buildings and asbestos removal appeared unavoidable. Those estimates

suggest a maximum valuation of \$8m (receipts: \$24m less costs: \$16m) but a minimum well below \$0.

Review of the then Valuer-General's documentation suggested similar matters were considered. The Valuer-General also noted that:

- Maintenance of the site was costing DHHS \$1m annually.
- There was considerable development risk in the need to obtain a full Development Impact Statement and heritage constraints and requirements.
- The property could not be marketed on its 'current use' because of its size and dated conveniences.
- There was limited demand for vacant land and improved property in the area; any development would be necessarily long-term and present considerable investment risk to a purchaser.

We reviewed the Valuer-General's worksheet calculations and found them to be accurate and based on reasonable assumptions. Ultimately, we believe the valuation was reasonable.

2.3 *Was the price paid less than the independent valuation?*

The relevant Treasurer's instruction at the time (TI 904 'Disposals') required an independent valuation to be obtained from the Valuer-General and the property to not be sold at a price below valuation.

The proposed price was \$550 000. However, the sale agreement provided a grant of \$200 000 which effectively reduced the selling price to \$350 000. As the agreement for sale had directly linked the purchase price with reimbursement within the one paragraph it was difficult to treat the two items as separate events.

Further, the grant deed stated that it was for such purposes to assist costs associated with the purchase and redevelopment of the former RDH and Willow Court Complex at New Norfolk.

On the other hand, the developer argued that the grant was at least partly compensation for two factors, namely:

- DHHS had not provided vacant possession at the time the Agreement of Sale was signed.
- The site was in very poor state, imposing additional costs on the developer.

We also again note that the Valuer-General's valuation was two years old at the time of the sale and that a lower valuation might have been obtained closer to the agreement.

On balance, we do not consider the grant (of \$200 000) to represent a failure to ensure that the property not be sold at a price less than the Valuer-General's valuation.

2.4 *Was the EoI process likely to provide a reasonable offer?*

A well-publicised and transparent EoI process that gives potential bidders a reasonable opportunity to make offers is likely to produce a fair price. As discussed in Chapter 1, our opinion is that:

- The request for EoI was appropriately publicised and circulated.
- All submissions were appropriately considered by a representative panel.

We also consider the high-level negotiation that led to the successful consortium being formed, and the sale agreement being signed, was a reasonable outcome from the EoI process. We believe that the negotiated price and the compensatory grant were not disadvantageous to the Crown.

2.5 *Did other valuations indicate a reasonable price was not achieved?*

A number of valuations for the RDH site have been referred to in media reports or in private submissions to the Tasmanian Audit Office.

- A \$45m valuation was provided by private architects in 1993, five years prior to the EoI process. It should be noted that, at that time, the site was in use as a working hospital. The valuation was not intended to represent market value, but was an estimate of value to DHHS as an ongoing entity with various options.
- Not long after that valuation, the Valuer-General's in-use valuation in June 1994 estimated a value of \$8m. Then, some buildings were being wound down and had become surplus to requirements. The Valuer-General subsequently issued a 'not-in-use' valuation of \$500 000 in 1999 in relation to the Lachlan River Estate expression of interest⁵.

⁵ 'Lachlan River Estate' is a term by DELM and DSD to encompass the RDH and Willow Court.

- For rating purposes, effective 1 July 1993, the Valuer-General provided a capital valuation of \$9.4m. Five years later, in July 1998, the Valuer-General provided a capital valuation of \$4.5m.

We believe the Valuer-General's June 1999 valuation (i.e. \$500 000) was more credible than the above valuations with respect to the 2001 sale, because:

- It was more current than the other valuations.
- Despite the existence of previous large public valuations, no offers above \$1m were received, following a well-publicised EoI process.
- The higher valuations were based on an 'in-use' situation. An in-use valuation is based on future benefits to an existing user. On the other hand, a not-in-use valuation estimates the value to potential purchasers, but must also discount for risk, renovations and development costs. The difference can be extremely large where an in-use valuation is based on a highly specific purpose not shared by potential purchasers, such as a mental hospital in a rural area.

Accordingly, we are not persuaded by the existence of previous larger valuations that the sale price was not reasonable.

2.6 *Conclusion*

The valuation was almost two years old at the time of settlement. A more up-to-date assessment should have been made. However, the site's deterioration due to neglect and vandalism had worsened and a lower valuation would be likely.

We consider that the sale proceeds of \$550 000, even after taking into account the \$200 000 reimbursement, were fair and reasonable.

**3 Was the purchaser held to account to deliver on the terms
of the sale agreement?**

3 Was the purchaser held to account to deliver on the terms of the sale agreement?

3.1 *Background*

In May 2001, a sale agreement — developed from the initial objectives from the invitation for EoI in the Lachlan River Estate — was concluded after discussion and deliberation between the Premier, Treasurer and LRCH.

As discussed in the Introduction, apart from securing a reasonable price for the site, the EoI process had the additional objectives of stimulating economic activity, preserving heritage assets, developing the site and contributing to the development of Tasmania. Documentation of the EoI process, and subsequent negotiations, showed that these additional objectives were important criteria in the decision to sell the site to LRCH.

LRCH formulated a plan to redevelop the property and terms were included in the sale agreement to represent those plans and declared intentions. This Chapter examines whether:

- the terms of the sale contract were worded to enforce compliance
- DSD monitored compliance by the purchaser with the terms of the Agreement for Sale
- the purchaser was held to account for any failure to develop the site
- the purchaser was held to account for any neglect of or failure to restore heritage buildings
- the purchaser was held to account for any failure to safeguard cultural artefacts.

As mentioned in the Introduction, the scope excluded any involvement of Crown Law with respect to the sale agreement. We accept that any services or advice provided by Crown Law were on the basis of client instructions, and any criticisms or recommendations regarding the agreement are not aimed at Crown Law.

3.2 *Were the terms of the sale contract worded to enforce compliance?*

In order for a legal contract to adequately represent the understanding reached by the parties, the contract needs to be worded so that the parties clearly understand their obligations and the consequences of failure to comply.

This particular agreement was unusual in that it involved not just the sale of an asset but Government's wish to encourage economic activity in the region. DSD actively promoted the formation of a consortium which included DVC. As the municipal body, DVC shared Government's wish to promote economic activity in the region.

In our opinion, the terms and conditions inserted by DSD in the sale contract were too loosely worded to ensure compliance. The following examples illustrate some of the shortcomings of the Agreement for Sale:

- It contained conditions such as '... the purchaser acknowledges his intention to develop the property in accordance with the Development Proposal and '... it is the intention of the Crown to establish a Whole of Government Committee'. The use of the word 'intention' makes the conditions non-binding.
- It included the purchaser's development proposal that contained non-specific, descriptive terms such as 'create a sustainable complex community' and 'create jobs' rather than providing measurable outputs.
- It did not include performance clauses. DSD considered that it would be unreasonable to attach performance clauses to the sale agreement because of the participation of the DVC and its interest in promoting economic growth in the region.
- It gave the Minister the power to declare the property be forfeited to the Crown should the purchaser fail to comply with terms of the Agreement. Whilst this appears to be a powerful sanction it was impractical once lots had been subdivided and sold off to third parties.

By contrast, two other asset sales in Hobart (namely 1 Collins Street and the Henry Jones site in Hunter Street) had prescriptive terms and performance conditions written into their contracts. However, the extent to which those property sales can be compared to RDH is questionable. The scale, location and previous history of the RDH site made it a less attractive commercial proposition than the other two properties.

Some interviewees suggested that the private developer involved in the LRCH consortium might not have been willing to agree on a more enforceable contract. It also appeared that

Government was keen to have an agreement signed, in order to curtail large and ongoing maintenance costs as well as to promote economic activity in the region.

Nonetheless, our view is that any legal agreement requires clarity and enforceability, where practical, for the protection of the interests of all parties.

Recommendation 4

We recommend that entities responsible for future asset sales seek timely advice from Crown Law to ensure that, as far as is practical, the terms used in sales contracts are made prescriptive and performance clauses used to ensure compliance.

Recommendation 5

We recommend that entities responsible for future asset sales ensure clearly defined roles and responsibilities are included in agreements, stating who is responsible for control and monitoring of the terms of sale.

3.3 *Did DSD monitor compliance with terms of the Agreement for Sale?*

While we observed that some provisions of the Agreement for Sale contained more precise wording, there was no clarity as to who within government would monitor and enforce compliance.

As noted in Section 3.2, the Agreement for Sale stated that ‘it is the intention of the Crown to establish a Whole of Government Committee’. While there was discussion in government circles, the Committee was not formed and its potential role as an oversight body was not realised.

Further, we found no evidence from DSD files that we examined, and interviews with relevant parties, to support the notion of monitoring and enforcement by the Department.

Recommendation 6

We recommend that entities responsible for future asset sales seek timely advice from Crown Law to ensure that, as far as is practical, performance clauses within contracts are clear and unambiguous. Monitoring clauses should be practical and workable to ensure compliance conditions are capable of being met.

3.4 *Was the purchaser held to account for any failure to develop the site?*

The Agreement for Sale had included an ambitious intention by LRCH to redevelop the Lachlan River Estate into a number of various uses ranging from international education facilities, aged care, health, residential, agriculture and tourism purposes.

Following the sale, the LRCH consortium successfully subdivided and sold the more suitable parts of the site, but made limited progress in broader development of the site.

In 2002, LRCH was amicably split and the Willow Court component of the RDH site was sold to DVC for \$1. The impact for the private developer was that, having profited from the subdivision and sales, it was able to walk away from any expectation that it develop the site. The impact on DVC was that it was left with the responsibility to maintain and restore the Willow Court and Barracks Precinct — but without the necessary resources to do so. For that reason, few of the earlier plans eventuated. Consequently, there has been considerable community concern expressed at lack of post-sale action to develop the site.

In that regard, a consultant's report commissioned by DVC noted in February 2011:

For a variety of reasons, such plans have not been implemented. Meanwhile, the buildings have fallen further into disrepair and have been subject to graffiti, vandalism, small fire damage, break-ins, thefts and infestation by vermin. The state of the grounds has deteriorated too and weed growth is rampant. The site generally projects an unkempt image⁶.

Notwithstanding the progress that has been made (including renovation of 45 staff houses and improved security to prevent further damage to heritage properties), much remains to be done.

The development plan prepared by the consultants estimated \$9.1m for capital requirements over a five- to seven-year time frame, to restore and develop the site. DVC's position was that the development should have no adverse impact on ratepayers. Similarly, the consultant commented that 'the scale and complexity of the ... project does not represent core business for

⁶ *Willow Court & Barracks Precinct: New Norfolk, Tasmania: Business Plan & Development Plan.* Malcolm MacDonald and Associates, Launceston February 2011.

DVC'. The difficulty is that DVC has to find funding for the proposed works and has limited sources of income. If funding commitments cannot be met in any year, the development plan will be further slowed and require a longer period to achieve desired outcomes.

In any event, despite the agreement's expressed intention for development of the site, our view is that the terms and conditions of the sale contract were unenforceable.

Recommendation 7

We recommend that entities responsible for future asset sales seek timely advice from Crown Law as to whether sales agreements should contain enforceable conditions or assets be sold on an 'as is where is' basis.

3.5 *Was the purchaser held to account for any neglect of or failure to restore heritage buildings?*

The RDH site included the Willow Court and Barracks precinct, which is a heritage-listed site. At the time of its closure it was the oldest mental hospital in Australia, dating back to 1827.

The Agreement for Sale acknowledged that 'some or all of the buildings had been damaged or vandalised'. Similarly, the Valuer-General's June 1999 valuation report and our interviewees also confirmed that the site was in very poor condition at time of sale.

The Agreement for Sale included no requirement that heritage buildings be protected, other than the non-binding 'intention to develop the property in accordance with the Development Proposal' and un-prescriptive references to 'heritage' in the Development Proposal. More specifically, there was no requirement with respect to the buildings for the purchaser to:

- take on specified trustee-type responsibilities
- provide security.

Following the sale, a number of buildings fell into further disrepair, subjected to graffiti, fire, break-ins, theft and destruction. As discussed in Section 3.4, DVC has had a development plan prepared, which includes plans for maintaining and restoring the heritage buildings. As with other aspects of site development, further restoration of buildings will be dependent on future funding.

In any event, it is not clear to us that the purchaser was legally responsible for maintaining or restoring the buildings.

Recommendation 8

We recommend that when major Government assets are scheduled for future disposal, responsible Government entities should prepare or update asset management plans to minimise loss of value for those assets.

3.6 *Was the purchaser held to account for any failure to safeguard cultural artefacts?*

The RDH site included equipment, furniture, fittings and other inventory (the collection) which were considered to be of historical significance to Tasmania and which were not sold under the Agreement for Sale. Instead, those items were covered by a separate schedule that provided for the parties to enter into a loan agreement.

We wanted to confirm that the cultural artefacts from the site were secured and had not been lost or stolen. The schedule referred to above included a number of specific requirements, namely:

- The loan would be for a 10-year duration, finishing in January 2011.
- Items were not to be removed, lent, sold or traded, without permission.
- The borrower would insure the collection.
- An inventory would be maintained to include details of condition of the items.
- The borrower was to safeguard the collection by taking reasonable steps to prevent damage, loss or theft.
- The borrower was to provide an annual report on the collection.

We found that the collection was held by DVC, and inspected a number of the items, which were held in a number of secure facilities. No up-to-date inventory list (inclusive of items identified after the sale and disposals) was available, making it impossible to perform a complete reconciliation. Instead, we focused on some of the more obviously attractive items from the original list and we were able to locate each of those items. Our impression was that at least most of the 814 items from the original list were present.

On the other hand, we found no inventory updates or annual reports to the Crown, by either LRCH or DVC. We were also advised that no physical handover sheets were provided, or

reconciliation performed, when LRCH was dissolved and the site sold to DVC.

Recommendation 9

We recommend that DVC does a stocktake of cultural artefacts of the RDH site and negotiates with DEDTA about future custody and display of the items.

In regard to monitoring the collection, we restate Recommendation 6:

We recommend that entities responsible for future asset sales seek timely advice from Crown Law to ensure that, as far as is practical, performance clauses within contracts are clear and unambiguous. Monitoring clauses should be practical and workable to ensure compliance conditions are capable of being met.

3.7 Conclusion

The terms and conditions of the Agreement for Sale were such that enforcement and monitoring were either non-binding or inconclusive. Consequently, without clearly defined roles and responsibilities, there was no carry through. At this point, many of the original intentions remain unfulfilled.

Independent auditor's conclusion

Independent auditor's conclusion

This independent conclusion is addressed to the President of the Legislative Council and to the Speaker of the House of Assembly.

Audit objective

As it related to the sale of the Royal Derwent Hospital (RDH) site the audit objective focused on whether:

- the objectives of the Expressions of Interest (EoI) were achieved
- the sale proceeds were reasonable
- the purchaser was held to account to deliver on the terms of the sale agreement.

Audit scope

The audit scope mainly centred on Department of Economic Development, Tourism and the Arts (that was the Department of State Development at the time of the transaction) but there was also some involvement with:

- The Valuer-General
- Department of Treasury and Finance
- Department of Health and Human Services (as previous owner of the RDH site)
- Derwent Valley Council.

The audit's time scope was from January 1998 to June 2012. It covered planning of the EoI, evaluation, and the post-agreement period.

Responsibility of the auditee(s)

Evident from the audit scope is that this performance audit involved multiple auditees with differing responsibilities. Also, changing roles between 1998 and 2002 made it difficult to identify a single auditee with overall responsibility. However, and as noted in the audit scope, I regarded the Department of Economic Development, Tourism and the Arts and its forerunners as responsible for the sale of the RDH site.

Auditor-General's responsibility

In the context of this performance audit, my responsibility was to express an opinion on whether the obligations outlined in my audit objective had been met.

I conducted my audit in accordance with Australian Auditing Standard ASAE 3500 *Performance engagements*, which required me to comply with relevant ethical requirements relating to audit engagements. I planned and performed the audit to obtain

reasonable assurance whether Department of Economic Development, Tourism and the Arts had met its obligations under the EoI process, achieved of a reasonable selling price and held the purchaser to account to deliver on the terms of the sale agreement.

My work involved reviewing documentation, interviewing relevant staff, decision-makers and stakeholders and visiting the RDH site.

I believe that the evidence I have obtained was sufficient and appropriate to provide a basis for my conclusion.

Auditor-General's conclusion

In relation to my three objectives I concluded that the:

- Objectives of the EoI were largely achieved. However, due diligence checking should have been more thorough.
- Sale proceeds of \$550 000, even after taking into account a \$200 000 reimbursement, were fair and reasonable.
- Terms and conditions of the Agreement for Sale were such that enforcement and monitoring were either non-binding or inconclusive. Consequently, without clearly defined roles and responsibilities, there was no carry through. At this point, many of the original intentions remain unfulfilled.

My report contains nine recommendations which are aimed at ensuring assessments of financial capacity of parties expressing interest and, in particular those with whom contracts are entered into, timeliness of independent valuations, clarity of roles, responsibilities and for performance obligations in contracts and that unsold public assets on the site are recorded and controlled.

H M Blake

Auditor-General

19 March 2013

Recent reports

Recent reports

Tabled	No.	Title
Nov	No. 4 of 2011-12	Volume 2 — Executive and Legislature, Government Departments and other General Government Sector entities 2010-11
Nov	No. 5 of 2011-12	Volume 3 — Government Business Enterprises, State Owned Companies, Water Corporations and Superannuation Funds 2010-11
Nov	No. 6 of 2011-12	Volume 4 Part I — Local Government Authorities 2010-11
Dec	No. 7 of 2011-12	Volume 5 — Other State Entities 30 June 2011 and 31 December 2010
Mar	No. 8 of 2011-12	The assessment of land-use planning applications
Jun	No. 9 of 2011-12	Volume 6 — Other State Entities 30 June 2011 and 31 December 2011
Jun	No. 10 of 2011-12	Public Trustee: Management of minor trusts
Jun	No. 11 of 2011-12	Updating the Motor Registry System
Jun	No. 12 of 2011-12	Follow up of special Reports 75-81
Jul	No. 1 of 2012-13	Sale of TOTE Tasmania
Oct	No. 2 of 2012-13	TasPorts: benefits of amalgamation — October 2012
Nov	No. 3 of 2012-13	Volume 3 — Government Business Enterprises, State Owned Companies and Water Corporations 2011-12
Nov	No. 4 of 2012-13	Volume 4 Parts I & 2 — Local Government Authorities 2011-12
Nov	No. 5 of 2012-13	Volume 1 — Analysis of the Treasurer's Annual Financial Report 2011-12
Nov	No. 6 of 2012-13	Volume 2 — Executive and Legislature, Government Departments, other General Government Sector State entities, other State entities and Superannuation Funds 2011-12
Dec	No. 7 of 2012-13	Compliance with the <i>Tasmanian Adult Literacy Plan 2010-15</i>
Mar	No. 8 of 2012-13	National Partnership Agreement on Homelessness

Current projects

Current projects

Performance and compliance audits that the Auditor-General is currently conducting:

Title	Subject
Managing hospital bed demand	Assesses the effectiveness of the Department of Health and Human Services' efforts to manage the demand for hospital beds through alternatives to hospital treatment.
Fraud control in local government	Assesses whether local government Councils' fraud management strategies are effective to prevent, detect and respond to fraud.
Royal Hobart Hospital redevelopment	A performance audit to assess the effectiveness of the governance, project management and initial implementation of the RHH redevelopment project.