

**MEDIA RELEASE****4 February 2021****Land Management Agreements**

Auditor-General, Mr Michael Harris, today presented a report on **Land Management Agreements** to the Speaker for tabling in the ACT Legislative Assembly.

Mr Harris says ‘while the process of developing Land Management Agreements serves a useful purpose in documenting the current environmental and agricultural state of rural properties the Environment, Planning and Sustainable Development Directorate is not effectively managing Agreements to ensure that they are relevant as an active and ongoing land management tool’.

Mr Harris also says ‘a significant proportion of Agreements are out of date and they often lack a depth of information and assessment. There is no overarching risk management framework to guide the development of Land Management Agreements and monitoring and enforcement of rural leaseholders’ compliance with the Agreements does not occur. The value of Land Management Agreements is questionable’.

The audit found ACT Government agencies are not effectively monitoring and enforcing rural leaseholders’ compliance with Land Management Agreements. There is no regular and systematic program of compliance activity to monitor rural leaseholders’ compliance with their Agreement obligations and there is no evidence of any enforcement activity being undertaken by any ACT Government agency in relation to rural leaseholders and their Agreements.

The audit report made six recommendations for improvement. The recommendations are aimed at improving the effective management and administration of Land Management Agreements.

The summary of the **Land Management Agreements** audit, with audit conclusions, key findings and recommendations is attached to this media release.

Copies of **Land Management Agreements: Report No. 01/2021** are available from the ACT Audit Office’s website [www.audit.act.gov.au](http://www.audit.act.gov.au). If you need assistance accessing the report please phone 6207 0833.

# SUMMARY

---

Land Management Agreements provide a basis for cooperative land management between rural leaseholders and ACT Government agencies responsible for managing non-urban land on behalf of the Territory. The Agreements are unique to the Territory. No other jurisdiction in Australia has a legal agreement with every rural landholder to deliver sustainable management of rural lands including the conservation of natural and cultural values.

Land Management Agreements are intended to facilitate cooperation between ACT Government agencies and rural leaseholders with a view to establishing appropriate sustainable agricultural management practices and good farm biodiversity whilst maintaining the ecological and cultural values of the land and protecting the environment from harm.

This audit examines the management and administration arrangements that are in place for Land Management Agreements including the monitoring, regulation and enforcement of agreement requirements.

## Overall Conclusion

Land Management Agreements are legally binding and enforceable agreements required under the *Planning and Development Act 2007*. The overall purpose of a Land Management Agreement is to 'establish appropriate sustainable agricultural management practices and good farm biosecurity for the subject land while maintaining ecological and cultural values present on the land, and protecting the environment from harm'.

While the process of developing Land Management Agreements serves a useful purpose in documenting the current environmental and agricultural state of rural properties the Environment, Planning and Sustainable Development Directorate is not effectively managing Agreements to ensure that they are relevant as an active and ongoing land management tool. A significant proportion of Agreements are out of date and they often lack a depth of information and assessment. There is no overarching risk management framework to guide the development of Land Management Agreements and monitoring and enforcement of rural leaseholders' compliance with the Agreements does not occur. The value of Land Management Agreements is questionable.

## Conclusions

### DEVELOPMENT OF LAND MANAGEMENT AGREEMENTS

There is no overarching risk management framework to guide the development of Land Management Agreements in the ACT. In the absence of an overarching risk management framework, it is difficult for the Environment, Planning and Sustainable Development Directorate to articulate the risks to rural leasehold land in the Territory to be managed through the

Agreements. It is also difficult for the Directorate to demonstrate the effectiveness of its management and administration of the Agreements in '[establishing] appropriate sustainable agricultural management practices and good farm biosecurity for the subject land while maintaining ecological and cultural values present on the land, and protecting the environment from harm' across the Territory. A risk-based approach to the development and management of the Agreements could also ensure that Directorate resources and activities are appropriately targeted to key areas of risk.

The development of Land Management Agreements could also be improved by documenting roles and responsibilities, implementing regular governance forums and meetings to facilitate intra-agency and cross-agency communication and developing administrative policy and procedural guidance.

### **UTILITY OF LAND MANAGEMENT AGREEMENTS**

The Environment, Planning and Sustainable Development Directorate is not effective in ensuring the currency and utility of Land Management Agreements. Thirty-one of the 63 Land Management Agreements considered as part of the audit had not been reviewed and replaced as required in the past five years. Twenty-four of the Agreements were over ten years old, ten were up to 17 years old and two were up to 19 years old. The Directorate is focused on a program of activity to review and update all Agreements.

A review of the Land Management Agreements considered as part of this audit also showed that there was variability in quality and depth of information and assessment. This compromises their ability to be used as an active and ongoing land management tool and hinders the Directorate's ability to monitor and enforce rural leaseholder compliance with the Agreements. Rural leaseholders consulted as part of the audit questioned the value and utility of the Agreements.

### **MONITORING AND ENFORCEMENT OF LAND MANAGEMENT AGREEMENTS**

ACT Government agencies are not effectively monitoring and enforcing rural leaseholders' compliance with Land Management Agreements. There is no regular and systematic program of compliance activity to monitor rural leaseholders' compliance with their Agreement obligations and there is no evidence of any enforcement activity being undertaken by any ACT Government agency in relation to rural leaseholders and their Agreements.

## **Key findings**

### **DEVELOPMENT OF LAND MANAGEMENT AGREEMENTS**

Paragraph

A range of ACT Government agencies and business units have roles and responsibilities for the development of Land Management Agreements. These include a range of business units within the Environment, Planning and Sustainable Development Directorate, the Environment Protection Authority (Access Canberra)

2.23

and the Emergency Services Agency (ACT Rural Fire Service). In practice the Rural Services and Natural Resource Protection Team within the Resilient Landscapes Branch has primary responsibility for initiating the development of an agreement with a rural leaseholder and working with the rural leaseholder to complete the agreement, thereby ensuring that Agreements are up to date, i.e. reviewed at least every five years. The team needs to do this in close cooperation and communication with the other stakeholders. The roles and responsibilities of the Rural Services and Natural Resource Protection Team and other business units are not specifically and explicitly documented with respect to the development of Land Management Agreements. This increases the risk of uncertainty in the management of Agreements and gaps in responsibilities and accountabilities.

There are no specific governance forums, meetings or other activities to facilitate coordination and cooperation across the number of business units and stakeholders involved in the development of Land Management Agreements. The coordination of effort and cooperation between ACT Government business units and stakeholders is primarily achieved through informal and ongoing communication on an as needed basis for specific Agreements. This presents a potential risk to the effective management and administration of Agreements as there is no formal, regular and systematic opportunity to share knowledge and discuss issues and trends in their management and administration and identify and discuss potential system and process improvements. Periodic meetings do occur between the Rural Services and Natural Resource Protection Team and the ACT Rural Fire Service, where bushfire risks and Agreement priorities are shared and discussed.

2.30

The *Land Management Agreement Form* provides comprehensive guidance to ACT rural leaseholders and Environment, Planning and Sustainable Development Directorate officers undertaking the Land Management Agreement process. It provides the most fulsome and explicit guidance on the type and nature of information to be included in an Agreement. A reviewed and revised 2020 version of the *Land Management Agreement Form* provides more guidance than the 2016 version on the information that needs to be included in each of the sections.

2.39

There is an absence of practical and useful procedural guidance for the development of Land Management Agreements. A key issue is the absence of procedural guidance to guide Rural Services and Natural Resource Protection Team officers (and other Environment, Planning and Sustainable Development Directorate stakeholders more generally) for the development of the Agreements. Defining and documenting procedural and administrative processes to be followed would provide clarity to Environment, Planning and Sustainable Development business units and their staff and support the achievement of environmental obligations in accompanying Territory legislation. Agreeing on and documenting administrative processes to be followed for the development of Agreements is necessary. Without this guidance there is an increased risk that rural leasehold agreements may be inadvertently

2.48

overlooked, incomplete, omit technical stakeholder feedback and/or not concluded within the required legislative timeframe.

Neither the Rural Services and Natural Resource Protection Team or Conservator of Flora and Fauna maintains an overarching risk management framework that assists in identifying, assessing and mitigating risks (or opportunities) associated with rural leasehold land in the Territory and guiding the management and administration of Land Management Agreements. In the absence of an overarching risk management framework, it is difficult for the Environment, Planning and Sustainable Development Directorate to articulate the risks to rural leasehold land to be managed through the Agreements and demonstrate the effectiveness of its management and administration of Agreements in '[establishing] appropriate sustainable agricultural management practices and good farm biosecurity for the subject land while maintaining ecological and cultural values present on the land, and protecting the environment from harm' across the Territory. An overarching risk management framework may also assist in identifying appropriate timeframes for the Agreements. The review and replacement of Agreements within a five year period, which is not a legislative requirement, but is otherwise established through the *Land Management Agreement Form* itself, also establishes a 'one-size fits all' approach that is not based on risk. Longer timeframes for Agreements may be warranted for some rural leaseholds, while shorter timeframes for others may be warranted.

2.58

The Rural Services and Natural Resource Protection Team has developed an 'LMA Priorities' tracking spreadsheet to assist in the administration of Land Management Agreements. The tracking spreadsheet was developed and implemented to work through the backlog of rural leaseholds for which Agreements had not been reviewed and replaced within the past five years. Along with a "target" of 40 Agreements to be reviewed each year and additional staffing, the tracking spreadsheet serves a useful purpose in addressing the immediate problem of the backlog of old Agreements. However, no guidance has been developed on how the spreadsheet is to be used or how information is to be documented in the spreadsheet. The spreadsheet is populated by inconsistent and incomplete information in relation to the Agreements. It does not prioritise Agreements taking into account a risk-based framework of rural land where there may be a significant environmental or land management issues that should be addressed as a matter of imminent priority. An intention to synchronise the development of Agreements for collaboration purposes at specific localities has not been progressed through a program of activity by the Rural Services and Natural Resource Protection Team.

2.70

## **UTILITY OF LAND MANAGEMENT AGREEMENTS**

Paragraph

The Environment, Planning and Sustainable Development Directorate does not maintain a single authoritative listing of rural leaseholds and accompanying Land Management Agreements. Separate and inconsistent documentation was maintained by Leasing Services and the Rural Services and Natural Protection Team

3.6

for different purposes. A single authoritative listing of rural leaseholds and accompanying Agreements by the Directorate would support the Directorate to correctly and easily identify whether rural leaseholds have a current and enforceable Agreement in place.

Documentation and information supporting the development and conclusion of Land Management Agreements is inconsistently maintained and recorded. Information on the development of an Agreement and any associated issues (including for instance, potential disputes with the leaseholder) is not consistently retained in the Objective document management system together with the final signed Agreement. Comments and feedback from technical stakeholders and their input into the development of an Agreement is also not retained with the Agreement itself or, alternatively, in a centralised and coordinated place. This makes it difficult to identify the administrative steps and processes associated with the development of the Agreement and impairs the transparency and accountability of the process.

3.15

Land Management Agreements are required to be reviewed and replaced by a subsequent agreement within five years from the date of signing. Of the 63 Agreements considered as part of the audit 31 were more than five years old, demonstrating that they had not been reviewed and replaced in the past five years. Of these Agreements 24 were over ten years old, ten were up to 17 years old and two were up to 19 years old. This shows that the Environment, Planning and Sustainable Development Directorate has not been managing the development of Agreements in a way that ensures they remain current and relevant. This impairs the ability of the Agreements to be used to 'establish appropriate sustainable agricultural management practices and good farm biosecurity for the subject land while maintaining ecological and cultural values present on the land, and protecting the environment from harm' across the Territory. The Directorate is focused on a program of activity to review and update all Agreements, which is estimated to take five years.

3.24

A review of the 63 Land Management Agreements considered as part of this audit showed that, while they are predominately complete and respond to each required site assessment category, they often lack a depth of information and assessment and the information is often of variable quality. This compromises their ability to be used as an active and ongoing land management tool and as a means for '[establishing] appropriate sustainable agricultural management practices and good farm biosecurity for the subject land while maintaining ecological and cultural values present on the land, and protecting the environment from harm' across the Territory. The lack of detail and specific actions and outcomes identified in Agreements also compromises the ability of ACT Government agencies to monitor and enforce compliance with Land Management Agreements by rural leaseholders.

3.43

Farm FireWise Plans are a means to assist in the management of bushfire risks to both the rural leaseholders property and adjoining the Territory. A Farm FireWise Plan serves as a bushfire operational plan for the purpose of the *Emergencies Act 2004* and the Territory's *Strategic Bushfire Management Plan 2019-2024*. The *Land Management Agreement* form states that it cannot be approved without a Farm FireWise Plan. However, the *Strategic Bushfire Management Plan 2019-2024* requires only rural leaseholds within the Bushfire Abatement Zone to prepare a Farm FireWise Plan. A review of the 64 rural leaseholds considered as part of the audit shows: 51 rural leaseholds were supported by a Farm FireWise Plan or another mechanism for addressing the bushfire risks associated with the property; and for a further 12 rural leaseholds Farm FireWise Plans were being developed. (Seven of these leaseholds did not have an existing plan in place because they were new lessees or did not previously require a Plan and there was no evidence of an existing Plan for the remaining five).

3.51

#### **MONITORING AND ENFORCEMENT OF LAND MANAGEMENT AGREEMENTS**

Paragraph

In 2009, the then ACT Parks, Conservation and Lands (Programs Coordination) developed and put in place *Land Management Agreement Monitoring and Compliance Guidelines*, the purpose of which is to 'outline procedures for ongoing monitoring and compliance ... of Land Management Agreements (LMAs)'. The Guidelines envisage a need for 'clear, adaptive and technical advice on remedial action/s that may be required' and discuss the need for monitoring and compliance officers to be familiar with rural leaseholds and their specific issues and undertake regular site visits. The Guidelines are high-level and provide little practical administrative or procedural guidance on how to undertake monitoring and compliance activity. The Guidelines have not been reviewed or updated since 2009.

4.20

There is no regular and systematic program of compliance activity undertaken by the Rural Services and Natural Resource Protection Team or Access Canberra to monitor rural leaseholders' compliance with their Land Management Agreement obligations. Feedback from rural leaseholders consulted as part of the audit indicated that, from their perspective, once an Agreement is signed and in place no further monitoring of their compliance with the Management Actions section of the Agreement is undertaken. Rural Services and Natural Resource Protection Team officers engage and interact with rural leaseholders on a regular basis but do not have responsibility for monitoring compliance with Agreements through the *Planning and Development Act 2007*, which is the responsibility of Access Canberra.

4.37

Access Canberra has delegated powers under the *Planning and Development Act 2007*, more specifically the *Planning and Development (Inspectors) Appointment 2019 (No 2)*, to appoint inspectors to all urban and rural land areas, but does not proactively monitor rural leaseholders' compliance with Land Management Agreements. The Rural Services and Natural Resource Protection Team, which

4.38

interacts with rural leaseholders for the development of Agreements and other rural lands management activities, has not referred any matters to Access Canberra for further review or investigation in relation to rural leaseholders' compliance with their Agreement responsibilities. There is no evidence of any monitoring and enforcement activity being undertaken by any ACT Government agency in relation to rural leaseholders and their Agreements.

Clause 7 of the *Land Management Agreement Form* provides for the resolution of disputes in relation to Land Management Agreements. To date there have been no disputes in relation to Agreements that have been recognised and managed in accordance with clause 7 of the Agreement. This is despite the fact that Agreements have been in existence since the early 2000s and specific rural leaseholders may have had multiple Agreements during this period.

4.44

## Recommendations

### RECOMMENDATION 1 ROLES AND RESPONSIBILITIES

The Environment, Planning and Sustainable Development Directorate, in cooperation with other ACT Government agencies involved in the development of Land Management Agreements should:

- a) identify and document roles and responsibilities for the establishment of the Agreements; and
- b) establish an ongoing forum for the discussion and resolution of issues associated with the development of the Agreements and the identification of potential system and process improvements.

### RECOMMENDATION 2 POLICY AND PROCEDURAL GUIDANCE

The Environment, Planning and Sustainable Development Directorate should develop policy and procedural guidance for the development and ongoing management and administration of Land Management Agreements.

### RECOMMENDATION 3 LAND MANAGEMENT AGREEMENT PRIORITISATION

The Environment, Planning and Sustainable Development Directorate should develop a risk-based framework for the development and administration of Land Management Agreements. The framework could assist in identifying appropriate timeframes for the Agreements as well as consideration of a means to synchronise the development of Agreements for collaboration purposes at specific localities.

### RECOMMENDATION 4 DOCUMENTATION AND RECORD-KEEPING

The Environment, Planning and Sustainable Development Directorate should develop and implement policy and procedural guidance for the documentation and record-keeping of Land



Management Agreements. The guidance should include principles for the consistent documentation of processes associated with the development of Agreements with rural leaseholders.

#### **RECOMMENDATION 5      LAND MANAGEMENT AGREEMENT DETAIL**

The Environment, Planning and Sustainable Development Directorate should identify and prescribe a minimum level of detail for Land Management Agreements that fosters their use as an active and ongoing land management tool. The minimum level of detail should identify specific actions and outcomes that facilitate the monitoring and enforcement of compliance with Agreements by rural leaseholders.

#### **RECOMMENDATION 6      MONITORING AND COMPLIANCE**

The Environment, Planning and Sustainable Development Directorate and Access Canberra should develop a risk-based framework for the monitoring and enforcement of Land Management Agreements including processes for:

- a) monitoring rural leaseholders' compliance with their Agreements; and
- b) taking enforcement action in the event of potential non-compliance.

## **Response from entities**

In accordance with subsection 18(2) of the *Auditor-General Act 1996*, the Environment, Planning and Sustainable Development Directorate and the Chief Minister, Treasury and Economic Development Directorate were provided with:

- a draft proposed report for comment. All comments were considered and required changes were reflected in the final proposed report; and
- a final proposed report for further comment.

In accordance with subsection 18(3) of the *Auditor-General Act 1996* other entities considered to have a direct interest in the report were also provided with extracts of the draft proposed and final proposed reports for comment.

No comments were provided for inclusion in this Summary Chapter.