

MEDIA RELEASE

30 September 2016

Certain Land Development Agency Acquisitions

ACT Auditor-General, Dr Maxine Cooper, today presented a performance audit report **Certain Land Development Agency Acquisitions** to the Speaker, for tabling in the ACT Legislative Assembly.

Dr Cooper says 'Transparency, accountability and rigour have been lacking in the processes used by the Land Development Agency for the acquisition of three properties and two businesses considered in the audit. Without these the integrity and probity of the acquisition process cannot be demonstrated.'

The Land Development Agency acquired:

- **Block 24, Section 65, City (land adjacent to Glebe Park)** - for \$3.8 million
- **Block 13, Section 33, Acton (Mr Spokes Bike Hire)** - for \$1.1 million (and \$1.00 for the associated business and \$52,338 for owners' costs associated for the preparation of the deed of surrender)
- **Block 16, Section 33, Acton (Dobel Boat Hire)** - for \$1.0 million and **Lake Burley Griffin Boat Hire** (a business which operated under a sub-lease from Dobel Boat Hire) - for \$575,000 (and \$10,000 as a contribution for legal and accounting fees and \$16,387 to settle unpaid rent payable to Dobel Boat Hire)

'Administrative issues related to sourcing professional advice, procurement for contractors and the approval process for making acquisitions were identified' said Dr Cooper.

'While the number of acquisitions considered were few, given the significance of the findings I am considering undertaking a broader audit on the Land Development Agency' said Dr Cooper.

The Chief Executive Officer of the Land Development Agency and Chair, Deputy Chair and former Deputy Chair of the Land Development Agency Board have provided statements in response to the audit, which are in the Summary chapter. Other interested parties were also invited to provide statements for inclusion in the report, and the two that were provided are included in Chapters 3 and 4.

The Summary of the **Certain Land Development Agency Acquisitions**, with the audit conclusions, key findings and seven recommendations is attached to this media release.

Copies of the **Certain Land Development Agency Acquisitions: Report No. 7/2016** are available from the ACT Audit Office's website, www.audit.act.gov.au. If you need assistance accessing the report please phone 6207 0833 or go to 11 Moore Street, Canberra City.

Extract of Summary chapter:

Conclusions

Overall conclusion

Transparency, accountability and rigour have been lacking in the processes used by the Land Development Agency for acquiring the three sites and two associated businesses considered in this audit. Without these the integrity and probity of the acquisition processes cannot be demonstrated. Although the acquisitions were few, and comparatively small in financial value compared with many of the Land Development Agency's other transactions, given the significance of the findings an independent audit of other activities of the Land Development Agency seems prudent. Accordingly, the ACT Audit Office will consider conducting a broader audit on the Land Development Agency.

Chapter conclusions

PURCHASE OF BLOCK 24, SECTION 65, CITY (LAND ADJACENT TO GLEBE PARK)

The Land Development Agency's acquisition of Block 24, Section 65, City (land adjacent to Glebe Park) has been undertaken without adequate transparency, accountability and rigour.

Negotiations for the acquisition were undertaken by the former Deputy Chief Executive Officer of the Land Development Agency, at the request of the Chief Executive Officer. The former Deputy Chief Executive relied on informal, unpaid advice from Colliers International for the purpose of negotiating the acquisition, rather than a formal valuation.

PURCHASE OF BLOCK 13, SECTION 33, ACTON AND BLOCK 16, SECTION 33, ACTON - LEASES AND BUSINESSES

The Land Development Agency's acquisitions of Block 13, Section 33, Acton (Mr Spokes Bike Hire), Block 16, Section 33, Acton (Dobel Boat Hire) and the Lake Burley Griffin Boat Hire business has been undertaken without adequate transparency, accountability and rigour.

The acquisitions were undertaken under difficult circumstances, as each of the acquisitions presented its own challenges. There was a difficult relationship between the Land Development Agency and the owners of Block 13, Section 33, Acton (Mr Spokes Bike Hire), which deteriorated over time. The acquisition process was complicated by an unapproved sub-lease in place for Block 16, Section 33, Acton between the Crown lessee (Dobel Boat Hire Pty Ltd) and Lake Burley Griffin Boat Hire (the operators of the boat hire business) and an apparent business dispute between these entities. All owners also made significant and unsubstantiated offers to the ACT

Government for the acquisition of their interests.

Valuations were sought and received by the Land Development Agency for all acquisitions. The Land Development Agency paid significantly more for the acquisitions than the valuations allowed for. There is no documentation in relation to the rationale for the acquisition price and the amounts that were eventually paid for the acquisitions.

Of note is the payment of \$1.0 million for the lease for Block 16, Section 33, Acton (Dobel Boat Hire Pty Ltd). Two initial valuations received in relation to this site (April and May 2015) valued the acquisition at \$50,000 and \$100,000, while a third valuation sought in November 2015 from Colliers International provided that ‘a total acquisition price could therefore be in the range of \$900,000 - \$1,000,000’. Capital Valuers advice to the Audit Office states ‘the Colliers report does not stand on its own and cannot be relied upon without further review of a number of anomalies in the report. The final ascribed value lacks evidence and methodology and has not been justified’.

ADMINISTRATIVE MATTERS

The land acquisitions considered as part of the audit were not approved by the Land Development Agency Board. This represents non-compliance with the requirements of *Planning and Development (Land Acquisition Policy Framework) Direction 2014 (No 1)* (Land Acquisition Policy Framework) (Notifiable Instrument - NI2014-264), which came into effect in June 2014, which requires land acquisitions up to \$5 million to be approved by the Board.

Significant expenditure has been incurred by the Land Development Agency on consulting firms for services in relation to the City to the Lake Project. A large proportion of this expenditure has related to services provided by a former Land Development Agency executive, whose role in the organisation had concluded, but who continued to provide services through a consulting firm in a ‘marriage of convenience’. These services were arranged through successive single-select non-competitive procurement processes. The services of another former executive of Economic Development were also arranged through the same consulting firm. As the contracting arrangements relied on successive single-select non-competitive procurement processes there is no assurance that the services are an effective use of public money.

The Chief Executive Officer of the Land Development Agency requested the principal of Colliers International to mentor the former Deputy Chief Executive Officer of the Land Development Agency. This was done at no cost to the Land Development Agency. At the suggestion of the Chief Executive Officer, the former Deputy Chief Executive Officer of the Land Development Agency also verbally requested, and subsequently received free of charge, advice from the principal of Colliers International on the value of Block 24, Section 65, City (land adjacent to Glebe Park). The advice was used by the former Deputy Chief Executive Officer of the Land Development Agency in negotiating the final price for the land. Such arrangements are problematic as there is potential

for conflict of interest and they do not promote transparency and accountability

Key findings

PURCHASE OF BLOCK 24, SECTION 65, CITY (LAND ADJACENT TO GLEBE PARK)

Coranderrk Pond restricted the development potential of land for the City to the Lake Project and was ineffective for managing stormwater. It therefore needed to be relocated and Block 24, Section 65, City (land adjacent to Glebe Park) was considered to be the most suitable position from an engineering perspective. Accordingly, throughout 2014 and in early 2015, Block 24, Section 65, City (land adjacent to Glebe Park) was the subject of consideration by the Land Development Agency for acquisition.

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Based on instructions from the former City to the Lake Project Director, the Opteon August 2014 valuation report for Block 24, Section 65, City (land adjacent to Glebe Park) identified a value for the site of between \$950,000 and \$1,050,000 (GST exclusive). The valuation was provided on the basis of ‘Market Value “As Is” (subject to all present Lease conditions)’.

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Capital Valuers, a subject matter expert in relation to land valuations engaged by the Audit Office, advised that ‘limiting the market value to ‘*Market Value “as is” - subject to all present lease conditions*’ is a restriction on assessing the value in accordance with the definition of Market Value ... and removes the concept of ‘highest and best use’ which is inherently assumed to be reflected in an open market transaction’. Such an assessment disregards the possibility of a variation to the Crown lease to allow for potential future residential use of the site. By virtue of the *City Precinct Map and Code* under the Territory Plan, the site is designated ‘MT4’, which may allow for future residential use, subject to a merit track assessment process to be assessed by the planning and land authority.

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Capital Valuers advised that ‘the apparent instructions by which the Opteon Valuation was undertaken appear inappropriate for the stated purpose of the valuation. The [Land Development Agency] were attempting to purchase a property as a normal purchaser in the market place. A prudent buyer or seller would not disregard the alternate more valuable potential use of the site’.

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The Opteon valuation report was provided to the owner of Block 24, Section 65,

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City (land adjacent to Glebe Park) in August 2014, who rejected the valuation asserting that ‘the highest and best use of the site should be ascertained’. Following this response, the then Project Director advised the owner that they would pursue compulsory acquisition. The then Project Director has also advised that the acquisition of the land through a compulsory acquisition process under the *Lands Acquisition Act 1994* was the then Project Director’s preferred means of acquisition. This approach was not ultimately pursued by the Land Development Agency.

In April 2015, at the suggestion of the Chief Executive Officer of the Land Development Agency, the former Deputy Chief Executive Officer sought advice from the principal of Colliers International in relation to Block 24, Section 65, City (land adjacent to Glebe Park). The principal of Colliers International provided by hand a two-page *Valuation Considerations May 2015* document sometime between 8 June and 10 June 2015. This identified a range of values for the site based on whether the site was to be used for a hotel, serviced apartments or residential units. The document identified that the zoning for the site allowed for a hotel or serviced apartments, but did not allow for residential units. The document identified a range of values between \$3,750,000 (GST exclusive) for serviced apartments to \$4,185,000 (GST exclusive) for residential units. There was no evidence of this document in the Land Development Agency’s records.

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Approximately a week after the *Valuation Considerations May 2015* document was presented, on 16 June 2015, a *Block 24, Section 65, Division of City ‘Glebe Park Land’ May 2015* Discussion Paper was provided by the principal of Colliers International. The *Block 24, Section 65, Division of City ‘Glebe Park Land’ May 2015* Discussion Paper provided for a ‘range of current value to settle the matter’ of \$2,800,000 to \$4,600,000, with a recommendation of \$3,600,000 to \$3,800,000. The *Block 24, Section 65, Division of City ‘Glebe Park Land’ May 2015* Discussion Paper did not consider the alternative uses previously identified (hotel or serviced apartments). Importantly, in contrast to the *Valuation Considerations May 2015* document, only provided approximately one week earlier, the *Block 24, Section 65, Division of City ‘Glebe Park Land’ May 2015* Discussion Paper stated that the site was permitted for residential use.

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The principal of Colliers International advised under oath/affirmation that the *Block 24, Section 65, Division of City ‘Glebe Park Land’ May 2015* Discussion Paper was not a formal valuation report, but that ‘there is some valuation advice in there’. The principal of Colliers International also advised under oath/affirmation that they offered to provide further, more detailed valuation advice through a formal valuation report if the ACT Government wished to proceed with acquiring the land. This offer was not taken up by the former Deputy Chief Executive Officer of the

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Land Development Agency.

The Opteon valuation, the only formal valuation for Block 24, Section 65, City (land adjacent to Glebe Park), had expired by the time the site was purchased. The valuation has received considerable attention and created an expectation that the site could have been purchased for approximately \$1 million, including through compulsory acquisition under the *Lands Acquisition Act 1994*. However, the Opteon valuation, based on instructions from the former City to the Lake Project Director, did not recognise the possibility of future development on the site. The site was designated 'MT4' according to the *City Precinct Map and Code* under the Territory Plan, which allows for additional merit track development assessment for residential use. Residential use could be achieved through a variation to the existing Crown lease. However, the planning and land authority would need to assess that the site was suitable for residential use.

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The former Deputy Chief Executive Officer of the Land Development Agency negotiated with the owner of Block 24, Section 65, City (land adjacent to Glebe Park) for the surrender of the lease for a purchase price of \$4.18 million (\$3.8 million plus \$380,000 GST). The principal of Colliers International arranged the initial discussion with the owner. The Chief Executive Officer of the Land Development Agency was advised of, and supported, the negotiation throughout the process. There is no documentation associated with the negotiation process, including contemporaneous approval for the purchase.

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It is not clear to the Audit Office why the principal of Colliers International, a valuations and real estate marketing company, should have arranged a negotiation meeting on their premises. The Land Development Agency should have either arranged such a meeting itself or engaged an appropriate body (e.g. the ACT Government Solicitor) to assist.

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The negotiation for the acquisition was undertaken on the basis of informal advice provided by the principal of Colliers International, free of charge, and for which there were no written instructions. Formal valuation advice that had previously been provided had expired in November 2014 (after 90 days). At the time of negotiation for the acquisition there was no current, formal valuation report for the land.

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The renewal of activity associated with the acquisition of Block 24, Section 65, City (land adjacent to Glebe Park) from approximately April 2015 was undertaken by the former Deputy Chief Executive Officer of the Land Development Agency, with the knowledge of the Chief Executive Officer of the Land Development Agency. The former City to the Lake Project Director was not involved. The lack of

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communication within the Land Development Agency from the most senior levels of management to operational staff has resulted in confusion and differences in expectations and understanding with respect to administrative processes for the acquisition.

The former Deputy Chief Executive Officer of the Land Development Agency advised that they assumed a business case for the acquisition of Block 24, Section 65, City (land adjacent to Glebe Park) would have been prepared and provided to the Land Development Agency Board for consideration before any contracts were executed. (The former Deputy Chief Executive Officer had departed this role in early August 2015 prior to the contracts being executed). This is a prudent approach, but would still have occurred after the agreement had been made with the owners in June 2015.

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The Land Development Board, at its September 2015 meeting, was advised that the Chief Executive Officer of the Land Development Agency had approved the acquisition of Block 24, Section 65, City (land adjacent to Glebe Park) 'in accordance with his delegations'. The Board was advised after the Land Development Agency had reached agreement with the owner. Further, the information does not present information that allows it to ensure that appropriate processes are followed.

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The Chief Executive Officer of the Land Development Agency has advised under oath/affirmation that the suitability of Block 24, Section 65, City (land adjacent to Glebe Park) for compulsory acquisition was uncertain. The Chief Executive Officer advised that uncertainty derived from whether the purchase of the land met the 'public purpose' requirement for compulsory acquisitions provided for by section 19 of the *Lands Acquisitions Act 1994*, given the portion of the land that was ultimately to be used for the purpose of the relocated pond. The former City to the Lake Project Director advised the Audit Office that they intended to acquire the Crown lessee's interest in Block 24, Section 65, City (land adjacent to Glebe Park) through a compulsory acquisition process under the *Lands Acquisition Act 1994*. This process was ultimately not pursued by the Land Development Agency, which acquired the Crown lessee's interest in the land through a negotiated market-based acquisition. This demonstrates a difference in expectations amongst Land Development Agency staff and executives with respect to options that could be pursued for the acquisition of land. The Land Development Agency does not have any administrative guidance with respect to the use of compulsory acquisition.

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PURCHASE OF BLOCK 13, SECTION 33, ACTON AND BLOCK 16, SECTION 33, ACTON - LEASES AND BUSINESSES

Paragraph

Block 13, Section 33, Acton (Mr Spokes Bike Hire) was surrendered on 1 February 2016 for \$1.1 million and the associated business for \$1.00. The Land Development Agency also paid \$52,338 for the owner's costs associated with the preparation of the deed of surrender. Discussions with the owners in relation to the acquisition of the lease (or potential relocation of the business) commenced in April 2014 and were characterised by a difficult relationship that deteriorated over time between the owners and the Land Development Agency.

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The owners made a significant and unsubstantiated offer to the Land Development Agency to surrender the Crown lease for the land for over \$3.0 million. This claim did not take into account an apparent 'land' value component for the site, for which the owners expected additional compensation. Three valuations were received by the Land Development Agency, which valued the owners' interest in the lease between \$600,000 and \$700,000. There is no documentation associated with the negotiations that took place with the owners throughout November 2015, nor is there any documentation outlining the rationale for the acquisition price and the amounts to be paid to the owners for the surrender of the lease, which was significantly more than what had been identified by the valuers.

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The lease for Block 16, Section 33, Acton (Dobel Boat Hire) was surrendered on 17 December 2015 for the sum of \$1.0 million. Discussions with the owners in relation to the acquisition of the lease were complicated by the existence of an unapproved sub-lease that was in place for the block between the Crown lessee (Dobel Boat Hire Pty Ltd) and Lake Burley Griffin Boat Hire (the operators of the boating business) and the apparent business dispute between these entities.

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Valuations associated with Block 16, Section 33, Acton (Dobel Boat Hire) differed significantly. Initial valuations provided in April and May 2015 valued the interest of Dobel Boat Hire Pty Ltd at \$50,000 and \$100,000 (GST exclusive). In November 2015 a third valuation was provided by Colliers International, which identified 'a total acquisition price could therefore be in the range of \$900,000 - \$1,000,000'. Capital Valuers advice to the Audit Office states 'the Colliers report does not stand on its own and cannot be relied upon without further review of a number of anomalies in the report. The final ascribed value lacks evidence and methodology and has not been justified'.

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There is no documentation associated with the negotiations that took place with the owner in late November 2015, nor is there any documentation outlining the rationale for the acquisition price and the amount to be paid to the owner for the

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surrender of the lease. It is inappropriate for the acquisition to be made on the basis of the Colliers International valuation advice, which has been described as 'lacking evidence and methodology and has not been justified'.

On 31 August 2015, the Chief Executive Officer of the Land Development Agency agreed to the purchase of Lake Burley Griffin Boat Hire Pty Ltd (goodwill and inventory) for a price of \$575,000 plus GST. In addition to the \$575,000, the Land Development Agency agreed to pay rental arrears on behalf of Lake Burley Griffin Boat Hire from January 2014, which amounted to approximately \$17,000. The Land Development Agency therefore paid Lake Burley Griffin Boat Hire \$575,000, plus \$10,000 for legal and accountancy fees and \$17,000 for rental arrears to the owners of Block 16, Section 33, Acton (Dobel Boat Hire). Discussions with the owners of Lake Burley Griffin Boat Hire Pty Ltd in relation to the acquisition of the business commenced in May 2014. Discussions with the owners were complicated by the nature of their interest in Block 16, Section 33, Acton (Dobel Boat Hire) (through an unapproved sub-lease) and their apparent business dispute with Dobel Boat Hire Pty Ltd.

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The owners made a significant and problematic offer of \$1.7 million to sell the business to the Land Development Agency. The methodology underpinning this valuation was comprehensively refuted by PwC in advice to the Land Development Agency. Valuation advice from PwC, MMJ Valuers and Herron Todd White valued the business between \$270,000 and \$278,750 (GST exclusive). There is no documentation associated with the negotiations that took place with the owner in August 2015, nor is there any documentation outlining the rationale for the acquisition price and the amount to be paid to the owner for the business.

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ADMINISTRATIVE MATTERS

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Planning and Development (Land Acquisition Policy Framework) Direction 2014 (No 1) (Land Acquisition Policy Framework) is a Notifiable Instrument (NI2014-264), which came into effect in June 2014. The Land Acquisition Policy Framework provides for a series of principles (tests) to apply to the acquisition of land and provides for a range of thresholds for decision-makers in relation to the acquisition of land. On 27 August 2015, a Land Acquisition Policy Framework Interpretation document was presented to the Land Development Agency Board for its consideration. The Interpretation document recommended that the Land Acquisition Policy Framework not apply to all land acquisitions, but only apply to 'new business opportunities' where 'the characteristics of these acquisitions are speculative and opportunistic in nature (with no particular project identified), and usually for longer term development' and for 'land acquired to facilitate a Government request/outcome'.

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<p>The Land Development Agency Board endorsed the Interpretation document, noting that 'land acquisitions constituting new land development opportunities outside the LDA's core business of delivering the Indicative Land Release Program to be subject to the Land Acquisition Policy Framework'. The effect of the Land Development Agency Board's interpretation was to limit the acquisitions that needed to be assessed against the Framework principles and be authorised for purchase by the Board. The limitation on the scope of the Land Acquisition Policy Framework also meant that certain acquisitions would not be counted against the \$20 million annual ceiling for acquisitions.</p>	4.21
<p>It would have been prudent for the Land Development Agency, in developing the Land Acquisition Policy Framework Interpretation document, to seek legal advice and formally consult with the Minister. However, there is no evidence that this occurred.</p>	4.22
<p>None of the acquisitions considered in this audit was approved by the Land Development Agency Board, despite the Land Acquisition Policy Framework (Notifiable Instrument NI2014-264) requiring that acquisitions less than \$5 million be approved by the Board. The Land Development Agency has relied on the Land Acquisition Policy Framework Interpretation document, presented to the Land Development Agency Board on 27 August 2015, as authority for the Land Development Agency Chief Executive Officer to purchase Block 24, Section 65, City (land adjacent to Glebe Park) without Land Development Agency Board approval.</p>	4.47
<p>The Land Development Agency's interpretation of the Land Acquisition Policy Framework only applying to 'strategic' acquisitions, with 'project' acquisitions (those within the core business of the Land Development Agency) being exempt is a significant narrowing of the application of the Framework, based on the words in the Notifiable Instrument NI2014-264. The Australian Government Solicitor has advised that the Board's endorsement of the Interpretation document, which limits the need for Board approval for certain transactions, is incorrect. The Australian Government Solicitor further advised that 'the better view is that the Land Acquisition Policy Framework operates to require Board agreement to all acquisitions below \$5 million'.</p>	4.48
<p>Notwithstanding that the Board did not have the authority to limit the kinds of transactions presented to it for approval, in the case of Block 24, Section 65, City (land adjacent to Glebe Park) the Land Development Agency Board was not given the opportunity to consider the acquisition prior to the Chief Executive Officer's agreement to acquire the land. This decision took place almost two months prior to the Board's consideration of the Land Acquisition Policy Framework Interpretation</p>	4.49

paper and three months before the transaction was notified to the Board.

The 2014-15 Land Development Agency annual report reported on the Land Acquisition Policy Framework and its application to new land development opportunities outside the Land Development Agency's core business of delivering the Indicative Land Release Program. The Land Development Agency Board did not formally consider and endorse the interpretation of the application of the framework until 27 August 2015. The annual reporting period pre-dates the Board decision by almost two months.

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The need for documented governance arrangements for the City to the Lake Project, i.e. through a governance framework, was identified as early as April 2014. Different governance models were proposed by consultants, the Land Development Agency Board and Economic Development throughout 2014, but a governance model for the project was not agreed and endorsed until September 2015. This was a significant inadequacy for the City to the Lake Project throughout 2014 and 2015, when the Land Development Agency was undertaking the land acquisitions considered as part of this audit.

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A Project Business Plan has not been developed for the City to the Lake Project. The Audit Office notes that a Strategic Project Plan is currently being developed, with the intention of presenting it to the Project Control Board in October 2016. This is a significant inadequacy for such a large and complex project.

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The City to the Lake Project has had ad hoc arrangements for the role of Project Director since its inception in 2013. From its inception in 2013 to June 2014, various executives from the Economic Development Directorate and Land Development Agency have had managerial oversight of the project. An external consultant was formally identified as the Project Director in July 2014, with their services being terminated in September 2015. A Land Development Agency executive has since been identified as the Project Director.

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For much of the implementation of the City to the Lake Project neither a Project Control Board nor Project Control Group has been in place to provide oversight and direction for the City to the Lake Project. In October 2014 the City Plan and City to the Lake Strategic Coordination Committee was established, but this only met once. Since September 2015 a Project Control Board has been in place to strategically oversee the implementation and delivery of the project. Since January 2016 a Project Control Group has been in place and operationally overseeing implementation and delivery. The establishment of these oversight bodies has come at a comparatively late stage in the project. This was a significant inadequacy for the City to the Lake Project throughout 2014 and 2015, when the Land

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Development Agency was undertaking the land acquisitions considered as part of this audit.

In April 2012, Elleven Consulting Pty Ltd was engaged to provide financial services assistance to the Economic Development Directorate. The arrangement was varied in June 2012 to allow for additional services to be provided. Minutes relating to the procurement, which were approved by the Chief Executive Officer of the Land Development Agency, indicate that the total value of the services was in the order of \$150,000, although it is not clear if this was GST inclusive or exclusive. Approval for the engagement of Elleven Consulting Pty Ltd was given on 10 May 2012 by the Chief Executive Officer of the Land Development Agency, although the services had commenced previously on 23 April 2012. The Chief Executive Officer of the Land Development Agency approved the exemption of the April 2012 procurement exercise from section 6 of the *Government Procurement Regulation 2007*, which requires seeking three quotations. The June 2012 procurement minute relating to the additional services indicates that there was a competitive process by which Elleven Consulting Pty Ltd consultant was identified as the preferred consultant. However, there was no documentation to support this claim.

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The majority of services provided under these arrangements related to a former executive of the Economic Development Directorate. The former executive finished as a temporary employee of the Economic Development Directorate on 21 April 2012 and commenced as a consultant on 23 April 2012. The principal of Elleven Consulting Pty Ltd advised under oath/affirmation that they were approached to employ the former executive as the executive's employment role had concluded at the Economic Development Directorate, but that they were too valuable to not be further employed.

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In September 2012, Elleven Consulting Pty Ltd was engaged to provide services to the Economic Development Directorate for the City to the Lake Project. The arrangement was varied in September 2013 and November 2013 to allow for additional services to be provided. There is no identified total maximum value for the services, although minutes relating to the procurement indicate that the total value of the services (following the two variations) was in the order of \$550,000 (GST inclusive). The Chief Executive Officer of the Land Development Agency approved the exemption of the procurement exercise from section 9 of the *Government Procurement Regulation 2007*, which requires seeking public tenders.

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The September 2013 variation to the services provided for an additional month's services for an additional cost of \$90,000 (GST inclusive). At the agreed rate of \$165 per hour (GST inclusive) this equates to approximately 545 hours of work. This is impossible for one person to do within one month. The November 2013 variation

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to the services provided for additional services to be provided through to 30 June 2014. The expected total value of these services is not identified.

The majority of services to be provided under these arrangements related to the services provided by a second former executive of the Land Development Agency. The former executive finished as an employee of the Economic Development Directorate on 19 September 2012 and commenced as a consultant on 20 September 2012. The principal of Elleven Consulting Pty Ltd advised the Audit Office under oath/affirmation that they were approached to employ the former executive as their employment had concluded at the Economic Development Directorate, but that they were too valuable to not be further employed. The former executive advised the Audit Office that the arrangement was a 'marriage of convenience', which came about because they did not have their own consulting company, which enabled them to continue doing the work they were previously doing for the Economic Development Directorate / Land Development Agency.

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In June 2014, Elleven Project Coordination Pty Ltd was engaged to provide services to the Land Development Agency for the City to the Lake Project. The arrangement was varied in October 2014 and June 2015 to allow for additional services to be provided. The total maximum value for the services was identified as \$1,176,000 (GST inclusive). The Chief Executive Officer of the Land Development Agency approved the exemption of the procurement exercise from section 9 of the *Government Procurement Regulation 2007*, which requires seeking public tenders. A significant proportion of the services to be provided under these arrangements related to the services provided by a former executive of the Land Development Agency.

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The October 2014 variation to the services allowed for an additional support person to work a maximum of 37.5 hours per week at a rate of \$77.00 per hour (GST inclusive) for a period of eight months (3 November 2014 to 30 June 2015) at a total additional cost of \$105,000. It is not possible for a person to work these hours and for these services to amount to \$105,000 (GST inc).

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Since 2011 approximately \$2.66 million in payments have been made to Elleven Consulting Pty Ltd and Elleven Project Coordination Pty Ltd for services to the Land Development Agency/Economic Development Directorate. These services were all approved on a single-select non-competitive basis, with the Chief Executive Officer of the Land Development Agency approving their exemption from the requirements of the *Government Procurement Regulation 2007*. A significant proportion of these payments relates to services provided by former executives of the Land Development Agency/Economic Development Directorate. The former Project Director for the City to the Lake Project advised under oath/affirmation that

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the former executives were employed on the basis that their previous public service remuneration package was matched by the company, but that there was a profit component built in to the fees charged to the Land Development Agency/Economic Development Directorate. The administrative arrangements used to secure these services, being successive single-select non-competitive procurement processes, make it difficult to demonstrate that the services are an effective use of public money.

The Land Development Agency received a Freedom of Information request on 5 November 2015 in relation to the acquisition of Block 24, Section 65, City (land adjacent to Glebe Park). A Land Development Agency senior manager (now executive) provided a document to Land Development Agency officers responding to this request which had only been created after the Freedom of Information request was received. The title of the Colliers International *Block 24, Section 65, Division of City 'Glebe Park Land' May 2015* Discussion Paper was amended by the Principal of Colliers International from 'Discussion Paper' to 'Valuation Advice' on 12 November 2015 and accepted by the Land Development Agency senior manager (now executive). This document was provided in response to the Freedom of Information request received by the Land Development Agency on 5 November 2015. Submitting manipulated information in response to a Freedom of information request is unacceptable.

The advice provided by Colliers International in relation to Block 24, Section 65, City (land adjacent to Glebe Park) has been cited by the Land Development Agency Chief Executive Officer as valuation advice which was relied on for the purpose of informing discussions with the owner of this site. The absence of written instructions for the services performed and no payment for the services impairs the transparency, accountability and impartiality of the services provided. There is therefore no evidence of a proper process in relation to the seeking of valuations for acquisitions.

The Chief Executive Officer of the Land Development Agency requested the principal of Colliers International to mentor the then Deputy Chief Executive Officer of the Land Development Agency. This was done at no cost to the Land Development Agency.

At the suggestion of the Chief Executive Officer, the former Deputy Chief Executive Officer of the Land Development Agency verbally requested advice from the principal of Colliers International on the value of Block 24, Section 65, City (land adjacent to Glebe Park). This advice was provided free of charge and used by the former Deputy Chief Executive Officer of the Land Development Agency in negotiating the final price for the land. Such arrangements are problematic as there

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is potential for conflict of interest and they do not promote transparency and accountability.

Recommendations

RECOMMENDATION 1 PURPOSE OF LAND ACQUISITIONS

ACT Government agencies proposing to acquire land should identify the purpose for which the land is to be acquired and the means by which the land is to be acquired, e.g. a market-based transaction or acquisition under the *Lands Acquisition Act 1994* (either through negotiation or by compulsory acquisition). The process to be followed should be clearly documented at an early stage.

RECOMMENDATION 2 VALUATIONS FOR LAND ACQUISITIONS

The Land Development Agency, in undertaking land acquisitions, should rely on formal valuations underpinned by appropriate and considered instructions. The instructions should accord with the nature of the acquisition process and be formally agreed and endorsed by an appropriate executive.

RECOMMENDATION 3 INFORMATION FOR THE LAND DEVELOPMENT BOARD

The Land Development Agency should provide the Land Development Agency Board with information prior to acquisitions that allows the Board to authorise acquisitions in accordance with legislation.

RECOMMENDATION 4 COMPULSORY ACQUISITION

The Land Development Agency should develop administrative guidance for the application of compulsory acquisition processes under the *Lands Acquisition Act 1994* to guide staff in determining whether a potential acquisition might meet the criteria in the Act.

RECOMMENDATION 5 DOCUMENTATION OF ACQUISITIONS

The Land Development Agency, when undertaking acquisitions, should fully document the reasons for the acquisition and the rationale for the price paid for the acquisition.

RECOMMENDATION 6 CLARIFICATION OF THE APPLICATION OF THE LAND ACQUISITION POLICY FRAMEWORK

The Land Development Agency, in recommending changes to the Land Acquisition Policy Framework, should consult with the Minister and other ACT Government agencies on any proposed changes. It would also be prudent to seek legal advice in developing any proposed changes.

RECOMMENDATION 7 PROCUREMENT AND CONTRACTING

The Land Development Agency and Economic Development should develop policy and associated procedures with respect to the contracting of former executives and staff through ongoing non-competitive procurement processes. The policy and associated procedures should provide explicit guidance on the circumstances in which it is appropriate for former executives and staff to be employed through on-going non-competitive procurement processes.