

ACT AUDITOR-GENERAL'S REPORT

**CERTAIN LAND DEVELOPMENT
AGENCY ACQUISITIONS**

REPORT NO. 7 / 2016

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PA 16/09

The Speaker
ACT Legislative Assembly
Civic Square, London Circuit
CANBERRA ACT 2601

Dear Madam Speaker

I am pleased to forward to you a Performance Audit Report titled 'Certain Land Development Agency Acquisitions' for tabling in the Legislative Assembly pursuant to Subsection 17(5) of the *Auditor-General Act 1996*.

Yours sincerely



Dr Maxine Cooper
Auditor-General
30 September 2016

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SUMMARY

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)

Paragraph

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. 2.20

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)'. 2.49

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. 2.50

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'. 2.51

The Opteon valuation report was provided to the owner of Block 24, Section 65, 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. 2.57

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 2.79

(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.

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.

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 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.

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.

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. 2.89

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. 2.90

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 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. 2.92

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. 2.97

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. 2.98

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 2.111

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.

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.

3.41

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.

3.42

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.

3.92

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'.

3.93

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 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'.

3.94

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.

3.111

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.

3.112

ADMINISTRATIVE MATTERS

Paragraph

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'.

4.20

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

4.21

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.

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. 4.22

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. 4.47

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'. 4.48

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 paper and three months before the transaction was notified to the Board. 4.49

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. 4.51

The need for documented governance arrangements for the City to the Lake 4.78

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.

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. 4.83

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. 4.87

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 Development Agency was undertaking the land acquisitions considered as part of this audit. 4.96

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. 4.120

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.

4.121

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.

4.142

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 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.

4.143

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.

4.144

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

4.155

Agency.

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). 4.156

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 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. 4.168

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. 4.177

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. 4.180

The Chief Executive Officer of the Land Development Agency requested the 4.186

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

4.187

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.

Statements of auditee and others

In accordance with subsection 18(2) of the *Auditor-General Act 1996*, the Land Development Agency was 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 comments. As part of this process, the Land Development Agency was offered the opportunity to provide a statement for inclusion in the final report in the Summary chapter.

The statement of the Chief Executive Officer of the Land Development Agency is provided on pages 14 and 15.

In accordance with subsection 18(3) of the *Auditor-General Act 1996*, extracts of a draft proposed report and a final proposed report were provided to individuals or entities that have a direct interest in the proposed report. Extracts were provided to the:

- former owner of Block 24, Section 65, City (land adjacent to Glebe Park);
- former owners of Block 13, Section 33, Action (Mr Spokes Bike Hire);
- former owner of Block 16, Section 33, Action (Dobel Boat Hire);
- former Deputy Chief Executive Officer of the Land Development Agency;

- former City to the Lake Project Director;
- State Chief Executive Officer – ACT, Colliers International (Principal of Colliers International);
- Managing Director – ACT, Opteon Property Group;
- former executive of the Economic Development Directorate; and
- former executive of the Land Development Agency.

These individuals or entities were offered the opportunity to provide a written statement for inclusion in the report. Statements that were provided have been included in full in Chapter 3 and Chapter 4.

In accordance with subsection 18(3) of the *Auditor-General Act 1996* the Chair, Deputy Chair and the former Deputy Chair of the Land Development Agency Board were provided with extracts of a draft proposed report. These individuals were also provided with a full final proposed report and offered the opportunity to provide comments for inclusion in the final report in the Summary chapter.

The statement of the Chair, Deputy Chair and former Deputy Chair of the Land Development Agency Board is provided on pages 15 and 16.

Statement of the Chief Executive Officer of the Land Development Agency

I welcome the Auditor-General's Performance Audit into Certain Land Development Agency Acquisitions and the associated recommendations aimed at building on and improving LDA processes and practices.

When concerns about the LDA's role in undertaking the acquisitions were first raised with the Auditor-General, I was invited to investigate the concerns. I chose not to investigate this matter personally, rather, referring the matter to the Auditor-General to enable a comprehensive and impartial investigation.

In acknowledging the serious nature of the Audit findings, I would like to stress that at no time did I, or to my knowledge any other member of the LDA, deliberately or knowingly seek to circumvent or avoid the LDA's statutory responsibilities. The matters identified by the Auditor-General do, however, highlight that there were deficiencies in the LDA's processes and record keeping when these land acquisitions were undertaken.

Since the subject land acquisitions occurred in early to mid 2015 the LDA has made significant structural, staffing and process changes that address and in some cases go beyond, the Auditor-General's findings and recommendations. These changes include restructure of the City to the Lake project team and its composition and establishment of robust governance arrangements; centralisation of processes for obtaining valuations to ensure high standards and consistency; re-establishment of 'in-house' Corporate and Governance services to support the effective operation of the LDA; and increased procurement training for all staff. In addition the former Australian

Auditor-General ... has been engaged to undertake a Governance Framework Review for the LDA and the broader Economic Development. I have committed to implement the findings of this review and will release and publish the report. Following implementation and establishment of the changes noted above, I would welcome a further performance review from the Auditor-General into the LDA's processes and practices.

The Auditor-General has highlighted the complexities and risks of undertaking commercial negotiations. There is no set formula for undertaking commercial negotiations. For each of the purchases examined by the Auditor-General, the LDA obtained valuation advice from appropriately qualified valuers on the LDA's Panel of Commercial and Residential Property Agents. These valuations established a basis for negotiations, however the respective interests of the buyer and seller ultimately determined the agreed sale price.

To underscore this, the relocation of Coranderrk Pond as part of the City to the Lake project will deliver significant financial and public realm benefits to the Canberra community, including through improvements to traffic flow, improved development outcomes and greater connection between the City and the Lake. These strategic benefits were important considerations in negotiating the purchases.

The Land Acquisition Policy Framework that took effect on 20 June 2014 was initiated by the LDA Board to establish a process for the 'strategic' purchase of land available on the market. The LDA's understanding of the genesis was the basis for the LDA's application of the framework; not to diminish its effect, but to enable the LDA to acquire land to secure future housing supply for the Territory.

In conclusion, I am satisfied the prices paid for these acquisitions were reasonable, appropriate and necessary to facilitate the continued implementation of the ACT Government's City to the Lake project.

Once again, I thank the Auditor-General for her comprehensive report. Consistent with the report, I am confident that the range of actions the LDA has, or is, already undertaking to build on and improve its processes and practices will further contribute to the social and financial outcomes the LDA is committed to delivering for the community.

Statement of the Chair, Deputy Chair and former Deputy Chair of the Land Development Agency Board

Recommendations 1 to 5 and 7 of the report are supported. In particular, we acknowledge and support the need for improved record keeping and the documentation of reasons for decisions, including the rationale for the prices paid in market based willing buyer/willing seller transactions. We do not, however, support the findings on which recommendation 6 is based.

This Direction was made in June 2014 to give effect to the implementation of an additional deliverable in the Statement of Government Policy for the Land Development Agency. That deliverable required the Land Development Agency to "pursue development opportunities where such opportunities would be consistent with the Government's policy framework for land

acquisitions.” That deliverable was additional to a long standing deliverable, to “deliver the Government’s Indicative Land Release Programs for residential, commercial, industrial and community land uses.”

As documented extensively in the government policy process that gave rise to the Land Acquisition Policy Framework Direction, the purpose of the Framework was to give the Land Development Agency the additional authority to undertake strategic land acquisitions to support its business activities. The Framework was very much about future rather than current land requirements.

Since its establishment, the Land Development Agency has routinely acquired land as part of the delivery of the Indicative Land Release Program. During 2015-16, the Land Development Agency spent a total of \$89 million on land. The Framework Direction requires that Government agreement is required for any acquisition by the LDA that results in a cumulative annual total of \$20 million in acquisitions being exceeded. To interpret the Direction literally as requiring each purchase of “any” land above a cumulative total of \$20 million to be referred to Ministers for approval would be administratively unworkable, both for Ministers and the LDA. The Chief Executive Officer of the Land Development Agency and the Land Development Agency Board shared a common understanding that the Land Acquisition Policy Framework Direction related only to strategic land acquisitions beyond the scope of the current Indicative Land Release Program.

The Board considered that the price paid for each of these acquisitions was commercially sound and necessary in the facilitation of the City to the Lake Project. The Chief Executive of the Land Development Agency, acting in accordance with this shared understanding, undertook the acquisitions that are the subject of this report, in good faith, as part of the delivery of the Government endorsed Indicative Land Release Program.

1 INTRODUCTION

- 1.1 Between June 2015 and February 2016 the Land Development Agency acquired the existing Crown Lessees' interests associated with the following parcels of land:
- Block 24, Section 65, City (land adjacent to Glebe Park);
 - Block 13, Section 33, Acton (Mr Spokes Bike Hire); and
 - Block 16, Section 33, Acton (Dobel Boat Hire).
- 1.2 The Land Development Agency also purchased the Lake Burley Griffin Boat Hire business, which operated under a sub-lease from Dobel Boat Hire Pty Ltd at Block 16, Section 33, Acton.
- 1.3 The Land Development Agency acquired the leases and businesses within the context of the City to the Lake Project.

The Land Development Agency

- 1.4 The Land Development Agency was established under section 31 of the *Planning and Development Act 2007*. Section 32.1 of the Act states that the Agency has the following functions:
- to develop land;
 - to carry out works for the development and enhancement of land; and
 - to carry out strategic or complex urban development tasks.
- 1.5 The Land Development Agency must exercise its functions in accordance with a Statement of Intent. The Land Development Agency's 2016-17 *Statement of Intent* states:
- The key outcomes for the LDA are:
- the LDA contributes positively to the economic and social development of the ACT by building vibrant and sustainable communities through greenfield and urban renewal projects for the development of residential, commercial, industrial, community and non-urban land.
 - the LDA acts in a commercially responsible, ethical and efficient manner when developing and selling land on behalf of the ACT Government.
 - the LDA balances potentially competing public sector and commercial priorities and provides opportunities for private sector development to optimise the community benefit for the ACT's land assets.

- 1.6 The governance arrangements for the Land Development Agency were determined by the ACT Government in October 2011. Under those arrangements the Chief Executive Officer and the Deputy Chief Executive Officer of the Land Development Agency are also the Director-General and Deputy Director-General of Economic Development.
- 1.7 The Land Development Agency Board was established under section 42 of the *Planning and Development Act 2007* as the governing board of the Land Development Agency. Section 77 of the *Financial Management Act 1996* provides that a governing board's functions will include:
- setting the authority's policies and strategies;
 - governing the authority consistently with the authority's establishing Act and other relevant legislation;
 - ensuring, as far as practicable, that the authority operates in a proper, effective and efficient way; and
 - ensuring, as far as practicable, that the authority complies with applicable governmental policies (if any).

City to the Lake Project

- 1.8 In March 2013, the ACT Government announced the City to the Lake Project, which is an urban renewal project that involves the development of areas in and around the City and Lake Burley Griffin.
- 1.9 According to the *City to the Lake Master Plan Implementation Report* (August 2014):
- Delivery of the [City to the Lake Project] in its entirety has the potential to transform Canberra into a vibrant urban centre, attracting investment and facilitating economic growth and opportunity for the Canberra and ACT communities by unlocking barriers to optimised land use and providing sustainable economic and social infrastructure options. Key to realising the benefits [City to the Lake Project] offers is the need to link revised land use and activity in the city with the amenity and environmental aspects of Lake Burley Griffin and surrounding area.
- 1.10 According to the *City to the Lake Master Plan Feasibility Report* (August 2014) the City to the Lake Project 'is a program that is comprised of a number of projects or elements that can be viewed broadly as three asset classes created over a 25 year investment period'. Key elements of the project include:
- enabling infrastructure, including 'the grade separation, re-alignment and modification of Parkes Way and the reclamation of land at West Basin';
 - land development, including the development of 'prime residential, retail and commercial property develop lots at West Basin and in Civic'; and

- social infrastructure, including ‘the Aquatic Centre at West Basin, Canberra Stadium near Civic, a cultural centre at West Basin and a new exhibition and convention facility (Australia Forum) in Civic’.

Lease and business acquisitions

Block 24, Section 65, City (land adjacent to Glebe Park)

- 1.11 Block 24, Section 65, City is adjacent to Glebe Park, Canberra Casino and the Glebe Park Residences. It is approximately 1.2 hectares in size.
- 1.12 The Land Development Agency commenced negotiations for the Territory’s acquisition of the Crown Lessee’s interest in the land in mid 2014. Negotiations stopped in September 2014 and re-commenced in June 2015. A draft contract for the acquisition was developed in June 2015 with settlement on 8 September 2015 for \$3.8 million.

Block 13, Section 33, Acton (Mr Spokes Bike Hire)

- 1.13 Block 13, Section 33, Acton was the location of the former ‘Mr Spokes Bike Hire’ bicycle hire site near Lake Burley Griffin. Similar to the acquisition of Block 24, Section 65, City (land adjacent to Glebe Park), the Land Development Agency negotiated the Territory’s acquisition of the Crown Lessee’s interest in the land.
- 1.14 The Land Development Agency commenced discussions with the owners in April 2014 and settled 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.

Block 16, Section 33, Acton (Dobel Boat Hire)

- 1.15 Block 16, Section 33, Acton was leased by Dobel Boat Hire Pty Ltd. Dobel Boat Hire in turn sub-leased the site to Lake Burley Griffin Boat Hire. Similar to the other acquisitions, the Land Development Agency negotiated the Territory’s acquisition of the Crown Lessee’s interest in the land.
- 1.16 The Land Development Agency commenced negotiations in December 2014 and settled on 17 December 2015 for \$1.0 million.

Lake Burley Griffin Boat Hire business

- 1.17 The Land Development Agency commenced negotiations to purchase the Lake Burley Griffin Boat Hire business in October 2014 and settled on 17 December 2015. The Land Development Agency purchased the business for \$575,000 (GST exclusive) and paid \$10,000 as a contribution to legal and accounting fees and \$16,387 to settle unpaid rent payable to Dobel Boat Hire.

Public interest disclosure

- 1.18 In December 2016 the Audit Office received information in relation to the Land Development Agency's activities for the acquisition of the leases and businesses. In February 2015 the Audit Office determined that the information was a public interest disclosure, for the purpose of the *Public Interest Disclosure Act 2012*.
- 1.19 On 18 February 2016 the Audit Office referred the disclosure to the Chief Executive Officer of the Land Development Agency in accordance with section 17 of the *Public Interest Disclosure Act 2012*. On 22 February 2016 the Chief Executive Officer of the Land Development Agency referred the disclosure to the Auditor-General for investigation noting 'given the circumstances in relation to this matter, it would be most appropriate that an external entity manage this disclosure'.
- 1.20 The Auditor-General accepted the referral and commenced an investigation in relation to the public interest disclosure shortly thereafter. As part of the investigation process a professional services firm was engaged and information was collected and interviews conducted with key personnel. In May 2016 the Auditor-General decided to end the investigation of the disclosure because, in accordance with subsection 20(g) of the *Public Interest Disclosure Act 2012*, 'there is a more appropriate way reasonably available to deal with the disclosable conduct in the disclosure'; a performance audit.
- 1.21 On 27 May 2016 the Auditor-General advised the Chief Executive Officer of the Land Development Agency that the Audit Office would be conducting a performance audit, the criteria for which reflect the issues in the disclosure.

Audit objective and scope

Audit objective

- 1.22 The objective of the audit is to provide an independent opinion to the Legislative Assembly on the effectiveness of the Land Development Agency's management of the acquisition of certain land and businesses in 2015.

Audit scope

- 1.23 The audit scope comprised an examination of the circumstances associated with the acquisition of:
- Block 24, Section 65, City (land adjacent to Glebe Park);
 - Block 13, Section 33, Acton (Mr Spokes Bike Hire);
 - Block 16, Section 33, Acton (Dobel Boat Hire); and

- Lake Burley Griffin Boat Hire (a business which operated from the Dobell Boat Hire location at Block 16, Section 33, Acton).

Audit criteria, approach and method

1.24 The audit objective was assessed using the following questions as criteria:

- Did the Land Development Agency and its Board have appropriate processes in place for the acquisition of the Crown Lessees' interest in the land and businesses?
- Did the processes:
 - ensure a high standard of integrity; and
 - comply with legislative and regulatory requirements.

1.25 The audit adopted the Office's Performance Audit Methods and Practices (PAMPr) and related policies, practice statements and guidance papers. These policies and practices have been designed to comply with the requirements of the *Auditor-General Act 1996* and relevant professional standards (including *ASAE 3500 – Performance Engagements*).

1.26 The audit approach and method consisted of:

- examination of documentation relevant to the purchases, including documentation maintained by the Land Development Agency and Economic Development;
- interviews with key personnel in the Land Development Agency, Economic Development and other stakeholder agencies, including the Environment and Planning Directorate and ACT Government Solicitor's Office;
- interviews with representatives from other entities and stakeholders associated with the purchases;
- the conduct of some interviews under oath/affirmation in accordance with section 14A of the *Auditor-General Act 1996*. These were recorded, transcribed and participants given the opportunity to provide comment on the accuracy of the transcript;
- engagement of a subject matter expert in the field of property valuations, Capital Valuers;
- engagement of the Australian Government Solicitor for the provision of legal advice;
- consultation with the Chief Minister with respect to the use of information that may be interpreted as 'deliberative information' for the purpose of section 20 of the *Auditor-General Act 1996*; and
- an engagement quality control review.

- 1.27 As part of the audit process, the Auditor-General provided a copy of the draft proposed report (or relevant extracts) and final proposed report (or relevant extracts) to the Chief Executive Officer of the Land Development Agency and other persons who the Auditor-General considered had a direct interest in the report. These persons were offered the opportunity to provide a statement for consideration for inclusion in the final report.

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

Summary

Conclusions

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.

Key findings

	Paragraph
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.	2.20
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)'.	2.49
Capital Valuers, a subject matter expert in relation to land valuations engaged by the Audit Office, advised that 'limiting the market value to <i>'Market Value "as is" - subject to all present lease conditions'</i> 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 <i>City Precinct Map and Code</i> under the Territory Plan, the site is designated 'MT4', which may allow for future residential use, subject to a merit track	2.50

assessment process to be assessed by the planning and land authority.

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’.

2.51

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

2.57

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.

2.79

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.

2.80

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 Land Development Agency.

2.81

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.

2.83

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.

2.88

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.

2.89

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

2.90

the land.

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 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. 2.92

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. 2.97

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. 2.98

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 2.111

any administrative guidance with respect to the use of compulsory acquisition.

Block 24, Section 65, City (land adjacent to Glebe Park)

- 2.1 Block 24, Section 65, City is located adjacent to Glebe Park, the Canberra Casino and the Glebe Park Residences apartment building (refer to Figure 2-1). It is accessible via Coranderrk Street. In 2015 the site was owned by Glebe Park Pty Ltd.
- 2.2 The site is zoned *CZ6: Leisure and Accommodation*, and the existing lease, which commenced on 16 May 2007, provided for the purpose of the lease as follows:
 - To use the premises only for purposes of a parkland including a carpark, outdoor recreation facility, drink establishment, restaurant and other associated uses.
- 2.3 The lease provided for the combined gross floor area of all buildings erected on the land not to exceed 650 square metres.
- 2.4 The site is subject to the *City Precinct Map and Code* under the Territory Plan, which identifies the site as 'MT4'. According to the *City Precinct Map and Code*, an 'MT4' designation allows for additional merit track development 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.

Figure 2-1 Block 24, Section 65, City (land adjacent to Glebe Park) – shaded area



Source: Land Development Agency

Acquisition of land by the ACT Government

2.5 The acquisition of land by the ACT Government may be broadly achieved through:

- direct negotiation with a land owner through a ‘market-based’ transaction;
- acquisition by agreement under the *Lands Acquisition Act 1994*; or
- compulsory acquisition under the *Lands Acquisition Act 1994*.

Acquisition through direct negotiation with a land owner

2.6 The ACT Government may acquire an interest in land through direct negotiation via a ‘market-based’ transaction. This process provides for the land owner and ACT Government to come to an agreement, similar to any other process where there is a buyer

and seller of land. The ACT Government Solicitor advised the Land Development Agency in March 2014 that:

Provided that [the land owners] agree to the terms the LDA offers, [the purchase] can occur on virtually any terms that the parties agree subject only to the LDA's obligations under the *Financial Management Act 1996* and the *Government Procurement Act 2001*. Generally these require the LDA to operate within budgets and to obtain value for money.

Acquisition under the *Lands Acquisition Act 1994*

2.7 As an alternative to a negotiated 'market-based' transaction, section 13 of the *Lands Acquisition Act 1994* provides that an interest in land may be acquired:

- by agreement under section 32; or
- compulsorily under section 33.

2.8 The future use of the land for a public purpose is necessary for an acquisition under the *Lands Acquisition Act 1994*. In order to commence a process under the Act the Executive must make a declaration that it is considering acquiring the land for a public purpose, which requires:

- a statement that land appears to be suitable for use, or for development for use, for a public purpose; and
- a statement setting out the particulars of the use to which the land will be put and the reasons why the land appears to be suitable for that use or for development for that use.

Principles for the amount of compensation

2.9 Section 45 of the *Lands Acquisition Act 1994* provides for principles to be applied in relation to the amount of compensation to be paid for the compulsory acquisition of land under the Act. Subsection 45(1) of the Act provides:

The amount of compensation to which a person is entitled under this part in respect of the acquisition of an interest in land is such amount as, having regard to all relevant matters, will justly compensate the person for the acquisition.

2.10 Subsection 45(2) provides for a range of principles including:

- the market value of the person's interest in the land;
- the value of any financial advantage, additional to market value, incidental to the person's ownership of the interest in the land;
- any reduction in the market value of any other interest in the land caused by the acquisition of the acquired interest;

- (where the acquisition has the effect of severing the acquired interest from another interest) any increase or decrease in the market value of the interest still held by the person;
- any loss, injury or damage suffered, or expense reasonably incurred by the person, that was suffered or incurred by the person as a direct, natural and reasonable consequence of the acquisition of the interest; and
- any legal or other professional costs reasonably incurred by the person in relation to the acquisition, including the costs of obtaining advice in relation to the acquisition and executing, producing or surrendering documents required by the process of acquisition.

2.11 ACT Government agencies, proposing to acquire land, need to identify the purpose for which the land is to be acquired and the rationale for a market based acquisition vis-a-vis a potential compulsory acquisition process. The process to be followed must be clearly documented from an early stage.

Need for the acquisition of Block 24, Section 65, City (land adjacent to Glebe Park)

Relocation of Coranderrk Pond

2.12 Block 24, Section 65, City (land adjacent to Glebe Park) was identified as an appropriate site for a stormwater catchment pond to replace Coranderrk Pond, which is currently located in the roundabout at the intersection of Parkes Way and Coranderrk Street. The relocation of Coranderrk Pond would facilitate urban redevelopment objectives associated with the City to the Lake Project and address shortcomings in existing stormwater management in the eastern part of the city.

Facilitation of development

2.13 The relocation of the stormwater pond was important to facilitate the achievement of urban redevelopment objectives of the City to the Lake Project. The former Deputy Chief Executive Officer of the Land Development Agency advised under oath/affirmation that:

Coranderrk Pond needed to be relocated to unlock a huge amount of value along Parkes Way and to also allow for some of the larger scale infrastructure items that were being considered as part of the project ...

2.14 The former Deputy Chief Executive Officer of the Land Development Agency further advised:

... the consolidation or rationalisation or relocation, however you want to frame it, of Parkes Way is the key to unlocking the entire project. You can do lots of little bits and pieces but most of the value uplift comes from how you manage Parkes Way. By

compacting Parkes Way, by shifting it to the south, you create value and additional development in a large number of sites within the overarching project.

- 2.15 The Chief Executive Officer of the Land Development Agency similarly advised under oath/affirmation of a desire to relocate Coranderrk Pond for the purpose of facilitating additional development for the City to the Lake Project. The Chief Executive Officer of the Land Development Agency identified that the realignment of Parkes Way would facilitate land release of a number of sites associated with the City to the Lake Project, including creating a potentially larger site for development at the existing car park opposite the Canberra Institute of Technology Reid campus:

... by removing Coranderrk Pond, if we could find another location for that and straightened up that block it would add about another one hectare or 1.2 hectares into that site, because you are squaring it off.

Addressing stormwater management inadequacies of Coranderrk Pond

- 2.16 An October 2014 SMEC report produced for the purpose of the City to the Lake Project, *Re-engineering Parkes Way and Civic's Southern Road Network (Volume 1 - Feasibility Design)* (October 2014) found:

Currently, there is no known formal stormwater flow attenuation, gross pollutant, coarse sediment or fine pollutant removal measures upstream of Parkes Way. The original design intent of Coranderrk Pond at the Coranderrk Street/Parkes Way roundabout would have been to achieve gross pollutant and coarse sediment removal, and possibly some fine pollutant removal. Gross pollutants are believed to be removed monthly from the trash basket within the Coranderrk Pond. Coarse sediment removal has not been undertaken for many years due to maintenance difficulties (mainly due to the sediment trap being submerged in water), and due to environmental issues. As a result, the pond and the surrounding stormwater infrastructure are heavily sedimented, physically impacting on the flow carrying capacity of the existing twin 3600 x 2000mm box culvert on Coranderrk Street. Sedimentation of the box culverts could be due to a number of reasons, including:

- Flat (0.2%) grade of the culvert,
- Undersized sediment trap,
- Coranderrk Pond below Lake Burley Griffin and Nerang Pool water level, and
- Lack of maintenance.

The Coranderrk Pond is physically an extension of Lake Burley Griffin and Nerang Pool, as it is below the water levels of the two water bodies. The pond would provide minimal increase in fine pollutant removal compared to the pollutant removal by Lake Burley Griffin and Nerang Pool.

Therefore, the Coranderrk Pond would provide minimal, if any, flow attenuation or coarse sediment and fine sediment removal, even if it was well maintained. If the sediment trap was located above the Nerang Pool water level and kept 'dry', maintenance of the facility would have been much easier. If it was maintained, the Coranderrk Pond would have had some level of coarse sediment removal functionality, although it is likely undersized for its catchment.

It is clear that the catchment is currently lacking effective stormwater management measures, except for some gross pollutant removal at Coranderrk Pond. Implementing [Water Sensitive Urban Design] measures, where there are opportunities, is therefore paramount for this catchment. In undertaking a review of the UDS WSUD concept plan, those measures that are relevant and beneficial to the current project were identified for further investigation.

Identification of Block 24, Section 65, City (land adjacent to Glebe Park) for the relocated Coranderrk Pond

2.17 In March 2014, a member of the City to the Lake Project Team, a Senior Manager in Economic Development, prepared a *Glebe Park Wetland Draft Discussion Paper*, which was circulated to the owner of Block 24, Section 65, City (land adjacent to Glebe Park) and to a number of staff and executives within Economic Development and the Land Development Agency. The *Glebe Park Wetland Draft Discussion Paper* included a satellite map of the block, which was titled 'Proposed scope of a 'master plan' for Glebe Park Wetlands and adjacent land'. The *Glebe Park Wetland Draft Discussion Paper* included a drawing of a pond for the site, which had the pond located mostly in Block 24, Section 65, City and partially in Glebe Park itself. The former Deputy Chief Executive Officer of the Land Development Agency advised under oath/affirmation:

... we knew back in 2014 that that was probably going to be the best solution but we didn't know what the ultimate solution for Parkes Way or where we were likely to land on that so in the backs of our minds - in the backs of our minds we knew that Glebe Park was probably going to be where Coranderrk Pond landed ...

2.18 In October 2014, Block 24 Section 65, City (land adjacent to Glebe Park) was identified by SMEC as being the most appropriate site for a relocated pond:

... the Coranderrk Pond does not provide any flow attenuation. Retardation basins at Glebe Park and Reid Park would provide flow attenuation downstream of the basins but there will be minimal attenuation at Parkes Way.

It is also clear that much improved fine pollutant reductions could be achieved by implementing the [Water Sensitive Urban Design] measures specified in the UDS, compared to what could be achieved by the Coranderrk Pond, even if it was functional. A pond at Block 24 Section 65 will contribute significantly towards this improved fine pollutant reduction.

2.19 Accordingly, the SMEC report recommended:

Feasibility investigation of a pond/wetland and retardation basin at Block 24 Section 65, adjacent to Glebe Park, is recommended. SMEC's preliminary investigation indicates that both a pond for fine pollutant removal and a retardation basin for flow attenuation would be feasible at this site. A [gross pollutant trap] can be provided upstream of the pond for gross pollutant and coarse sediment removal.

2.20 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.

Development of options for Block 24, Section 65, City (land adjacent to Glebe Park)

- 2.21 In March 2014, a member of the City to the Lake Project Team, an Economic Development Senior Manager, was in discussion with the owner of Block 24, Section 65, City (land adjacent to Glebe Park) in relation to the future development of the block. On 3 March 2014, this Senior Manager met with the owner 'to talk through opportunities for the ... block'. On 4 March 2014, the Senior Manager sent an email to the owner's representative, which included an attachment that 'outlined our proposal to investigate a wetland on the northern part of Block 24'. The *Glebe Park Wetland Draft Discussion Paper* was attached to the email. The *Glebe Park Wetland Draft Discussion Paper* included a satellite map of the block, which showed the block separated into two. A label for the northern part of the block stated 'approximately 7,000m² of Block 24, Section 65 surrendered to the Territory'. A label for the southern part of the block stated 'future development by existing lessee'.
- 2.22 The email proposed a suggested approach to dealing with the site, which included Economic Development undertaking a hydraulics study and funding a master plan for the site 'with input from [the owner and its joint venture partners]', followed by a range of activities associated with surrendering the lease and seeking planning approval from the Environment and Planning Directorate. The final proposed action was Economic Development 'constructs the new water quality control pond and parkland improvements and provides services to [the owner's] future development site'.
- 2.23 Following this communication, on 1 April 2014, the owner's representative confirmed 'they are happy to move to the next stage based on what you have tabled previously'.

Design options for the site

- 2.24 On 1 April 2014, the Economic Development Senior Manager sent an email to a number of Economic Development and Land Development Agency executives and staff stating:
- I have a proposal from TRACT, Cox Architects and Envirolinks Design in the amount of \$50K to prepare the master plan drawings that will dovetail with SMEC's technical assessment. All are on the LDA's consultant panel, so with ... [former Deputy Chief Executive Officer's] agreement, I'll engage TRACT to lead the team.
- 2.25 The former Deputy Chief Executive Officer of the Land Development Agency subsequently sent an email stating 'I agree to you proceeding as outlined'.
- 2.26 In early May 2014, Economic Development received *Glebe Park Wetlands*, a 'design options' document from TRACT, Cox Architects and Envirolinks for Block 24, Section 65,

City (land adjacent to Glebe Park) and ‘the [Water Sensitive Urban Design] investigation into the Coranderrk Pond catchment’. The *Glebe Park Wetlands* ‘design options’ document included six design options (with associated diagrams) which ranged from 271 residential units in three eight-storey blocks, through to an option which did not envisage any residential development.

2.27 On 13 May 2014, the Economic Development Senior Manager sent an email to a range of Economic Development and Land Development Agency executives and staff noting:

Strictly speaking the development outlined in the concept design is permissible under the Territory Plan although the existing lease is restricted to the following:

- Parkland
- Restaurant and bar to a maximum GFA of 650m²
- Public car parking

2.28 The Economic Development Senior Manager further stated:

While the attached concept designs for schemes ranging from 271 to 20 apartments all represent a significant uplift in the existing lease, the schemes’ benefits are:

- [Water Sensitive Urban Design] objectives for the eastern catchment of City to the Lake are achieved, assisting to advance the removal of Coranderrk Street Pond;
- pedestrian connections from the National Convention Centre to Glebe Park are substantially improved; and
- new residents and mixed uses are introduced to the heart of the Civic and to improve the passive surveillance over Glebe Park.

2.29 The Economic Development Senior Manager further stated:

Before investing anything more in design development I suggest the matter be raised with the ESDD’s Chief Planner. ESDD’s guidance would allow a preferred option to be taken to [the owner] as a balanced scheme that respects the existing Glebe Park Apartments and parkland setting and which may enjoy the Territory’s support. This would be a good position from which to achieve our [Water Sensitive Urban Design] objectives through a joint venture with Amalgamated.

If however ESDD believes that any apartment scheme is inappropriate, or if [the owner] envisions a higher level of development, then the next best option to achieve our [Water Sensitive Urban Design] objectives is to acquire the land in the public interest under the *Lands Acquisition Act 1994*.

2.30 In April 2014, an Economic Development Senior Manager engaged consultants to prepare master plan drawings for Block 24, Section 65, City (land adjacent to Glebe Park). In addition to a wetland for the northern part of the site, the drawings identified six different options for the southern part of the site, including an option for no residential development, and five options for residential development ranging from 20 residential units to 271 residential units.

Negotiations for the acquisition of Block 24, Section 65, City (land adjacent to Glebe Park)

2.31 In July 2014, the City to the Lake Project Team commenced activities for the purpose of acquiring Block 24, Section 65, City (land adjacent to Glebe Park).

2.32 On 25 July 2014, a Manager for the City to the Lake Project from the Land Development Agency sought three quotes for a valuation report for Block 24, Section 65, City (land adjacent to Glebe Park). The task specification form, which formed the basis for instructions relating to the valuation, stated:

The following documents are provided:

1. Lease - Block 24 Section 65 City;
2. Deposited Plan Block 24 Section 65 City;
3. Development Control Plan Section 65 City;
4. ACTPLA (June 2005) Urban Design Guidelines being the most reliable official position on the land, beyond the Territory land use policies and the lease purpose.

The valuation is to take into account all terms and conditions contained within the lease and, in particular, the permitted use, purpose and gross floor area.

2.33 Documentation indicates that the Manager on the City to the Lake Project, who was administering the process, had an expectation that three valuers would be selected to provide a range of advice on the matter. In response to a request on progress from the former City to the Lake Project Director (a consultant to the Land Development Agency employed through Elleven Project Coordination Pty Ltd), on 29 July 2014 the Manager advised:

Should have them all in by cob Wednesday then I can go ahead (once [the Deputy Director-General] signs as the delegate) to engage all three. I need to do three valuations as per Govt policy.

2.34 The former City to the Lake Project Director subsequently advised the Manager for the City to the Lake Project from the Land Development Agency that only one valuation would be necessary. The former City to the Lake Project Director advised under oath/affirmation that only one valuation was commissioned in order to commence a negotiation process with the owner:

I was simply getting a baseline valuation to start a negotiating process out of offering the less hostile of the two possibilities for acquiring that land.

2.35 In response to the draft proposed report, the former City to the Lake Project Director advised that they contracted 'one valuation "as is" as a baseline to start a discussion' and that they would have obtained three valuations if they were going to go through an acquisition process. In response to the draft proposed report, the former City to the Lake Project Director also advised that it was not their intention to pursue a negotiated market-based acquisition.

- 2.36 On 30 July 2014, the former Deputy Chief Executive Officer of the Land Development Agency approved the use of Opteon to provide a valuation for Block 24, Section 65, City (Land adjacent to Glebe Park). Although a Manager on the City to the Lake Project had an expectation that three valuers would be engaged, only Opteon was contracted as the former City to the Lake Project Director advised under oath/affirmation that ‘I was simply getting a baseline valuation to start a negotiating process’.

Opteon valuation

- 2.37 A comprehensive 41-page valuation report was provided to the Land Development Agency by Opteon on 25 August 2014. The Opteon valuation included photographs and graphics, a description of the site and its features, information on the instructions that were provided, the assumptions underpinning the valuation and a description of the different valuation approaches applied. The valuation report advised that the valuation was current up to 90 days from the date of valuation, i.e. the valuation advice was current to 24 November 2014. Opteon was paid \$3,850 (GST inclusive) for its services.

- 2.38 The Opteon valuation report stated the valuation purpose was ‘for negotiation purposes’ and the valuation basis was ‘market value “as is” (subject to all present lease conditions)’. The valuation report identified key assumptions including:

The instructions and subsequent information supplied contain a full disclosure of all information that is relevant;

That there is no prospect of a change to the zoning or Lease Purpose Clause of the subject ...

- 2.39 The Opteon valuation report stated ‘this valuation has been prepared on the basis of Market Value as defined by the International Valuation Standards Committee (IVSC), and endorsed by the Australian Property Institute’. The valuation report further stated:

Market Value is defined as “the estimated amount for which an asset or liability should exchange on the date of valuation between a willing buyer and a willing seller in an arm’s length transaction after proper marketing wherein the parties had each acted knowledgeably, prudently, and without compulsion”.

Market Value is based on the highest and best use of the asset that may not necessarily be the existing use. Highest and Best Use is “The most probable use of a property which is physically possible, appropriately justified, legally permissible, financially feasible and which results in the highest value of the property being valued”.

- 2.40 The Opteon valuation report provided that the ‘Market Value “As Is” (Subject to all present Lease conditions)’ was \$950,000 to \$1,050,000 (GST exclusive).

Capital Valuers Pty Ltd advice to Audit Office

- 2.41 The Audit Office sought advice from Capital Valuers with respect to the valuation advice that was sought and received by the Land Development Agency in relation to the acquisition of Block 24, Section 65, City (land adjacent to Glebe Park).

2.42 In relation to the validity of the Opteon valuation, Capital Valuers advised:

The [Opteon] report states that the valuation has been prepared in accordance with the Australian Property Institute Practice Standards and Guidance Notes. In my opinion this is a correct statement.

2.43 In relation to the Opteon valuation report, Capital Valuers advised:

The stated basis of *'Market Value "as is" - subject to all present lease conditions'* is the most significant single issue affecting the ascribed value. 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.

2.44 The *City Precinct Map and Code* under the Territory Plan designated the site as 'MT4', 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 it was suitable for residential use.

2.45 In relation to the assumption(s) underpinning the Opteon valuation (which were based on instructions from the Land Development Agency), Capital Valuers advised:

The Opteon Valuation clearly details the Valuers assessment of value. However the ascribed value relies significantly on either:

1. an instruction from the LDA to disregard any use other than the current use;
or
2. by advice or investigation a Crown lease variation would under no circumstances be permitted by the Territory.

Although the report repeatedly states that the value was assessed as instructed based on 'as is', Opteon do not quote any LDA instructions, advice received or investigations in terms of points 1) or 2) above.

2.46 Capital Valuers advised:

In my opinion the apparent instructions by which the Opteon Valuation was undertaken appear inappropriate for the stated purpose of the valuation. The LDA 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.

It is not possible to state with certainty what the value of this property is without further investigation of whether or not a Development Application for a lease variation would be permitted. However I have not seen anything in the Territory Plan, the Crown Lease or the City Precinct Code that categorically states that residential development of this site would not be permitted. From what I have seen a prudent buyer would be entitled to assume that residential use of at least part of the subject site is a possibility.

2.47 In response to the draft proposed audit report, Opteon's legal adviser stated:

The instructions given ... were to assess the current market value of the property, subject to the assumption that there was no prospect of a change to the zoning or Crown lease purpose clause. These instructions and the assumption are clearly stated within [the] report.

...

[The] report relies on the instructions given. We confirm that [the] instructions were to assess the current market value of the property, subject to the assumption that there was no prospect of a change to the zoning or Crown lease purpose clause. These instructions and the assumptions are clearly stated within [the] report. [Opteon] has not valued the subject on the basis of existing use, but on the basis of the Highest and Best use subject to the instructions and assumptions stated within the report.

2.48 In response to the final proposed audit report, Opteon's legal adviser further advised:

[Opteon] was given specific instructions to value the property on the basis that there was no prospect of a change to the zoning or Lease Purpose Clause of the property. [Opteon] valued the property at its Highest and Best Use in accordance with those instructions. The report was accepted by the instructing party and there has been no dispute of the instructions and assumptions which are clearly stated within the report.

2.49 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)'.

2.50 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.

2.51 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'.

2.52 In response to the final proposed report, and in response to Capital Valuers' comments, the legal representative of Opteon advised:

Opteon were instructed by the Land Development Agency to assess the current market value of the property subject to the assumption that there was no prospect of

a change to the zoning or Crown lease purpose clause. Based on these instructions, Opteon were not able to consider residential use as a possible use for the purpose of assessing market value, as this would have been a direct contravention of the instructions given to it. It was not Opteon's role to advise the Land Development Agency on how it should be instructed or the appropriateness of the valuation for the Land Development Agency's purpose.

Discussion with owner

- 2.53 The Opteon valuation report was provided to the owner of the site. The former City to the Lake Project Director advised under oath/affirmation that they spoke with the owner's representative saying words to the effect of:

We need this for a gross pollutant trap, we will have this piece of land. Our options available to us are compulsory acquisition or we can negotiate. If we can negotiate it's got to be on terms we accept and we've got to do it quickly, which would be the only reason to do that.

- 2.54 The Chief Executive Officer of the Land Development Agency advised under oath/affirmation that, at the time, they had no knowledge of the actions of the City to the Lake Project Director in engaging with the owner of Block 24, Section 65, City (land adjacent to Glebe Park):

I must admit, it makes me wonder why [they were] doing - what authority, one, [they] had to go and even have that conversation because a consultant does not have any delegation. So that was news to me that [they] had had that conversation ...

- 2.55 In response to the Opteon valuation report, on 26 August 2014 the owner's representative responded via email stating:

The report was tabled at today's board meeting and the directors are of the opinion, that the government can't be genuine about making an offer for the land.

If the valuation was prepared for "negotiation purposes" then a value reflecting the highest and best use of the site should be ascertained.

- 2.56 The former City to the Lake Project Director advised under oath/affirmation that, following the response they advised the owner of the site 'Well, just don't worry. I'll just go to compulsory acquisition'.

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

2.58 The former City to the Lake Project Director advised under oath/affirmation that, following the response from the owner of the site they were instructed by the Chief Executive Officer of the Land Development Agency to 'put the brakes on' the process as:

... by the time we're moving Coranderrk Pond into there is - you're talking five or six years away, whereas I wanted to be actually building down on the lake foreshore within 12 months and I had a couple of leases down there I needed to deal with. Any opportunity to leave that one alone was sensible from my point of view and, yes, I didn't think twice about it.

2.59 The Chief Executive Officer of the Land Development Agency has advised that the West Basin Project had funded capital works and that it was prioritised over the relocation of Coranderrk Pond, which did not have capital funding.

Resumption of negotiations for the acquisition of Block 24, Section 65, City (land adjacent to Glebe Park)

2.60 There was no activity in relation to the acquisition of Block 24, Section 65, City (land adjacent to Glebe Park) between September 2014 and April 2015. Activity re-commenced in April 2015.

2.61 The former Deputy Chief Executive Officer of the Land Development Agency advised under oath/affirmation that there were discussions in approximately April 2015, which led to a renewed focus on identifying a solution for the removal of Coranderrk Pond from its current location and the development of stormwater management facilities at Block 24, Section 65, City (land adjacent to Glebe Park).

2.62 The former Deputy Chief Executive Officer of the Land Development Agency also advised there was a desire to secure Commonwealth funding, through Infrastructure Australia, for the relocation of Parkes Way and that, a solution would have to be identified for Coranderrk Pond:

... we had to finalise the engineering and financial investigations that were being undertaken ... and bed down what those options were ...

The value created by the Parkes Way works along the whole corridor was in the tens of if not over a \$100 million of value uplift by moving that road to the south, over and above the additional opportunities that you created for the new stadium and other bits and pieces. Now, we hadn't done the detailed investigation of what that value uplift was at that time. We had some preliminary valuations for each of the sites within the project area ... but that's the sort of work that would have been required to do the detailed business case to [Infrastructure Australia]. ...

I knew that one of the key things we were going to have to manage was the fact that, if we were going to do a business case to Infrastructure Australia we couldn't very well go in there and say, "We would like \$150 million of Commonwealth funding please" and then they say, "Well, what are you doing with the pond?" and I say, "Well,

we are thinking about moving it over here”. “Okay, you haven’t made a decision. You don’t actually have a project then”.

- 2.63 The former Deputy Chief Executive Officer of the Land Development Agency advised under oath/affirmation:

So one of my first conversations with [Chief Executive Officer of the Land Development Agency] ... was we need to move on the business case development and we need to move on the - locking down the solution for Coranderrk Pond and Glebe Park which was seen at that time as being the best, if not only, solution. Let’s say best because it wasn’t the only solution. You could have done a range of other things. Best solution by far.

- 2.64 The former Deputy Chief Executive Officer of the Land Development Agency advised under oath/affirmation:

So the conversation I had with [Chief Executive Officer of the Land Development Agency] in April was along the lines of, “We need to resolve Coranderrk Pond”. “Yes, we do”. And from memory, [Chief Executive Officer of the Land Development Agency’s] suggestion was to talk to - to get some advice from Colliers about valuing it. It was “Get some advice from Colliers”.

- 2.65 The Chief Executive Officer of the Land Development Agency has advised that they recommended Colliers International for advice as the principal of Colliers International is the President of the Australian Property Institute and that Colliers International was considered preferable as the site was an unusual block, which was key to a larger proposal. The Chief Executive Officer of the Land Development Agency has also advised that they were aware that Colliers International was on a procurement panel for valuation services.

Colliers International advice

- 2.66 In May 2015 the former Deputy Chief Executive Officer of the Land Development Agency verbally sought advice from the principal of Colliers International in the ACT in relation to Block 24, Section 65, City (land adjacent to Glebe Park). The former Deputy Chief Executive Officer of the Land Development Agency advised under oath/affirmation that the instructions provided to Colliers were to the effect of:

Can you provide us with some advice on Glebe Park ... can I get some advice on ... indicative valuations for the Glebe Park land.

Valuation Considerations May 2015 document

2.67 The principal of Colliers International under oath/affirmation advised that they met with the former Deputy Chief Executive Officer of the Land Development Agency sometime between 8 June and 10 June 2015 and provided a two-page document on Colliers International letterhead titled *Valuation Considerations May 2015*. This was provided free of charge. The *Valuation Considerations May 2015* document provided a value for the site of \$1,000,000:

... on basis that current uses cannot be varied. Essentially a 'Before' Value not a Market Value between willing buyer and willing seller.

2.68 The principal of Colliers International advised under oath/affirmation:

... we talked through the various issues about the site and the only thing I pointed out to [them] was that ... the valuation of \$1 million, whilst absolutely fine in its context of being a value on its existing use, obviously didn't reflect highest and best use which is the premise of market value. So I said, "If your instructions were to the valuer to assess it on, you know, the lowest value, which is existing use, then that is exactly what you have got. But if you are trying to buy something off somebody, you know, since the first Commonwealth case, history is pretty clear, it is highest and best use and the current use is not highest and best use".

2.69 The *Valuation Considerations May 2015* document identified that the site was zoned CZ6 'which permits uses such as commercial accommodation, serviced apartments'. It presented three development options and their associated value:

- a 250 to 280 room eight storey hotel, with a 'current market value for hotel use' of \$3,800,000 (GST exclusive);
- 122 serviced apartments over eight storeys, with a 'current value for services apartments' of \$3,750,000 (GST exclusive); and
- 122 residential apartments, with a 'net value if approval secured for [Territory Plan variation]' of \$4,185,000 (GST exclusive).

2.70 The *Valuation Considerations May 2015* document identified that the site currently did not permit residential use and that a Territory Plan variation would be required.

2.71 There was no evidence of a copy of the *Valuation Considerations May 2015* document in the Land Development Agency's records.

Block 24, Section 65, Division of City 'Glebe Park Land' May 2015 Discussion Paper

2.72 On 16 June 2015, the Colliers International principal provided a two-page Discussion Paper on Colliers International letterhead titled *Block 24, Section 65, Division of City 'Glebe Park Land' May 2015*. This was provided free of charge. The document stated:

The land is zoned CZ6 which permits uses such as residential.

Approval for uses in the table will require a DA and lease variation which would result in the payment of a lease variation charge.

2.73 In contrast to the *Valuation Considerations May 2015* document which the principal of Colliers International advised was provided approximately one week earlier, the *Block 24, Section 65, Division of City 'Glebe Park Land' May 2015* Discussion Paper provided advice on the basis of the site being used only for future residential development. The hotel and serviced apartments options were not considered in the paper. The principal of Colliers International advised under oath/affirmation:

We talked through those options, which were effectively hotel, serviced apartment and residential, noting that obviously residential was what the developer's aspirations were and we know that because they'd put an application in for major projects which was reasonably well publicised in the marketplace for 120-odd apartments.

2.74 The *Block 24, Section 65, Division of City 'Glebe Park Land' May 2015* Discussion Paper stated:

The proponents of the land wish to develop part of the land with a residential apartment complex which occupies 2,500 square metres of the footprint of the site with the balance being public open space and interface.

The current scheme provides for an eight (8) level building above basement car parking and is to yield some 122 units.

2.75 The *Block 24, Section 65, Division of City 'Glebe Park Land' May 2015* Discussion Paper further stated:

The market value of the site will represent the existing value of the site plus a percentage of the development rights resulting from a lease variation and payment of [Lease Variation Charge].

2.76 The Colliers International *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. This was calculated by identifying an 'indicative value' of the site of \$10,400,000 (calculated on the basis of 122 units at approximately \$85,000 each) and subtracting an amount for a lease variation charge, costs to obtain a development approval and other holding and administrative costs.

Capital Valuers Pty Ltd advice to Audit Office

2.77 In relation to the advice provided by Colliers International, Capital Valuers advised:

By any objective view [the Colliers International *Block 24, Section 65, Division of City 'Glebe Park Land' May 2015* Discussion Paper cannot] be considered a valuation in terms of the international Valuation Standards and Australian Property Institute Guidance Notes. Compliance with the standards is personal to the qualifications of the individual undertaking the work. These documents give no indication of being authored by a Valuer qualified to undertake such work. The documents are the "bare bones" of an assessment approach and provide an unsupported opinion of value. At best the document might be a discussion paper as a simple demonstration of one scenario/approach.

- 2.78 Notwithstanding the shortcomings of the Colliers International advice, Capital Valuers advised:

As a final consideration of this matter, I am of the view that, subject to the opportunity to prepare formal valuation advice based on appropriate instructions for the purpose, the Colliers International assessment is likely to reflect more closely the market value of the subject property. This statement should not be taken in isolation without understanding what I believe Opteon were instructed.

- 2.79 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.
- 2.80 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.
- 2.81 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 Land Development Agency.
- 2.82 The principal of Colliers International, in response to the draft proposed audit report, advised that the paper was emailed to the former Deputy Chief Executive of the Land Development Agency in order to provide them with 'an understanding of how the developer would be looking at the values', noting that they were proposing to meet and negotiate with the owners of the land and that if the owner had an unrealistic view of

value, then the former Deputy Chief Executive Officer would know what the extent of those values would be for the proposed use.

- 2.83 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.

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.

Discussions with owner

- 2.84 Following the receipt of the *Block 24, Section 65, Division of City 'Glebe Park Land' May 2015 Discussion Paper* from Colliers International, 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). These negotiations were facilitated by the principal of Colliers International who, sending through the advice via email noted 'They are free Friday morning after 11am if that works for you'. A meeting was set up at the Colliers International office for 11:00 to 11:30 on Friday 19 June, with invitations sent to the principal of Colliers International, the former Deputy Chief Executive Officer of the Land Development Agency and two representatives from the owner. In an interview under oath/affirmation the principal of Colliers International advised that they briefly attended the meeting to introduce the parties and then left.
- 2.85 A series of discussions took place, via telephone or face-to-face, in which the Land Development Agency's acquisition of the site was discussed. The former Deputy Chief Executive Officer of the Land Development Agency advised under oath/affirmation that:
- I had two or three phone conversations with [the owner representative] who'd been nominated as the representative ... to deal with me.
- ...
- From memory ... they had indicated they wanted somewhere between \$4-5 million. I indicated that that was well beyond what we were willing to examine. We ended up agreeing in principle to a price of \$3.8 million.
- 2.86 The former Deputy Chief Executive Officer of the Land Development Agency advised under oath/affirmation that:
- After each conversation I had with [the owner representative] I spoke to [the Chief Executive Officer of the Land Development Agency].
- 2.87 The Chief Executive Officer of the Land Development Agency advised under oath/affirmation:
- [The former Deputy Chief Executive Officer of the Land Development Agency] went to do the negotiation. [They] did ring me and say, "Look ... they're not going to budge", because they originally wanted a lot more as well and he said, "We can secure it if we go to \$3.8". Because originally I told him to go into the lower end of the threes as well, and I said to him they will be quite dogged so you've got to try and hang in there and I think at the end of the day he rang me and he said, "... they'll accept \$3.8, nothing less" and I said, "... if that's where you think it's got to, finalise the negotiation".
- 2.88 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.

- 2.89 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.
- 2.90 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.

Involvement of City to the Lake Project Director

- 2.91 The former City to the Lake Project Director did not have a role in negotiations for Block 24, Section 65, City (land adjacent to Glebe Park) following the recommencement of activity in April 2015 and was unaware that it was progressing. The former Project Director for the City to the Lake Project, in an interview under oath/affirmation, advised that the first they were aware of the purchase was when a contract for the acquisition of the land was sent to them by the owner's legal representative in June 2015. This appears to be supported by the former Deputy Chief Executive Officer of the Land Development Agency, in an interview under oath/affirmation when asked whether the former Project Director would have been aware of the rationale for pursuing the acquisition of Block 24, Section 65, City (land adjacent to Glebe Park) (i.e. the perceived need to identify a solution to the placement of the existing Coranderrk Pond in order to seek Commonwealth funding for the realignment of Coranderrk Pond):

No, [they] wouldn't have. Not to my knowledge. [They] may not have even been aware that discussions were being had.

- 2.92 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 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.

Execution of the purchase

2.93 On 23 June 2015, a contract for sale was forwarded to the ACT Government Solicitor from the owner's legal representative. On 9 September 2015, the lease was surrendered to the ACT Government for \$4.18 million including GST. The contract for the sale was signed on behalf of the ACT Government by the Chief Executive Officer of the Land Development Agency.

Land Development Agency Board involvement

2.94 The Land Development Agency Board was advised of the acquisition of the Crown Lessee's interest in Block 24, Section 65, City (land adjacent to Glebe Park) at its 24 September 2015 meeting. The Chief Executive Officer of the Land Development Agency advised that they provided verbal updates to the Land Development Agency Board on the proposed purchase of Block 24, Section 65, City (land adjacent to Glebe Park) prior to the purchase being made.

2.95 Advice to the Land Development Agency Board in a Board paper on 24 September 2015 stated:

Land between the Convention Centre and Glebe Park (Block 24) was identified as being suitable for a pond ... The owners, Glebe Park Pty Limited, were approached by the LDA and agreed to an immediate sale.

The owners of Block 24 had sought an immediate response to their offer to sell and in response the LDA's CEO has agreed to purchase the block at \$4.18 million inclusive of GST.

2.96 The Board paper did not provide further detail on the purchase, including that various discussions had taken place over approximately eighteen months prior to the Board meeting. The Board paper stated 'the owners ... were approached by the LDA and agreed to an immediate sale'. This advice ignores earlier discussions that had taken place in 2014 and the owner's rejection of the valuation of the land in August 2014. The minutes of the meeting record:

... the purchase of the site will facilitate the establishment of a water quality control pond that will enable Coranderrk Pond at the corner of Coranderrk Street and Parkes Way to be removed. This will support a major element of the City to the Lake Project for future configuration of Parkes Way.

The Board noted that, in accordance with his delegations, the CEO had agreed to purchase the site for \$4.18 million, including GST.

2.97 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.

- 2.98 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.

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.

Administrative processes for the acquisition of Block 24, Section 65, City (land adjacent to Glebe Park)

- 2.99 The preceding paragraphs of this chapter have highlighted the actions taken in relation to the acquisition of Block 24, Section 65, City (land adjacent to Glebe Park). Administrative inadequacies have been identified with respect to:

- the lack of a current formal valuation report to guide negotiations for the acquisition;
- reliance on informal advice provided free of charge to guide negotiations for the acquisition; and
- inadequate documentation associated with the acquisition process, including negotiations for the acquisition.

- 2.100 A review of the administrative processes associated with the acquisition of Block 24, Section 65, City (land adjacent to Glebe Park) has also highlighted differences in expectations amongst Land Development Agency and Economic Development executives and staff associated with the acquisition of land and the basis on which the acquisition of the Crown lessee's interest should take place. A key issue in this respect is the availability or otherwise of the option for compulsory acquisition of the Crown lessee's interest through the *Lands Acquisition Act 1994*.

- 2.101 In response to the draft proposed audit report, the former City to the Lake Project Director advised the Audit Office of their intention to acquire the land through a compulsory acquisition process under the *Lands Acquisition Act 1994*:

There was no strategy to purchase through market acquisition as we had no budget, no business case and no time restrictions. We also required the land for public infrastructure which is clearly a great candidate for compulsory acquisition.

2.102 In response to the draft proposed audit report, the former City to the Lake Project Director further advised the Audit Office:

In general I was looking at the cheapest way to acquire the land for the Territory and for my project. No budget and no business case meant compulsory acquisition represented both the best practical solution and the best financial solution for the project.

2.103 In contrast with such an approach, the Land Development Agency ultimately pursued a negotiated market-based acquisition, which is consistent with advice received from the ACT Government Solicitor.

Potential compulsory acquisition of Block 24, Section 65, City (land adjacent to Glebe Park)

2.104 In May 2014, the Land Development Agency sought advice from the ACT Government Solicitor with respect to the most appropriate way to proceed with the acquisition of Block 24, Section 65, City (land adjacent to Glebe Park), including whether it was appropriate to acquire the land on a compulsory basis through the *Lands Acquisition Act 1994*.

ACT Government Solicitor advice

2.105 The Land Development Agency sought advice from the ACT Government Solicitor on three occasions between March 2014 and March 2015 in relation to the potential compulsory acquisition of land associated with the City to the Lake Project in order to inform decision-making (although only one of these advices was specifically in relation to the purchase of Block 24, Section 65, City (land adjacent to Glebe Park)).

2.106 ACT Government Solicitor advice in May 2014, specifically in relation to Block 24, Section 65, City (land adjacent to Glebe Park), advised that ‘the public nature of acquisitions under the Act and the cost consequences in terms of the compensation payable under the Act have historically led to a preference for market acquisitions of land’.

2.107 ACT Government Solicitor advice in both March 2014 and May 2014 also identified that the Land Development Agency’s intention with respect to the future use of the land would be a consideration with respect to whether the ‘public purpose’ test in the *Lands Acquisition Act 1994* would be met. The May 2014 ACT Government Solicitor advice identified the importance of having a ‘public purpose’ for the acquisition of land under the Act:

Having a “public purpose” is essential if land is to be acquired under the Act. There is a continually evolving body of law on the nature of a public purpose both in Australia and overseas and an agency wanting to rely on the Act to acquire property should seek advice and discuss the nature of the public purpose for the acquisition. Urban renewal for example may not be a public purpose whereas on the other hand the construction of a main road or railway line would seem obvious public purposes.

2.108 The Land Development Agency had previously sought advice from the ACT Government Solicitor in March 2014 in relation to the potential compulsory acquisition of land around Lake Burley Griffin. In relation to the issue of a 'public purpose' for the acquisition, the advice stated:

There is some uncertainty whether the proposed acquisitions are for public purpose. On the one hand, the LDA intends to service and on-sell the land more or less like a private developer. On the other hand it is part of a great vision of the development of the City to the Lake project. The narrow purpose is probably not a "public purpose" the broader purpose is.

I think on balance the acquisition is for a public purpose and therefore permitted under the Acquisition Act, though the matter is not entirely free from doubt.

2.109 In March 2015 the Land Development Agency sought further advice from the ACT Government Solicitor in relation to the potential compulsory acquisition of land around Lake Burley Griffin. In relation to the issue of a 'public purpose' for the acquisition, the advice noted that 'public purpose' was defined in the *Lands Acquisition Act 1994* as 'a purpose in respect of which the Legislative Assembly or the Commonwealth Parliament has power to make laws'. The advice noted:

While the definition seems broad, there is a continually evolving body of law on the issue of what constitutes a "public purpose" in Australia and overseas. The interpretation of "public purpose" may restrict the Territory from acquiring the Crown Leases if the Territory intends to use the land for private purposes or selling it on commercial terms.

As discussed at our previous meeting, we require further instructions regarding the exact plans for the blocks to allow us to provide more definitive advice as to whether the public purpose test is satisfied. Once you have provided this detail we will examine this issue further.

2.110 The legal advice received by the Land Development Agency from the ACT Government Solicitor about compulsory acquisition made two major points: the first that there had to be a public purpose in order to make use of the *Lands Acquisition Act 1994* and the second that 'there is a continually evolving body of law on the nature of a public purpose ... and an agency wanting to rely on the [*Lands Acquisition Act 1994*] to acquire property should seek advice and discuss the nature of the public purpose for the acquisition'. The 2014 advices both concluded that the public purposes as espoused to the ACT Government Solicitor would potentially satisfy the tests. The third advice requested further information before providing a more complete response.

Suitability of Block 24, Section 65, City (land adjacent to Glebe Park) for compulsory acquisition

2.111 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.

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.

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

Summary

Conclusion

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'.

Key findings

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

Paragraph

3.41

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.

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. 3.42

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. 3.92

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'. 3.93

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 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'. 3.94

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 3.111

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.

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.

3.112

3.1 The Land Development Agency acquired the Crown Lessees' interests associated with the following parcels of land:

- Block 13, Section 33, Acton (Mr Spokes Bike Hire); and
- Block 16, Section 33, Acton (Dobel Boat Hire).

3.2 The Land Development Agency also purchased the Lake Burley Griffin Boat Hire business, which operated under a sub-lease from Dobel Boat Hire at Block 16, Section 33.

Block 13, Section 33, Acton (Mr Spokes Bike Hire)

3.3 Block 13, Section 33, Acton was the location of the former 'Mr Spokes Bike Hire' bicycle hire site near Lake Burley Griffin. Similar to the acquisition of Block 24, Section 65, City (land adjacent to Glebe Park), the Land Development Agency negotiated the Territory's acquisition of the Crown Lessee's interest in the land.

3.4 The Land Development Agency commenced discussions with the owners in April 2014 and settled 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.

Block 16, Section 33, Acton (Dobel Boat Hire)

- 3.5 Block 16, Section 33, Acton was leased by Dobel Boat Hire Pty Ltd. Dobel Boat Hire in turn sub-leased the site to Lake Burley Griffin Boat Hire. Similar to the other acquisitions, the Land Development Agency negotiated the Territory's acquisition of the Crown Lessee's interest in the land.
- 3.6 The Land Development Agency commenced negotiations in December 2014 and settled on 17 December 2015 for \$1.0 million.

Lake Burley Griffin Boat Hire business

- 3.7 The Land Development Agency commenced negotiations to purchase the Lake Burley Griffin Boat Hire business in October 2014 and settled on 17 December 2015. The Land Development Agency purchased the business for \$575,000 (GST exclusive) and paid \$10,000 as a contribution to legal and accounting fees and \$16,387 to settle unpaid rent payable to Dobel Boat Hire.

Block 13, Section 33, Acton (Mr Spokes Bike Hire) lease and business

- 3.8 Block 13, Section 33, Acton (Mr Spokes Bike Hire) was acquired in November 2006 as a rental lease by JE and MS Pty Ltd, trading as Mr Spokes Bike Hire. The lease term was for a period of 25 years commencing in 2002 and expiring in 2027.

Initial negotiations

- 3.9 Discussions between the Land Development Agency and the owners of Block 13, Section 33, Acton (Mr Spokes Bike Hire) were driven by the City to the Lake Project and the implications it would have for the business, including the extinguishment of the lease. A meeting took place between the owners and the Acting Director of Greenfields in the Land Development Agency and the City to the Lake Project Director. In response to the draft proposed audit report, the owners of Block 13, Section 33, Acton (Mr Spokes Bike Hire) advised that they were asked at the meeting if they were interested in relocating the business and that the owners advised that 'they needed more detail of both relocation and compensation options in order to respond'. A letter from the Acting Director of Greenfields in the Land Development Agency on 26 April 2014 subsequently noted:

The City to the Lake development will result in significant changes to the road and block layout in the West Basin precinct that will result in extinguishing your lease as it currently exists.

In this respect we wish to work with you to reach an outcome that is commercially acceptable to you. However to achieve this both the LDA and you will benefit by having a good appreciation of each other's requirements and intentions.

You have asked to be provided advice as to the processes available in the Territory in negotiating an outcome for your business as the City to the Lake project develops. At our meeting we briefly discussed possibilities and you have indicated that at this point you have not formulated any views as to ongoing options for your business for example its sale or relocation.

3.10 In relation to options for the extinguishment of the lease the letter advised:

The Territory has available the option to acquire your lease by commercial negotiation or compulsory acquisition. LDA prefers commercial negotiation because it allows the affected parties more freedom to preserve their existing position albeit at a different location.

3.11 In relation to future options for the business, the letter advised:

As mentioned in our meeting, the LDA believes the relocation of your business would be beneficial to the precinct; however we would not wish to limit your options.

If it is the case that you are wishing to continue your business in the precinct, we will need to have an understanding of your business operation requirements and how the LDA might work with you to facilitate this within the development. Alternatively, if you do not wish to continue the LDA is happy to discuss commercial terms for you to surrender the lease.

3.12 The Chief Executive Officer of the Land Development Agency since advised that its officers met with the owners 'on a number of occasions and also communicated on numerous occasions via letter, email and telephone' 'both in relation to the construction of Westside and in preparation for future construction of the waterfront (and ultimately, land release)' throughout 2014. In response to the draft proposed audit report, the owners of Block 13, Section 33, Acton (Mr Spokes Bike Hire) advised that at a meeting with Land Development Agency representatives on 13 June 2014 they requested 'more detail regarding possible relocation options, and lease tenure terms and options available for a future lease'.

Deterioration in relationship

3.13 The Chief Executive Officer of the Land Development Agency also advised of an apparent deterioration in the relationship with the owners following a meeting on 12 August 2014. At the meeting of 12 August 2014, representatives of the City to the Lake Project Team met with the owners 'to provide an update on matters in relation to the redevelopment of West Basin'. The Chief Executive Officer of the Land Development Agency acknowledged that 'the meeting concluded on a negative note' and that while there were a number of meetings that took place after this 'it would be reasonable to say that [the owners] exhibited signs of mistrust in their dealing with the [Land Development Agency] from about this time onwards'. In response to the draft proposed audit report, the owners of Block 13, Section 33, Acton (Mr Spokes Bike Hire) advised that the meeting ended poorly and they were left 'frustrated and disappointed'.

- 3.14 A legal representative for the owners wrote to the Minister for Planning on 30 September 2014, raising a number of concerns and posing a number of questions in relation to the City to the Lake Project and its potential impact on the owners and their interests. The Minister for Economic Development responded on 12 November 2014 asking that a meeting be arranged with the Land Development Agency to exchange information and address any concerns.
- 3.15 On 19 November 2014, the former City to the Lake Project Director and Deputy Project Director and a representative from the ACT Government Solicitor met with the owners and their legal representative. The meeting was also attended by a ministerial advisor to the Minister for Economic Development. At this meeting there was discussion on the process that could be used to determine a value for the business and indicative timeframes for development. The possibility of compulsory acquisition was also discussed, but Land Development Agency documentation of the discussion notes that the preference was to negotiate a settlement and avoid 'the complicated, prescriptive and adversarial nature of compulsory acquisition'. As an outcome of the meeting, according to Land Development Agency documentation of the meeting, the Land Development Agency was to arrange the collection of valuations for the acquisition. Further correspondence was subsequently entered into in relation to collection of valuations for the acquisition.

Owners' offer to surrender the lease

- 3.16 On 19 February 2015, the owners' legal representative wrote to the ACT Government Solicitor, setting out the 'basis upon which our client would be willing to surrender the Crown lease for the abovementioned land'. A sum of \$3,045,130 was identified for the business, stock, loss of future earnings, improvements, business equipment and expenses. The sum that was identified did not include a 'land' component. The letter acknowledged that 'we understand your office is undertaking land valuation' and that 'when that is to hand our client can assess it and if necessary obtain an independent valuation to verify the value'.
- 3.17 On 2 April 2015, the ACT Government Solicitor sent a letter to the owners' legal representative noting that 'the [Land Development Agency] has requested information from your clients ... including financial particulars and access to your client's business premises in order to assess the Proposal and to negotiate a package which will be acceptable to your client and which reflects the value of its business'. The letter also stated 'it is the [Land Development Agency's] preference that this matter be finalised through negotiations however this can only occur with your client's cooperation'.

Further deterioration in relationship

- 3.18 On 18 March 2015 the legal representative for the owners lodged a Freedom of Information request with the Chief Minister, Treasury and Economic Development Directorate. On 18 June 2015, the legal representative requested that the scope of the initial request be changed. The 18 June 2015 request sought documents relating to the valuations of Block 13, Section 33, Acton (Mr Spokes Bike Hire) including the terms of

engagement for the valuers and the valuation reports prepared by the valuers. The request also sought any applications (either draft or approved) for the development of land comprising of or including Block 13, Section 33, Acton (Mr Spokes Bike Hire). In August 2015, the relevant decision-maker made a decision to release a number of documents in response to the request, either in full or in part.

3.19 On 2 July 2015, the former Director of the City to the Lake Project wrote to the owners to advise:

... the Land Development Agency (LDA) has procured valuations for the purposes of evaluating your offer to sell your interests at Block 13 Section 33 Acton (Mr Spokes). Advice on the valuations is currently being prepared for the LDA Board for its consideration in the broader planning for the redevelopment of West Basin. As part of this process, the LDA is prepared to:

- Provide you with a copy of the valuations (subject to being granted permission to do so by the valuers - and the LDA's position will be that this should be provided);
- Assist you with the costs of obtaining your own valuation (should you require one); and
- Contribute to future reasonable legal and financial advisory costs in settling any agreement.

3.20 The letter further advised:

As you would be aware, the ACT Government provided \$10.1 million in the 2015-16 Budget to construct a park and two intersections at West Basin and on Commonwealth Avenue. This represents the initiation of the first stage of the redevelopment of West Basin. The LDA plans to submit an application for works approval to the National Capital Authority within the next fortnight and, subject to that approval, commence work following the conclusion of Floriade 2015. The boundaries for that work will stop well short of your property and the works will be staged in such a fashion as to, as much as possible, minimise impacts.

3.21 The letter noted the apparent misunderstanding between the owners and the Land Development Agency in relation to the possibility for the relocation of the business:

I am surprised that, as [the ACT Government Solicitor's representative] understood from your conversation, you were advised that relocation was no longer an option being considered by the LDA. Relocation was most recently offered as a viable option in a letter from [ACT Government Solicitor's representative] to [owners legal representative] (2 April 2015). I wish to confirm the LDA's willingness to assist in relocating your business and reassure you that this may present a genuine option for the future of your business.

Such a transition would not be without challenges (in terms of preparing a suitable premises and timing considerations), however the locations under consideration may be of interest to you. I would therefore be grateful for an opportunity to have an open discussion with you and, if you are agreeable, to discuss your requirements and to understand factors that may need to be taken into account.

3.22 In response to the draft proposed audit report, the owners of Block 13, Section 33, Acton (Mr Spokes Bike Hire) advised that they were upset at the offer in the letter of 31 July 2015 to 'discuss [their] requirements and to understand factors that may need to be taken into account' in relation to the relocation of their business. The owners advised that they felt they had already communicated this to the Land Development Agency, including more than twelve months previously. On 6 July 2015, the owners wrote to the Chief Executive Officer of the Land Development Agency advising that they were 'disappointed with the recent letter from [the former City to the Lake Project Director] on the grounds that it lacks any specifics'. The owners also advised:

In light of the above concerns, and in view of the fact that we have met numerous times with the LDA already, with no progress towards a resolution (and it seems, different understandings of what was agreed at the meetings), we do not believe that meeting again with staff from the LDA is wise. We have stated twice at face-to-face meetings with your staff of our need for any offer of future relocation to be made in writing, and our lawyer has asked for this in correspondence as well.

3.23 In July 2015, the Land Development Agency provided a response to the ACT Ombudsman in relation to a complaint that had been lodged by the owners in relation to the Land Development Agency's actions on the matter.

3.24 On 30 July 2015, the former City to the Lake Project Director wrote to the Director of Visit Canberra advising:

Following from our discussion, I am writing to seek your confirmation that you are prepared to support the co-location of Mr Spokes Bicycle Hire with a new Canberra Region Visitor's Centre, should the proposal to relocate operations to the National Capital Exhibition at Regatta Point proceed. ...

Subject to your confirmation, I would appreciate an opportunity, at your earliest convenience, to discuss likely timing and costs as these will be of importance in discussing any move with the proprietors of Mr Spokes.

Chief Executive Officer of the Land Development Agency involvement

3.25 A meeting between the owners and Chief Executive Officer of the Land Development Agency took place on 14 August 2015. In a letter dated 14 August 2015, handed over at the meeting, the Chief Executive Officer of the Land Development Agency advised the owners:

Taking into account your preference to remain in your present location the Land Development Agency has also pursued options which would take into account your wishes.

Today, I am pleased to advise you that together with our construction contractor and consultants the Land Development Agency have developed a solution that can work around your lease and business and as a consequence the Land Development Agency no longer needs to pursue the acquisition of your Crown lease.

3.26 In response to the draft proposed audit report, the owners of Block 13, Section 33, Acton (Mr Spokes Bike Hire) advised that they were upset at the inference that their preference was to remain in the current location. The owners assert that they had never expressed a preference to remain at the location, 'but rather that they wished to withdraw from negotiations that were providing unfruitful and could no longer afford to keep going, mentally or financially'. Following receipt of the letter of 14 August 2015, valuations were again pursued so that agreement could be reached for the surrender of the Crown lease. Following the provision of the letter by the Chief Executive Officer of the Land Development Agency in mid August 2015, it is apparent that the Chief Executive Officer took a greater role in progressing negotiations with the owners of Block 13 Section 33, Acton (Mr Spokes Bike Hire). A review of emails and other correspondence in relation to the acquisition process shows that the Chief Executive Officer of the Land Development Agency took a lead role in communication with the owners' legal representative for the purpose of the acquisition.

The valuation process

3.27 Valuations in relation to Block 13 Section 33, Acton (Mr Spokes Bike Hire) were requested by the Land Development Agency from three valuers: Herron Todd White, MMJ Valuers and PricewaterhouseCoopers (PwC). Herron Todd White and MMJ Valuers were asked to value the lease and associated business. PwC was asked to value the business only.

Initial valuations

3.28 Initial valuations were undertaken in April and May 2015. These valuations were developed without access to current business records or to the property itself. Valuations were based on visual assessments from the boundary and limited financial information available to the Land Development Agency.

3.29 In its 21 April 2015 advice, PwC advised:

... we would require far more financial information and access to the working proprietors which we understand is not possible in this case. Accordingly, we are unable to provide a formal opinion of value. However, to assist you in assessing the likely quantum of compensation we have, provided some high level comments and illustration.

3.30 In its 29 May 2015 valuation report, MMJ Valuers also advised:

We consider this information not suitable to accurately assess the potential current fair market value of the business. For the purpose of this exercise these figures have been employed as some basis but we accept no liability and reserve the right to review our estimated figure in the event the required information is provided.

3.31 A range of valuations were provided in relation to Block 13 Section 33, Acton (Mr Spokes Bike Hire). The lease associated with the site was valued at \$160,000 (GST exclusive) by Herron Todd White and \$185,000 (GST exclusive) by MMJ Valuers. The business was valued at \$90,000 (GST exclusive) by MMJ Valuers, \$450,000 (GST exclusive) by Herron

Todd White and between \$220,000 (GST exclusive) and \$551,000 by PwC. The variation in the PwC valuation is due to the wide range in the EBIT (earnings before income tax) multiple that could be applied to a business of the nature of Mr Spokes Bike Hire, with PwC suggesting a range of two to five.

Based on the key assumptions as outlined, our analysis suggests the business is likely to have had a value in range of \$220k to \$551k in 2009. The top end of this range is close to the book value of the business assets in 2009. As to the value at the current date this will depend on the current and prospective profitability of the business but we note that ... value is likely to reduce as the end of the lease draws near.

Revised valuations

3.32 On 24 August 2015, the owners' broker sent an email to the Chief Executive Officer, which included financial statements for the years ending 30 June 2013, 2014 and 2015. A second round of valuations were then undertaken by all three valuers and reports provided to the Land Development Agency in October 2015. In relation to the lease associated with the site, Herron Todd White did not revise its initial valuation of \$160,000 (GST exclusive), although MMJ Valuers Pty Ltd revised its valuation from \$185,000 to \$119,000 (GST exclusive). In relation to the valuation of the business, there was an increase in all three valuations. PwC revised its valuation to \$600,000 to \$700,000, while MMJ Valuers revised its valuation to \$528,000 (GST exclusive) and Herron Todd White revised its valuation to \$520,000 (GST exclusive).

3.33 Table 3-1 shows the initial and revised valuations for Block 16, Section 33, Acton (Mr Spokes Bike Hire).

Table 3-1 Block 16, Section 33, Acton (Mr Spokes Bike Hire) valuations April/May and September/October 2015

	MMJ Valuers		Herron Todd White		PwC	
	Initial Valuation (\$ GST ex)	Second Valuation (\$ GST ex)	Initial Valuation (\$ GST ex)	Second Valuation (\$ GST ex)	Initial Valuation (\$)	Second Valuation (\$)
Real Estate	185,000	119,000	160,000	160,000	-	-
Business	90,000	528,000	450,000	520,000	220,000 to 551,000	600,000 to 700,000
Total	275,000	647,000	610,000	680,000	220,000 to 551,000	600,000 to 700,000

Source: ACT Audit Office

Capital Valuers advice to Audit Office

3.34 The Audit Office sought advice from Capital Valuers with respect to the valuation advice that was sought and received by the Land Development Agency in relation to the acquisition of Block 13 Section 33, Acton (Mr Spokes Bike Hire).

3.35 Capital Valuers assessed the valuations as follows:

Broadly the approaches adopted by MMJ and HTW for the real estate and all three firms for the business assessments are similar, although PwC did take a more analytical and supported approach to the business valuation. This is understandable as PwC would be regarded as having greater expertise in the area of business analysis and valuation.

3.36 Capital Valuers noted that the MMJ valuation undervalued the real estate by about \$20,000 than their assessment would have been and concluded:

The principal variation is in the PwC business assessment. However, the report is more detailed in approach and a result I agree with.

Request for additional considerations

3.37 On 23 October 2015, the Chief Executive Officer met with the owners' broker. The Chief Executive Officer of the Land Development Agency advised that their recollection of the meeting was an undertaking that any further information provided by the owners would be provided to the valuers. The owners' broker sent an email advising of some matters to be considered, including:

- 'increase the earnings reflecting that as is the case with many small cash based businesses not all income is reflected in the accounts'. A figure of an additional 15 percent was proposed by the owners' legal representative;
- 'increase earnings to reflect the potential to run a café (as permitted under the terms of the lease)';
- 'increase the earnings multiple used to 5... reflecting the very strong and growing business with no competition and all but guaranteed repeat business through the hire of bikes to schools'. It was noted that the valuers used multiples in the range of 3.25 to 4.5;
- 'have the valuers apply the earnings multiple to EBITDA';
- 'increase the land value component by using the highest replacement cost (\$325,000 in HTW valuation of 30/9/15) and the lowest depreciation rate (25% in MMJ valuation of 29/5/15)'; and
- 'include an amount for disturbance'.

3.38 The Acting Director of City to the Lake Project provided this information to the valuers and asked the valuers whether there was any possibility of re-considering the valuations on the basis of the matters set out by the owners' legal representative.

3.39 In light of the new information received from the owners' broker, the Acting Director of the City to the Lake Project met with the valuers on 3 November 2015 and sought advice on whether there was any possibility for increasing the valuations. In an email of 9 November 2015 advising the Chief Executive Officer of the Land Development Agency of the outcome of discussions with the valuers, the Acting Director of the City to the Lake Project advised '[the valuers] felt that they were unable to reconsider their valuations' and that:

In conclusion all the valuers felt that they had interpreted the Land Development Agency's instructions to date and had sought to attribute the highest/fairest possible defensible value to the differing elements of Mr Spokes. This was also the case for inventory, improvements and any component for the land.

3.40 In an email to the owners' broker on 12 November 2015, the Chief Executive Officer of the Land Development Agency advised:

The 3 firms that we have engaged are/have had difficulties in reviewing their valuations. They are all very comfortable with the advice that they have provided the LDA.

I have asked for additional information and should have that next week. I do apologise for the delay. But as I said to you it is public money and I need to be able to justify any purchases.

Execution of the purchase

3.41 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.

3.42 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.

- 3.43 A briefing minute, dated 8 December 2015, to the Chief Executive Officer, the current Deputy Chief Executive Officer and the Executive Director Urban Renewal, set out the terms of the acquisitions with a recommendation that the Chief Executive Officer note the actions outlined in the minute.

Land Development Agency Board involvement

- 3.44 The Land Development Agency Board was advised of the acquisition of Block 13, Section 33, Acton (Mr Spokes Bike Hire) at its 25 February 2016 meeting. The Chief Executive Officer of the Land Development Agency advised that they provided verbal updates to the Land Development Agency Board on the proposed acquisition.

- 3.45 Advice to the Land Development Agency Board in a Board paper on 25 February 2016 stated:

The purchase of Mr Spokes in West Basin has been completed and the LDA is now the owner of this business. In order to ensure that bike hire facilities are available during the key tourism period in Summer and Autumn, a temporary arrangement has been entered into with an existing tenant at West Side to operate the bike hire business. I will provide further details at the Board meeting.

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.

Statement from owners of Mr Spokes Bike Hire

- 3.46 The owners of Mr Spokes Bike Hire were provided with extracts of the draft proposed report in order to verify the accuracy and completeness of the information it contained. As part of their response to the draft proposed report, the owners of Mr Spokes Bike Hire provided a general statement. The Audit Office has included this statement in full in Figure 3-1.

Figure 3-1 Statement of the former owners of Mr Spokes Bike Hire

Mr Spokes Bike Hire was purchased by us in 2006 for \$480,000. This included the purchase of the building it operated from. The business had a lease until 2027. We borrowed against our house to fund the purchase.

Bread-and-butter lines, integral to our location, such as our one-hour route for Pedal Cars to the Carillon and back and the one-hour guided bike ride for interstate school groups (that went through the Parliamentary Triangle and crossed no roads) grew, and the business ranked very highly on Trip Advisor. Over 100,00 interstate school students rode the RG Menzies route with us each year.

We became aware of the proposed development for the site in April 2011. We attempted to raise the importance of sorting out the future of our business by:

- meeting with [the then Minister for Planning] on 25th July 2011;
- speaking with LDA staff at the CttL community consultation tent in Garema Place in April 2013; and
- speaking with [the then Chief Minister] office on 30 May 2013.

In each case we explained that sorting out a relocation or alternative option for our business would probably be time consuming and difficult given how integral the business was with its location by the Lake cycle path in West Basin. Resolving the future of this business, we emphasized, should be one of the first 'cabs off the rank' within the project.

Negotiations began in March 2014, but were slow, confusing, contradictory, lacking in any detail, and we believe, marred by the following shortcomings:

- 1) Unwillingness to communicate in writing – including incomplete and vague responses to letters written by our legal representative.
- 2) Staff changes leading to being asked the same thing numerous times
- 3) Meetings lacking detailed agendas and minutes.
- 4) Staff were tasked with handling discussions they were too junior to be handling
- 5) Contradictory approaches revealing a lack of process from the start.
- 6) Requests for information (such as financials) that were not accompanied by a commitment to any process
- 7) Unwillingness to discuss methodology

These characteristics lead to a relationship of mistrust and a large degree of stress and frustration. Eventually, with no offer of relocation, no clear commitment to whether the LDA would reimburse our legal costs or fund our valuers/forensic accountants, no transparency regarding the methodology they had briefed their valuers to use, a lack of willingness from the LDA to use the Lands Acquisition Act they said they would use, and a debt in legal fees of over \$20,000 we withdrew from the then 16-month process, not being able to continue financially or mentally. If the CttL project was to continue, we thought the LDA would eventually use the Lands Acquisition Act or we would seek to trigger it ourselves.

It was at a final meeting called by our lawyer and attended by [the Chief Executive Officer of the Land Development Agency] and the ACT Government Solicitor on 14th August 2015 that the LDA

delivered a letter stating it had been *our* preference to stay where we were and that they had sought to accommodate this and would build around us. Withdrawing from a long series of unproductive negotiations was not, in our eyes, the same as stating we wanted to stay where we were with a construction site all around us. Having been informed of the scale of the construction works (which would take years) at previous meetings, and been told twice by LDA staff in earlier discussions that there was no way a business such as ours could continue to operate during the filling in of the Lake, we were devastated. We knew it would be difficult to keep staff under such circumstances, let alone clients.

We believed we faced the prospect of our business going backwards, and knew there was a chance we could lose our home as well once the area became a large-scale construction zone.

We took our story to the media, and that's when our mediator/broker came on board. While it still took some months of negotiations, a degree of trust and faith in the process evolved.

At the conclusion of the negotiations we felt content with the sum we received. The figure of \$1.1m was acceptable to us and recognized the degree to which we had grown and invested in the business and the fact that the livelihood from a family business had been extinguished.

Government agencies are by their very nature cumbersome and can appear slow moving; dealing with staffing changes, limited budgets, changing priorities and administrative obligations. But when individuals are faced with working with departments on complex issues that impact dramatically on their lives, it is the individual who lives and breathes the problem daily. Staff in the department do not live and breathe the problem in the same way. That is why it is critical that departments commit to clear processes and clear timeframes when it comes to sensitive and life changing events such as land acquisition. A clear and open process supported with written documentation (including detailed minutes of any meetings held) laid out at the beginning of an acquisition would, we feel, build faith in those on the other end of it. Too often the community perceives that meetings are held in order for governments to declare they have 'consulted widely on numerous occasions,' when in fact very little information is imparted and few specific actions are adopted. The LDA certainly had the reputation around town of behaving in this fashion, and we felt our experience was a perfect example.

When you're the 'little guy' you can easily lose faith that your interests will be looked after by 'the system'. We felt like we would simply be collateral damage in the midst of a shiny big new development, and we fought the only way we new [sic] how. We remain eternally grateful to our broker/mediator who helped both parties return to the negotiating table, and we are content to be getting on with our lives.

Block 16, Section 33, Acton (Dobel Boat Hire) lease

- 3.47 Block 16, Section 33, Acton (Dobel Boat Hire) was a concessional lease¹ held by Dobel Boat Hire Pty Ltd. Dobel Boat Hire was the Crown lessee for the lease. The lease re-commenced on 26 August 2008 (having originally commenced in 1997) and was due to expire in 2028. The annual rental payment was \$13,000 over a 20 year term and gave to the owners the right to operate a boat hire business and sell 'light refreshments confectionary and smokers requisites'.
- 3.48 Sub-letting was not permissible under the terms of the lease without the permission of the ACT Planning and Land Authority. However, a sub-lease was entered into with Lake Burley Griffin Boat Hire at a rental of \$18,000 per annum for five years with options for three further five year periods.² No permission for the sub-lease was ever sought from the ACT Planning and Land Authority until legal representatives representing Dobel Boat Hire Pty Ltd (the Crown lessee) requested retrospective approval for the sub-lease in June 2015. Retrospective approval was not granted.

Initial negotiations

- 3.49 The Land Development Agency attempted to communicate with Dobel Boat Hire Pty Ltd, the Crown lessee for Block 16, Section 33, Acton (Dobel Boat Hire), in May 2014 in order to discuss the City to the Lake Project. Throughout May and June 2014, the Land Development Agency reported a series of attempts were made to communicate with the owner via telephone and email.
- 3.50 On 19 September 2014 the owner contacted the former City to the Lake Project Director. A briefing note in relation to the communication notes that the owner 'advised that [they] intended to seek legal advice with a view to re-establishing [their] interests on Block 16'.
- 3.51 On 2 December 2014 representatives from the City to the Lake Project Team and a representative from the ACT Government Solicitor met with the owner and their business adviser. According to Land Development Agency notes from the meeting, the purpose of the meeting was to discuss the Land Development Agency's proposed acquisition of the lease for Block 16, Section 33, Acton (Dobel Boat Hire). According to the notes from the meeting the Land Development Agency advised that it needed to access the site by April

¹ Concessional leases are leases granted for an amount that is less than the market value that would otherwise be paid if the lease was sold on the open market. Although the term "concessional lease" was only introduced under the Land (Planning and Environment) Regulations 1992, this class of lease has been granted since the inception of the leasehold system. Concessional leases have been an effective means for Government to provide and augment a range of social, economic and community objectives, including the delivery of core community and social facilities. They have also been offered as part of business incentive packages to help the economic growth and development of the Territory. http://www.actpla.act.gov.au/_data/assets/pdf_file/0015/3912/factsheet08.pdf <accessed 4 august 2016>

² The sub-lease was entered into on 11 July 2003, for an initial period of five years and three extension periods of five years provided for.

2015 (or May 2015 at the latest) and that it was important for the Land Development Agency to acquire the leases so that this would occur.

Dispute between Dobel Boat Hire Pty Ltd and Lake Burley Griffin Boat Hire Pty Ltd

3.52 Land Development Agency notes from the meeting on 2 December 2014 record that there was discussion associated with an apparent dispute between Dobel Boat Hire Pty Ltd and Lake Burley Griffin Boat Hire. Land Development Agency notes from the meeting record that the owners of Dobel Boat Hire Pty Ltd were in the process of seeking legal advice in relation to the termination of the sub-lease with Lake Burley Griffin Boat Hire. The Land Development Agency notes from the meeting record that they advised the owners of Dobel Boat Hire Pty Ltd that they had a good relationship with the owner of Lake Burley Griffin Boat Hire and were in negotiations in relation to acquiring their interest or claims in relation to Block 16, Section 33, Acton (Dobel Boat Hire).

3.53 The owner of Block 16, Section 33, Acton (Dobel Boat Hire) followed up the meeting on 2 December 2014 with an email to the former City to the Lake Project Director on 6 December 2014 further reiterating their intention to take action with respect to the owners of Lake Burley Griffin Boat Hire Pty Ltd:

It is our understanding that ACT Government is willing to financially compensate [the owners of Lake Burley Griffin Boat Hire] to avoid any further hostility and facilitate [their] cessation on the site. We advise that in our opinion this is not the business of the ACT Government but that of Dobell Boat Hire. We have commenced proceedings advising [the owners of Lake Burley Griffin Boat Hire] that [they] no longer has a sub lease and was made aware of same over the past few years. Our lawyer will be having discussions with [ACT Government Solicitor representative] to direct any 'heat' in the situation from ACT Government to the Crown Lessee, Dobell Boat Hire. We are open to your advice but prefer to deflect liability away from ACT Government.

3.54 In the email to the former City to the Lake Project Director on 6 December 2014 the owners of Dobel Boat Hire Pty Ltd noted the Land Development Agency's apparent offer that financial compensation 'may take one of two forms (i) financial and non-financial compensation, or (ii) financial compensation and 'walk away'. The email further advised:

... we seek clarification as to the basis of the financial compensation and were led to believe you were talking about provision of a first right of refusal to operate a restaurant within a new iconic building on West Basin. The original purchase of the Crown Lease and concessions was solely to construct an approved restaurant on the site for family functions, small weddings and operate as a restaurant for the public. This vision was nearly realised in 2006 when the ACT Government furnished Dobell Boat Hire with a new lease, much larger lot size and approval to construct. This lease did not proceed due to an unfavourable condition placed in the lease. The time, energy and financial resources invested in the site over the past 17 years, separate to the paddle boat operations, has been enormous.

Owners offer to surrender the lease

3.55 On 24 December 2014, the Land Development Agency received a letter from a business advisory firm representing the owner, setting out the elements of compensation for the ACT Government's acquisition of Block 16, Section 33, Acton (Dobel Boat Hire). The letter proposed an acquisition price of \$3,075,300, which represented 'the direct costs incurred by Dobel Boat Hire Pty Limited from the time of purchase of the Crown Lease in 1997 and future lost revenue'. The costs incorporated:

... purchase cost; premises maintenance and repairs spanning 15 years; consultants fees and costs associated with developing the site, consistent with the Griffin Legacy, including extensive communications and negotiations with the National Capital Authority, Land Development Agency, ACTPLA and the Chief Minister's Office since 2000; and an estimate of revenue of the business up to 2028.

3.56 On 19 January 2015, the owner sent a revised estimate of the proposed acquisition price for the ACT Government's acquisition of Block 16, Section 33, Acton (Dobel Boat Hire) of \$2,650,170.

3.57 On 2 April 2015, the ACT Government Solicitor wrote to the owner advising:

As has been previously discussed, the LDA is happy to look at a number of ways in which you can be compensated for the surrender of the Crown lease, including:

- 1) Financial compensation for the surrender of the Crown lease, improvements and assets fixed to the land and extinguishment of your interests at West Basin; or
- 2) Relocation of your interests to an alternate site on Lake Burley Griffin; and
- 3) Financial compensation for any reasonable relocation costs, business disruption and any loss of goodwill.

3.58 The 2 April 2015 letter from the ACT Government Solicitor advised:

In the interests of making a reasonable offer the LDA requested information including financial particulars and access to your business premises.

In correspondence dated 19 January 2015, you offered to sell Dobel Boat Hire Pty Ltd to the LDA for \$2,650,170 in respect of costs incurred by you in attempts to develop the Crown lease, such as architects, planners solicitors and other advisory consultancies.

With respect these costs do not assist in valuing the business or lease. To allow valuers to make an informed estimate of the value of any business, the LDA requires the financial records of the business setting out turnover, expenses, assets and liabilities. These should generally be in the form of audited accounts backed by tax returns. The letter of 19 January 2015 indicates that Dobel Boat Hire does not have such records.

The LDA's ability to obtain valuations of the Crown lease is constrained without access to the premises.

- 3.59 The letter also noted the litigation in relation to the control of the lease with Lake Burley Griffin Boat Hire and sought further advice on the status of the proceedings to determine whether and when access to the site might be available. The letter requested a response within seven days after which time further instructions would be sought.
- 3.60 On 10 April 2015, the legal representative for the owner of Block 16, Section 33, Acton (Dobel Boat Hire) wrote to the ACT Government Solicitor, advising that their client did not wish to relocate and considered financial compensation to be the appropriate course and that site access would be available.

The valuation process

Initial valuations (Herron Todd White and MMJ Valuers)

- 3.61 In March 2015, valuations were commissioned from Herron Todd White and MMJ Valuers for Block 16, Section 33, Acton (Dobel Boat Hire). The valuation reports provided by Herron Todd White and MMJ Valuers provided a valuation of:
- the Crown Lessee's interest in the land, being the interest of Dobel Boat Hire Pty Ltd; and
 - the business being operated from the site by Lake Burley Griffin Boat Hire.
- 3.62 In a report dated 16 April 2015 Herron Todd White valued the Crown Lessee's interest in the land (i.e. the interest of Dobel Boat Hire Pty Ltd) as \$50,000 (GST exclusive) and in a report dated 29 May 2015 MMJ Valuers valued the interest as \$100,000 (GST exclusive). Herron Todd White valued the business operating from the site at \$270,000 (GST exclusive) and MMJ Valuers valued the business at \$278,750 (GST exclusive).
- 3.63 The valuations were conducted on the basis of a hypothetical scenario that there was no sub-lease in place for the site. The Herron Todd White valuation report noted:
- The property is occupied via a 'rental lease' and operates as a "boat hire" business. We are advised that a lease to the operating party is to be ignored as it was registered incorrectly. ... We have as instructed assumed that this under-lease is not in existence. ... Although the under-lessee operates the business as agents of the lessee, if this arrangement was not in place the lessee would operate the facility. We have thus ascribed a value to the business.
- 3.64 The MMJ Valuers valuation report also noted:
- For the purposes of this report we have treated the premises as being owner occupied with no value attributed to the Sub Lease to the Crown lessee but still making a conclusion to the value of the business carried out by the Sub Lessee on the projections from the Crown Lessee.
- 3.65 The Herron Todd White valuation report notes that there is no provision for compensation in the Crown lease document on termination of the Crown lease. The valuation report identified that the lessee only had a leasehold interest in the land and buildings and that 'leasehold improvements have been undertaken by the lessee including creation of the

kiosk and the provision of a locked store'. Herron Todd White recognised that improvements to the kiosk and buildings merited a value of \$50,000 (GST exclusive).

- 3.66 The MMJ valuation also referred to the lack of provision for compensation for early termination of the lease but assessed the lessee's interest in the land at \$100,000. (GST exclusive) However, the report states:

We note the Crown lessee amount (\$100,000) is a hypothetical amount if seen fit by the Land Development Agency to pay a compensatory amount for the early termination of the Crown Lease but [it] is not noted as a requirement under the Crown Lease. Furthermore, it is [deemed] by the market that the Lessee does not have a saleable interest in the land apart from what is captured in their business value to operate from the site.

Additional valuation (Colliers International)

- 3.67 On 23 November 2015, approximately six months after the two initial valuations, the Land Development Agency sought a further valuation from Colliers International 'to assist the Land Development Agency in making a fair and just offer to the Crown lessee for the surrender of their lease to the Territory'. The Colliers International advice was sought after the Land Development Agency's acquisition of the Lake Burley Griffin Boat Hire business were agreed in August 2015.

- 3.68 The Colliers International advice assessed the value of Block 16, Section 33, Acton (Dobel Boat Hire) at between \$900,000 to \$1 million, on the basis of buying out the concessional lease and including 'the lessee and sub-lessee interest in the Crown lease'.

- 3.69 Colliers International identified an amount of \$568,000 as the 'value of Crown lease as a nominal rent market value Crown lease' but noted that there was a cost of \$130,000 to pay out the land rent associated with the land as 'the Crown lessee's interest is diminished as they do not have the ability to use the premises and therefore have a real estate investor interest only'. Colliers International therefore ascribed a value for the Crown lease (with no concession) of \$438,000. Colliers International also noted that:

Whilst the purchase of this property is not being progressed as compulsory acquisition, it is not unreasonable to pay a premium over its straight real estate value for the above heads of compensation of up to \$500,000.

- 3.70 Colliers International therefore advised 'a total acquisition price could therefore be in the range of \$900,000 - \$1,000,000'.

Capital Valuers advice to Audit Office

- 3.71 The Audit Office sought advice from Capital Valuers with respect to the valuation advice that was sought and received by the Land Development Agency in relation to the acquisition of Block 16, Section 33, Acton (Dobel Boat Hire). Capital Valuers advised:

The complexity of this task and the unusual nature of the property have created significant difficulties that are evident with all three of the valuations. Crown leases

for air space in Canberra are not uncommon but this property is a very rare example of a Crown lease for air space that is not attached to another Crown lease or structure that is in the same ownership. None of the three valuations addressed the air space issue and two of the reports failed to mention that the property consists of air space only.

3.72 Capital Valuers advised that 'the MMJ Valuers and Herron Todd White] reports complied with industry standards but lack some important detail and due to poor data on which to rely, the reports are heavily qualified'. Capital Valuers advised that the Colliers report 'did not contain the detailed format expected as an industry standard' and was also heavily qualified.

3.73 In relation to the Herron Todd White and MMJ Valuers reports, Capital Valuers advised:

No particular issues are raised with the [Herron Todd White] and [MMJ Valuers] valuations although both are considered to be basic reports ...

3.74 In relation to the Colliers International advice, Capital Valuers advised:

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.

Colliers International advice

3.75 The discussion below relates to the Colliers International valuation advice as that was the valuation reflected in the contract price.

Concessional lease status

3.76 The Colliers International valuation advice proceeds on the basis that there is to be a varying of the concessional status of the lease. The Colliers International advice draws attention to section 238 of the *Planning and Development Act 2007* and the characterisation of leases in the ACT as 'concessional leases' or 'market value leases'. The Colliers International advice also draws attention to section 263 of the *Planning and Development Act 2007* and the methodology to be applied to calculating the amount payable to convert a 'concessional lease' to a 'market value lease'.

3.77 The Colliers International advice noted:

If the Crown lease is fully concessional then the Crown lessee will need to pay the current market value of the Crown lease (excluding Crown lessee improvements).
Essentially this would mean the value of Crown lessee's interest in the Crown lease is nil or nominal.

If the Crown lessee has made a payment that is the equivalent of market value at the time of the payment then the cost to discharge the concession would be nil. In this regard we note a comment included in documentation produced by the Crown lessee that payment of \$230,000 was made in 1997.

- 3.78 The Colliers International advice does not draw attention to section 261 of the *Planning and Development Act 2007*, which provides that the ACT Planning and Land Authority or Minister must not make a decision on a development application (and conversion of a concessional lease to a market value lease) unless 'it is in the public interest to consider the application'. Subsection 261(2) provides a range of factors that must be taken into account in deciding whether it is in the public interest to consider such an application. In advice to the Audit Office, Capital Valuers noted that no such application had been made, but that such an application would be problematic due to the nature of the lease and the fact that 'a short term lease was originally granted due to future Territory planning requirements'.
- 3.79 The Colliers International advice places significant reliance on the purported payment of \$230,000 in 1997. In advice to the Audit Office Capital Valuers noted that 'Colliers have assumed in favour of the Crown lessee that the payment was a payment for the lease'. However, the Crown lessee, Dobel Boat Hire Pty Ltd, did not produce documentation in relation to the payment, as requested by the Land Development Agency.

Conversion of the concessional lease to a nominal rent lease

- 3.80 Colliers International was also of the opinion that the Crown lessee could improve the marketability and value of the Crown lease by converting the Crown lease to a nominal rent lease by paying out the land rent commitment:

The Crown lessee also has the opportunity to improve the marketability and value of the Crown lease by paying out the land rent provision and converting the Crown lease to a nominal rent payment. The land rent payout amount is typically calculated as the present value of the rent payable quarterly in advance.

- 3.81 In relation to this, Capital Valuers advised the Audit Office:

[The] *Planning and Development (Land Rent Payout) Policy Direction 2105 (No 1)* requires that the payment amount is equal to the current market value of the lease. Therefore again technically the payment required is market value so it could be at some risk and no certainty to achieve a higher market value than what was paid to convert the lease to a nominal rent lease at that time. It is conceded however that a purchaser is more likely to be attracted to the property if there is no risk of an escalating Crown lease rent amount each three years.

However the issue still remains that the lease is likely to be still a concessional lease which requires consent to assign or transfer an interest and that can only occur to someone who is entitled to hold a concessional lease.

Unimproved market value of the Crown lease

- 3.82 On the basis of the conversion of the Crown lease from a 'concessional lease' to a 'market value lease' Colliers International sought to identify 'the unimproved market value of the Crown lease after making a comparison to other Crown leases that have sold with similar characteristics'. Colliers International compared Block 16, Section 33, Acton (Dobel Boat Hire) with two other blocks that had been sold at Yarralumla with lake frontage. Colliers

International identified a 'site rate' for each of the Yarralumla blocks of \$1,042 per square metre and \$1,387 per square metre.

- 3.83 The Colliers International valuation advice identifies a distinction between the Yarralumla properties and Block 16, Section 33, Acton (Dobel Boat Hire), noting:

The [Yarralumla properties'] Crown leases have much larger site areas and inferior locations in comparison to the subject property. There is greater infrastructure development along the lake foreshore at Acton and the adjoining pedestrian/bicycle bridge allows direct access to the CBD. The nearby public car park also generates activity from commuters working in the CBD.

The Yarralumla properties lack exposure to passing pedestrian traffic and are largely destination locations. The smaller size of the subject property in comparison to the two Yarralumla sales also warrants a higher site rate. Overall a much higher site rate is warranted for the subject property and we have adopted \$3,000 per square metre'.

- 3.84 While the Colliers International valuation advice identifies a 'site rate' of \$3,000 per square metre, for the purpose of calculations the Colliers International valuation advice uses a 'site rate' of \$4,000 per square metre. This is an internal inconsistency in the document which was unresolved.

- 3.85 The Colliers Internal valuation advice therefore calculates the unimproved market value of the Crown lease as \$568,000 (a site area of 142 square metres multiplied by a 'site rate' of \$4,000 per square metre).

- 3.86 There is no further advice or justification with respect to the use of a 'site rate' of \$4,000 per square metre for Block 16, Section 33, Acton (Dobel Boat Hire). The 'site rate' is so far in excess of the 'site rates' adopted for each of the Yarralumla blocks of \$1,042 per square metre and \$1,387 per square metre as to make comparison with these blocks almost meaningless.

Payment of a premium in the circumstances

- 3.87 Colliers International advised:

In addition to the unimproved market value of the Crown lease, the property is being essentially compulsorily acquired from the lessee to allow future redevelopment of the West Basin.

In other Jurisdictions, heads of compensation for compulsory acquisition would take into future losses, injurious affection and solatium. Due to confidentiality most of the details of these examples cannot be set out in this advice. As this is not a residential property solatium would not be considered but taking into account future losses, and injurious affection would be taken into account in arriving at a premium.

Whilst the purchase of this property is not being progressed as compulsory acquisition, it is not unreasonable to pay a premium over its straight real estate value for the above heads of compensation of up to \$500,000.

- 3.88 This is advice for which there is no underpinning calculations or methodology. There is no further explanation as to how this figure was derived or calculated.

3.89 The Capital Valuers report finally concludes:

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.

Execution of the purchase

3.90 The Colliers International valuation advice was emailed direct from the principal of Colliers International to the Chief Executive Officer of the Land Development Agency on the afternoon of Monday, 30 November 2015. Oral instructions appear to have been given by the Chief Executive Officer of the Land Development Agency to the ACT Government Solicitor for the acquisition some time after this time but no written instructions could be found. A handwritten file note, dated 2 December 2015, in the office of the ACT Government Solicitor recognised the apparent acquisition price of \$1.0 million for the purpose of querying whether it was GST inclusive or exclusive.

3.91 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.

3.92 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'.

3.93 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 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'.

Land Development Agency Board involvement

3.94 The Land Development Agency Board was purportedly advised of the acquisition of Block 16, Section 33, Acton (Dobel Boat Hire) at its 10 December 2015 meeting. The Chief Executive Officer of the Land Development Agency advised that they provided verbal updates to the Land Development Agency Board on the proposed acquisition of Block 16, Section 33, Acton (Dobel Boat Hire) prior to the acquisition being made.

- 3.95 The Chief Executive Office of the Land Development Agency provided a verbal update, which was recorded in the Adopted Minutes as:

The Land Development Agency has acquired Lake Burley Griffin Boat Hire for \$1 million. This includes the purchase of the business and a disruption fee; nothing that the price reflects the fact that the proprietor has NCA approval to build over the water.

- 3.96 Following inquiries by the Audit Office as part of this audit, the Land Development Agency confirmed that the Adopted Minutes from the 10 December 2015 meeting were incorrect and that the above verbal update should have stated 'Dobel Boat Hire Pty Ltd' rather than 'Lake Burley Griffin Boat Hire'.

- 3.97 This error was corrected in further advice to the Land Development Agency Board in the Chief Executive Officer's Report Board paper on 25 August 2016 that stated:

I provided a verbal update at the 10 December 2015 LDA Board meeting (Agenda item 149.3.1 - CEO's Report) about the West Basin Acquisitions. In my update, I advised the Board that the Lake Burley Griffin Boat Hire had been acquired for \$1 million. I wish to correct the record of that meeting by advising the following:

- The Crown Lease over Block 16 Section 33 Acton was surrendered to the Territory for a Surrender Sum of \$1 million (excl GST), paid by the LDA to the lessee (Dobel Boat Hire Pty Ltd).
- The boat hire business that operated on that land (Lake Burley Griffin Boat Hire) was purchased by the LDA for \$575,000 (excl GST).

Lake Burley Griffin Boat Hire business

- 3.98 Notwithstanding that there was no approval from the ACT Planning and Land Authority, Dobel Boat Hire Pty Ltd sub-let the boat hire and cafe business to Lake Burley Griffin Boat Hire. The terms of the sub-lease were for an initial period of five years from 1 January 2003, with three options of five years each, i.e. 20 years in total and expiring in December 2022. The annual rental was \$18,000.

- 3.99 Lake Burley Griffin Boat Hire was considered by the Land Development Agency to have 'a tenure of sorts over block 16 and should be treated as persons impacted by the government's decision to develop the West Basin foreshore'. The Land Development Agency commenced discussions with the owners of Lake Burley Griffin Boat Hire on 27 May 2014 and later met with the owner and their legal adviser on 20 October 2014 for a formal discussion. At this meeting the owner indicated that they had no desire to continue working the business and would entertain an offer. It was agreed that the Land Development Agency would obtain valuations to inform further negotiations.

The valuation process

3.100 In February 2015, the Land Development Agency informed the owners of Lake Burley Griffin Boat Hire that three valuers had been appointed 'to undertake a valuation of your business undertakings, stock and any other matters that they consider to hold value' and to request access to the premises for the purposes of the valuation.

3.101 As discussed in paragraph 3.62, the Land Development Agency commissioned Herron Todd White and MMJ Valuers to undertake valuations for Block 16, Section 33, Acton (Dobel Boat Hire). The valuation reports provided by Herron Todd White and MMJ Valuers provided a valuation of:

- the Crown Lessee's interest in the land, being the interest of Dobel Boat Hire Pty Ltd; and
- the business being operated from the site by Lake Burley Griffin Boat Hire Pty Ltd.

3.102 In addition to Herron Todd White and MMJ Valuers, the Land Development Agency commissioned PwC to provide a valuation of the Lake Burley Griffin Boat Hire business only.

Owners valuation advice

3.103 On 13 December 2014, a business advisor for the owners sent a letter to the owners providing advice in relation to the compensation amount that they should seek from the ACT Government for the purchase of the business. The business advisor noted:

Whilst I would ordinarily refer you to an expert in the field of compensation, I am conscious of the current timelines and unavailability of other professionals at present, which will, without sound advice, inhibit the negotiation process. To this end, I am happy to comment on what I believe should be the very **minimum amount** that you should be recompensed.

3.104 Little detail was provided in the advice, but the business advisor noted:

... I would suggest that a figure of **no less** than 1.7 million be sought from the government. In any event, I trust that you will be rewarded appropriately.

Commissioned valuation advice

3.105 Herron Todd White provided a valuation report in April 2015 and MMJ Valuers provided a valuation report in May 2015. PwC provided valuation advice on 29 July 2015, noting:

This report provides our opinion on the reasonableness of [the owners' business advisor's] methodology and calculations and high level commentary on his assumptions based on [Lake Burley Griffin Boat Hire's] recent financial performance. We have also provided a high level view on value based on the Business's financial performance and further information provided by [the owners' business advisor].

3.106 PwC provided heavily qualified advice, and advised that:

To express a reliable view on the value of the Business ... we would need more information than that currently available.

3.107 MMJ Valuers and Herron Todd White also noted the limitations of the information on which they could provide valuation advice.

3.108 MMJ Valuers valued the Lake Burley Griffin Boat Hire business at \$278,750 (GST exclusive), while Herron Todd White and PwC valued the business at \$270,000 (GST exclusive). The basis for the valuations are set out in Table 3-2.

Table 3-2 Lake Burley Griffin Boat Hire valuation advice

	Goodwill (\$ GST ex)	Assets (\$ GST ex)	Total (\$ GST ex)
MMJ Valuers	243,750	35,000	278,750
Herron Todd White	270,000	Not valued	270,000
PwC	100,000	170,000	270,000

Source: ACT Audit Office

3.109 On 3 August 2014, the business advisor for the owners of Lake Burley Griffin Boat Hire provided further advice in relation to the valuation of the business. This was shared with PwC and further advice sought from PwC. On 24 August 2015 PwC comprehensively refuted the further advice from the business advisor to the owners and wrote to a Senior Manager for the City to the Lake Project Team reaffirming its view 'that the upper limit of compensation should be \$270k'.

Execution of the purchase

3.110 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.

3.111 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.

Land Development Agency Board involvement

3.112 As mentioned in paragraph 3.97, the Land Development Agency Board was advised of the acquisition of Lake Burley Griffin Boat Hire on 25 August 2016, when the Adopted Minutes of the December 2015 meeting were corrected. The Chief Executive Officer of the Land Development Agency advised that they provided verbal updates to the Land Development Agency Board on the proposed acquisition prior to the acquisition being made.

4 ADMINISTRATIVE MATTERS

Summary

Conclusion

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

	Paragraph
<i>Planning and Development (Land Acquisition Policy Framework) Direction 2014 (No 1)</i> (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	4.20

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'.

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. 4.21

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. 4.22

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. 4.47

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'. 4.48

Notwithstanding that the Board did not have the authority to limit the kinds of 4.49

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 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. 4.51

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. 4.78

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. 4.83

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. 4.87

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 4.96

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 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. 4.120

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. 4.121

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. 4.142

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 4.143

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 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. 4.144

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. 4.155

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). 4.156

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 4.168

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. 4.177

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. 4.180

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. 4.186

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 is potential for conflict of interest and they do not promote transparency and 4.187

accountability.

Land Acquisition Policy Framework

- 4.1 On 14 June 2014, the Minister for Economic Development signed the *Planning and Development (Land Acquisition Policy Framework) Direction 2014 (No 1)*. It is a Notifiable Instrument (NI2014-264), which came into effect in June 2014. The Framework:

... provides the principles that are to govern the exercise of the Land Development Agency functions under the *Planning and Development Act 1997*. The framework also supports the ACT Government's *Statement of Governance Arrangements* for the Land Development Agency.

The framework is to enable the Land Development Agency to pursue business opportunities for the acquisition of land available on the market.

Policy intent for the Land Acquisition Policy Framework

- 4.2 The development of the Land Acquisition Policy Framework commenced in 2013. A September 2013 Land Development Agency Board paper in relation to the proposed Framework stated:

The Minister has also asked that [Economic Development Directorate] investigate options whereby the Land Development Agency might strategically acquire land from willing non-government lessees (that is, in situations where using the Government's compulsory acquisition powers would not be necessary or appropriate) to further the Government's land development goals and without placing pressure on the Budget.

While the Land Development Agency already has the legal capacity to acquire land, it would be desirable if a policy framework were in place to guide the Agency in the exercise of that capacity.

- 4.3 The September 2013 Land Development Agency Board paper noted that broader Government policy had identified that 'much of Canberra's future development will need to be accommodated through the renewal of existing urban areas (that is, where land has been previously leased to non-government entities)' and that 'circumstances are likely to arise in the future where the renewal process could be facilitated by the [Land Development Agency] acquiring land from non-government lessees'.

- 4.4 The paper also envisaged that proposals for the purchase of land would be brought to the Board for approval or, where appropriate, to Ministers for approval:

In practice, acquisition proposals would be brought before the Board, who will then consider assessments of proposals developed by Land Development Agency officers against the Cabinet-agreed principles and tests. The assessments will also be accompanied by triple bottom line analyses based on the framework used for Cabinet submissions ...

It is also proposed that where the price of an acquisition exceeds a given threshold, following the Board's agreement, approval will also be sought from the Chief Minister

and the Minister for Economic Development. The Board's view is sought on what it believes to be a suitable price threshold. [Economic Development Directorate] suggests a \$10 million threshold would be appropriate.

Land Acquisition Policy Framework principles and thresholds

4.5 According to the Land Acquisition Policy Framework:

All proposed acquisitions are to be assessed against the principles and associated tests provided in the Land Acquisition Policy framework. All principles (tests) must be followed for an acquisition.

Land Acquisition Policy Framework principles

4.6 The Land Acquisition Policy Framework provides for a series of principles (tests) to apply to the acquisition of land. Table 4-1 identifies the nine tests to be applied to potential land acquisitions.

Table 4-1 Land Acquisition Policy Framework Principles (Tests)

	Test
1	An intended outcome has been identified for the proposed acquisition site.
2	The intended outcome for the proposed acquisition advances the Government's land development policies as set out in the ACT Planning Strategy and any other relevant Government strategic spatial planning documents and requirements.
3	The intended outcome for the proposed acquisition is consistent with the Statement of Government Policy for the Land Development Agency.
4	The intended outcome for the proposed acquisition is consistent with any other relevant Government policies.
5	The proposed purchase price for the site is consistent with the independent market valuation.
6	If a commercial outcome is sought from the proposed acquisition site, a business case has been prepared that demonstrates that a satisfactory commercial return will be realised, taking into consideration any holding costs, redevelopment costs, and opportunity costs.
7	If a non-commercial outcome is sought from the proposed acquisition site, any holding costs, redevelopment costs, and opportunity costs have been demonstrated to be reasonable and not onerous.
8	The proposed acquisition will not expose the Territory to risks that are not appropriately managed.
9	The intended outcome for the proposed acquisition is reasonably achievable.

Source: ACT Audit Office

Acquisition thresholds for the Land Acquisition Policy Framework

4.7 The Land Acquisition Policy Framework provides for thresholds for decision-making on land acquisitions. Table 4-2 identifies the thresholds and relevant decision-makers.

Table 4-2 Acquisition thresholds and approved decision makers

Threshold	Approved decision maker	Additional requirements
Below \$5 million	Land Development Agency Board ³	Advice to Minister for Economic Development or the Minister responsible for administering Chapter 4 of the <i>Planning and Development Act 1997</i>
Between \$5 million and \$20 million	Chief Minister and Treasurer	LDA to provide a business case to Treasury for these proposals
Above \$20 million	Government	

Source: ACT Audit Office

4.8 The Land Acquisition Policy Framework (Notifiable Instrument NI2014-264) provides for a series of principles (tests) to be applied to all potential purchases by the Land Development Agency and requires:

- land purchases valued at below \$5 million to be approved by the Land Development Agency Board; and
- land purchases valued at between \$5 million and \$20 million to be approved by the Chief Minister and Treasurer; and
- land purchases valued above \$20 million to be approved by the Government.

4.9 The Land Acquisition Policy Framework also requires that Government agreement be sought for any proposed acquisition that could result in an annual limit of \$20 million being exceeded:

Government agreement is required for any acquisition by the LDA that results in a cumulative annual total of \$20 million in acquisition being exceeded. The cumulative annual total means all acquisitions within a financial year - 1 July to 30 June.

Land Acquisition Policy Framework Interpretation

4.10 In August 2015, the Land Development Agency developed a Land Acquisition Policy Framework Interpretation document (the Interpretation document). The purpose of the Interpretation document was:

To seek the Land Development Agency (LDA) Board's input into Management's interpretation and implementation of the Land Acquisition Policy Framework (the Framework) at an operational level.

4.11 The Interpretation document was presented to the Land Development Agency Board for its consideration and approval on 27 August 2015. The Interpretation document presented options for the interpretation of the Land Acquisition Policy Framework and proposed a preferred recommendation. The Interpretation document stated:

³ The Land Development Agency Board is able to refer any acquisition below \$5 million to the Government should it consider such action appropriate.

The Framework can be interpreted to apply to land acquisitions in two different ways, namely:

- a) new land development opportunities outside the LDA's core business of delivering the Territory's Indicative Land Release Program; or
- b) all LDA land acquisitions including leased and unleased land.

Potential application of the Land Acquisition Policy Framework to new development opportunities outside the delivery of the Indicative Land Release Program

4.12 In relation to the first scenario, the Interpretation document states:

Under this interpretation, the purpose of establishing the Framework is to provide the LDA guidance for land acquisition that is 'opportunistic' in nature allowing the LDA flexibility to respond to current market opportunities or future market conditions that will allow the Territory to achieve its strategic land use objectives, for example urban infill.

...

This interpretation is based on the Framework applying to new opportunities only, such as "land banking" for future strategic outcomes, and not core LDA business activities.

4.13 Accordingly, the Interpretation document provides that land acquisitions that are considered to fall under the description of 'new business opportunities' are:

- land acquired for strategic development where 'the characteristics of these acquisitions are speculative and opportunistic in nature (with no particular project identified), and usually for longer term development. The final outcome is unknown ...'
- 'land acquired to facilitate a Government request/outcome'.

Potential application of the Land Acquisition Policy Framework to all land acquisitions

4.14 In relation to the potential application of the Land Acquisition Policy Framework to all land acquisitions, the Interpretation document states:

The second interpretation is broader. Under this interpretation, the framework is to be applied when the LDA exercises its functions under the Act. This would capture all land acquisitions made by the LDA, regardless of whether the acquisitions are opportunistic or part of the LDA's core revenue program.

4.15 Accordingly, the Interpretation document provides that 'in addition to the acquisitions referred to under interpretation A [refer to paragraphs 4.12 and 4.13], this interpretation would also include':

- 'land acquired for the purposes of undertaking development on projects identified in the Indicative Land Release Program (ILRP) and thereby meeting our Statement of Intent targets. These objectives are set out in documents already approved by Cabinet and the targets represent the LDA's committed projects and core business'; and

- ‘land acquired as part of a response to a known direct sale. This may involve land acquired as part of a bigger land sale transaction (which later becomes ‘residual’), in order to achieve the best outcome’.

4.16 In relation to the potential application of the Land Acquisition Policy Framework to all land acquisitions, the Interpretation document states:

Despite this interpretation providing Government with more transparency and involvement in the decision making for approving land acquisitions from the private sector, it does have some limitations.

From a practical perspective, there is an argument that:

- the threshold is insufficient, and would be reached very quickly;
- where the land to be acquired forms part of an existing project, the approval processes outside of the LDA could lead to bottlenecks in project delivery, because of the lack of project understanding and additional approval time required; and
- there is potential for the LDA to lose its flexibility and agility in responding to market opportunities.

Land Development Agency Board decision

4.17 Following its consideration of the Land Acquisition Policy Framework Interpretation document, the Land Development Agency Board recommended that the narrower interpretation be adopted for the Framework:

- The interpretation of the Framework preferred by the LDA is:
 - The acquisition of new land development opportunities outside of the LDA’s core business of delivering the Indicative Land Release Program should be subject to the Framework; and
 - The annual acquisition limit of \$20 million takes effect at the time a delegate decides to proceed with the purchase (i.e. upon approval).

Explanation of Land Acquisition Policy Framework Interpretation

4.18 The Land Development Agency has sought to explain the interpretation of the Land Acquisition Policy Framework with reference to ‘strategic acquisitions’ and ‘project acquisitions’. These terms are not used in either the Land Acquisition Policy Framework or the Interpretation document. Email advice from the Land Development Agency to the Audit Office seeks to explain the distinction as follows:

A ‘strategic acquisition’ is made under the *Planning and Development (Land Acquisition Policy Framework) Direction 2014 (No 1)*. It is an acquisition of land for future land development opportunities that are outside of the Land Development Agency’s core business of delivering the Land Release Program.

A ‘project acquisition’ is a land acquisition for land development activities associated with the Land Release Program. These acquisitions are pursued on the basis of the Land Development Agency’s core business. For example, the purchase of a parcel of land that is contiguous to a Land Development Agency development (a development

identified on the Land Release Program), which is required to enable or facilitate that land development.

The Land Development Agency's interpretation of the *Planning and Development (Land Acquisition Policy Framework) Direction 2014 (No 1)* was adopted and endorsed by the Land Development Agency Board in August 2015.

A project acquisition is common practice, made in accordance with the Land Development Agency Financial Delegations and Chief Executive Financial Instructions.

- 4.19 The Land Development Agency advised that it had not sought legal advice prior to presenting the paper to the Board nor did the Land Development Agency advise the Minister or Cabinet about the proposal. The Land Development Agency Board similarly did not seek legal advice on the impact of the Land Acquisition Policy Framework Interpretation document.
- 4.20 *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'.
- 4.21 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.
- 4.22 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.

Application of the Land Acquisition Policy Framework

- 4.23 There is some evidence that the Land Acquisition Policy Framework, including approval by the Land Development Agency Board, was contemplated for the acquisitions of Block 13, Section 33, Acton (Mr Spokes) and Block 16, Section 33, Acton (Dobel Boat Hire).

Block 13, Section 33, Acton (Mr Spokes)

- 4.24 On 7 August 2015, the Chief Executive Officer of the Land Development Agency provided a brief to the Minister for Urban Renewal in relation to the status of the negotiations for Block 13, Section 33, Acton (Mr Spokes). The brief identified the need for the acquisition process to align with the requirements of the Land Acquisition Policy Framework:

The process will need to align with the policy, risk and value for money principles set out in the Planning and Development Land Acquisition Policy Framework. This is considered to be a less prescriptive process than compulsory acquisition.

- 4.25 A minute prepared by the Acting Director of the City to the Lake Project in relation to Block 13, Section 33, Acton (Mr Spokes) to the Chief Executive Officer and the current Deputy Chief Executive Officer stated:

If negotiations with ... [owners] are to proceed to the making of an offer, an assessment of the proposed purchase should also be undertaken against the principles of the Planning and Development Land Acquisition Policy Framework (July 2014). A copy of the Framework is at [Attachment F](#).

- 4.26 There is no evidence that this was provided to the Chief Executive Officer of the Land Development Agency.

Block 16, Section 33, Acton (Dobel Boat Hire)

- 4.27 A minute drafted for the Chief Executive Officer of the Land Development Agency by the Acting Director of the City to the Lake Project in relation to Block 16, Section 33, Acton (Dobel Boat Hire) stated:

Should you proceed to make an offer that is acceptable to Dobel, a high level assessment of the proposed strategic purchase should also be undertaken against the principles of the *Planning and Development (Land Acquisition Policy Framework) Direction 2014 (No 1)* and the Land Development Agency Board consulted prior to finalising any agreement for sale.

- 4.28 There is no evidence that this was provided to the Chief Executive Officer of the Land Development Agency.

Lake Burley Griffin Boat Hire

- 4.29 A draft brief (dated 24 July 2015) was prepared for the Chief Executive Officer of the Land Development Agency prior to a meeting with the owner of Lake Burley Griffin Boat Hire. The draft brief contained an assessment of the valuations for the proposed acquisition of the Lake Burley Griffin Boat Hire business and attached to that brief was an assessment of the acquisition against the Land Acquisition Policy Framework. There is no evidence that this was provided to the Chief Executive Officer of the Land Development Agency.

Application of the Land Acquisition Policy Framework to the acquisitions

- 4.30 None of the acquisitions were approved by the Land Development Agency Board, despite the Land Acquisition Policy Framework stating that acquisitions for less than \$5 million needed to be approved by that body.
- 4.31 The Land Acquisition Policy Framework Interpretation document, which was presented to the Land Development Agency Board on 27 August 2015, has since been cited by the Chief Executive Officer of the Land Development Agency as authority for being able to purchase Block 24, Section 65, City (land adjacent to Glebe Park) without Land Development Agency Board approval.
- 4.32 The Audit Office sought legal advice on the Land Development Agency's interpretation of the Land Acquisition Policy Framework and the Land Development Agency Board's purported endorsement of the Land Acquisition Policy Framework Interpretation document, to apply only to 'strategic' acquisitions, with 'project' related acquisitions not subject to the principles.

Australian Government Solicitor advice

- 4.33 In relation to whether it was open for the Land Development Agency Board, through its endorsement that 'Land acquisitions constituting new development opportunities outside the LDA's core business of delivering the Indicative Land Release Program to be subject to the Land Acquisition Policy Framework' to delegate its responsibility as set out in the 2014 Ministerial Direction, the Australian Government Solicitor advised:

In our view, the Direction operates to require the Board to agree to all acquisitions below \$5 million regardless of whether the acquisition falls within the LDA's 'core business'. There is no scope for the Board to effectively waive the requirement for the LDA to seek its agreement in relation to particular transactions or classes of transactions, whether by purported delegation of an 'agreement' function or power or otherwise

- 4.34 In support of its advice the Australian Government Solicitor advised:

There is nothing in the PD Act or the FM Act (or, so far as we can determine, in any other legislation) which provides the Board with any capacity to alter the effect of the Direction. More particularly, the Board does not have any power to effectively waive the requirement established by the Direction that it agree to certain acquisitions of land by the LDA.

Indeed, s 77 of the FM Act provides that the functions of the Board include to govern the LDA consistently with the PD Act and to ensure that the LDA complies with any applicable governmental policies. The Board is accordingly required to govern the LDA consistently with the provisions of the PD Act requiring the LDA to comply with the Direction.

4.35 The Australian Government Solicitor further advised:

The obligations imposed on the LDA in the Direction are relevantly expressed to be mandatory and inclusive of all acquisition transactions. Clause 2.1 states that '*all* proposed acquisitions are to be assessed against the principles ... [and that] *All* tests *must be* followed for an acquisition' (emphasis added). Additionally, cl 2.2.1 states that the thresholds and decision makers '*apply to all* LDA land acquisitions' (emphasis added). This relevantly includes the requirement in cl 2.2.1(a) to seek the LDA Board's agreement for acquisitions below \$5 million.

In our view, the Board's interpretive decision is inconsistent with the plain language of the Direction and is incorrect. The Direction requires the LDA to follow the requirements in 'all' LDA land acquisitions. There is nothing in the Direction that gives the Board or the LDA any discretion to depart from this. There is also nothing to suggest a distinction exists between the LDA's acquisitions with respect to 'new land development' and those with respect to its 'core business'.

4.36 The Australian Government Solicitor further advised:

We note for completeness that the policy justification for the Board's interpretation does not sit comfortably with the statutory framework for the Direction. The LDA's Acting Chief Financial Officer (CFO) preferred the interpretive decision on the basis it would give the LDA 'the necessary flexibility to pursue opportunities as they arise'.⁴ However, we note that s 37(2) of the PD Act requires the Minister to consult with the LDA and consider its comments before issuing the Direction. In other words, the policy issue identified by the Acting CFO is one which the statutory framework for the Direction contemplates being identified and considered by the Minister before issuing the Direction. The statutory framework leaves no room for the LDA or the Board to later 'overlay' a preferred policy position so as to alter the clear effect of the Direction.

Overall, it is clear that the Board had no discretion to depart from the requirement that it agree to all purchases below \$5 million. Consequently, the LDA should have sought the Board's agreement for the 2015 acquisitions.

4.37 Accordingly, in relation to whether the Chief Executive Officer of the Land Development Agency had the authority to approve the purchase of the land or whether the Land Development Agency Board should have approved the purchases, the Australian Government Solicitor advised:

We consider the better view is that the Direction operates to require Board agreement to all acquisitions below \$5 million.

4.38 In response to the draft proposed audit report, the Chief Executive Officer of the Land Development Agency advised:

The Land Development Agency's understanding of the Direction from the antecedents was it did not apply to all acquisitions. The Direction was instigated by the Land Development Agency with the intention of applying to strategic acquisitions outside of the Indicative Land Release Program. This was a misunderstanding on the Land Development Agency's behalf.

⁴ See Item 145.3.2.4 of the minutes of LDA Board Meeting 145 (27 August 2015).

Land Development Agency Board advice

4.39 In response to the draft proposed audit report, the Chair of the Land Development Agency Board has provided advice to the Audit Office that the understanding of the Land Development Agency and the Land Development Agency Board was that the Land Acquisition Policy Framework was never intended to apply to all land acquisitions undertaken by the Land Development Agency. The Chair of the Land Development Agency Board advised that the development of the Land Acquisition Policy Framework occurred in the context of the Government giving to the Land Development Agency a '**wider role**', namely the '**strategic** acquisition of land from willing non-government lessees to further the Government's land development goals and without placing pressure on the Budget'. The Chair of the Land Development Agency Board advised that this was a policy change for the Land Development Agency, which was additional to the role it has had in relation to the delivery of the Indicative Land Release Program. The Chair of the Land Development Agency Board further advised:

Until the beginning of 2014-15, the required deliverables of the LDA, as set out in the annual Statement of Government Policy: Land Policy and Development Objectives, were to focus on the delivery of the Government's required Indicative Land Release Program, and related policy objectives concerning housing affordability, sustainability, climate change, inter-agency coordination, efficiency and effectiveness, agreed financial returns and community engagement.

The Statement of Government policy for the Land Development Agency for 2014-15 included an additional deliverable, "pursue development opportunities where such opportunities would be consistent with the Government's policy framework for land acquisitions." It should be noted that this deliverable was **additional** to the first deliverable, "deliver the Government's Indicative Land Release Programs for residential, commercial, industrial and community land uses."

This change to the Statement of Government Policy for the LDA ... reflects the policy changes that also led to the development and promulgation of the Planning and Land Development (Land Acquisition Policy Framework) Direction.

As noted at paragraph 4.3 of the ... report, the Government began to give consideration during 2013 to a **wider** role for the LDA, namely the **strategic** acquisition of land from willing non-government lessees to further the Government's land development goals and without placing pressure on the Budget. This proposed policy change, initiated by the Economic Development Directorate, was advised to the LDA Board in August 2013, and further considered by the Board in September 2013. The September 2013 Board paper included a summary of how the proposed Strategic Land Acquisition Framework would work. It is clear from this summary that the operation of this proposed framework was seen as being separate from the established arrangements for the implementation of the Indicative Land Release Program.

In December 2013, the LDA Board was advised of the proposed change to the deliverables contained in the Statement of Government Policy for the LDA for 2014-15. That advice to the Board stated that the proposed new overarching deliverable would "potentially allow acquisitions to be made without taking individual proposals to Cabinet". Thus what was being proposed was a **widening** of the LDA's scope and flexibility in relation to land acquisitions. This interpretation is consistent with the

advice provided to the Minister for Economic Development later that month that the new deliverable would “enhance the capacity of the LDA to strategically acquire land to support its business activities in a way that would be consistent with the governance arrangements currently applying to the Agency.”

4.40 The Chair of the Land Development Agency Board further advised:

The delivery of the Indicative Land Release Program routinely requires the acquisition of land. Nowhere, in all of the documentation relating to the development of this Direction, is there any indication that the acquisition of land for the purposes of the achievement of the Indicative Land Release Program would fall within the scope of this Direction. Rather, the consistent language used refers to widening of the LDA’s scope and flexibility, an additional deliverable and to strategic land acquisitions.

It is our view that the application of the Direction needs to be understood in that context, and in relation to its purpose, which as set out at clause 1.2 of the Direction states “the framework is to enable the LDA to pursue business opportunities for the acquisition of land available on the market.” Against this body of evidence, the arguments presented in the draft report, including the comments provided by the Australian Government Solicitor, offers nothing more than a literal interpretation of the wording of the Direction in isolation from its context and the policy process that gave rise to its promulgation.

4.41 The Chair of the Land Development Agency Board further advised:

A further consideration in support of the Board’s interpretation of the application of the Direction is the practical implications if the Direction was to be interpreted literally as proposed in the advice from the Australian Government Solicitor. This consideration relates to the annual scale of land acquisitions undertaken by the LDA compared with the requirement in the Direction that once land acquisitions in any financial year had reached the cumulative total of \$20m then all additional proposed acquisitions would need to be referred to Ministers for decision.

As detailed in its annual financial statements, LDA land acquisitions over the last few years have totalled \$89m in 2015-16, \$82m in 2014-15, \$36m in 2013-14 and \$58m in 2012-13. Given this scale of land acquisitions, a requirement to refer all acquisitions to Government after an annual threshold of \$20m is reached would have been administratively unworkable.

4.42 In response to the final proposed audit report, the former Deputy Chair of the Land Development Agency Board has provided advice to the Audit Office that:

The interpretation presented [by the Chair of the Land Development Agency in response to the draft proposed report] is consistent with the Commonwealth *Acts Interpretation Act 1901*. That Act provides guidance on how to arrive at an interpretation that best achieves the “Acts” purpose or object. Section 15AA of the Act states, “In interpreting a provision of an Act, the interpretation that would best achieve the purpose or object of the Act (whether or not that purpose or object is expressly stated in the Act) is to be preferred to each other interpretation.” Further, Section 15AB states, “in the interpretation of the provision of an Act, if any material not forming part of the Act is capable of assisting in the ascertainment of the meaning of the provision, consideration must be given to that material ... to determine the meaning of the provision when ... the ordinary meaning conveyed by the text of the provision taking into account its context in the Act and purpose or object underlying

the Act leads to a result that is manifestly absurd or is unreasonable.” It is our contention that this is precisely the case with the “plain language” interpretation of the Land Acquisition Policy Framework Direction, and why the Board’s interpretation of the application of this Direction is to be preferred.

- 4.43 In response to the draft proposed audit report, the Chair of the Land Development Agency Board further advised:

It is part of the routine business of the LDA to undertake land acquisitions and related business transactions to ensure that the Indicative Land Release Program can be achieved effectively. The land acquisitions that are the subject of [the audit] were undertaken to give effect to the achievement of the City to the Lake element of the Indicative Land Release Program, which is the core business of the LDA.

Page 12 of the 2014-18 Indicative Land Release Program document illustrates that the extent of the City to the Lake project covers the sites of the boat and bicycle hire businesses and redevelopment of the site opposite the CIT City campus.

The acquisition of Block 24, Section 65 City was undertaken to facilitate moving the drainage pond and thus allowing for the optimal redevelopment of the site on Constitution Avenue through the re-alignment of Parkes Way. That site was, at the time, included for release in 2015-16 as part of the 2015-19 Indicative Land Release Program.

The acquisitions of Blocks 13 and 16 of Section 33, Acton were undertaken to facilitate the overall development of the City to the Lake project and a release of land for 200 dwellings and 6000 sqm of commercial space in 2017-18 in this area as part of the current Indicative Land Release Program.

- 4.44 The Chair of the Land Development Agency Board further advised:

... the inclusion of the words “all LDA land acquisitions” at clauses 2.2.1 needs to be seen as nothing more than a lack of clarity in drafting. It was clear to the LDA Board that the acquisitions referred to in that clause are those that fall within the scope of this particular policy initiative.

- 4.45 The advice of the Chair of the Land Development Agency Board is noted. However, the Land Acquisition Policy Framework did not draw a distinction, and clearly explain the difference, between acquisitions undertaken for the purpose of the Indicative Land Release Program and other ‘strategic’ acquisitions that may be undertaken by the Land Development Agency.

- 4.46 The Land Acquisition Policy Framework is a Notifiable Instrument that was tabled in the Legislative Assembly. This provides a measure of transparency and accountability for the Land Development Agency with respect to its activities for the acquisition of land. The Land Acquisition Policy Framework first and foremost seeks to provide ‘the principles that are to govern the exercise of the Land Development Agency (LDA) functions under the *Planning and Development Act 1997*’ and in doing so does not differentiate between acquisitions undertaken for the purpose of the Indicative Land Release Program and other ‘strategic’ acquisitions. The Land Acquisition Policy Framework further clearly and explicitly states ‘all proposed acquisitions are to be assessed against the principles and associated tests’. It is also noted that the Land Development Agency’s interpretation of

the Land Acquisition Policy Framework (i.e. not applying to land acquisitions undertaken in the furtherance of the Indicative Land Release Program) also provides the Chief Executive Officer of the Land Development Agency with significant authority for the acquisition of land without needing Board approval.

- 4.47 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.
- 4.48 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'.
- 4.49 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 paper and three months before the transaction was notified to the Board.

2014-15 Land Development Agency annual report

- 4.50 The 2014-15 Land Development Agency annual report describes the application of the Land Acquisition Policy Framework as follows:

The Land Acquisition Policy Framework applies to the approval of land acquisitions constituting new land development opportunities outside the LDA's core business of delivering the Indicative Land Release Program.

- 4.51 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.

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.

Governance and project management

4.52 Given the issues discussed in Chapters 2 and 3, the governance and project management of the City to the Lake Project is considered. The City to the Lake Project is a large and complex project involving a number of ACT Government agencies, the National Capital Authority and stakeholders. ACT Government agencies include:

- the Economic Development Directorate, including the Office of Coordinator General and Infrastructure and Capital Works business units;
- the Land Development Agency; and
- the Environment and Planning Directorate.

4.53 For such a large complex project involving many agencies and stakeholders, it was incumbent on the ACT Government to implement appropriate project governance and management arrangements.

4.54 In response to the final proposed report, the former Deputy Chair of the Land Development Agency Board advised that ‘while, for some periods, the persons occupying the position of the City to the Lake Project Director have been LDA staff members or LDA contractors, the City to the Lake project is not an LDA project’.

Governance

4.55 Effective and appropriate governance arrangements are critical to the successful implementation of government policy. According to the ANAO’s *Successful Implementation of Policy Initiatives* Better Practice Guide (October 2014):

Governance refers to the arrangements and practices which enable an entity to set its direction and manage its operations in order to discharge its accountability obligations and assist in the achievement of expected outcomes. Governance encompasses many facets, including leadership, policies, relationships and control and accountability measures.

- 4.56 It is better practice to set out governance arrangements in a documented governance framework. A documented governance framework would identify:
- the governance structure for a project, including reporting and communication lines;
 - roles and responsibilities, including decision-making responsibilities and authority; and
 - stakeholders and associated interdependencies.
- 4.57 The need for documented governance arrangements for the City to the Lake Project, primarily in order to establish responsibilities and authority for the project, were identified in early April 2014 in correspondence from the Chair of the Land Development Agency Board to the Chief Minister and Treasurer. The *City to the Lake Master Plan Implementation Report* (August 2014) similarly identified the need to set out the governance arrangements for the project.

Correspondence to the Chief Minister and Treasurer (April 2014)

- 4.58 In a letter to the Chief Minister and Deputy Chief Minister on 3 April 2014, the Chair of the Land Development Agency Board wrote:

I understand that it is the Government's intention that [the City to the Lake Project] be implemented in tandem with Capital metro and the urban renewal and redevelopment of the Northbourne Avenue transit corridor, reflecting the inextricable links between these key Government priorities.

In order to bring [the City to the Lake Project] and its various elements to the market, I believe that it is essential that the whole project be progressed to investment ready status. This will provide Government with the flexibility to progress individual elements or the whole project, including key infrastructure elements, in a timely manner in order to maximise public benefit.

- 4.59 The Chair of the Land Development Agency Board identified the lack of an agreed project governance framework for the City to the Lake Project and a preference that this be formally designated to the Land Development Agency Board:

One key matter for [the City to the Lake Project] that remains unresolved is the formalisation of an agreed project governance framework. Ideally this would incorporate oversight of the project in its broadest sense but also account for the various layers of stakeholder engagement and infrastructure planning that will be required across the precinct.

... the strong view of the LDA Board is that overarching responsibility for the ongoing strategic planning and delivery of [the City to the Lake Project] should rest with the LDA.

...

In the interests of efficiency and effective coordination, the LDA is ideally positioned to deliver [the City to the Lake Project] on behalf of the ACT Government. The establishment of a separate authority or agency would be unnecessarily duplicative and potentially undermine the delivery of a coherent land release program.

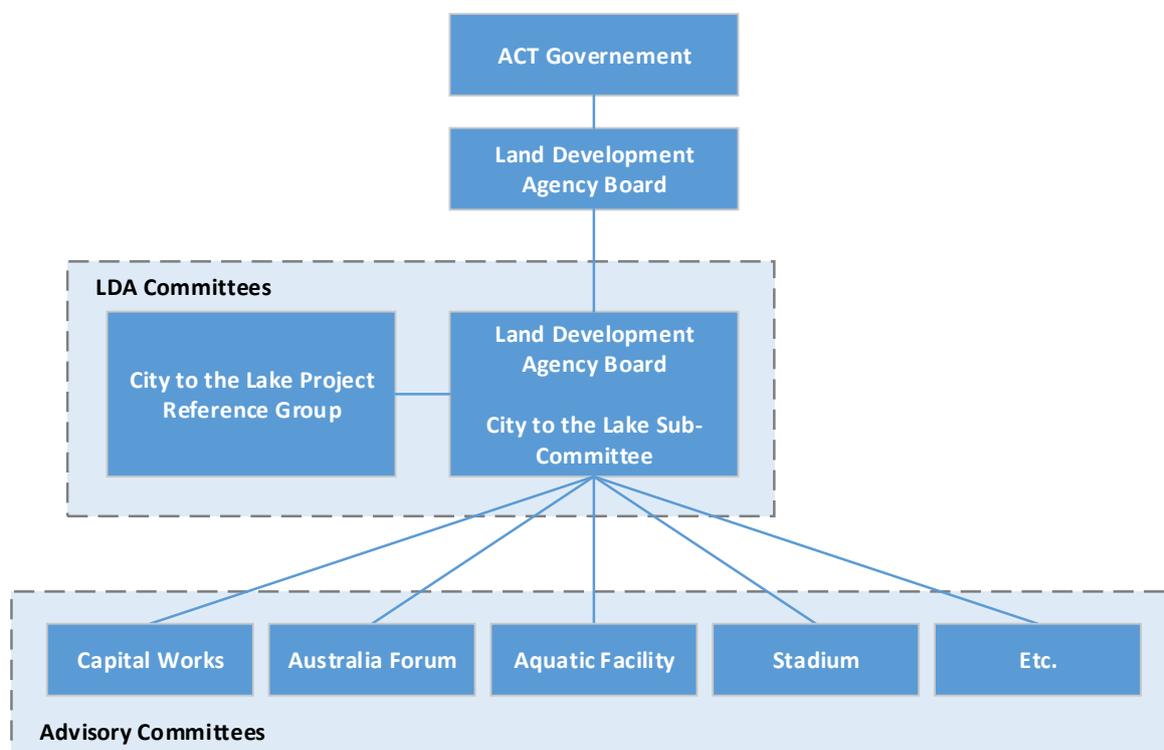
4.60 The Chair of the Land Development Agency Board set out a potential governance framework and advised that:

The key elements of the framework include:

- an LDA Board City to the Lake Sub-Committee, which would include Board members (3) and non-Board members with appropriate expertise (4);
- a City to the Lake Project reference Group of relevant stakeholders that would provide advice to the Sub-Committee; and
- a series of advisory committees associated with key infrastructure elements of the project (such as the Australia Forum, Stadium etc).

4.61 The Chair of the Land Development Agency Board’s proposed governance arrangements for the City to the Lake Project are set out in Figure 4-1.

Figure 4-1 Land Development Agency Board Chair’s proposed governance arrangements (April 2014)



Source: ACT Audit Office

Advice to the Chief Minister and Treasurer

4.62 On 14 April 2014, the former Deputy Chief Executive Officer of the Land Development Agency provided a brief to the then Chief Minister in relation to the letter from the Chair of the Land Development Agency Board and the governance arrangements for the City to the Lake Project generally. The former Deputy Chief Executive Officer of the Land Development Agency acknowledged that an agreed governance framework was yet to be resolved:

To this point, all of the work on the CttL has been undertaken by various branches of the Economic Development Directorate (EDD), including the Office of the Coordinator-General, EDD's Infrastructure and Capital Works Branch and the Urban Renewal team within the LDA.

While this work is continuing, the formalisation of an agreed project governance framework has yet to be resolved, which has led to some conjecture about how best to deliver its various elements ...

- 4.63 The former Deputy Chief Executive Officer of the Land Development Agency advised of a preference not to implement the model proposed by the Chair of the Land Development Agency Board, and that the project would be overseen by the Office of Coordinator General in the Economic Development Directorate. They advised that 'an appropriate line of sight' to the Land Development Agency Board would be maintained because the Chief Executive Officer of the Land Development Agency was also a Land Development Agency Board member:

The Project Governance Framework proposed by [the Chair of the Land Development Agency Board] recognises that at its heart, CttL is an urban renewal/metropolitan redevelopment project. ... On this basis, it makes good sense for the LDA to take a leadership role in managing and delivering the project as this will ensure a higher degree of coherence and optimise resource allocation across the land release program.

That said, there are a number of elements that set CttL apart from the LDA's other urban renewal projects, most specifically the large infrastructure items such as the proposed stadium, the Australia Forum, the aquatic facility and public realm in West Basin, and the proposed realignment of Parkes Way. Given the scale, complexity and diversity of interests involved in each of these projects, responsibility for business case development and stakeholder management would sit better with the Coordinator-General than with the LDA Board and its proposed sub-committee (although an appropriate line-of-sight to these activities would be maintained through [the Chief Executive Officer of the Land Development Agency's] dual roles as an LDA Board Member and Coordinator-General).

- 4.64 The brief included a suggested response to the Chair of the Land Development Agency Board, which included an alternative governance structure for the project. The only change to the governance structure proposed by the Chair of the Land Development Agency Board Chair (refer to Figure 4-1) was the insertion of the Coordinator-General into the structure, below the Land Development Agency Board and its proposed sub-committees.
- 4.65 The brief included a series of recommendations, including the establishment of a Land Development Agency Board sub-committee and a Project Reference Group and for the Coordinator-General to assume 'formal responsibility for managing the processes (such as business case development and stakeholder engagement) associated with the key infrastructure elements of City to the Lake'.

- 4.66 The recommendations in the brief were not agreed by the then Chief Minister, who provided an annotated response as follows:

I must say - this brief seems very light on in terms of advice to [Chief Minister] (and potentially Cabinet) on project governance for such an important long term project for our city's future. I don't have a problem with sub-committee or Reference Group but I do believe that some external (to the ACT) advice is provided directly to me as [Chief Minister] on robust governance for CttL including any appropriate safeguards needed to ensure utmost probity is observed (+ rid any chance for corrupt processes or inappropriate influence) and managed from the earliest stages of the project. - a letter from LDA + advice from EDD (both who are conflicted in the roles they already play in this project) is not appropriate + advice from an external consultant is essential before further decision is taken.

Governance health check (July 2014)

- 4.67 In July 2014 a *Governance health check* report was completed by a consultant in relation to 'the results of a governance review (health check) of the City to the Lake (CttL) urban renewal project'. The *Governance health check* (July 2014) found that 'in broad terms the current arrangements provide a sound basis for governance of [the City to the Lake Project] over the next 20 years'. In this respect the consultant identified they had 'not uncovered any evidence of immediate emerging problems associated with [the City to the Lake Project's] existing governance practices and hence we do not see value in developing completely new governance arrangements'.

- 4.68 Notwithstanding the broad conclusion, the *Governance health check* (July 2014) identified 'some gaps need to be addressed in order to provide better accountability, strategic oversight and risk management'. The *Governance health check* (July 2014) recommended that:

- Economic Development 'should continue to take overall responsibility for the project, including its economic dimensions'; and
- the Land Development Agency should have 'responsibility for managing the release of land in accordance with Territory plans and regulations'.

- 4.69 The *Governance health check* (July 2014) identified a series of key shortcomings associated with the City to the Lake Project including:

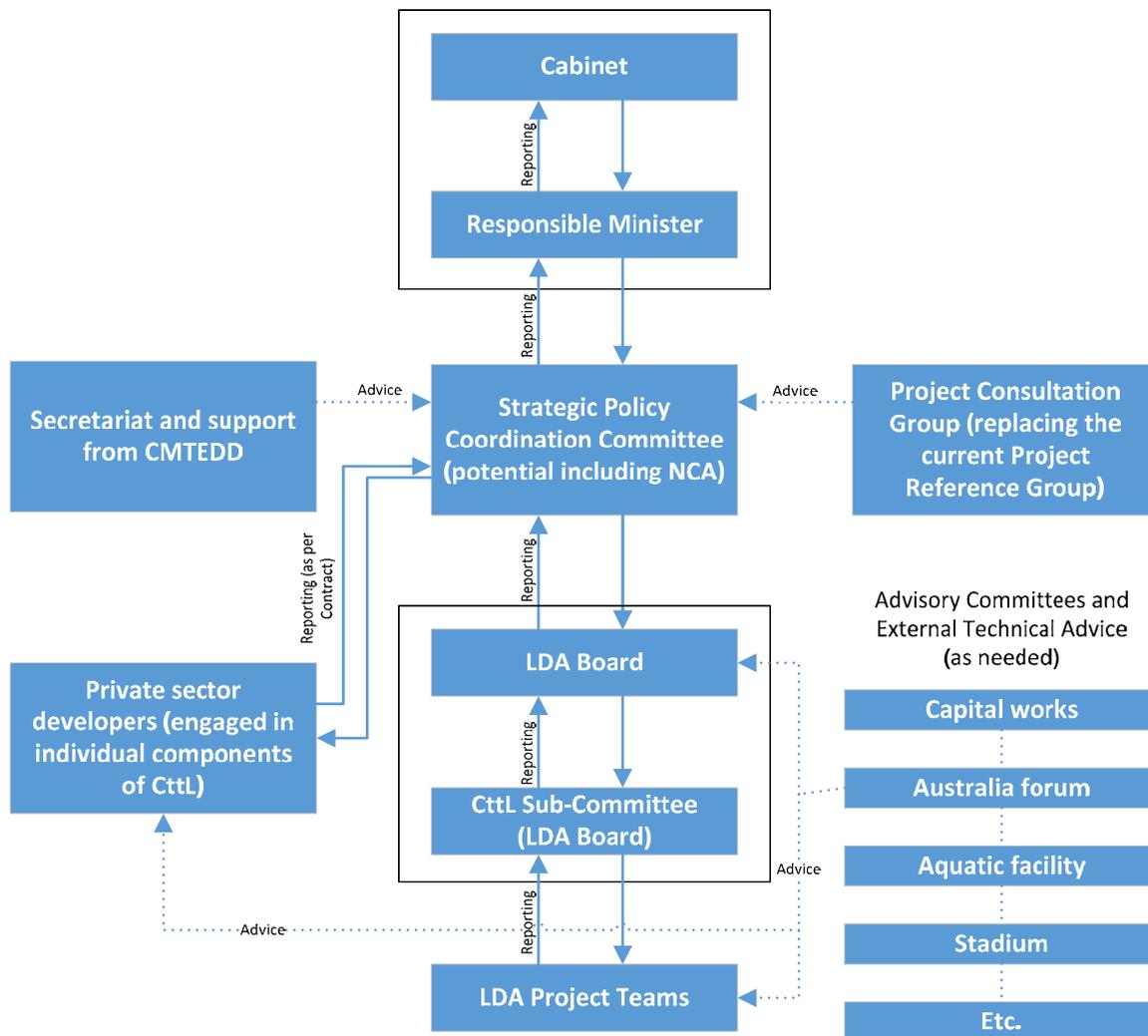
- 'an overarching group (or body) is needed to ensure strategic policy issues are considered' and that 'its remit should be to monitor and guide the project from a high level';
- a 'need to better define the objectives of [the City to the Lake Project]. At present too many objectives are outlined, with no clear way of establishing how to resolve competing priorities between these objectives';
- a 'lack of a clearly articulated performance framework for the project', noting that 'without a clearly articulated performance framework it will be difficult to ascertain

progress against [the City to the Lake Project’s] objectives and provide accountability to Government, Ministers and the community through project reporting’;

- a ‘lack of a whole-of-project risk assessment, plan and framework’; and
- ‘absence of a mechanism for cross-Directorate input into [the City to the Lake Project’s] governance’.

4.70 The *Governance health check* (July 2014) made four recommendations for improvements to the governance arrangements for the City to the Lake Project and also recommended a proposed governance framework for the City to the Lake Project, which is set out in Figure 4-2.

Figure 4-2 Proposed governance framework for the City to the Lake Project



Source: ACT Audit Office

City to the Lake Implementation Plan (August 2014)

- 4.71 The need for documented governance arrangements for the City to the Lake Project was also identified in the *City to the Lake Implementation Plan* (August 2014):

There is governance being applied across all elements of the CTL project, but this needs to be brought together into one unified and coordinated governance structure operating across all project work streams.

...

Establishment of a governance structure in the early stages of the development of the CTL master plan will underpin the success of the development and delivery of the elements. The key objectives in ensuring that there is strong governance for the programme of work is to provide sound, timely decision making, a single point of accountability for delivery, transparency of the status and hurdles facing the project and a focus for managing and communicating with stakeholders.

...

Project governance is about guiding and monitoring the process of converting investment decisions into value for the organisation, delivering the anticipated benefits to intended beneficiaries.

- 4.72 According to the *City to the Lake Implementation Plan* (August 2014):

A project governance framework is a document prepared for each project outlining who has responsibility and authority to make decisions. It ensures there is clearly defined accountability for all aspects of the project. It is the link between, and support for, the governance decisions made by the LDA and the work of the project team to deliver the project and its outcomes.

Effective accountability requires everyone associated with the project to know:

- What they are responsible for;
- The limits of their authority and tolerance levels;
- When tasks have to be achieved; and
- Communication, reporting and monitoring lines.

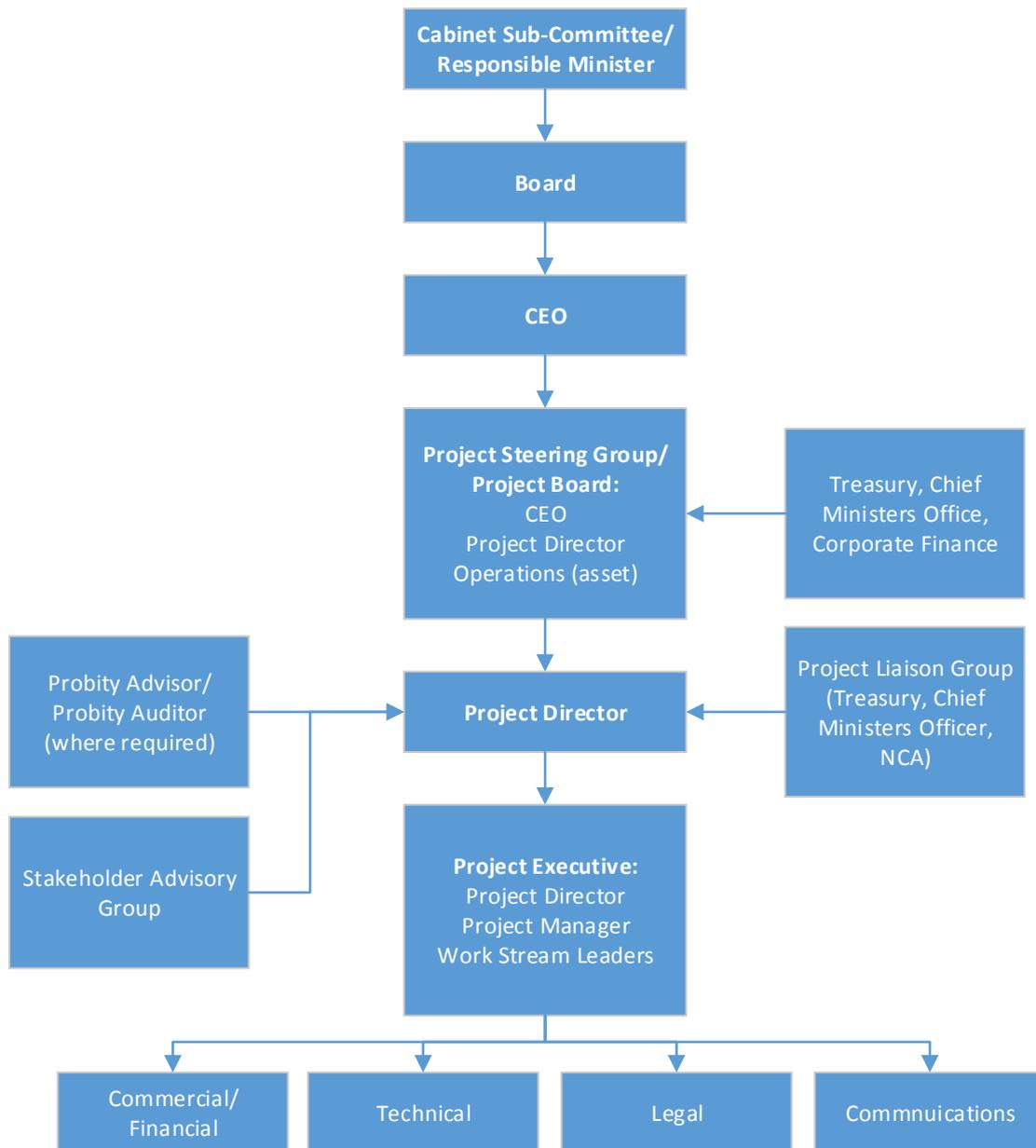
It is important to ensure that there is a process for all project participants to be informed of these arrangements, in particular new project team members as the project progresses.

- 4.73 The *City to the Lake Implementation Plan* (August 2014) proposed a governance model for the project. According to the *City to the Lake Implementation Plan* (August 2014):

A governance model that recognises the LDA as the project sponsor and agency responsible for development and delivery is vital. It is understood that a current governance structure operates for the development of the CTL master plan. The governance model presented below is an output that has been generated through discussion with the LDA.

- 4.74 The governance model proposed in the *City to the Lake Implementation Plan* (August 2014) is set out in Figure 4-3.

Figure 4-3 Proposed governance model in the City to the Lake Implementation Plan (August 2014)

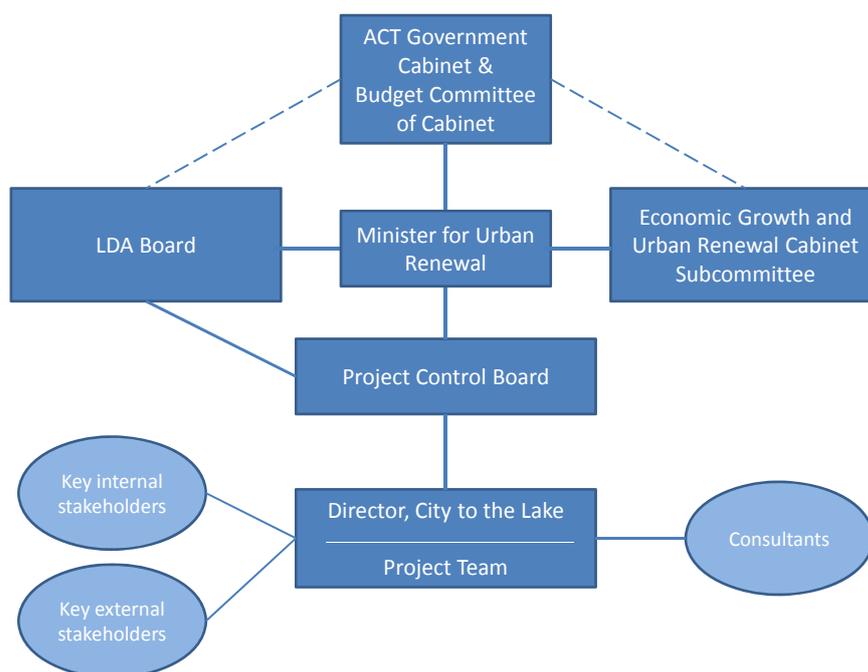


Source: ACT Audit Office

Current governance arrangements

4.75 The governance arrangements for the City to the Lake Project were formalised in September 2015, with the establishment of the City to the Lake Project Control Board (refer to paragraph 4.90). Figure 4-4 shows the current governance structure for the City to the Lake Project.

Figure 4-4 Current and agreed governance structure for the City to the Lake Project



Source: ACT Audit Office

4.76 According to the *City to the Lake Governance Structure* (September 2015):

The Project Control Board's (PCB) primary roles are to provide:

- strategic direction and oversight to the CttL project team in accordance with ACT Government policy, Cabinet decisions, EGUR Subcommittee directions and LDA Board decisions, to ensure the project is delivered on time and on budget
- a forum to enhance across government coordination on the project
- guidance to the project team on project delivery.

The PCB is an advisory body to the LDA Board, and will function as a clearinghouse for all information and decisions put to the LDA Board, and Cabinet and its Committees.

4.77 According to the *City to the Lake Governance Structure* (September 2015):

As part of executing these roles, the PCB will:

- review and endorse the project scope and key milestones
- evaluate and monitor project progress against the Master Program
- evaluate and monitor project issues, risks and changes to the project scope
- provide a forum for issue escalation and resolution, where these cannot be resolved by the project team
- report on the project's progress to the LDA Board and EGUR Subcommittee on a quarterly basis.

- 4.78 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.

Project Management

- 4.79 Effective project management is critical to the successful achievement of the City to the Lake Project, its outcomes, objectives and deliverables. The following elements of a project management framework are considered:
- project business plan;
 - project director; and
 - project oversight committee / group.

Project Business Plan

- 4.80 A Project Business Plan is important to establish and document a project's objectives, deliverables and timeframes. A Project Business Plan should be an important reference document for the implementation of the project with progress against the plan monitored and reviewed regularly.

- 4.81 In relation to a Project Business Plan for the City to the Lake Project, the Land Development Agency has advised:

There has been a number of assessments and reports undertaken over the last two years that cover strategic direction, feasibility and specific infrastructure project elements such as Parkes Way. The project has funding from both Treasury and LDA as separate entities and different responsibilities as defined in the Terms of Reference of the Project Control Boards (PCB). Funding bids to Treasury require a business case and Investment Logic Workshops for bids over \$10 million in value. The LDA Board require an LDA business case, with respect the land development component, but this cannot be generated until the resolution of Parkes Way is achieved. The feasibility studies to date form the basis of the indicative business case for the LDA and will be formalised when a design and alignment is known providing definite staging and delivery timeframes crucial to a business case.

- 4.82 The Land Development Agency further advised that 'the LDA will be seeking to present to the Project Control Board in October 2016 a draft Strategic Project Plan that encompasses previous work undertaken and formalise this work into a single ACT Government branded document rather than several reports'.

- 4.83 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.

Project Director

- 4.84 The formal identification of a Project Director is important to identify and assign responsibility and accountability for the delivery of a project.
- 4.85 There is no documentary evidence that, following the inception of the City to the Lake Project in March 2013, there was an identified Project Director, with a formally designated role for the management and oversight of the project. Nevertheless, between 2013 and July 2014, general managerial oversight for the City to the Lake Project was the responsibility of:
- Director - Office of the Coordinator General (Economic Development Directorate) - March 2013 to early 2014; and
 - Director - Land Development (Land Development Agency) - early 2014 to June 2014.
- 4.86 An external consultant from Elleven Project Coordination Pty Ltd was formally engaged as the City to the Lake Project Director in July 2014. The consultant's services were terminated in early September 2015. An interim Project Director from the Land Development Agency was appointed shortly thereafter, before a permanent Project Director from the Land Development Agency was appointed in December 2015. This person has been the Project Director since then.
- 4.87 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.

Project oversight committee/group

- 4.88 For large complex projects such as the City to the Lake Project, it is better practice to identify a committee or group with responsibility for the oversight and monitoring of the delivery of the project. Representation on the committee or group would ideally be achieved through key stakeholders associated with the project and government agencies with responsibilities in the delivery and implementation of the project's deliverables and objectives. There may be two levels of committee or group oversight:
- strategic high-level oversight; and
 - operational oversight.

- 4.89 Within the Land Development Agency, for some large complex projects a Project Control Board is established to provide strategic high-level oversight, while most projects are subject to operational oversight through a Project Control Group. For much of the implementation of the City to the Lake Project a Project Control Board or Project Control Group has not been in place.

Project Control Board

- 4.90 A Project Control Board was established for the City to the Lake Project in September 2015. It comprises the:
- Director-General, Economic Development / Chief Executive Officer, Land Development Agency (Chair)
 - Deputy Director-General, Economic Development / Deputy Chief Executive Officer, Land Development Agency (Deputy Chair)
 - Director-General, Transport Canberra and City Services
 - Director-General, Environment and Planning
 - Under Treasurer
 - Land Development Agency Board member (nominated by the LDA Board)
 - Executive Director, Urban Renewal, Economic Development
 - Director, City to the Lake
 - external expert advisor.

- 4.91 The Project Control Board has met five times since its inception in 2016.

Project Control Group

- 4.92 A Project Control Group was established for the project in January 2016. The Project Control Group consists of:
- City to the Lake Project team members;
 - representative(s) from Land Development Agency Finance;
 - representative(s) from Land Development Agency Estate Management;
 - representative(s) from Land Development Agency Sales and Marketing; and
 - ACT Property Group.

- 4.93 The Project Control Group has met seven times since its inception in January 2016.

City Plan and City to the Lake Strategic Coordination Committee

- 4.94 In October 2014 the City Plan and City to the Lake Strategic Coordination Committee was established pursuant to a Cabinet decision. The Committee was established as ‘the central administrative body for the projects included within the City to the Lake (CttL) project and the broader City Plan’. The Committee was co-chaired by the Directors-General of Economic Development and the Environment and Planning Directorate. The Committee’s role was to provide strategic direction and oversight of the City Plan and City to the Lake Project to ensure efficient, effective and integrated implementation and phasing, including:
- providing consolidated advice to the Integrating Minister and Cabinet (coordinated through the Secretariat);
 - support the delivery of both the City Plan and the City to the Lake Project;
 - discussing issues prior to Cabinet consideration;
 - managing and reporting on performance of both projects;
 - establishing relevant sub committees and project reference groups; and
 - managing whole-of-project risks.
- 4.95 The Strategic Coordination Committee met once. The introduction of new government administrative arrangements resulted in the creation of the Minister for Urban Renewal and the Economic Growth and Urban Renewal Subcommittee of Cabinet. The Strategic Coordination Committee did not meet after these arrangements were put in place as new reporting and accountability lines were created.
- 4.96 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 Development Agency was undertaking the land acquisitions considered as part of this audit.

Procurement and contracting

- 4.97 Key personnel associated with the City to the Lake Project (including a key urban planner, the Project Director and an administrative support person) were engaged through contracted consulting firm(s), namely Elleven Consulting Pty Ltd or Elleven Project

Coordination Pty Ltd.⁵ The Audit Office has identified several matters associated with the procurement and contracting of these services.

ACT Government procurement requirements

4.98 The *Government Procurement Regulation 2007* sets out principles for the procurement of goods and services by ACT Government agencies. The regulation requires:

- three written quotations to be sought from suppliers if the total estimated value of the procurement is between \$25,000 and \$200,000 (section 6); and
- invitation of public tenders if the total estimated value is over \$200,000 (section 9).

4.99 Subsection 10(2) however, allows for the head of an agency to exempt an agency from the requirements of section 6 and section 9 'if satisfied, on reasonable grounds, that the benefit of the exemption outweighs the benefit of compliance with the requirement'.

Total fees payable to Elleven Consulting and Elleven Project Coordination

4.100 Table 4-3 shows the total value of payments made to Elleven Consulting Pty Ltd and Elleven Project Coordination Pty Ltd from 2011-12 to 2015-16 by the Land Development Agency and Economic Development.

Table 4-3 Total fees paid to Elleven Consulting Pty Ltd and Elleven Project Coordination Pty Ltd from 2011-12 to 2015-16

Financial Year	Elleven Consulting Pty Ltd (\$)	Elleven Project Coordination Pty Ltd (\$)	Total (\$)
2011-12	81,480.00		81,480.00
2012-13	755,123.10		755,123.10
2013-14	736,450.50		736,450.50
2014-15	131,030.00	695,008.00	826,038.00
2015-16	104,100.00	176,662.50	280,762.50
Total	1,808,183.60	871,670.50	2,679,854.10

Source: ACT Audit Office, based on data from the Land Development Agency and Economic Development Directorate

Note: The Land Development Agency has been responsible for most of the payments to Elleven Consulting Pty Ltd or Elleven Project Coordination for the City to the Lake Project. The Economic Development Directorate paid \$1,120 in 2013-14 and \$22,880 in 2014-15 to Elleven Consulting Pty Ltd. The Economic Development Directorate did not make any payments to Elleven Project Coordination during this period.

4.101 Analysis of payments made to Elleven Consulting Pty Ltd and Elleven Project Coordination Pty Ltd shows that a total of approximately \$2.68 million in payments has been made to these companies by the Land Development Agency (or Economic Development Directorate) since 2011.

⁵ On some occasions Elleven Consulting Pty Ltd or Elleven Project Coordination Pty Ltd is referred to as E11even Consulting Pty Ltd or E11even Project Coordination Pty Ltd.

- 4.102 These payments relate to a number of procurements since 2011 (discussed in detail in the following sections of the report). However, the Audit Office was not able to precisely match invoice payments to procurements (or associated services agreements) with certainty due to the poor documentation associated with services agreements and invoices and associated purchase orders. Notwithstanding the difficulty in matching invoice payments to specific procurements and services it is understood that a significant proportion of these payments relate to services provided in relation to the City to the Lake Project. The balance of these payments relate to the provision of financial consulting services to the Economic Development Directorate/Land Development Agency.
- 4.103 In addition to poor documentation associated with the procurements and the matching of invoices to specific purchase orders or services agreements, a number of matters have emerged in relation to the procurement and contract management arrangements for the services. Key matters which are examined in this section of the report are:
- the Land Development Agency and Economic Development's facilitation of the continuing employment of ex-executive employees through Elleven Consulting Pty Ltd and Elleven Project Coordination Pty Ltd; and
 - the continuing use of single select procurement processes for services, where the *Government Procurement Regulation 2007* requires three written quotes or a public tender process.

Agency facilitation of continuing employment through consultants

- 4.104 During the audit, it was identified that the Land Development Agency has facilitated the continuing employment of ex-employees through consulting firm(s) (Elleven Consulting Pty Ltd and Elleven Project Coordination Pty Ltd). The Audit Office is aware that this practice occurred for at least two former executives of Economic Development and Land Development Agency. Further information on the extent of this practice across the organisation has not been considered in this audit.
- 4.105 The former Project Director for the City to the Lake Project (who was an executive of Elleven Consulting Pty Ltd and director of Elleven Project Coordination Pty Ltd), in an interview under oath/affirmation, advised that they were approached on two occasions to employ former executives of the Economic Development Directorate/Land Development Agency, whose roles in the organisation were terminating. This is discussed in further detail in the following sections of the report.

Engagement of Elleven Consulting Pty Ltd for provision of financial services (2012)

May 2012 procurement (financial services)

- 4.106 In April 2012 Elleven Consulting Pty Ltd was engaged to provide assistance to the Economic Development Directorate. The assistance that was to be provided was in the form of services from a former executive of the Economic Development Directorate. In

response to the draft proposed audit report, the legal representative of the former executive advised the former executive was:

... initially engaged to - review current GST process to improve the outcomes, Review the Bi-annual reviews and provide input into improving outcomes and performance measures, assist the Office of Coordinator-General as needed, peer review the annual land release strategy and other projects as required.

- 4.107 On 8 May 2012 the former Economic Development Directorate Chief Financial Officer provided a minute to the Land Development Agency Chief Executive Officer (through the former Deputy Chief Executive Officer) the purpose of which was 'to formalise your agreement to use a single select method of procurement to engage E11even Pty Ltd (specified personnel - [name of former executive]'. The minute stated:

E11even Pty Ltd has indicated [the former executive] is available and willing to work on an 'as required' basis at the hourly rate of \$220.00 (GST inclusive).

Taking into account the need for high quality advice, the low risk to the Territory and the need to maintain the momentum of a number of key strategic projects, it is considered that the benefits of the exemption far exceed the benefit of compliance with the regulations.

- 4.108 The minute does not identify an expected total cost for the services. However, an undated 'Notification of New Procurement' document identifies an estimated value of \$125,000 for the services. It is not clear whether this amount is GST inclusive or GST exclusive.

- 4.109 The minute was approved by the Chief Executive Officer of the Land Development Agency on 10 May 2012. The 'Notification of New Procurement' document identifies a contract period of 23 April 2012 to 31 August 2012. The former executive's employment under the *Public Sector Management Act 1994* had concluded on 21 April 2012.

- 4.110 In relation to the employment of the former executive, the former Project Director for the City to the Lake Project, in an interview under oath/affirmation, advised:

[The Chief Executive Officer of the Land Development Agency] came to me and said, "We can't lose [the former executive] but I can't be seen to be employing [them].

...

[The former executive] and [the Chief Executive Officer of the Land Development Agency] came to see me to say, "Look, is there a way we can get [them] into your company as a consultant?" I ran a business with consultants, right.

- 4.111 The former Project Director for the City to the Lake Project, in an interview under oath/affirmation, advised:

I can't remember the exact words, but [the former executive] is too valuable and [they] can't be on staff was the gist of it.

- 4.112 The Chief Executive Officer of the Land Development Agency in an interview under oath/affirmation, advised that they did not facilitate these arrangements. In response to the draft proposed audit report, the Chief Executive Officer of the Land Development

Agency advised that they do not agree with the statement made by the former Project Director for the City to the Lake Project as they did not make such a statement(s).

4.113 In discussions with the Audit Office, the former executive advised that they were employed by Elleven Consulting Pty Ltd between 2012 and 2015 and the services provided were in the nature of a 'body-shopping' arrangement. A large proportion of the work was for the Economic Development Directorate and Land Development Agency, although the former executive also provided services to other clients during this period.

4.114 In response to the draft proposed audit report, the legal representative of the former executive advised:

Our client had 30 years' experience as a consultant. [They] worked for the LDA on 2 short term (9 month) Executive Contracts, the last of which required [them] to work on several matters where GST was a significant consideration. The contract was due to expire in April 2012.

Our client was approached (before the end of the second contract term) by the CEO to continue [their] work on the GST matters. Our client discussed the terms of a possible consultancy with [the Chief Executive Officer of the Land Development Agency]. Our client then approached E11even Consultancy to formally engage [them] so that, in turn, LDA would engage [their] services via E11even Consultancy.

4.115 In response to the draft proposed audit report, the legal representative of the former executive further advised that the former executive:

... approached [the principal of Elleven Consulting Pty Ltd] amongst others regarding re-employing him in a body shop arrangement. The offering from [the principal of Elleven Consulting Pty Ltd], through E11even Consulting Pty Ltd, at that time met [their] needs.

4.116 In response to the draft proposed audit report, the legal representative of the former executive further advised that:

... [the former executive] had several discussions with [the Chief Executive Officer of the Land Development Agency] regarding the construction of several important projects for the LDA within [their] area of expertise. One of those areas was GST. The hourly rate to be charged was negotiated by [the former executive] with [the Chief Executive Officer of the Land Development Agency].

[The former executive] approached E11even Consulting and another consultancy to determine if they would engage [them] to do consultancy work for the LDA and EDD. The arrangements proposed by E11even Consulting were more favourable to [the former executive] so [they] elected to perform services to the LDA through E11even Consulting.

June 2012 procurement (financial services)

4.117 In June 2012 the services of Elleven Consulting Pty Ltd was extended. On 27 June 2012 the former Economic Development Directorate Chief Financial Officer provided a minute to the Land Development Agency Chief Executive Officer which sought to 'vary the current

contract for E11even Pty Ltd to add additional specified personnel'. The additional personnel was another consultant from Elleven Consulting Pty Ltd.

- 4.118 The minute identifies the need for resources to 'review the costs associated with each development over the preceding 6 years, with a view to achieving improved GST outcomes for the LDA'. The minute identifies two candidates were considered and the Elleven Consulting Pty Ltd consultant was the preferred candidate. However, the minute does not identify the basis on which the Elleven Consulting Pty Ltd consultant was identified as the preferred candidate.
- 4.119 The minute does not identify an expected price for the additional services. The minute states 'E11even Pty Ltd has indicated [the consultant] is available and willing to work on an 'as required' basis at the hourly rate of \$130.00 (GST inclusive). The estimated workload is 2 to 3 days per week for approximately 8 weeks'.
- 4.120 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.
- 4.121 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.
- 4.122 In response to the draft proposed audit report, the legal representative of the former executive advised:

The former executive approached E11even and at least one other organisation prior to choosing to provide services through E11even. The former executive has had years of experience providing consulting services and expected that [their] client base would expand. The role at the LDA did not occupy a full working load for the former executive.

- 4.123 In response to the draft proposed audit report, the legal representative of the former executive further advised:

The skill set of our client, with understanding of the relevant components of ACT Legislation, GST legislation and land release were unique and were provided to the LDA/EDD at a competitive rate. The draft report does not make reference to [their] skill sets and an hourly rate is quoted without context.

The information presented infers that the former executive provided fulltime services to the LDA/EDD. This is incorrect. The former executive provided consulting services on an as needs basis. Our client provided approximately 3000 hours of time to the LDA over three years from April 2012. The majority of the work was in respect of the GST project. The report should make clear that services provided were consulting services and that they were provided on an as needs basis.

- 4.124 In response to the draft proposed audit report, the legal representative of the former executive asserted that the project that the former executive was working on 'has provided significant financial benefits to the Territory which would not have been obtained without [their] input'.

Engagement of Elleven Consulting for services for the City to the Lake Project (2012)

September 2012 procurement (City to the Lake Project services)

- 4.125 In September 2012, Elleven Consulting Pty Ltd was engaged to provide assistance to the Economic Development Directorate in relation to the City to the Lake Project. The assistance that was provided was in the form of services from a second former executive of the Land Development Agency.

- 4.126 In an undated minute from September 2012, the Director of the Office of Coordinator General provided a minute to the Chief Executive Officer of the Land Development Agency to 'seek your agreement to use a single select method of procurement to engage E11even Pty Ltd (Specified personnel - ([second former executive]))'. The minute stated:

There are clear advantages in contracting for [the former executive] to provide the services given [their] current knowledge of the City to the Lake project, urban infill and the land release processes. In particular [their] current knowledge of the City to the Lake project gained from [their] work with the prior employments at the National Capital Authority and the LDA is invaluable. Given [their] considerable knowledge, experience and expertise it is considered that there is low risk to the Territory with a likely significant benefit to the Territory.

Taking into account the need for high quality advice, the low risk to the Territory and the need to maintain the momentum of the City to Lake project, it is considered that the benefits of the exemption far exceed the benefit of compliance with the above procurement guidelines.

- 4.127 The minute further stated 'E11even Pty Ltd has indicated [the second former executive] is available and willing to work at the hourly rate of \$165.00 (GST inclusive)'. The minute sought approval for 'project management and technical planning assistance, up to a limit of \$250,000 (inclusive of GST) for the period 20 September 2012 to 19 September 2013'.

The second former executive's employment had concluded at the Land Development Agency on 19 September 2012.

4.128 The minute was approved by the Chief Executive Officer of the Land Development Agency on 20 September 2012.

4.129 An undated services agreement was signed by the Chief Executive Officer of the Land Development Agency for a maximum contract price of \$250,000 (GST inclusive). The services agreement specifies 'project coordination and management services - City to the Lake Project - policy and planning advice on urban development - other projects as required'.

4.130 In relation to the employment of the second former executive, the former Project Director for the City to the Lake Project, in an interview under oath/affirmation, advised:

They restructured the LDA, no longer had a role for that [position]. [The second former executive] was made redundant... I can't remember exactly who approached me but it might have been [the first former executive to be employed through the company], even though [they were] a consultant, and said, "[The Chief Executive Officer of the Land Development Agency] can't afford to lose [the second former executive]". I asked why they made [them] redundant and why they wouldn't find [them] another position.

4.131 In response to the draft proposed audit report, the Chief Executive Officer of the Land Development Agency and the second former executive advised that the assertion that the former executive's position was made redundant was incorrect, but rather that the former executive's contract was not renewed. The former executive further advised that they did not receive a redundancy payout.

4.132 In relation to the second former executive, the former Project Director for the City to the Lake Project, in an interview under oath/affirmation, further advised:

I can't tell you the exact person but someone asked me, and I think it was [the first former executive to be employed through the company] on behalf of [the Chief Executive Officer of the Land Development Agency]. Again, too valuable to lose, [their] position is redundant. I don't know if [they] got paid out a redundancy. I don't know any of the details but the next day [they were] working for my company under a contract.

...

Someone asked me to do it. These are people before I walked in there I didn't know from a bar of soap. ... I - look, I'm in the business of hiring out people. So there was a profit in it for me ... I'll be quite honest. I was making a profit on their employment but that was my business. I had a consultancy ...

4.133 The Chief Executive Officer of the Land Development Agency in an interview under oath/affirmation, advised that they did not facilitate these arrangements. However, they did approve the procurement.

4.134 In relation to the second former executive, the former Project Director for the City to the Lake Project, in an interview under oath/affirmation, advised that in the latter part of 2012 and into 2013 (immediately on the employment of the former executive as a consultant in his company) they did not have any managerial oversight or responsibility for the executive:

Definitely not. No, [they] gave me a timesheet once a fortnight and I created an invoice and sent it in. I probably didn't speak to [the former executive] for months on end.

4.135 In discussions with the Audit Office, the former executive advised that the arrangements were a 'marriage of convenience' in order to facilitate their continuing employment with the organisation. The former executive advised that they did not have their own consulting company established at the time, and they needed to be employed through a consulting company to continue doing the work that they were doing for the Economic Development Directorate / Land Development Agency at the time.

September 2013 procurement (extension to City to the Lake Project services)

4.136 In September 2013 the services of Elleven Consulting Pty Ltd for the City to the Lake Project were extended.

4.137 On 9 September 2013 a minute was provided from the former Deputy Chief Executive Officer of the Land Development Agency to the Chief Executive Officer of the Land Development Agency seeking 'variation to the contract with E11even Pty Ltd (specified personnel - [second former executive])'. The minute seeks 'short term contract variation to continue the engagement of [the former executive] to ensure traction is not lost on the project' noting that 'the capped maximum price under the contract of \$250,000 has been fully exhausted'. The minute seeks and receives approval to 'increase the maximum capped price from \$250,000 to \$340,000 (inclusive of GST) and extend the contract term from 19 September 2013 to 17 October 2013'.

4.138 The minute was approved on 10 September 2013. The contract was varied for one additional month for an additional cost of \$90,000. This is disproportionate and indicative of poor contracting practices.

November 2013 (further extension to City to the Lake Project services)

4.139 In November 2013 the services of Elleven Consulting Pty Ltd for the City to the Lake Project were further extended.

4.140 On 12 November 2013 a letter was sent from the Development Director to the principal of Elleven Consulting Pty Ltd advising of the Territory's intention to 'formalise the agreement to extend the contract term and exercise the option to extend the period of the Agreement until 30 June 2014'. The letter advises 'all other terms and conditions of the Service Agreement remain unchanged except for the Contract Price that is based on an hourly rate of \$165 per hour (GST inclusive) for a maximum of 40 hours per week'. An

'Acknowledgement of Acceptance' attachment to the letter was signed by the principal of Elleven Consulting Pty Ltd on 14 November 2013.

- 4.141 The letter does not identify an expected contract price for the additional services. Unlike the other services a minute was not provided to the Chief Executive Officer of the Land Development Agency to approve the arrangement.
- 4.142 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.
- 4.143 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 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.
- 4.144 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.
- 4.145 In response to the final proposed report, the former Project Director for the City to the Lake Project advised:
- Neither Elleven Consulting Pty Ltd or Elleven Project Co-ordination Pty Ltd ever received any consulting fees without timesheets being submitted and signed off by EDD/LDA officers in the reporting line. No one was billed 545 hours in a month for work ... The previous contract value may have been spent and the total contract may have been adjusted after the fact. As in all consultancies, no invoices were ever issued without a timesheet ...

Engagement of Elleven Consulting for services for the City to the Lake Project (2014)

June 2014 procurement (City to the Lake Project services)

4.146 In June 2014 Elleven Project Coordination Pty Ltd was again engaged to provide services for the City to the Lake Project.

4.147 On 17 June 2014 a minute was provided by a Manager on the City to the Lake Project to the Chief Executive Officer of the Land Development Agency (through the former Deputy Chief Executive Officer) to 'seek your agreement to engage Elleven Project Co-ordination Pty Ltd (Elleven) through a single select procurement process to provide project coordination services and planning advice for the City to the Lake (Cttl) project'. The minute states:

The proposed procurement of Elleven is to provide consulting services to the Land Development Agency (LDA) for the Cttl project. These services will include project delivery of a number of elements, along with coordination of input and output from other areas of the Economic Development Directorate and the LDA and planning advice in relation to Cttl.

...

Elleven consultants have significant skills and experience in project coordination, delivering commercial returns, effective stakeholder management and town planning principles and the ability to interpret and apply relevant government policy, practices and legislation. Elleven consultants possess specialist planning knowledge, project management and have a clear understanding of effective financial management. Through existing contractual arrangements Elleven consultants have provided clear direction to the Cttl team to deliver elements of the project and have built strong relationships with external contractors, government and non-government stakeholders. The benefits of an exemption in this case exceed the benefit of compliance in that the consulting firm is able to supply a particular good or service and provide the specialist knowledge required for the delivery of the Cttl project.

4.148 The minute provides for a contract price of \$650,000 (GST inclusive). This minute was agreed to do by the Chief Executive Officer of the Land Development Agency on 22 June 2014.

4.149 Further advice was provided on 26 June 2014 in a minute from the Manager on the City to the Lake Project to the Chief Executive Officer of the Land Development Agency (through the former Deputy Chief Executive Officer) advising 'Elleven has negotiated amendments to the terms contained in the Schedule' including:

- additional hours (45 hours per week for 48 weeks as opposed to 37.5 hours for 52 weeks); and
- contract price of \$715,000 (GST inclusive).

4.150 This minute was agreed to do by the Chief Executive Officer of the Land Development Agency on 27 June 2014.

- 4.151 A 27 June 2014 services agreement identified the second former executive of the Land Development Agency and the principal of Elleven Consulting Pty Ltd (Elleven Project Coordination Pty Ltd) as specified personnel including '[the principal of Elleven Project Coordination Pty Ltd] is to assume project director responsibilities for the City to the Lake (CttL) Project'.

October 2014 procurement (City to the Lake Project services variation for additional services)

- 4.152 In October 2014, the services to be provided by Elleven Project Coordination Pty Ltd were varied to allow for an additional administrative support officer. On 13 October 2014 a minute was provided from the Manager on the City to the Lake Project to the former Deputy Chief Executive Officer of the Land Development Agency to 'seek your agreement to a variation of the Services Agreement ... to include ... the services of a Project Officer / Executive Officer; and delete the Professional Indemnity requirement'. The minute was approved by the former Deputy Chief Executive Officer on 16 October 2014.
- 4.153 The minute provided for an additional 37.5 hours per week at an hourly rate of \$70.00 per hour for the period 3 November to 30 June 2015. It is not clear whether the rate was GST inclusive or exclusive. Nevertheless, as an outcome of the variation, the total cost of the services appears to have been varied from \$715,000 to \$820,000 (GST inclusive) (an additional \$105,000 (GST inclusive)).

June 2015 procurement (City to the Lake Project services variation for additional services)

- 4.154 On 15 June 2015 a letter was sent from the former Deputy Chief Executive Officer of the Land Development Agency to the principal of Elleven Project Coordination Pty Ltd advising of 'an extension of the contract date from 30 June 2015 to 31 December 2015, and the revised contract price (GST inclusive)'. The letter advises of a 12 June 2015 variation of \$356,400 (GST inclusive) amounting to a revised contract value of \$1,176,400 (GST inclusive). An 'acknowledgement of acceptance' form was signed by the principal of Elleven Project Coordination Pty Ltd on 15 June 2015.
- 4.155 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.

4.156 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).

4.157 In response to the final proposed report, the former Project Director for the City to the Lake Project advised:

All fees paid to both Elleven Consulting Pty Ltd and Elleven Project Coordination Pty Ltd were in response to invoices prepared from signed timesheets from EDD/LDA officers.

4.158 The former Project Director for the City to the Lake Project further advised:

Elleven charged [the first former executive] at an agreed rate significantly below the only comparable firms with the same knowledge - big four rates (by a factor of at least 3) - and paid [them] 97% of that amount. Similarly, payments for [the second former executive], after covering Superannuation, Workers compensation, public holidays and sick days only a modest fee in excess of this amount was charged. I know of many consultancies [where] up to 30% was charged on top of their costs.

There is no easy way to just create new positions within the Public Service. Most of the time there is significant scrutiny over the number of FTE employees. The gap between the number of FTE's and the work load is filled with consultants.

Cost of contracting arrangements with Elleven Project Coordination Pty Ltd

4.159 On 9 September 2015, the Land Development Agency terminated its contract with Elleven Project Coordination Pty Ltd for the provision of services for the City to the Lake Project with immediate effect. The second former executive of the Land Development Agency (who was employed through Elleven Project Coordination Pty Ltd) commenced as a temporarily engaged full-time employee of the Land Development Agency on 10 September 2015. The former executive of the Land Development Agency has since been providing services to the Land Development Agency through a company called Griffin Brooks Pty Ltd. In response to the draft proposed audit report, the former executive of the Land Development Agency advised that the awarding of the contract was achieved 'after I was requested to provide a proposal', following which Griffin Brooks Pty Ltd was awarded the contract for services.

4.160 In response to the draft proposed audit report, the second former executive of the Land Development Agency further advised:

I ... believe that the procurement of my services by the LDA to continue my role with the City to the Lake project was and is justified because of my specialist knowledge and that the benefit outweighs the benefit of compliance with requirement to go to public tender. The value for money has in particular been demonstrated with the current engagement of Griffin Brooks Consulting.

- 4.161 In response to the draft proposed audit report, the former executive of the Land Development Agency also advised ‘that the project was one of the largest and most significant urban renewal projects in Australia’ and that the project had gained significant momentum at the time their executive contract with the Land Development Agency concluded and would have been at risk if they were not involved with the project past 2012, as they had the most experience with it.
- 4.162 Table 4-4 shows the employment history of the second former executive of the Land Development Agency in the Land Development Agency/Economic Development Directorate.

Table 4-4 Employment history of former Land Development Agency executive who was employed through Elleven Consulting Pty Ltd and Elleven Project Coordination Pty Ltd

Former Land Development Agency executive
23 June 2009 to 19 September 2012 Employed on a full-time temporary basis as an Executive Level 1.3 by the Land Development Agency
20 September 2012 to 9 September 2015 Provided services to the Land Development Agency through Elleven Consulting Pty Ltd and Elleven Project Coordination Pty Ltd
10 September 2015 to 23 October 2015 Employed on a full-time temporary basis as a Senior Officer Grade A by the Land Development Agency
1 November 2015 to 31 October 2017 Providing services to the Land Development Agency through Griffin Brooks Pty Ltd

Source: ACT Audit Office

- 4.163 In an interview under oath/affirmation, the former Project Director for the City to the Lake Project advised that the former executives were employed on the basis that their previous public service remuneration package was matched by the company. However, the former Project Director further advised:

... I’m in the business of hiring out people.

...

So there was a profit in it for me ... I’ll be quite honest. I was making a profit on their employment but that was my business. I had a consultancy ...

- 4.164 The following exchange took place in an interview under oath/affirmation with the former Project Director in relation to the profitability of employing the second former executive of the Land Development Agency:

Audit Office:

Without sharing too much, was it a healthy profit?

Former Project Director:

It was reasonable. Better than [the first former executive’s].

Audit Office:

So it would have been cheaper ... it would have been more cost-effective for the government to maintain [the second former executive's] employment than to put it through a private forum?

Former Project Director:

Well and truly.

4.165 In response to the draft proposed audit report, the Chief Executive Officer of the Land Development Agency advised that they disagreed with the assertions made by the former City to the Lake Project Director.

4.166 In response to the draft proposed audit report, the legal representative of the first former executive advised:

It is not the case that [their] remuneration was matched by the rates negotiated for [their] consultancy - both in terms of hourly rates and total hours 'worked'. There is sufficient information available that supports that the consulting services provided by the former executive provided extraordinary value to the Territory.

4.167 In response to the final proposed report the former Project Director for the City to the Lake Project advised:

Both [former executives] were valuable to the EDD/LDA. On cessation of [the first former executive's] role, it was made known to me by [the Chief Executive Officer of the Land Development Agency and the first former executive] that due to [their] unique and valuable knowledge [they were] too important to lose.

... it is true that the cost would be higher per hour than if [they were] employed but, there was no executive position for [them] to be appointed to; the role may not have been required beyond the initial period; [they] certainly represented significant value ... as the only other people with the knowledge required were big four accountants at \$650 plus per hour.

Similarly, with [the second former executive], [their] executive employment finished, but given there was still an interest to progress some of the vision of the City to the Lake Project to determine feasibility etc., [they] had a unique skillset that no one else had. Again given the uncertain longevity of the appointment at the time, I was asked, by [the first former executive] I think, if [the second former executive] could be contracted through Elleven Consulting Pty Ltd. The cost to the LDA was higher than in his previous executive role, but that was to cover a range of other expenses like worker's compensation, superannuation, Public Holidays, sick days etc. plus a small margin.

There is a big difference between cost and value. I was asked if [the former executives] cost more as consultants than as employees and I said yes. ... It wasn't through my contacts or [the former Deputy Chief Executive Officer of the Land Development Agency's] contacts that [the former executives] were appointed as consultants after [their] executive appointments, but that also doesn't mean those appointments did not represent value to the Government, although they cost more than if they had been employed.

4.168 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 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.

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.

4.169 The former executives were provided with extracts of the draft and final proposed report in order to verify the accuracy and completeness of the information it contained. As part of their response to the draft proposed report, one of the former executives provided a statement. The Audit Office has included this statement at Figure 4-5.

Figure 4-5 Statement of a former executive

Thank you for providing a copy of extracts of the Final Proposed Report for comment.

I have no specific factual errors to bring to your attention. As pointed out previously I have no knowledge of the contract extensions or the amounts referred to in paragraphs ... or the June 2014 or 2015 procurements involving e11even.

I am disappointed that more of the meeting notes and specific comments have not been included in the report as I think this provides important context, particularly around my role with the origin and progression of the City to the Lake (CtTL) project. Specifically:

- For the last six or 7 months of my SES contract in 2012, I worked solely on the CtTL project, developing the concept.
- Significant momentum for the CtTL project had developed by the time my SES contract had expired with strong support from a Project Reference Group of key non-ACT Government stakeholders;
- The project would have been at significant risk of ‘falling over’ had I not been involved in the project past 2012, as I had detailed and specialist knowledge not available elsewhere. This was due in part to my background as co-author of the Griffin Legacy and of the National Capital Plan provisions covering the CtTL area;
- CtTL project is one of largest and most significant urban renewal projects in Australia. It is highly complex and the National Capital Authority has planning responsibility.
- Largely working in isolation my efforts resulted in the project receiving national recognition through the receipt of the Australia Award for Urban Design in 2013, which is Australia’s pre-eminent award for urban design excellence. This is a tangible measure of the value to the Territory delivered as a result of my engagement.
- I reiterate that I have no knowledge of the June 2014 or 2015 procurement of E11even Consulting. I was not aware that I was a specified person in the contract. I continued to be paid the same fixed salary as I had done since September 2012. I had raised the matter with an LDA Executive that I was concerned that I had no contract with e11even beyond September 2013 and that I would have preferred not to be engaged by E11even. The failure to consult with me for the extension of my services was and is a problem for me.
- The appointment of the principal of E11even Consulting as Project Director in June 2014 was a surprise to me. The principal did not have a background in city planning/building or major project delivery.

Following the termination of the E11even contract in early September 2015 I was requested to continue to provide strategic urban design and planning services due to my critical corporate knowledge and expertise. The loss of this corporate knowledge and expertise to the organisation would be a significant project risk and would have a significant negative impact on the CtTL project. The then Acting Director City to the Lake provided detailed justification to the Chief Executive Officer for the procurement of my services by the LDA to continue my role with the City to the Lake project. This justification also concluded that value for money had been demonstrated as rates provided were below an Infrastructure Manager/Specialist 3 (IMS3 under the Professional Services Agreement), when factoring in overheads. The services to be provided and the qualifications and experience equate the role to an IMS3.

Freedom of Information request

- 4.170 A Freedom of Information request was received by the Land Development Agency on 5 November 2015, seeking documentation associated with 'all valuations for land acquired by the LDA in City Section 65'.
- 4.171 The Audit Office has been advised that Land Development Agency officers responding to this request were aware of the existence of the Colliers International *Block 24, Section 65, Division of City 'Glebe Park Land' May 2015 Discussion Paper*, but could not locate it. A senior manager (now executive) from the Land Development Agency contacted the principal of Colliers International in order to obtain a copy. At 9:57 am on 12 November 2015 the principal of Colliers International sent the Discussion Paper via email, stating:
- ... please find attached what was provided to [the former Deputy Chief Executive Officer of the Land Development Agency]. If you want it changed to say valuation advice I can change.
- 4.172 At 10:05 am on 12 November 2015, the principal of Colliers International sent a further email stating:
- ... this is a copy of the advice provided to [the former Deputy Chief Executive Officer of the Land Development Agency] in respect to the values of the Glebe Site'.
- 4.173 Attached to the 10:05 am email was a two page document titled '*Block 24, Section 65, Division of City 'Glebe Park Land' May*'. This document was identical to that sent at 9:57 except that 'Discussion Paper' was changed to 'Valuation Advice'. All other aspects of the document remained the same.
- 4.174 A further Freedom of Information request was made on 7 December 2015 in relation to the documents that had already been provided. On 7 January 2016 the Land Development Agency responded to this request. As part of its response to this request, the Land Development Agency released the Colliers International *Block 24, Section 65, Division of City 'Glebe Park Land' May 2015 Discussion Paper* noting that this was 'Further release to FOI ref: LDA 6/15-16'. In releasing this document the Land Development Agency did not identify, or otherwise correct the record, that the first 'document' that was released had only been created in November 2015.
- 4.175 On 21 December 2015, a workplace investigation was initiated into the actions of the Land Development Agency senior manager (now executive) who had agreed to, and accepted, the revised document provided by the principal of Colliers International and provided this to officers responding to the Freedom of Information request. The investigation was concluded in April 2016 and the senior manager (now executive) was counselled in relation to their actions.
- 4.176 The Land Development Agency has advised that it has since conducted training for its staff in relation to the handling of Freedom of Information requests.

4.177 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.

Role of Colliers International

4.178 Chapters 2 and 3 of the report discuss the role of Colliers International in the valuation process for the land acquisitions and the provision of advice to the Land Development Agency.

4.179 Chapter 2 of the report identified that informal advice was sought from Colliers International for the purpose of informing the former Deputy Chief Executive Officer of the Land Development Agency in their negotiations with the owner of Block 24, Section 65, City (land adjacent to Glebe Park). Chapter 2 identified:

- there were no written instructions for the advice that was sought; and
- there was no payment for the advice that was received.

4.180 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.

Broader mentoring role

4.181 The former Deputy Chief Executive Officer of the Land Development Agency advised the Audit Office during an interview under oath/affirmation that the Chief Executive Officer (ACT) of Colliers International was one of a number of people that provided them with broad guidance and advice regarding property and land development in the ACT. These relationships were suggested by the Chief Executive Officer of the Land Development Agency.

- 4.182 The former Deputy Chief Executive Officer of the Land Development Agency advised under oath/affirmation that:

It was—[Director-General, Economic Development Directorate] put forward the suggestion that I catch up with some people within the industry, mentors effectively.

[The Chair of the Land Development Agency] became one and [Chief Executive Officer (ACT) of Colliers International] evolved into another over time, as people who had been in the industry for a long time who were able to provide... very much providing guidance....

There were a number of people who I trusted who I could—you know, who I could gauge the lay of the land on, who were willing to provide me with updates about what was the happening in the industry from their perspective. The transactions that were taking place. All simply to both further my understanding of the property market in the ACT but also to inform my own—well, the advice that I was able to provide government in relation to the government’s land assets. At the end of the day the board was—and cabinet were the ones making the decisions about what properties were being released and where...

- 4.183 The former Deputy Chief Executive Officer of the Land Development Agency advised under oath/affirmation that they ‘had regular catch ups with [the principal of Colliers International]’.

- 4.184 In an interview under oath/ affirmation, the principal of Colliers International advised:

I think what [the Chief Executive Officer of the Land Development Agency] had asked me to do ... is because, obviously as an industry representative, obviously Colliers does a lot of research work for the ACT Government, the LDA as well as my role with [the Australian Property Institute]. Basically said, “Would you mind meeting with [the former Deputy Director-General], you know, a couple of times a month if you can?” and I think we set up some meetings, Fridays at 10:00, Fridays at 4.00. It varied ... But yes, we’d catch up. We’d have basically a list of things to talk through; what was happening with LDA land sale projects; what was happening with supply and demand pricing; we’d talk, you know, various things... we probably didn’t do it as regularly as we could, the calendar - I found out very quickly, [the former Deputy Director-General] became quite busy and [they] didn’t honour as many of his regular meetings that we set up but we probably would have met at least once a month.

- 4.185 The former Deputy Chief Executive Officer of the Land Development Agency advised under oath/affirmation that they were not aware of any contractual arrangement for the Chief Executive Officer (ACT) of Colliers International for providing this mentoring.

- 4.186 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.

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

APPENDIX A: CITY TO THE LAKE

According to the *City to the Lake Strategic Urban Design Framework* (August 2015):

City to the Lake is a visionary idea that will transform Canberra's city centre and enhance its significance as the National Capital.

It is an ambitious long term project that will change the way Australians think about Canberra. By re-purposing under utilised land in central Canberra, it will provide a direct link from the city to Lake Burley Griffin and will create a new active waterfront foreshore in West Basin.

According to the *City to the Lake Master Plan Implementation Report* (August 2014):

City to the Lake is a long term infrastructure and urban regeneration programme proposed by the ACT Government's Land Development Agency (LDA) and represents one of Australia's most significant urban renewal projects.

Delivery of the CTL in its entirety has the potential to transform Canberra into a vibrant urban centre, attracting investment and facilitating economic growth and opportunity for the Canberra and ACT communities by unlocking barriers to optimised land use and providing sustainable economic and social infrastructure options. Key to realising the benefits CTL offers is the need to link revised land use and activity in the city with the amenity and environmental aspects of Lake Burley Griffin and surrounding area.

According to the *City to the Lake Master Plan Feasibility Report* (August 2014):

The CTL is a program that is comprised of a number of projects or elements that can be viewed broadly as three asset classes created over a 25 year investment period. These comprise of:

1. Enabling infrastructure - the grade separation, re-alignment and modification of Parkes Way and the reclamation of land at West Basin. This is central to achieving the connectivity between Civic and West Basin, unlocking prime residential, retail and commercial property development opportunities, and land for new social infrastructure projects such as the Canberra Stadium and the Aquatic Centre (described in 3, below);
2. Land development - prime residential, retail and commercial property develop lots at West Basin and in Civic; and
3. Social infrastructure - the Aquatic Centre at West Basin, Canberra Stadium near Civic, a cultural centre at West Basin and a new exhibition and convention facility (Australia Forum) in Civic.

According to the *City to the Lake Strategic Urban Design Framework* (August 2015) the objectives of City to the Lake are:

- **Transform the city centre** of Canberra by making it the **living, entertainment and leisure heart** of the National Capital.
- Anchor new mixed use precincts with cultural, entertainment and civic activities into an **urbane and pedestrian friendly place**.

- Bring the **everyday life of the city to the lake** where it intersects with **festivals, sporting and cultural events** and activities.
- Create West Basin as **Canberra's great meeting and event space** - a truly **public waterfront** for all Canberrans and visits to the city to enjoy throughout the day and into the evening.
- Deliver **world class public domain and architecture** that is **bold and inspiring** and awarded for its authenticity, integration and diversity.
- Create **diverse spaces for intimate and larger gatherings** of people.
- Embed **technology to enable an interactive environment** and immersive and memorable experiences.
- **Eliminate physical barriers** so there is no formal distinction between the living **city centre, the National Triangle and the national cultural institutions**.
- **Program, manage and promote the public realm** and ensure **exceptional standards** of design and maintenance.
- Deliver City to the Lake as **exemplar of sustainable development**. It will be environmentally sustainable, economically viable, climate resilient and climate positive.

According to the *City to the Lake Strategic Urban Design Framework* (August 2015) there are 'six key moves that are pivotal in realising the shared vision':

- Overcoming the barrier of Parkes Way
- Connecting Central Canberra
- Reinforcing a Civic Heart
- Creating a new Public Waterfront
- Creating a leisure and entertainment destination
- Strengthening the Canberra landscape

Key projects associated with the City to the Lake project and the 'six key moves' include:

- West Basin Waterfront development;
- an Aquatic Centre;
- the Realignment of Parkes Way;
- an 'Australia Forum' Convention Centre;
- a City Stadium and Entertainment Centre.

West Basin Waterfront

The development of the West Basin Waterfront is expected to involve the redevelopment of land around the West Basin of Lake Burley Griffin. It is expected to include residential and commercial development as well as community spaces. According to the City to the Lake website:

The West Basin waterfront is the first stage in the ACT Government's plans to connect the city centre to Lake Burley Griffin. It is being designed to bring the everyday life of the city to Lake Burley Griffin.

The West Basin waterfront is a central component of the City to the Lake project. When complete, the West Basin waterfront will be a vibrant destination, where people meet, celebrate and have fun. It will be the premier place for festivals and events in Canberra. The precinct will include new parks, cafes, restaurants, plazas and streets for the community to use and enjoy.

Aquatic Centre

As part of the redevelopment of West Basin, an Aquatic Centre is proposed which, according to the City to the Lake website will 'provide a unique aquatic/leisure facility on the shore of Lake Burley Griffin'.

Realignment of Parkes Way

A central component of the City to the Lake project is the expected realignment of Parkes Way. Parkes Way has been identified as a barrier to the connection between Canberra City and Lake Burley Griffin. Accordingly, according to the City to the Lake website:

The realignment of Parkes Way is a key piece of the City to the Lake vision as it unlocks the vision of City to the Lake. It will allow better pedestrian and bicycle access to the water front and will create high value sites for prestigious tourism and entertainment precincts overlooking Commonwealth Park and the lake.

A key consideration for the realignment of Parkes Way has been placement of the major arterial component of the road underground and the extension of existing roads from the City to the West Basin area. This is expected to allow for the fast flow of through-traffic underground and improved connectivity for local traffic to the West Basin Waterfront.

'Australia Forum' Convention Centre

As part of the City to the Lake project a new convention and exhibition centre has been proposed. The new convention and exhibition centre has been called the Australia Forum.

City Stadium and Entertainment Centre

As part of the City to the Lake project a new stadium and entertainment centre has been proposed. According to the City to the Lake website *'to enliven the city and to upgrade current sporting facilities City to the Lake proposes a Stadium/Entertainment Centre in the city. City stadiums are a great way to enliven a city – drawing locals and tourists alike to the precinct'*. The proposed stadium and entertainment centre has been identified for the site of the existing Civic Pool.

Audit reports

Reports Published in 2015-16	
Report No. 06 – 2016	Management and administration of credit cards by ACT Government entities
Report No. 05 – 2016	Initiation of the Light Rail Project
Report No. 04 – 2016	The management of the financial arrangements for the delivery of the Loose-fill Asbestos (Mr Fluffy) Insulation Eradication Scheme
Report No. 03 – 2016	ACT Policing Arrangement
Report No. 02 – 2016	Maintenance of Public Housing
Report No. 01 – 2016	Calvary Public Hospital Financial and Performance Reporting and Management
Report No. 10 – 2015	2014-15 Financial Audits
Report No. 09 – 2015	Public Transport: The Frequent Network
Report No. 08 – 2015	Annual Report 2014-15
Reports Published in 2014-15	
Report No. 07 – 2015	Sale of ACTTAB
Report No. 06 – 2015	Bulk Water Alliance
Report No. 05 – 2015	Integrity of Data in the Health Directorate
Report No. 04 – 2015	ACT Government support to the University of Canberra for affordable student accommodation
Report No. 03 – 2015	Restoration of the Lower Cotter Catchment
Report No. 02 – 2015	The Rehabilitation of Male Detainees at the Alexander Maconochie Centre
Report No. 01 – 2015	Debt Management
Report No. 07 – 2014	2013-14 Financial Audits
Report No. 06 – 2014	Annual Report 2013-14
Reports Published in 2013-14	
Report No. 05 – 2014	Capital Works Reporting
Report No. 04 – 2014	Gastroenterology & Hepatology Unit, Canberra Hospital
Report No. 03 – 2014	Single Dwelling Development Assessments
Report No. 02 – 2014	The Water and Sewerage Pricing Process
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Report No. 06 – 2013	ACT Auditor-General's Office Annual Report 2012-13
Report No. 05 – 2013	Bushfire Preparedness

These and earlier reports can be obtained from the ACT Auditor-General's website at <http://www.audit.act.gov.au>.