

ACT AUDITOR–GENERAL’S REPORT

**ASSEMBLY OF RURAL LAND
WEST OF CANBERRA**

REPORT NO. 8 / 2018

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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 'Assembly of rural land west of Canberra' for tabling in the Legislative Assembly pursuant to Subsection 17(5) of the *Auditor-General Act 1996*.

Yours sincerely



Dr Maxine Cooper
Auditor-General
29 June 2018

The ACT Audit Office acknowledges the Ngunnawal people as traditional custodians of the ACT and pays respect to the elders; past, present and future. The Office acknowledges and respects their continuing culture and the contribution they make to the life of this city and this region.

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SUMMARY

Between 14 June 2014 and its discontinuance on 1 July 2017, the former Land Development Agency purchased, or was in the process of purchasing, nine rural properties to the west of Canberra and to the east of the Murrumbidgee River. This involved a projected expenditure of \$43.086 million to purchase 3,378 hectares. All properties had 99-year leases that had commenced between 2001 and 2005.

Nine properties are the subject of this audit:

- Lands End (Blocks 1591 to 1597 District of Belconnen);
- Milapuru (Block 19 District of Stromlo);
- Fairvale (Block 518 District of Stromlo);
- Huntly (Blocks 412, 413, 426, 487, 489 District of Stromlo);
- Wintergarden (Blocks 1491, 1492, 1587 District of Belconnen);
- Winslade (Blocks 435, 439, 440, 441 456, 476 District of Stromlo);
- Pine Ridge (Block 1600 District of Belconnen);
- The Vines (Block 1582 District of Belconnen); and
- Wagtail Park (12 hectares of Block 1601 District of Belconnen).

This audit focuses on why and how the above nine properties were purchased by the former Land Development Agency under the *Planning and Development (Land Acquisition Policy Framework) Direction 2014 (No 1)* (Notifiable Instrument NI 2014-264) (the Framework).

Overall conclusion

The former Land Development Agency committed \$43 million dollars to purchase 3,378 hectares of rural land, of which 3,274 hectares is in the Western Edge Study area; ‘the subject of future investigation’ in the *ACT Planning Strategy* (2012), as a potential future urban development front. However, there is no certainty of future urban development. Six years on the ‘investigation’ has not commenced.

Given the ACT Government’s ownership of such a large rural area and the need to consider all changes since the development of the *ACT Planning Strategy* (2012), it is important that planning studies, to inform an updated planning strategy, be independent of existing land tenure and cover the Territory as a whole. While the Chief Planning Executive has advised that existing land tenure will not be a consideration in the planning studies, it would be prudent to provide the ACT community with transparency with respect to how this is to be achieved for assurance that ACT Government ownership does not affect the planning studies.

The above reflects the disconnect in the priorities of the work undertaken by the former Land Development Agency and the Environment, Planning and Sustainable Development Directorate and

creates one of two risks: delay in the identification and release of potential urban development fronts or suboptimal use of resources in securing and maintaining properties that may not become a future urban development front. In the future the ACT Government needs to give priority to better managing the integration of the timing of planning studies and land purchases.

Probity was lacking, and there were probity risks, in some of the actions of the former Land Development Agency in its purchase of the properties. There was also inadequate clarity and documentation provided for the application of the ACT Government's *Planning and Development (Land Acquisition Policy Framework) Direction 2014 (No 1)* (the Framework). While the application of the Framework did improve with the progression of purchases some were made in response to market dynamics which is not covered by Framework. It would have been prudent to clarify, review and, if considered necessary, amend the Framework; this did not occur.

Chapter conclusions

APPLICATION OF THE FRAMEWORK

The former Land Development Agency did not clarify how the *Planning and Development (Land Acquisition Policy Framework) Direction 2014 (No 1)* (the Framework) Principles and Tests were to be applied when making purchases of rural properties to the west of Canberra that were the subject of this audit. Given this lack of clarity, its application of the Framework needed to be well documented; this did not occur. While documentation associated with the earliest purchases of the rural properties was poor, it is apparent that documentation to justify its purchases improved over time.

An application of the Framework's Principles and Tests, by the Audit Office, shows that these were not met for most of the rural properties; specifically the Policy Alignment and Value for Money principles. With respect to the Value for Money principle, however, the Framework was limiting and there are indications that the former Land Development Agency responded to market dynamics. These were outside the Framework, which may indicate that the Framework needed reviewing and amending but this was not done.

PROBITY AND PROBITY RISKS

Probity was lacking in some of the actions by the former Land Development Agency in relation to its purchase of rural properties to the west of Canberra that were the subject of this audit: there was a lack of accountability and transparency in the engagement and management of agents' services; and in negotiation and decision-making leading to the purchase of Fairvale.

Basic procurement and contract management practices for the engagement of agents and advisors were also absent in some instances. Some services were provided free of charge, with inadequate management and scrutiny by the Agency, while some services were paid for without any evidence of them being requested or required.

The former Land Development Agency's management of the purchase of Fairvale was irregular and presented a probity risk. The former Land Development Agency initially sought to purchase the full property but subsequently supported its subdivision so that the valuer who undertook a valuation for the vendor could purchase part of the property. According to the former Land Development Agency's subsequent planning documents the block secured by the valuer is strategically important. There is no contemporaneous documentation that provides reasons as to why the former Land Development Agency agreed to the subdivision of the property to facilitate the valuer's purchase and thereby forego the opportunity to purchase the whole block.

MANAGEMENT OF PURCHASED RURAL LAND

The former Land Development Agency gave inadequate attention to the establishment of contracts (licences/subleases) for the use and ongoing management of some rural properties to the west of Canberra that were the subject of this audit. This includes not collecting revenue from the first three purchases (Lands End, Milapuru and Fairvale), which the Audit Office estimates could amount to more than \$200,000.

There are no executed Land Management Agreements in place even though the first purchase was almost three years ago. This presents a risk to sustainably managing these rural lands.

Given the former Land Development Agency purchased areas of land in the Bushfire Abatement Zone to the west of the urban edge of Canberra, it was incumbent on the former Land Development Agency to include these in its Bushfire Operations Plans; this did not occur initially. The Suburban Land Agency has included all purchased lands in its Bushfire Operations Plans since 2016-17.

The former Land Development Agency's property-by-property approach for managing land has not been examined and there may be better approaches if properties are managed in larger holdings; options for the use and on-going management on a large scale warrants examination. Huntly, one of the larger properties purchased (1,605 hectares), is yielding a considerably higher rental return than was anticipated.

PLANNING CONTEXT

The 3,378 hectares purchased, or in the process of being purchased, by the former Land Development Agency, under the *ACT Planning Strategy* (2012) are rural lands, with 3,274 hectares being in the Western Edge Study area; 'the subject of future investigation'. There is no certainty that the Western Edge Study area will ever become a future urban development front. To date the investigation has not commenced.

The purchases can be viewed as 'pre-emptive' of planning considerations or as offering 'certainty that the land will be available if it is in the scope for inclusion in the next Planning Strategy'. Regardless of how they are viewed there is a need for the long-term land use for the Western Edge Study area to be defined.

It is important that the Chief Planning Executive progresses a Territory-wide, independent planning study so that there is an updated planning context for decisions regarding the long-term land use of the Western Edge Study area. If such a study is undertaken it is important that the community is aware that the Chief Planning Executive has advised that it would be independent of existing land tenure.

Key findings

APPLICATION OF THE FRAMEWORK

Paragraph

The Audit Office assessed how the former Land Development Agency considered and applied the principles and tests in the Framework, based on 'all proposed acquisitions ... [being] assessed against the principles and associated tests'. In doing so, adherence to the Framework is assessed with a high threshold. In its response to the final proposed report on 22 June 2018 the Suburban Land Agency advised 'the Audit Office has placed a higher threshold on how the Framework should have been applied than is stipulated in the Framework or was commonly understood by the LDA Board and LDA management'. It also advised '... another relevant ordinary meaning of "follow" according to the ACT Government Solicitor's Office (GSO) is 'to endeavour to obtain or to attain to' and that definition would appear to sit equally well in the context of the wording of the Framework.

2.25

While the different views can be debated what needs emphasising is that the former Land Development Agency should have clarified how the Framework's principles and tests were to be applied; this did not occur. A *Land Acquisition Policy Framework Interpretation* paper was prepared in August 2015 but it only provided guidance on what purchases the framework applied to and how to apply the \$20 million 'accumulation limit'. No legal advice was sought by the former Land Development Agency at the time of the development of the Framework to assist its consideration and application of the Framework and its principles and tests. In the absence of interpretation guidance on how the principles and tests in the Framework were to be applied, it was important that the former Land Development Agency comprehensively document its consideration and application of the Framework principles and tests. This was not consistently or effectively done.

2.26

For the first four rural properties purchased west of Canberra (Lands End, Milapuru, Fairvale and Huntly) various Board reports and business cases assert that the purchases were in accordance with Framework, but there was no contemporaneous record of the consideration and application of the principles and tests in the Framework. For the subsequent rural properties purchased (Winslade, The Vines, Wintergarden and Pine Ridge) there is better documentation of the consideration of the principles and tests in the Framework. For the purchases of Winslade and The Vines there is evidence of partial consideration of the principles and tests in the Framework and for the purchases of Wintergarden and Pine Ridge there is evidence of full consideration of the principles and tests in the Framework, including

2.41

information in the form of a statement of the test and affirmative response and brief description for each.

For the eight rural property purchases assessed by the Audit Office, the Framework's Intended Outcome Principle (Test 1) was considered to have been followed as there was a documented reason why the former Land Development Agency proposed purchasing the properties. For the majority of properties (Lands End, Milapuru, Fairvale, Huntly, Winslade and Pine Ridge) it was residential development and other purposes ancillary to residential development. For some properties (Wintergarden, Pine Ridge and The Vines) it was for infrastructure and other purposes ancillary to residential.

2.47

The Audit Office and the Suburban Land Agency have different views on whether the identification of the Western Edge Study area in the *ACT Planning Strategy* (2012) provided a clear policy direction to the former Land Development Agency for it to state its intended outcomes (i.e. residential in most instances) are aligned with other government policies in relation to rural land west of Canberra. The Audit Office considers that the identification of the need for further studies and investigation into the Western Edge Study area and its potential for development does not amount to an intention to change the land use of this area. The Suburban Land Agency advised that 'it is beyond question that the planned future investigation of the land west of Canberra will result in the identification of uses of the land other than rural'.

2.53

For the eight rural purchases assessed by the Audit Office, the Framework's Policy Alignment Principle (Tests 2, 3 and 4) was considered to be followed for one property (Wintergarden). Test 3 was considered to be followed for all properties because the purchase of the properties were considered to be in conformance with the Statement of Government Policy objective for the Land Development Agency either to 'ensure that an adequate supply of land is maintained to meet market demand ...' or 'to ensure an adequate supply of Government-owned land is in the planning and development pipeline for future release'.

2.62

Test 2 (relating to the Government's land development policies as set out in the *ACT Planning Strategy* (2012) and any other relevant Government strategic spatial planning documents and requirements) was not considered to be followed for the majority of the properties as the land is not currently zoned for residential use and no policy had been established by Government relating to changing land use in this area. Test 4 (relating to consistency with any other relevant Government policies) was not considered to be followed for the majority of the properties for different reasons including: the Government's 2008 agreement to 'remove Central Molonglo from being considered as a future urban area', Cabinet not agreeing in May 2014 to proceed with specific investigations that would inform the prioritisation of a new development front and the Government's commitment to a compact city and urban renewal in the *Statement of Planning Intent 2015*.

2.63

In response to the draft proposed and final proposed reports on 10 May 2018 and 22 June 2018 the Suburban Land Agency advised, based on its interpretation of available information, that it considers that Tests 2 and 4 were followed for all purchases. In considering that both Test 2 and Test 4 was followed, the Suburban

2.64

Land Agency advised that the identification of the Western Edge Study area in the *ACT Planning Strategy* (2012) 'signalled that the Government was interested in assessing the potential uses of that land. Due to the identification of the area for future investigation in 2012, the purchases were not inconsistent with Government policy'. For the reasons outlined above, the Audit Office has a different view that the identification of the area as being subject to future investigation provides such certainty.

For the eight rural purchases assessed by the Audit Office, the Framework's Value for Money Principle (Test 5 relating to the proposed purchase price being consistent with the independent market valuation) was considered to be followed for four of the eight properties (i.e. Lands End, Huntly, Winslade and Pine Ridge). For these purchases the price paid by the former Land Development Agency for the properties was within 10 percent of a documented, independent valuation provided by a Certified Practising Valuer that was based on the 'highest and best use' of the property.

2.83

For the purchases of Milapuru and Wintergarden, the prices paid by the former Land Development Agency were not consistent with a valuation based on the 'highest and best use' of the property. The prices paid were consistent with, and based on, subsequent advice sought and received by the former Land Development Agency in response to market dynamics that prevailed. For Milapuru, the former Land Development Agency sought additional valuation advice. It was already aware of a counter-offer for the property, which was significantly higher than the valuation it had received on the basis of 'highest and best use'. For Wintergarden, the former Land Development Agency sought valuation advice because it was not successful in purchasing the property at auction at a price consistent with the valuation it had received on the basis of 'highest and best use' (the property was passed-in, with the former Land Development Agency being the second under-bidder).

2.94

For the purchase of Fairvale, the former Land Development Agency did not have an independent market valuation. While a draft market valuation report was prepared by the Director, Knight Frank Valuations Canberra for the owner of the property, and this identified a value of \$4.2 million to \$4.75 million for the property, the Audit Office did not locate, in former Land Development Agency records, reference to, or a copy of, this advice. Furthermore, this document does not represent an 'independent' market valuation, as the Director, Knight Frank Valuations Canberra had a personal interest in purchasing the property.

2.105

The former Land Development Agency subsequently engaged the Colliers International State Chief Executive, ACT, who was already acting as the Agency's agent, to provide 'updated valuation and consultancy' advice on how a previously agreed purchase price could be apportioned for the purchase. The letter took the agreed purchase price for the entire property as a starting point (\$4.95 million plus \$500,000 for improvements) and provided advice on how this should be apportioned, according to the purchase arrangements that had already been agreed. Furthermore, this three-page letter containing advice on value is not an 'independent' market valuation, as the valuer was already acting as agent to the former Land Development Agency.

2.106

For the purchase of The Vines, the price paid by the former Land Development Agency was not consistent with a documented independent market valuation based on the 'highest and best use' of the property. While the former Land Development Agency sought and received a valuation report, which provided a valuation range of \$1.2 million to \$1.4 million, the former Land Development Agency subsequently paid an estimated \$2.2 million for the property, based on its understanding that 'an offer of over \$2 million had apparently been received', which consequently 'sets the market value'.

2.108

In response to the draft proposed and final proposed reports on 10 May 2018 and 22 June 2018 the Suburban Land Agency advised that based on available information it considers that Test 5 was followed for all purchases. In considering that Test 5 was followed, the Suburban Land Agency identified the market dynamics that prevailed for the purchases of Milapuru, Wintergarden and The Vines, following its receipt of a valuation based on the 'highest and best use' of the property, as necessarily impacting on the former Land Development Agency's ability to purchase the properties at a price consistent with the valuation. The Suburban Land Agency advised that 'the references to Value for Money in the Framework relate to both current and anticipated uses, and as such it is appropriate that potential rezoning was considered'. The Audit Office considers that what was required to meet Test 5 was a strict application which means the effect of the Framework is limiting and does not expressly facilitate market dynamics being incorporated.

2.111

Noting the settlement dates of the purchases (between 30 June 2015 and 8 April 2016), the independent valuations for the purpose of establishing fair value for financial reporting as at 30 June 2016 aligned with the purchase prices paid for Lands End, Fairvale and Huntly. However, the purchase price of Milapuru was \$3 million more than the valuation conducted for the purpose of establishing fair value for financial reporting. This resulted in a reduction in value of Milapuru (a loss) of \$3 million plus \$0.362 million in stamp duty and other expenses in the former Land Development Agency's Financial Statements for 2015-16.

2.116

For the eight rural purchases assessed by the Audit Office, the Value for Money Principle Test 6 or 7 (relating to consideration of any holding costs, redevelopment costs, and opportunity costs and their demonstration as reasonable and not onerous) was not followed for the first three properties purchased that were purchased: Lands End, Milapuru and Fairvale. There is evidence to show that these tests were followed for all subsequent purchases. For the purchase of Lands End the relevant Board report provided no analysis as to the costs or benefits 'of the operation of the farm ... until such time as the land in part or as whole is required for urban development', while for the purchase of Milapuru and Fairvale the relevant Board papers did not provide sufficient information to demonstrate consideration of holding costs and other opportunity costs and that costs are 'reasonable and not onerous'.

2.121

The Suburban Land Agency considers, based on available records, that Test 6 or 7 was followed for all purchases because the 'business cases identified a proposed land management use' and 'costs associated with managing acquired land were discussed in detail by the LDA Board' which were 'undertaken as part of broader consideration

2.122

of land acquisitions and not separately documented in LDA Board minutes'. For the reasons outlined previously, the Audit Office does not agree that the former Land Development Agency's consideration of any holding costs, redevelopment costs, and opportunity costs and their demonstration as reasonable and not onerous was followed for the first three purchases.

For the eight rural purchases assessed by the Audit Office, the Risk Management Principle (Tests 8 and 9) was not considered to be satisfactorily followed for the majority of the eight rural purchases. Consideration of Test 8 (exposure of the Territory to risk) was considered to be satisfactorily followed for the purchase of Huntly and Winslade. Consideration of Test 9 (intended outcome for the proposed acquisition was reasonably achievable) was considered to be satisfactorily followed for the purchase of Winslade. The Suburban Land Agency considers, based on available information, that the Tests 8 and 9 were followed for all purchases, noting that 'The Board was aware of, and discussed, the Territory's position as a substantial landowner, including its understanding of established processes and the roles and responsibilities of relevant entities for the management of land. Acknowledging this, bringing the western edge rural parcels into Territory ownership was not, of itself, a risk'. The Suburban Land Agency also advised, based on available information that 'risks associated with the proposed land acquisitions were discussed in detail by the LDA Board. Such discussions were undertaken as part of broader consideration of land acquisitions and not separately documented in LDA Board minutes'. For the reasons outlined previously, the Audit Office does not agree that the former Land Development Agency's consideration of the potential exposure of the Territory to unnecessary risks and the reasonable achievability of the intended outcome of the purchase was followed for the majority of the purchases.

2.135

The Audit Office notes the advice of former Land Development Agency Board members as to the Board's remit, its capabilities and its strategic reasons in purchasing land. However as the former Land Development Agency was directed 'to act in accordance with the principles of the ... Framework ... when exercising the Agency's functions' it was also obliged to follow all tests of the Framework. Respecting that the former Land Development Agency and its Board have made statements that the Framework's tests were complied with, greater transparency and rigour was called for. It would have been prudent in responding to the new Ministerial direction in 2014 (i.e. the Framework) to have:

2.142

- examined its meaning and agreed how it would be operationalised;
- established documentation and decision-making expectations; and
- monitored compliance on an ongoing basis from the commencement of the Direction.

The Framework's decision-making thresholds were applied for all purchases; there was a written record of the decision maker and the date, and the decision-maker's authority was in accordance with the thresholds for individual purchases in the Framework. Business cases were also provided to Treasury in the case of the Milapuru, Huntly, and Winslade purchases in accordance with the Framework.

2.147

The former Land Development Agency Board exceeded the annual \$20 million cumulative threshold in 2015-16 by \$8.83 million due to the Huntly purchase. In its

2.154

response to the draft proposed report on 10 May 2018 the Suburban Land Agency advised that this was because of an incorrect interpretation of the Framework thresholds (i.e. previously the Framework thresholds were interpreted on the basis of the date of approval as opposed to the date of settlement) and not recognising acquisitions made for the purpose of the City to the Lake project. Following the receipt of legal advice in February 2017 a corrigendum was issued for the Land Development Agency's 2015-16 Annual Report, which presented the corrected information.

The former Land Development Agency advised the Minister for Economic Development in writing for all but one purchase under the \$5 million threshold prior to, or after, purchase as required under the Framework. The exception was the purchase of Fairvale. 2.158

Rural land purchases that were examined in the audit were all reported in the former Land Development Agency's annual reports (2014-15, 2015-16 and 2016-17) as required under the Framework. This was done to a sufficient level of detail notwithstanding the need for the former Land Development Agency to publish a corrigendum to its *2015-16 Annual Report* in March 2017. The corrigendum acknowledged that the former Land Development Agency did not previously comply with the Framework. 2.160

Between May 2015 and April 2017 the former Land Development Agency Board sought additional information from the Land Development Agency to facilitate its decision-making. The Board required that the former Land Development Agency provide it with additional information on proposed purchases to that required under the Framework. This requirement was met (partially or fully) in nearly all respects with later purchases reflecting an improvement in documentation for the consideration of the principles and tests in the Framework. 2.166

Two requests were made by the former Land Development Agency Board Audit and Review Committee (22 April 2016) and Land Development Agency Board (23 February 2017) for the former Land Development Agency to examine its application of the Framework. The internal audit report that resulted from the first review was criticised by Land Development Agency officers and the former Land Development Agency Board Audit and Review Committee for its 'lack of interrogation of the subject matter, narrow stakeholder engagement, flawed methodology and lack of alignment with the subsequent Auditor-General's Report and the McPhee review' and action on this item was closed. The second review focused on purchases that were not the subject of a paper that went to the former Land Development Agency Board; these purchases were 'in scope for retrospective assessment'. As the nine properties considered for the purpose of this audit were the subject of Board papers, the nine were not within the scope of the internal review. 2.180

PROBITY AND PROBITY RISKS

Paragraph

There is no documentary evidence that the former Land Development Agency presented important information to the former Land Development Agency Board (at 3.9

meetings on 25 September 2014 and 11 December 2014) regarding the origins of the 'project consolidation' written advice and *District of Stromlo Acquisitions strategy paper*. In order to ensure transparency and facilitate the identification of potential conflicts of interest the Board should have been advised that the work was unsolicited and provided by Colliers International free of charge. It was incumbent on the former Agency to provide all relevant information to the Board; there is no written record that it did.

In July 2015 the Colliers International State Chief Executive, ACT commenced acting as the former Land Development Agency's agent for the purchase of rural land. No written agreement was ever prepared for these services. On 21 August 2015 the *District of Stromlo Acquisitions strategy paper* previously presented to the former Land Development Agency Board in December 2014 was amended to provide a basis for the payment of services from Colliers International in relation to the purchase of properties (i.e. a commission-based arrangement for purchases by the former Land Development Agency based on an existing panel arrangement). 3.25

On 23 December 2015 Colliers International invoiced the former Land Development Agency for \$298,045, which represented 'Fee for sale/acquisition of properties as part of Stromlo Acquisition Strategy Paper'. Of this \$36,363 is identified as relating to a property that was not purchased by the former Land Development Agency, i.e. part of the former Fairvale property, which was purchased by a private entity; and \$50,000 is identified as relating to an unsolicited 'Planning report', for which Colliers International also invoiced the adjacent block owner \$15,000. There was no reference to the 'Planning report' or payment for it in the amended *District of Stromlo Acquisitions strategy paper* (21 August 2015). The invoice was paid in full by the former Land Development Agency, notwithstanding that no Purchase Order had been found in records for the invoiced services, and no Purchase Order number was written on the signed approval stamp. This means that the former Land Development Agency's financial controls were not applied. Accountability and transparency were lacking in the payment of fees for services. 3.26

The Colliers International State Chief Executive, ACT provided the *District of Stromlo Acquisitions strategy paper* free of charge to the former Land Development Agency to guide its purchases of rural properties to the west of Canberra, all of which were in the Western Edge Study area. Subsequently, the Colliers International State Chief Executive, ACT engaged with rural leaseholders and provided information regarding what the former Land Development Agency might contend in making a purchase. Although the former Land Development Agency was aware of what was occurring, and sometimes requested the assistance of the Colliers International State Chief Executive, ACT, there were no written instructions for their engagement. There is also no evidence that Colliers International's activities were monitored and managed by the former Land Development Agency. Accountability and transparency were lacking in relation to the management of services provided by Colliers International. 3.34

The Audit Office has been advised that there were 'preliminary challenges identified by the former LDA [Land Development Agency] prior to establishing the Expression of Interest process for Huntly'. While noting this, basic procurement requirements were not met. There was a lack of: documentation to request a quotation; written acceptance of a quotation; written explanation for undertaking a 'single select' 3.52

procurement (where three written quotes would be expected); an authorising delegate for the decision; and creation of a purchase order in advance of the services being provided. The decision to procure the services was not justified and the conduct of the process was poor.

The former Director, Sales, Marketing and Land Management of the Land Development Agency advised that they had 'no experience with rural leases and commissions' and sought the advice of the ACT Property Group who advised that the fee from CBRE was 'high for what is being offered'. However, it needs to be acknowledged that there was no precedent for judging the scope of the work and interest. As it eventuated the interest was high. Although the circumstances were uncertain and complex it was beholden on the former Land Development Agency to justify accepting the fee, this was not done.

3.55

The Director, CBRE Agribusiness Transactions, was engaged by the former Land Development Agency to provide services for conducting an *Expression of Interest* process for procuring a long-term land manager for Huntly. The Director was a shareholder and non-executive director of another company that was proposed by one tenderer to be engaged under a sub-contract to manage Huntly. The Director, CBRE Agribusiness Transactions advised that this conflict of interest was communicated to the former Land Development Agency before appointment, and that this was communicated verbally rather than in writing. No record of this disclosure was found in former Land Development Agency records.

3.69

After the *Expression of Interest* process had commenced the former Land Development Agency took management action when other prospective tenderers alerted it of their concerns.. The former Land Development Agency requested that: *Expressions of Interest* be sent directly to the former Land Development Agency instead of the Director, CBRE Agribusiness Transactions as originally planned; and tenderers complete a warranty relating to any conflicts of interest. While these changes to the process were communicated to prospective tenders in the days preceding the closing date for *Expressions of Interest* the Director, CBRE Agribusiness Transactions did receive submissions that should have been sent to the former Land Development Agency.

3.70

The *Information Memorandum* provided to prospective tenderers for Huntly and Piney Creek stated that there was to be a sublease and separate grazing licence. The eventual sum of the two contracts entered into (\$285,000 and \$9,800 per annum, that is, \$294,800 per annum over ten years) is less than the sum tendered (\$65,200 less than the \$360,000 tendered). The Land Development Agency did not adequately document the negotiations that occurred that resulted in the agreed price that was different from the panel-endorsed tendered amount.

3.76

The agreed rent of \$285,000 per annum for Huntly was substantially higher than the former Land Development Agency's estimated rental income of \$95,000 per annum. On the basis of Huntly rental income alone, this is a good financial outcome compared to former Land Development Agency expectations. While the ten per cent fee agreed for CBRE (based on a multiple of five years rental income) being \$151,717 (ex. GST) exceeded a \$41,500 (ex. GST) fee that would have been applicable on the

3.79

agreed rent (\$285,000) if ACT Property Group advice had prevailed it needs to be recognised that there was no precedent for judging the scope of the work and interest. As it eventuated the interest was high. While the circumstances were uncertain and complex it was beholding on the former Land Development Agency to justify accepting the fee, this was not done.

One valuer, Knight Frank Valuations Canberra, was the source of independent market valuation advice where a valuation report was prepared, for 75 per cent of the rural properties examined in this audit which were purchased or were being purchased by the former Land Development Agency. While acknowledging that there is a limited number of valuers with ACT rural land valuation expertise, there is no evidence that the former Land Development Agency took action to reduce the reliance on this one valuer. While acknowledging this is challenging issue in the ACT options for securing valuation services from several valuers needs to be examined. 3.92

Instructions from the former Land Development Agency to valuers to undertake valuations were not always given to valuers in writing, and when provided in writing contained insufficient information. Without the availability of a detailed written instruction, prior to a property inspection, incorporating a clear purpose and basis for the valuation, there is a risk to the quality and integrity of the valuation. 3.97

On 11 December 2014 the former Land Development Agency Board approved the Land Development Agency to initiate discussion with specific landowners in the Western Edge Study area, including the owner of Fairvale, 'with a view to the possible strategic acquisition at a later date'. Independently, in May 2015 the owner of Fairvale undertook activity to prepare the block for sale, including engaging a selling agent and engaging a number of valuers to provide advice on the potential value of the block. 3.114

In an interview under oath or affirmation, Fairvale's vendor advised that they had become aware of the former Land Development Agency's interest in purchasing Fairvale on 29 July 2015, before the property was advertised on the market. On 3 August 2015, the Director, Knight Frank Valuations (one of the vendor's valuers) proposed an arrangement to the vendor whereby the Director and his spouse would purchase part of the property and the other part of the property would be sold to the Land Development Agency. Throughout early to mid-August 2015 negotiations for the purchase of Fairvale ensued. 3.115

On 10 August 2015 a price of \$5.45 million was provisionally agreed between the vendor's agent (Landmark Harcourts) and the former Land Development Agency's agent (Colliers International State Chief Executive, ACT) for the whole of Fairvale (Block 491, 470.8 hectares not subdivided). The sale price was documented in an exchange of letters between the Colliers International State Chief Executive, ACT (agent for the former Land Development Agency) and Landmark Harcourts (the vendor's agent) on 13 and 17 August 2015. 3.119

At some point between 7 August and 24 August 2015 it is apparent that the vendor agreed to sell Fairvale in two parts: one to the former Land Development Agency and one to the Director, Knight Frank Valuations Canberra. The Colliers International 3.127

State Chief Executive, ACT (in their capacity as Director (ACT Division) of Colliers International Valuation and Advisory Services) was asked to provide advice on the value of the two proposed parts of the Fairvale block. This advice was provided on 14 September 2015 and was subsequently provided to the former Land Development Agency Board at its 24 September 2015 meeting, at which the Board agreed to purchase part of Block 491, Fairvale (new Block 518).

No contemporary documentation existed that provided:

3.138

- the rationale why the former Land Development Agency supported the subdivision and purchase of part of Block 491 rather than pursuing the purchase of the whole block as originally envisaged by the Board on 11 December 2014; or
- the circumstances in which officers of the former Land Development Agency agreed to pursue the purchase of part of the property during negotiations.

Approximately 32 percent of the original Fairvale block (Block 491) that was apportioned to the new Block 517, was purchased by the Director, Knight Frank Valuations Canberra. This site appears, by February 2017, to be potentially strategically important as an urban front area; having significant frontage to the Cotter Road, and the site of a local centre according to the former Land Development Agency's *Draft Stromlo District Master Plan*. This site, compared with the one purchased by the former Land Development Agency, has far less of the NUZ4 River Corridor zoned land which may impede development yield.

3.139

While it was suggested that 'a significant portion of [the new Block 517] would likely be retained as an asset protection buffer and the curtilage surrounding the homestead, noting a heritage assessment has yet to be considered at this stage' it is also noted that there are no recorded or registered heritage places or objects on the Block according to the ACT Heritage Register. Furthermore, it was also asserted that Block 517 has drainage issues but there is no documentary evidence that this was examined by the former Land Development Agency.

3.140

There was no evidence that the former Land Development Agency identified and assessed risks related to not pursuing the entire purchase of the Fairvale block (Block 491) or risks associated the various roles of the Director, Knight Frank Valuations Canberra. The former Land Development Agency had knowledge of the Director's roles as a valuer for the vendor and as a prospective purchaser, yet the former Agency directly supported the subdivision for no apparent reasons or need. There is no contemporaneous documentation to justify why the purchase of the whole block was not pursued, this presents a probity risk.

3.141

References in some reports and briefs prepared by the former Land Development Agency for decision-makers relating to future residential growth fronts contained incomplete information related to the Government's planning policy. This presented potential risks to the transparency of information for decision-makers.

3.145

In former Land Development Agency Board reports and a Ministerial Brief, information about the area of Central Molonglo removed in perpetuity from being considered a future urban area was inaccurately presented. The Board reports and Ministerial Brief referred to as a '20-year moratorium' rather than being '... in perpetuity from being considered as a future urban area'. This presented potential risks to the transparency of information for decision-makers.

3.153

MANAGEMENT OF PURCHASED RURAL LAND

Paragraph

Lands End (purchased 30 June 2015), Milapuru (31 July 2016), Huntly (8 April 2016), Wintergarden (30 August 2016), Winslade (30 June 2017) and Pine Ridge (31 July 2017) each need to have an executed Land Management Agreement but do not. By December 2018, the latest extension time granted for developing the agreements, properties will have been in the ownership of the Territory for a considerable time, including Lands End being owned for over three and a half years, with no executed Land Management Agreement. Not having a Land Management Agreement in place in a timely manner presents a risk of not achieving the principal objective of Land Management Agreements: 'sustainable agricultural management practices and good farm biosecurity for the subject land while maintaining ecological and cultural values present on the land, and protecting the environment from harm'. Reasons why Land Management Agreements have not been secured need to be examined to identify options for preventing this in the future.

4.15

The former Land Development Agency did not include all of the properties it purchased in its *Bushfire Operations Plans*; Lands End and Milapuru were not included in the *2015-16 Bushfire Operations Plan* and should have been. They were included in the *2016-17 Bushfire Operations Plan*. The Suburban Land Agency's inclusion of purchased properties in its *2017-18 Bushfire Operations Plan* is comprehensive. However the 2017-18 plan makes reference to licencing and subleasing arrangements for Lands End and Fairvale, but these have not been put in place and so the responsibility to meet fire management obligations is unclear.

4.25

The former Land Development Agency did not establish an adequate contractual basis for the daily management of all former Land Development Agency rural purchases to the west of Canberra. The Suburban Land Agency advised on 10 May 2018 that all properties have executed contracts (licences or subleases) except for Milapuru and Lands End which are being progressed.

4.46

Although agreements were in place for Milapuru (residential tenancy agreements and an agricultural licence), more than \$90,000 in rent that was due up to 31 December 2017 has not been collected. There is also a risk that approximately \$130,000 in rent (a figure estimated by the Audit Office derived from draft terms exchanged, but not settled) for Lands End and Fairvale was foregone up to 31 December 2017.

4.47

Sublease or licence arrangements with the former owners of Wintergarden, Winslade and Pine Ridge are adequate for the purpose of clarifying who is responsible for land management, and some aspects of land management are

4.48

included in contracts. However for these properties, Land Management Agreements have not been entered into. This means that the full extent of the sublessee or licensee responsibilities is not clear in terms of daily land management practices.

Arrangements for the daily management of the 3,378 hectares of rural land purchased to the west of Canberra has been on a property-by-property basis. There has been no strategic consideration as to whether or not this is the best arrangement, for example, several properties being under the one contract.

4.49

PLANNING CONTEXT

Paragraph

Between 2001 and 2006, 99-year leases commenced for each of the nine rural land properties that are the subject of this audit. For the seven properties where a transfer of the lease to the former Land Development Agency (or the Suburban Land Agency in the case of Pine Ridge) has occurred, the Lands End 99-year lease was secured for \$39,440, Milapuru for \$60,800, Fairvale for \$71,900, Huntly for \$204,295, Wintergarden for \$79,000, Winslade for \$73,730 and Pine Ridge for \$56,600. For three properties (Lands End, Fairvale and Pine Ridge) the long-term lease did not have a withdrawal clause to allow the Government to resume the land. For four properties (Milapuru, Huntly, Wintergarden, Winslade) a minor portion of the property was subject to withdrawal clauses. All leases were subject to a ten-year discharge provision during which time a premium was to be paid to the Government based on any uplift in value on the sale of the property. All nine properties were sold or agreed to be sold (in the case of The Vines and Wagtail Park) shortly after the ten-year discharge period lapsed between 30 June 2015 and 30 June 2017.

5.13

Between 2001 and 2006 owners of the 3,378 hectares of rural land west of Canberra purchased their long-term (99-year) leases for the equivalent of between \$117 and \$759 per hectare. This was based on 'Dry Sheep Equivalent' rates which 'meant that the prices paid for these leases were set as if their only value was that derived from the rearing of sheep'. Between 2015 and 2017 the owners received an average of \$12,754 per hectare, based on valuations and market dynamics discussed in this audit.

5.15

During the development of the *ACT Planning Strategy* (2012) the Western Edge Study area was not consistently identified as a priority for inclusion nor was its purpose consistently defined. However, in finalising the strategy the Economic Development Directorate requested that Cabinet consider the '... provision ... for a western Broadacre study for ... areas to the west of Canberra's current urban boundary'. The Western Edge Study area was then delineated and described in text in the published *ACT Planning Strategy* (2012) as a study area in which 'issues, best uses and management for the lands' would be investigated.

5.34

The inclusion of the Western Edge Study area in the *ACT Planning Strategy* (2012) does not amount to a decision by the Government to urbanise this area but, once the Western Edge Study was flagged as a 'study area', a risk is created that there will be land speculation based on the possible outcomes of any investigation and subsequent decision making by the Government. For rural lessees in the area this could be considered an opportunity as their land values may increase. In the period

5.49

2001 to 2006, 99 year leases were issued. At that time the Government's intentions was that the 'areas [were] no longer required for urban development'.

For five rural properties, former owners initiated a discussion with the former Land Development Agency about selling their property either directly (Lands End and Winslade) or indirectly via a third party (Milapuru, Fairvale and Huntly). One property (Wintergarden) came to the attention of the former Land Development Agency through being placed on the market for auction. For three properties (Pine Ridge, The Vines and Wagtail Park) discussions about selling the property occurred after contact had been made with owners for securing easements for electricity supply infrastructure. As landowners contacted the former Land Development Agency this indicates that there was an awareness that the former Land Development Agency was interested in purchasing properties. 5.51

In January 2013 the Government purchased 227 hectares of land known as Glenloch for \$10 million (including GST). The property was under negotiations with the Territory for development and/or purchase by the Territory when it was re-zoned in the Territory Plan from rural to 'future urban'. As rural land it had a value of \$4 million (excluding GST) but a 'speculative value', taking account of the re-zoning and the potential to amend the Crown Lease, was also provided at \$9 million (excluding GST). The agreed price of \$10 million (including GST) was close to the speculative value. 5.61

The experience in purchasing Glenloch was influential in the subsequent development of the former Land Development Agency's approach to purchasing rural land as a potential long-term supply of residential development land. The former Land Development Agency sought to secure rural lands before there was any prospect of their value being affected by any Government indication of potential urban development. 5.63

The ACT Government's 2016-17 Statement of Government Policy (approved in March 2016) specifically required the former Land Development Agency to 'Ensure an adequate supply of Government-owned land is in the planning and development pipeline for future release'. Prior to this, the Government's Statements of Government Policy for the former Land Development Agency provided a broad mandate to 'Ensure an adequate supply of residential land to meet market demand and develop an inventory of serviced land'. 5.74

According to former Board reports, residential development managed by the former Land Development Agency on Territory-owned land (i.e. Land Development Agency Estates) was estimated to yield the highest revenue dividend of all the delivery models, thus contributing to a key objective of the former Land Development Agency of providing 'agreed returns to the Territory'. 5.78

The former Land Development Agency, while being a source of revenue for the Government, also had a role in facilitating the provision of affordable housing. Twenty per cent of the land released by the former Land Development Agency was to be for affordable housing. A reduction in achieving land release targets affected the availability of land for affordable housing. 5.82

In May 2014 a Cabinet submission proposed that ‘investigations to identify the next development front should commence by the end of 2015, in anticipation of a new front being required in or soon after 2025’. Cabinet agreed on 27 May 2014 ‘not to endorse the strategy outlined in the submission, but that a further submission be brought forward in 2015 outlining the key processes and corresponding timeframes for ensuring planning-ready land is available for release, and the roles and responsibilities of the ACT Government directorate in facilitating these processes’. A further submission was never provided by the Economic Development Directorate.	5.92
The former Chief Executive Officer briefed the Land Development Agency Board on 26 June 2014 about the Cabinet’s response to the <i>Long-term land release in the ACT: Issues and options</i> paper. Recollections of the former Deputy Chief Executive Officer and a former Board member were that Cabinet in May 2014 did not view the need for a new development front to be determined with the same degree of urgency as the former Land Development Agency Board.	5.99
Unsolicited advice provided by the Colliers International State Chief Executive, ACT was the catalyst for, and basis of, the strategy used by the former Land Development Agency for the purchasing of Milapuru and Fairvale. There is no documentary evidence that this advice was rigorously assessed or conflicts of interest identified. In relation to these events: <ul style="list-style-type: none"> on 8 September 2014, the Colliers International State Chief Executive, ACT provided an unsolicited (four-page) ‘project consolidation’ proposal to the former Deputy Chief Executive Officer, indicating that the properties of Canberra Equestrian Centre, Riverview, Fairvale, National Equestrian Centre, and Milapuru would be worth considering for purchase or ‘taking control of’; on 8 September 2014 the Colliers International State Chief Executive, ACT stated in an email in relation to the ‘project consolidation’ proposal that ‘I have spoken to [the Chief] ... but she has asked me to discuss further with you ... then she can go get Cabinet support’. An interaction of this kind was not substantiated; former Land Development Agency Board records of the 25 September 2014 Board meeting do not acknowledge that the unsolicited ‘project consolidation’ proposal had been made. The Board requested that ‘a paper on long-term land supply options, incorporating a strategic acquisition program’ be prepared for its consideration. The rationale and scope of the program were not recorded in minutes; and on 11 December 2014, a <i>District of Stromlo Acquisition strategy paper</i> was presented to the former Land Development Agency Board. It had also been prepared by the Colliers international State Chief Executive, ACT and a colleague from Colliers International. The <i>District of Stromlo Acquisition strategy paper</i> is specific to the properties of Canberra Equestrian Centre, Riverview, Fairvale, National Equestrian Centre, and Milapuru which were under 99-year leases. The paper reflects the same geographic scope and similar recommendations as the 	5.114

unsolicited 'project consolidation' proposal provided on 8 September 2014.

Notwithstanding that it was a commitment made in the *ACT Planning Strategy* (2012), between 2012 and 2017 '... a study to assess the issues, best uses and management for the lands on the city's western boundary' was not commenced. The former Chief Planning Executive advised that 'the [Planning and Land Authority] was undertaking the work that was at that stage the priority of the Government. It was not the [Planning and Land Authority's] independent decision to give [other] work priority over the Western Edge Study'. Documentation indicates that the Minister for the Environment and Sustainable Development did not support the Planning and Land Authority's funding proposals to progress the study in 2012-13 and 2013-14, and funding proposals were not put to the portfolio Minister thereafter. The Planning and Land Authority focused on the *ACT Planning Strategy* (2012) priority of urban intensification.

5.127

The documented views in the first half of 2016 provided by the Economic Development Directorate and the Planning and Land Authority relating to the priority for urban development were different. The Planning and Land Authority was seeking to conduct a formal review of the *ACT Planning Strategy* (2012), emphasising emerging challenges, particularly those around the 'travel and infrastructure implications of the increasing mismatch between new greenfields settlement occurring to the west of Canberra and new employment growth in central and eastern Canberra'. The Economic Development Directorate sought to progress 'the coordinated body of work to investigate and identify the next urban development front which is likely to be along the western edge of the urban boundary'. Documentation indicates that these two Government entities held different views about the priority of urban growth to the west of Canberra.

5.143

From 2014 to 2017 the former Land Development Agency (or the Economic Development Directorate) and the Planning and Land Authority placed different priorities on the Western Edge Study area. The former Land Development Agency was purchasing rural lands in the Western Edge Study area to secure a long-term supply of land in Government control; the 'next urban development front [...] is likely to be along the western edge'. At the same time the Planning and Land Authority was focused on planning activities related to urban intensification in accordance with the Minister for Planning's *Statement of Planning Intent 2015* and not progressing a Western Edge Study area investigation as committed to in the *ACT Planning Strategy* (2012). These priorities may have been clarified from a whole of Government perspective had the former Land Development Agency (or Economic Development Directorate) addressed the 27 May 2014 Cabinet decision that a further submission be brought to Cabinet in 2015 on the topic of *Long-term land release in the ACT: Issues and options*.

5.153

In its response to the draft proposed report the Suburban Land Agency advised on 10 May 2018 based on its interpretation of available records that 'No agencies disagreed with the assumptions underpinning the Strategy, and there was ongoing dialogue within government. The former LDA was not operating in isolation or in its own direction, but shared a common understanding with other agencies, including ACT Treasury'.

5.154

The former Land Development Agency undertook internal planning activities for the Western Edge Study area and presented this to the former Land Development Agency Board and Economic Development Subcommittee of Cabinet. This was reflective of its focus on this area. 5.157

Two ways the purchases of the Western Edge rural properties can be considered; purchases made 'pre-emptive' of planning consideration (Professor Holliday, the Subject Matter Expert) or they provide '... certainty that the land will be available if it is in scope for inclusion in the next Planning Strategy' (the former Chief Executive Officer of the Land Development Agency). Either way there is a need for the long-term land use for the Western Edge study area to be defined. To inform this it is important that the Chief Planning Executive undertake a planning study to define the Territory's long-term future urban form and in so doing identify development fronts for the Government's consideration in updating the *ACT Planning Strategy* (2012). The planning study needs to be based on sound planning processes and principles which includes the identification of appropriate land uses not being influenced by land tenure. 5.166

The Chief Planning Executive advised that: 5.167

- In simple terms ... tenure is not a relevant consideration to a planning study into the Territory's long term future urban form or potential development fronts. The focus of such a study is on understanding and testing the inherent development capacity of land within the ACT, in this case the Western Edge. Planning studies consider the limitations, constraints and opportunities (hydrology, geology, environmental issues, topography etc), relevant to identified sites, districts or regions in the context of a full range of development options (e.g. urban or suburban development, capacity for environmental offset etc). This analysis is not constrained by property boundaries or tenure, and in turn may inform the preparation of independent expert advice on the ACT spatial planning framework by the Chief Planning Executive to the Government.

Recommendations

RECOMMENDATION 1 INSTRUCTING AND RECEIVING VALUATIONS

While the Suburban Land Agency was not the subject of this audit, since 1 July 2017 the Suburban Land Agency has had responsibility for activities considered in this audit that were previously those of the former Land Development Agency. Recommendations are therefore made to the Suburban Land Agency.

The Suburban Land Agency should:

- a) instruct valuers fully and in writing;
- b) clearly differentiate, in Territory records and verbal briefings, when a valuation is based on a letter or on a comprehensive valuation report;
- c) document clearly the salient aspects of professional standards such as ANZVGN 1 that have been addressed by a valuer (e.g. purpose, basis, methodology, Territory Plan uses) and bring this to the attention of decision makers relying on that valuation; and
- d) routinely test the application of valuation guidance.

RECOMMENDATION 2 FOLLOWING MINISTERIAL DIRECTIONS AND CABINET DECISIONS

While the Suburban Land Agency was not the subject of this audit, since 1 July 2017 the Suburban Land Agency has had responsibility for activities considered in this audit that were previously those of the former Land Development Agency. Recommendations are therefore made to the Suburban Land Agency.

The Suburban Land Agency should:

- a) implement a process to verify that, for the purchase of any property, any directions given by the Minister and in Cabinet decisions are implemented in accordance with any approved framework;
- b) align internal guidance material and operating procedures so that these are consistent with any direction or policy the Government makes publically available;
- c) document compliance; and
- d) routinely test the application of guidance and operating procedures

RECOMMENDATION 3 ENGAGING AND MANAGING AGENTS AND ADVISORS

While the Suburban Land Agency was not the subject of this audit, since 1 July 2017 the Suburban Land Agency has had responsibility for activities considered in this audit that were previously those of the former Land Development Agency. Recommendations are therefore made to the Suburban Land Agency.

The Suburban Land Agency should:

- a) formally engage agents and advisors through documented procurement and contracting arrangements; and
- b) manage and monitor their activities through appropriately documented contract management arrangements. Records of a quality that provides transparency for these activities should be maintained.

RECOMMENDATION 4 PROBITY IN SELECTING AGENTS, CONTRACTORS AND CONSULTANTS

While the Suburban Land Agency was not the subject of this audit, since 1 July 2017 the Suburban Land Agency has had responsibility for activities considered in this audit that were previously those of the former Land Development Agency. Recommendations are therefore made to the Suburban Land Agency.

The Suburban Land Agency should:

- a) document reasons for proposing to engage an agent, contractor or consultant and have this agreed and approved;
- b) monitor the implementation of contracts and authorise in writing reasons for any departure from the agreed contract; and
- c) give particular attention to scrutinising and authorising in writing any contractual terms, such as terms for the payment of an agent, that are a departure from standard terms.

RECOMMENDATION 5 PROBITY AWARENESS

While the Suburban Land Agency was not the subject of this audit, since 1 July 2017 the Suburban Land Agency has had responsibility for activities considered in this audit that were previously those of the former Land Development Agency. Recommendations are therefore made to the Suburban Land Agency.

The Suburban Land Agency should provide training and guidance to its staff on identifying and managing probity. This should be part of induction training and be refreshed annually.

RECOMMENDATION 6 LAND MANAGEMENT AGREEMENTS

While the Suburban Land Agency was not the subject of this audit, since 1 July 2017 the Suburban Land Agency has had responsibility for activities considered in this audit that were previously those of the former Land Development Agency. Recommendations are therefore made to the Suburban Land Agency.

The Suburban Land Agency should work with the Conservator of Flora and Fauna to:

- a) finalise Land Management Agreements for rural leasehold land purchased by the former Land Development Agency by December 2018 but preferably sooner;
- b) identify why Land Management Agreements for all the properties purchased in the Western Edge were not developed in a timely manner and identify options to prevent this in the future; and
- c) execute Land Management Agreements for all future rural land purchases within six months of transfer unless there are exceptional circumstances and these are documented.

RECOMMENDATION 7 BUSHFIRE OPERATIONS PLAN OBLIGATIONS

While the Suburban Land Agency was not the subject of this audit, since 1 July 2017 the Suburban Land Agency has had responsibility for activities considered in this audit that were previously those of the former Land Development Agency. Recommendations are therefore made to the Suburban Land Agency.

The Suburban Land Agency should align licencing and subleasing arrangements with responsibilities in its fire management *Bushfire Operations Plans* or vice versa.

RECOMMENDATION 8 PLANNING AND CONTRACTING LAND MANAGEMENT

While the Suburban Land Agency was not the subject of this audit, since 1 July 2017 the Suburban Land Agency has had responsibility for activities considered in this audit that were previously those of the former Land Development Agency. Recommendations are therefore made to the Suburban Land Agency.

The Suburban Land Agency should:

- a) undertake a strategic analysis of options for the daily management of purchased rural properties including considering use and ongoing management at a larger scale;
- b) implement the preferred option; and
- c) execute contracts for the management of all rural land purchases managed on its behalf.

RECOMMENDATION 9

FUTURE URBAN FORM OPTIONS

The Chief Planning Executive should undertake a planning study, to define the long term future urban form and identify the Territory's future development fronts to guide the update of the *ACT Planning Strategy* (2012).

Response from entities

In accordance with section 18 of the *Auditor-General Act 1996*, the Auditor-General provided a copy of the draft proposed report and final proposed report to the Chief Executive Officer of the Suburban Land Agency, the former Chief Executive Officer and Board members of the Land Development Agency, and the Director-General of the Environment, Planning and Sustainable Development Directorate (the Chief Planning Executive). They were offered the opportunity to provide a statement for consideration for inclusion in the Summary Chapter.

Other persons who the Auditor-General considered to have a direct interest in the report were also provided extracts of the draft proposed report and final proposed report.

The Suburban Land Agency provided comments for inclusion in the Summary Chapter.

Suburban Land Agency response

Application of the Land Acquisition Policy Framework

Application of the Planning and Development (Land Acquisition Policy Framework) Direction 2014 No 1 (the Framework) was central to the audit findings. As noted in the Report, there are multiple possible interpretations of the Framework. In assessing this matter, the ACT Audit Office sought advice from the Australian Government Solicitor, while in response to the views expressed in the draft proposed Report, the Suburban Land Agency sought advice from the ACT Government Solicitor's Office.

As noted in the Report, the Suburban Land Agency understands, based on available information, that the former Land Development Agency (LDA) and its Board interpreted the Framework with what was considered a reasonable degree of subjectivity, consistent with the exercise of the former LDA's function under the Planning and Development Act 2007 and its annual Statements of Intent.

Land Management Agreements

Section 286 of the Planning and Development Act 2007 provides that the interest holder must enter into a Land Management Agreement within six months, and that the Planning and Land Authority may extend that date. Such an extension was granted by the Planning and Land Authority for the preparation of Land Management Agreements. The former LDA, and subsequently the Suburban Land Agency, therefore acted in accordance with the legislation.

Audit Findings and Recommendations

The majority of the findings in the Report raise similar issues to those identified in the 2016 Performance Audit Report on Certain Land Development Agency acquisitions and largely relate to issues that have their origins almost four years ago. It was acknowledged prior to commencement of the audit process that the arrangements that prevailed at the time the acquisitions were made could have been improved.

The operating environment and governance arrangements applying to land development within the ACT have changed significantly since that time. Responses to a majority of the Report's findings and recommendations are effectively already in place.

Most of the findings, which principally relate to improving governance, have already been addressed by the Suburban Land Agency. In some cases, the new arrangements have been in place for more than 12 months. This includes a stronger focus on probity in the engagement and management of consultants and valuers, new valuation processes and comprehensive new governance arrangements, including improved documentation and records management processes, training for all staff including on probity, and additional reporting requirements. The Suburban Land Agency will continue to review options to strengthen processes and governance arrangements.

1 INTRODUCTION

Background

1.1 Between 14 June 2014 and 30 June 2017 the former Land Development Agency purchased, or was in the process of purchasing, nine rural properties totalling 3,378 hectares. All properties had 99-year leases that had commenced between 2001 and 2005. The purchases were made under the *Planning and Development (Land Acquisition Policy Framework) Direction 2014 (No 1)* (Notifiable Instrument NI 2014-264) (the Framework).

1.2 Table 1-1 shows the nine properties that were the subject of the audit.

Table 1-1 Properties west of Canberra, purchased or being purchased by the former Land Development Agency, as at 30 June 2017

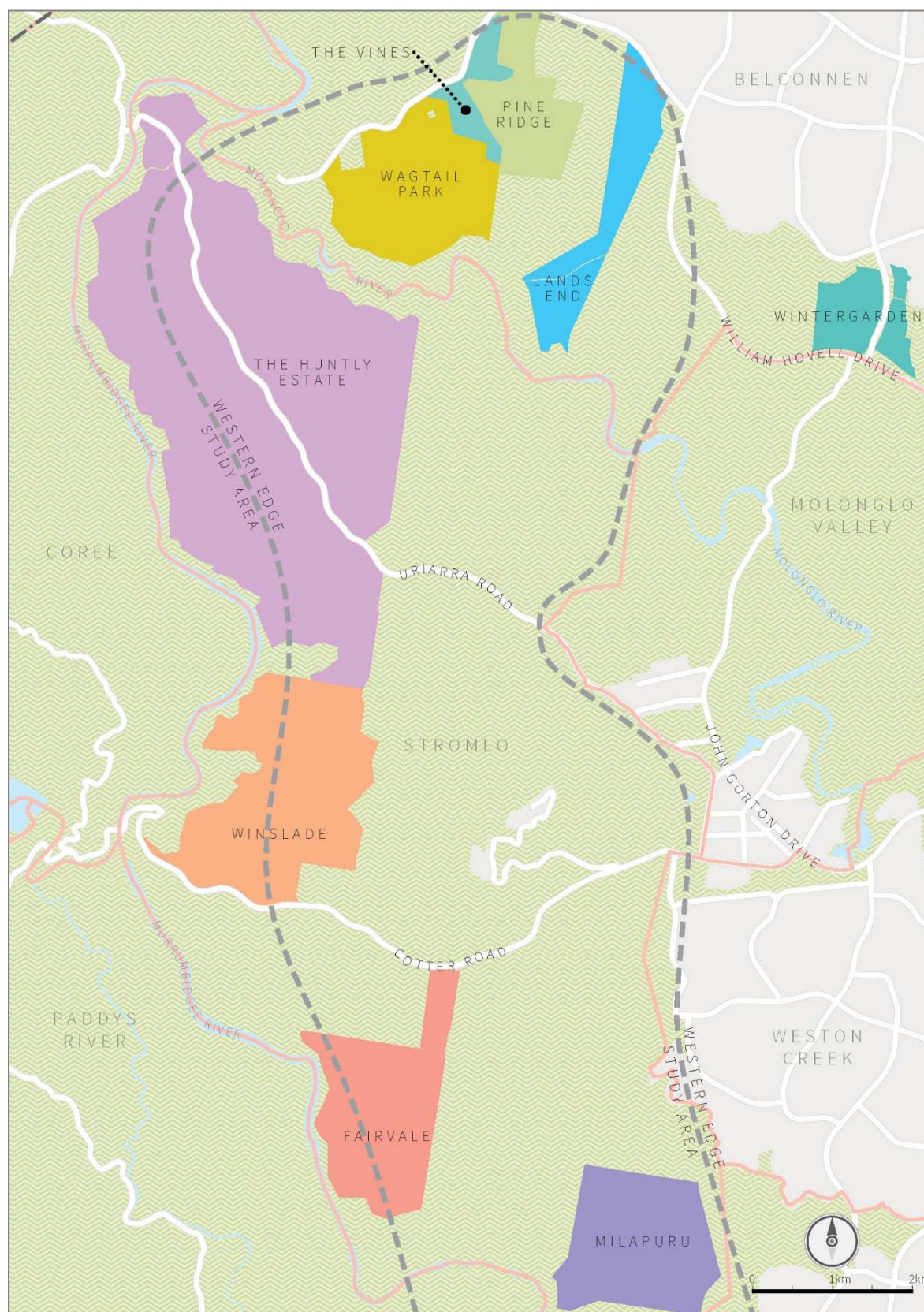
Property (Block)	Lease value paid by rural lessee ¹ 2001 - 2010	Territory Plan status (hectares)	Price paid by ACT Government
Lands End (Blocks 1591 to 1597 – District of Belconnen)	\$39,440	NUZ3 (335 ha)	\$3 million
Milapuru (Block 19 – District of Stromlo)	\$60,800	NUZ2 & 4 (290 ha)	\$7 million
Fairvale (part of former Block 491 – District of Stromlo)	\$71,900	NUZ2 & 4 (320 ha)	\$3.1 million
Huntly (Blocks 412, 413, 426, 487, 489 – District of Stromlo)	\$204,295	NUZ2 & 4 (1,605 ha)	\$10 million
Wintergarden (Blocks 1491, 1492, 1587 – District of Belconnen)	\$79,000	NCP Designated land (104 ha)	\$4 million
Winslade (Blocks 435, 439, 440, 441 456, 476 – District of Stromlo)	\$73,730	NUZ2-4 (486 ha)	\$7.5 million
Pine Ridge (Block 1600 – District of Belconnen)	\$56,600	NUZ3 (164 ha)	\$4.6 million
The Vines (Block 1582– District of Belconnen)	\$28,500	NUZ1 (62 ha)	Est. \$2.2 million

¹ Prices paid on conversion of leases (2001-2010) to 99-year leases on the basis of the “dry sheep equivalent” (DSE) value of the land (refer to paragraph 5.11).

Property (Block)	Lease value paid by rural lessee ¹ 2001 - 2010	Territory Plan status (hectares)	Price paid by ACT Government
Wagtail Park (12ha of Block 1601–District of Belconnen)	n/a	NUZ3 (12 ha)	Est. \$1.686 million
Total (9)	\$614,265	3,386 hectares	\$43.086 million

Source: Audit Office review of former Land Development Agency Board reports and Leasing Services records within the Environment, Planning and Sustainable Development Directorate.

- 1.3 The nine properties are to the west of Canberra (refer to Figure 1-1). Except for one property (Wintergarden) all are within the Western Edge Study area (*ACT Planning Strategy* (2012)).
- 1.4 When consolidated with other Territory land and short-term privately held leasehold, the nine properties combined account for more than 4,500 hectares of rural lands that surround Stromlo Forest Park. This area is similar in size to the combined area of the districts of Woden Valley (2,860 hectares) and Weston Creek (1,580 hectares).
- 1.5 Lands End, Milapuru, Fairvale, Huntly, Wintergarden and Winslade were purchased between 14 June 2014 and 30 June 2017. Expenditure on these properties was \$34.6 million.
- 1.6 Pine Ridge, The Vines and Wagtail Park were approved for acquisition but not settled prior to 1 July 2017. Proposed expenditure for these properties is \$8.49 million. The expenditure committed for the nine purchases totals \$43.086 million.

Figure 1-1 Former Land Development Agency land purchases west of Canberra

Source: Prepared for the Audit Office by the Environment, Planning and Sustainable Development Directorate, April 2018

Former Land Development Agency

1.7 The former Land Development Agency was established under section 31 of the *Planning and Development Act 2007*. Subsection 32(1) of the Act states the Agency's functions as:

- to develop land;
- to carry out works for the development and enhancement of land; and
- to carry out strategic or complex urban development tasks.

1.8 The former Land Development Agency was required to exercise its functions in accordance with a Statement of Intent. The Land Development Agency's (final) 2016-17 *Statement of Intent* stated:

The key outcomes for the LDA are that it:

- ... 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.
- ... acts in a commercially responsible, ethical and efficient manner when developing and selling land on behalf of the ACT Government.
- ... 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.

1.9 The governance arrangements for the former Land Development Agency were determined by the Government in October 2011. Under these the Chief Executive Officer and the Deputy Chief Executive Officer of the former Land Development Agency were also the Director-General and Deputy Director-General of Economic Development.

1.10 The former Land Development Agency Board was established under section 42 of the *Planning and Development Act 2007* (notified on 13 September 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 agency complies with applicable governmental policies (if any).

1.11 The former Land Development Agency was an agency within the Chief Minister, Treasury and Economic Development Directorate. On 1 July 2017 its functions were transferred to two new authorities: the City Renewal Authority, which is to focus on transforming the Civic

and Northbourne Avenue corridor; and the Suburban Land Agency, which is dedicated to developing new suburbs.

- 1.12 Responsibility for concluding the rural land purchases not finalised by the former Land Development Agency and the ongoing management of the nine properties now resides with the Suburban Land Agency.

Environment, Planning and Sustainable Development Directorate

- 1.13 The *Planning and Development Act 2007* establishes the Chief Planning Executive as the Planning and Land Authority of the Territory under subsection 10(3) of the Act. The Planning and Land Authority's functions under subsection 12(1) include:

- (a) preparing and administering the territory plan;
- (b) continually reviewing the territory plan and proposing amendments as necessary;
- (c) planning and regulating the development of land; and
- (d) advising on planning and land policy, including the broad spatial planning framework for the ACT
-
- (g) to grant, administer, vary and end leases on behalf of the Executive

- 1.14 The Planning and Land Authority resides within, and is supported by, the Environment, Planning and Sustainable Development Directorate. The Director-General of the Directorate is also the Chief Planning Executive. The Suburban Land Agency and City Renewal Authority are also within the Environment, Planning and Sustainable Development Directorate portfolio. The Directorate provides corporate services to the two entities and governance support and oversight.

The Framework (*Land Acquisition Policy Framework*)

- 1.15 On 14 June 2014, the Minister for Economic Development made a direction under section 37 of the *Planning and Development Act 2007* to the former Land Development Agency. The Direction (NI2014-264) is titled *Planning and Development (Land Acquisition Policy Framework) Direction 2014 (No 1)* (the Framework). The Direction lapsed on 1 July 2017 on omission of the authorising provision within the *City Renewal Authority and Suburban Land Agency Act 2017* (A2017-12).
- 1.16 Prior to 14 June 2014 the power to make decisions on strategic purchases was vested solely in Cabinet in accordance with a Cabinet decision of 27 June 2011.

1.17 The Framework established:

- decision making thresholds (below \$5 million - former Land Development Agency Board; \$5 to \$20 million - Chief Minister and Treasurer; and above \$20 million - Cabinet (Government));
- an annual cumulative purchase limit of \$20 million on the former Land Development Agency unless there was Government agreement;
- reporting requirements; and
- principles and tests to be applied by the former Land Development Agency in purchasing land.

1.18 The principles and tests in the Framework are:

The Intended Outcome Principle ...

Test 1: An intended outcome has been identified for the proposed acquisition site. ...

The Policy Alignment Principle ...

Test 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.

Test 3: The intended outcome for the proposed acquisition is consistent with the Statement of Government Policy for the Land Development Agency.

Test 4: The intended outcome for the proposed acquisition is consistent with any other relevant Government policies.

The Value for Money Principle ...

Test 5: The proposed purchase price for the site is consistent with the independent market valuation.

Test 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.

Test 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.

The Risk Management Principle ...

Test 8: The proposed acquisition will not expose the Territory to risks that are not able to be appropriately managed.

Test 9: The intended outcome for the proposed acquisition is reasonably achievable.

1.19 The matter of the applicability of the Framework to either 'all' Land Development Agency land purchases or alternatively, to those that qualify as being 'strategic' in nature (as opposed to specific 'project' purchases), was examined in the Auditor-General's report 07/2016 *Certain Land Development Agency Acquisitions* (paragraphs 4.10 to 4.51) and is not repeated in this audit.

The ACT Planning Strategy (2012)

1.20 In accordance with section 105 of the *Planning and Development Act 2007*:

The Executive [Government] must make a planning strategy for the ACT that sets out long term planning policy and goals to promote the orderly and sustainable development of the ACT, consistent with the social, environmental and economic aspirations of the people of the ACT.

1.21 One of the functions of the planning strategy is to inform changes to the Territory Plan. Subsection 52(3) of the *Planning and Development Act 2007* states:

The statement of strategic directions in the territory plan should promote the planning strategy.

1.22 The Government published the *ACT Planning Strategy (2012)* on 31 August 2012. The *ACT Planning Strategy (2012)* states:

This ACT Planning Strategy will take Canberra to 2030 and beyond to 2060 as a sustainable, liveable city where people enjoy living, working and playing; a strategy that recognises Canberra's significant role within the region; a strategy to ensure future generations enjoy the same opportunities we have.

1.23 The *ACT Planning Strategy (2012)* identifies an area to the west of Canberra as a 'Western Edge Study' area. Eight properties are within the area delineated as the Western Edge Study with one (Wintergarden) being on the eastern edge of the area (refer to Figure 1-1).

Key events and decisions

1.24 The timeframe of interest for this performance audit begins with the adoption of the Framework on 14 June 2014 and ends with its repeal on 30 June 2017. However, prior to the adoption of the Framework key decisions that affect it are examined to provide context and understanding. Table 1-2 summarises key events and decisions.

Table 1-2 Key events and decisions

Date	Event
17 October 2011	The Urban Development Committee of Cabinet agreed that a 'proposed framework for strategic acquisition be brought forward'.
31 August 2012	The Government publishes the <i>ACT Planning Strategy (2012)</i> .
27 May 2014	Cabinet agreed not to endorse a strategy to commence by the end of 2015 investigations to identify the next development front.
14 June 2014	The former Minister for Economic Development made a direction to the Land Development Agency; <i>Planning and Development (Land Acquisition Policy Framework) Direction 2014 (No 1)</i> (Notifiable Instrument NI 2014-264).
25 September 2014	The former Land Development Agency Board agreed not to proceed with the first proposed rural purchase (Riverview) under the Framework and asked the Land Development Agency to 'prepare a paper on long-term land supply options, incorporating a prospective strategic acquisition program'.

Date	Event
11 December 2014	The former Land Development Agency Board considered ' <i>District of Stromlo Acquisitions Strategy Paper</i> ' and approved the Land Development Agency to pursue three purchases in the district of Stromlo (Milapuru, Fairvale and the National Equestrian Centre).
28 May 2015	The former Land Development Agency Board approved the purchase of Lands End for \$3 million.
19 June 2015	The Chief Minister and Treasurer approved the purchase of Milapuru for \$7 million.
24 September 2015	The former Land Development Agency Board approved the purchase of part of the former property of Fairvale for \$3.1 million.
12 January 2016	The Chief Minister and Treasurer approved the purchase of Huntly for \$10 million.
19 July 2016	The former Land Development Agency Board approved the purchase of Wintergarden for \$4 million.
8 March 2017	The Government announced the proposal to establish on 1 July 2017 two new entities: the City Renewal Authority to lead and manage major projects and associated land purchases and sales in the city area; and the Suburban Land Agency to deliver new greenfield residential estates and more affordable housing.
30 March 2017	The former Land Development Agency Board approved the purchase of The Vines for \$2.2 million and Wagtail Park (12 ha) for \$1.6 million.
27 April 2017	The former Land Development Agency Board approved the purchase of Pine Ridge for \$4.6 million.
1 May 2017	The Chief Minister and Treasurer approved the purchase of Winslade for \$7.5 million.
1 July 2017	The former Land Development Agency was discontinued. The Suburban Land Agency commenced.

Source: ACT Audit Office review of Cabinet documents and former Land Development Agency Board records

Audit objective, scope and approach

Audit objective and scope

- 1.25 The objective of the audit is to provide an independent opinion to the Legislative Assembly on the effectiveness of the former Land Development Agency's assembly of rural land to the west of Canberra.
- 1.26 The scope of the audit is on the activity of the former Land Development Agency, with a particular focus on:
- the purchase of nine rural leasehold properties (refer to paragraph 1.2);
 - the application of the Framework; and
 - 14 June 2014 to 30 June 2017.

Audit approach and method

- 1.27 The audit criteria are captured in the following questions:
- Criterion 1: What was the policy framework under which the former Land Development Agency sought to assemble rural land? (Chapter 2)
 - Criterion 2: Did the former Land Development Agency assemble rural land between 14 June 2014 and 30 June 2017 in accordance with the policy framework? (Chapter 2)
 - Criterion 3: Was probity addressed effectively by the former Land Development Agency in assembling rural land? (Chapter 3)
 - Criterion 4: Following the purchase of rural lands by the former Land Development Agency were they appropriately managed? (Chapter 4)
 - Criterion 5: What was the planning context for the lands assembled? (Chapter 5)
- 1.28 Further detail on the above criteria are presented in Appendix A. The above criteria are a modification of initial criteria which are presented in Appendix B.
- 1.29 The audit adopted the Audit 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 and particularly *ASAE 3500 – Performance Engagements*, and *ASAE 3000 - Assurance Engagements Other than Audits or Reviews of Historical Financial Information*.
- 1.30 In the conduct of this performance audit the ACT Audit Office complied with the independence and other relevant ethical requirements related to assurance engagements.
- 1.31 The audit approach and method consisted of:
- examination of documentation relevant to rural land purchases in progress or concluded to 30 June 2017, particularly documentation maintained by the former Land Development Agency but that was prepared for or maintained by other parties;
 - examination of documentation relevant to the preparation, approval and implementation of the *ACT Planning Strategy* (2012) maintained by the Environment, Planning and Sustainable Development Directorate;
 - examination of Cabinet documentation held by the Cabinet and Coordination Office relevant to the former Land Development Agency governance arrangements and the making of the *ACT Planning Strategy*;
 - engagement of the Australian Government Solicitor to provide legal advice;
 - interviews with former personnel of the Land Development Agency and the Environment, Planning and Sustainable Development Directorate, as well as former Land Development Agency Board members;

- interviews with current and former leaseholders of rural land to the west of Canberra, their agents, and representatives of companies providing property services to the former Land Development Agency;
 - the conduct of interviews under oath or 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; and
 - the conduct of formal interviews, not under oath or affirmation but recorded and transcribed with participants given the opportunity to provide comment on the accuracy of the transcript.
- 1.32 Interviews were conducted, either under oath or affirmation, or through a formal process whereby a transcript of the interview was shared and agreed with the interviewee. Interviews were conducted between 21 August 2017 and 10 April 2018.
- 1.33 The Audit Office sought and received advice from a planning subject matter expert, Professor Sue Holliday (refer to Appendix C for detail). Ms Holliday is Professor of Planning Practice at the University of New South Wales. She provided advice and undertook the examination of documentation to assess whether or not the Intended Outcome Principle (Test 1) and the Policy Alignment Principle (Tests 2, 3 and 4) had been met.
- 1.34 Advice on valuation processes and principles was received from Certified Practising Valuers in the ACT Valuation Office, which is a valuation advisory unit within the ACT Revenue Office of the Chief Minister, Treasury, and Economic Development Directorate.

Disclosure of deliberative information

- 1.35 Section 20 of the *Auditor-General Act 1996* (the Act) relates to the disclosure of ‘deliberative information’ in Audit Office reports. Section 20 of the Act provides that the Auditor-General may only include ‘deliberative information’ in a report:
- if the Auditor-General considers that it is in the ‘public interest’ to do so; and
 - after consulting with the Chief Minister.
- 1.36 ‘Deliberative information’ is defined in the Act as ‘information that discloses a deliberation or decision of the Executive’.

Report references to Cabinet material

- 1.37 This report includes references to Cabinet material. The material is included to provide background and context to the establishment of the Framework, and its implementation. The following Cabinet material is referred to in this report:
- properties affected by proposed infrastructure for a second electricity supply (Cabinet decision of 24 November 2014);

- the development of the Land Acquisition Policy Framework (Cabinet decisions of 17 October 2011 and 11 February 2014);
- the *ACT Planning Strategy* (Cabinet decision of 19 June 2012);
- the purchase of Glenloch (Cabinet decisions of 23 November 2009, 7 February 2012, 4 September 2012 and 11 September 2012);
- future development fronts (Cabinet decision of 27 May 2014); and
- Western Edge Lands (Cabinet decision of 13 July 2017).

Reasons why the Audit Office considers that the inclusion of Cabinet material in the report is in the public interest

1.38 Cabinet documentation used to support the findings and conclusions of this audit has been referenced and sometimes quoted. This was done in the public interest because documentation represents:

- the only available evidence, or the most reliable and accurate evidence, that the Audit Office was able to locate; and
- important evidence that was considered by the Auditor-General in forming an independent opinion. Such evidence needs to be transparent to hold the ACT Government to account, and also the Auditor-General for the audit opinion. Its inclusion also promotes public understanding on an important issue.

Consultation with the Chief Minister

1.39 The Chief Minister was consulted regarding information to be included in the report. On 23 April 2018 the Chief Minister was provided with extracts of the draft proposed report that referenced Cabinet material. The Chief Minister advised:

I have no specific comments on the release of the Cabinet material identified.

Conclusions, key findings and recommendations

1.40 As mentioned in paragraph 1.24 this audit examines the period covered by the Framework (14 June 2014 to 30 June 2017) and is focused on the activities of the former Land Development Agency during this time. However, as the Suburban Land Agency has responsibility for activities that are pertinent to this audit and that previously were the responsibility of the former Land Development Agency, conclusions, key findings and recommendations are made for the Suburban Land Agency's consideration. In addition there are matters for the Government and the Environment, Planning and Sustainable Development Directorate to consider. While no recommendations are made to the City Renewal Authority aspects of the audit may be relevant to its activities.

2 APPLICATION OF THE FRAMEWORK

- 2.1 This chapter examines the former Land Development Agency's consideration and application of the *Planning and Development (Land Acquisition Policy Framework) Direction 2014 (No 1)* (the Framework) and the requirements imposed by the former Land Development Agency Board in purchasing the nine properties (refer to paragraph 1.2)

Summary

Conclusion

The former Land Development Agency did not clarify how the *Planning and Development (Land Acquisition Policy Framework) Direction 2014 (No 1)* (the Framework) Principles and Tests were to be applied when making purchases of rural properties to the west of Canberra that were the subject of this audit. Given this lack of clarity, its application of the Framework needed to be well documented; this did not occur. While documentation associated with the earliest purchases of the rural properties was poor, it is apparent that documentation to justify its purchases improved over time.

An application of the Framework's Principles and Tests, by the Audit Office, shows that these were not met for most of the rural properties; specifically the Policy Alignment and Value for Money principles. With respect to the Value for Money principle, however, the Framework was limiting and there are indications that the former Land Development Agency responded to market dynamics. These were outside the Framework, which may indicate that the Framework needed reviewing and amending but this was not done.

Key findings

The Audit Office assessed how the former Land Development Agency considered and applied the principles and tests in the Framework, based on 'all proposed acquisitions ... [being] assessed against the principles and associated tests'. In doing so, adherence to the Framework is assessed with a high threshold. In its response to the final proposed report on 22 June 2018 the Suburban Land Agency advised 'the Audit Office has placed a higher threshold on how the Framework should have been applied than is stipulated in the Framework or was commonly understood by the LDA Board and LDA management'. It also advised '... another relevant ordinary meaning of "follow" according to the ACT Government Solicitor's Office (GSO) is 'to endeavour to obtain or to attain to' and that definition would appear to sit equally well in the context of the wording of the Framework.

Paragraph

2.25

While the different views can be debated what needs emphasising is that the former Land Development Agency should have clarified how the Framework's principles and tests were to be applied; this did not occur. A *Land Acquisition Policy Framework Interpretation* paper was prepared in August 2015 but it only provided guidance on what purchases the framework applied to and how to apply the \$20 million 'accumulation limit'. No legal advice was sought by the former Land Development Agency at the time of the development of the Framework to assist its consideration and application of the Framework and its principles and tests. In the absence of interpretation guidance on how the principles and tests in the Framework were to be applied, it was important that the former Land Development Agency comprehensively document its consideration and application of the Framework principles and tests. This was not consistently or effectively done.

2.26

For the first four rural properties purchased west of Canberra (Lands End, Milapuru, Fairvale and Huntly) various Board reports and business cases assert that the purchases were in accordance with Framework, but there was no contemporaneous record of the consideration and application of the principles and tests in the Framework. For the subsequent rural properties purchased (Winslade, The Vines, Wintergarden and Pine Ridge) there is better documentation of the consideration of the principles and tests in the Framework. For the purchases of Winslade and The Vines there is evidence of partial consideration of the principles and tests in the Framework and for the purchases of Wintergarden and Pine Ridge there is evidence of full consideration of the principles and tests in the Framework, including information in the form of a statement of the test and affirmative response and brief description for each.

2.41

For the eight rural property purchases assessed by the Audit Office, the Framework's Intended Outcome Principle (Test 1) was considered to have been followed as there was a documented reason why the former Land Development Agency proposed purchasing the properties. For the majority of properties (Lands End, Milapuru, Fairvale, Huntly, Winslade and Pine Ridge) it was residential development and other purposes ancillary to residential development. For some properties (Wintergarden, Pine Ridge and The Vines) it was for infrastructure and other purposes ancillary to residential.

2.47

The Audit Office and the Suburban Land Agency have different views on whether the identification of the Western Edge Study area in the *ACT Planning Strategy* (2012) provided a clear policy direction to the former Land Development Agency for it to state its intended outcomes (i.e. residential in most instances) are aligned with other government policies in relation to rural land west of Canberra. The Audit Office considers that the identification of the need for further studies and investigation into the Western Edge Study area and its potential for development does not amount to an intention to change the land use of this area. The Suburban Land Agency advised

2.53

that 'it is beyond question that the planned future investigation of the land west of Canberra will result in the identification of uses of the land other than rural'.

For the eight rural purchases assessed by the Audit Office, the Framework's Policy Alignment Principle (Tests 2, 3 and 4) was considered to be followed for one property (Wintergarden). Test 3 was considered to be followed for all properties because the purchase of the properties were considered to be in conformance with the Statement of Government Policy objective for the Land Development Agency either to 'ensure that an adequate supply of land is maintained to meet market demand ...' or 'to ensure an adequate supply of Government-owned land is in the planning and development pipeline for future release'.

Test 2 (relating to the Government's land development policies as set out in the *ACT Planning Strategy* (2012) and any other relevant Government strategic spatial planning documents and requirements) was not considered to be followed for the majority of the properties as the land is not currently zoned for residential use and no policy had been established by Government relating to changing land use in this area. Test 4 (relating to consistency with any other relevant Government policies) was not considered to be followed for the majority of the properties for different reasons including: the Government's 2008 agreement to 'remove Central Molonglo from being considered as a future urban area', Cabinet not agreeing in May 2014 to proceed with specific investigations that would inform the prioritisation of a new development front and the Government's commitment to a compact city and urban renewal in the *Statement of Planning Intent 2015*.

In response to the draft proposed and final proposed reports on 10 May 2018 and 22 June 2018 the Suburban Land Agency advised, based on its interpretation of available information, that it considers that Tests 2 and 4 were followed for all purchases. In considering that both Test 2 and Test 4 was followed, the Suburban Land Agency advised that the identification of the Western Edge Study area in the *ACT Planning Strategy* (2012) 'signalled that the Government was interested in assessing the potential uses of that land. Due to the identification of the area for future investigation in 2012, the purchases were not inconsistent with Government policy'. For the reasons outlined above, the Audit Office has a different view that the identification of the area as being subject to future investigation provides such certainty.

For the eight rural purchases assessed by the Audit Office, the Framework's Value for Money Principle (Test 5 relating to the proposed purchase price being consistent with the independent market valuation) was considered to be followed for four of the eight properties (i.e. Lands End, Huntly, Winslade and Pine Ridge). For these purchases the price paid by the former Land Development Agency for the properties was within 10 percent of a documented, independent valuation provided by a

Certified Practising Valuer that was based on the 'highest and best use' of the property.

For the purchases of Milapuru and Wintergarden, the prices paid by the former Land Development Agency were not consistent with a valuation based on the 'highest and best use' of the property. The prices paid were consistent with, and based on, subsequent advice sought and received by the former Land Development Agency in response to market dynamics that prevailed. For Milapuru, the former Land Development Agency sought additional valuation advice. It was already aware of a counter-offer for the property, which was significantly higher than the valuation it had received on the basis of 'highest and best use'. For Wintergarden, the former Land Development Agency sought valuation advice because it was not successful in purchasing the property at auction at a price consistent with the valuation it had received on the basis of 'highest and best use' (the property was passed-in, with the former Land Development Agency being the second under-bidder).

2.94

For the purchase of Fairvale, the former Land Development Agency did not have an independent market valuation. While a draft market valuation report was prepared by the Director, Knight Frank Valuations Canberra for the owner of the property, and this identified a value of \$4.2 million to \$4.75 million for the property, the Audit Office did not locate, in former Land Development Agency records, reference to, or a copy of, this advice. Furthermore, this document does not represent an 'independent' market valuation, as the Director, Knight Frank Valuations Canberra had a personal interest in purchasing the property.

2.105

The former Land Development Agency subsequently engaged the Colliers International State Chief Executive, ACT, who was already acting as the Agency's agent, to provide 'updated valuation and consultancy' advice on how a previously agreed purchase price could be apportioned for the purchase. The letter took the agreed purchase price for the entire property as a starting point (\$4.95 million plus \$500,000 for improvements) and provided advice on how this should be apportioned, according to the purchase arrangements that had already been agreed. Furthermore, this three-page letter containing advice on value is not an 'independent' market valuation, as the valuer was already acting as agent to the former Land Development Agency.

2.106

For the purchase of The Vines, the price paid by the former Land Development Agency was not consistent with a documented independent market valuation based on the 'highest and best use' of the property. While the former Land Development Agency sought and received a valuation report, which provided a valuation range of \$1.2 million to \$1.4 million, the former Land Development Agency subsequently paid an estimated \$2.2 million for the property, based on its understanding that 'an offer

2.108

of over \$2 million had apparently been received', which consequently 'sets the market value'.

In response to the draft proposed and final proposed reports on 10 May 2018 and 22 June 2018 the Suburban Land Agency advised that based on available information it considers that Test 5 was followed for all purchases. In considering that Test 5 was followed, the Suburban Land Agency identified the market dynamics that prevailed for the purchases of Milapuru, Wintergarden and The Vines, following its receipt of a valuation based on the 'highest and best use' of the property, as necessarily impacting on the former Land Development Agency's ability to purchase the properties at a price consistent with the valuation. The Suburban Land Agency advised that 'the references to Value for Money in the Framework relate to both current and anticipated uses, and as such it is appropriate that potential rezoning was considered'. The Audit Office considers that what was required to meet Test 5 was a strict application which means the effect of the Framework is limiting and does not expressly facilitate market dynamics being incorporated.

2.111

Noting the settlement dates of the purchases (between 30 June 2015 and 8 April 2016), the independent valuations for the purpose of establishing fair value for financial reporting as at 30 June 2016 aligned with the purchase prices paid for Lands End, Fairvale and Huntly. However, the purchase price of Milapuru was \$3 million more than the valuation conducted for the purpose of establishing fair value for financial reporting. This resulted in a reduction in value of Milapuru (a loss) of \$3 million plus \$0.362 million in stamp duty and other expenses in the former Land Development Agency's Financial Statements for 2015-16.

2.116

For the eight rural purchases assessed by the Audit Office, the Value for Money Principle Test 6 or 7 (relating to consideration of any holding costs, redevelopment costs, and opportunity costs and their demonstration as reasonable and not onerous) was not followed for the first three properties purchased that were purchased: Lands End, Milapuru and Fairvale. There is evidence to show that these tests were followed for all subsequent purchases. For the purchase of Lands End the relevant Board report provided no analysis as to the costs or benefits 'of the operation of the farm ... until such time as the land in part or as whole is required for urban development', while for the purchase of Milapuru and Fairvale the relevant Board papers did not provide sufficient information to demonstrate consideration of holding costs and other opportunity costs and that costs are 'reasonable and not onerous'.

2.121

The Suburban Land Agency considers, based on available records, that Test 6 or 7 was followed for all purchases because the 'business cases identified a proposed land management use' and 'costs associated with managing acquired land were discussed in detail by the LDA Board' which were 'undertaken as part of broader consideration of land acquisitions and not separately documented in LDA Board minutes'. For the

2.122

reasons outlined previously, the Audit Office does not agree that the former Land Development Agency's consideration of any holding costs, redevelopment costs, and opportunity costs and their demonstration as reasonable and not onerous was followed for the first three purchases.

For the eight rural purchases assessed by the Audit Office, the Risk Management Principle (Tests 8 and 9) was not considered to be satisfactorily followed for the majority of the eight rural purchases. Consideration of Test 8 (exposure of the Territory to risk) was considered to be satisfactorily followed for the purchase of Huntly and Winslade. Consideration of Test 9 (intended outcome for the proposed acquisition was reasonably achievable) was considered to be satisfactorily followed for the purchase of Winslade. The Suburban Land Agency considers, based on available information, that the Tests 8 and 9 were followed for all purchases, noting that 'The Board was aware of, and discussed, the Territory's position as a substantial landowner, including its understanding of established processes and the roles and responsibilities of relevant entities for the management of land. Acknowledging this, bringing the western edge rural parcels into Territory ownership was not, of itself, a risk'. The Suburban Land Agency also advised, based on available information that 'risks associated with the proposed land acquisitions were discussed in detail by the LDA Board. Such discussions were undertaken as part of broader consideration of land acquisitions and not separately documented in LDA Board minutes'. For the reasons outlined previously, the Audit Office does not agree that the former Land Development Agency's consideration of the potential exposure of the Territory to unnecessary risks and the reasonable achievability of the intended outcome of the purchase was followed for the majority of the purchases.

2.135

The Audit Office notes the advice of former Land Development Agency Board members as to the Board's remit, its capabilities and its strategic reasons in purchasing land. However as the former Land Development Agency was directed 'to act in accordance with the principles of the ... Framework ... when exercising the Agency's functions' it was also obliged to follow all tests of the Framework. Respecting that the former Land Development Agency and its Board have made statements that the Framework's tests were complied with, greater transparency and rigour was called for. It would have been prudent in responding to the new Ministerial direction in 2014 (i.e. the Framework) to have:

2.142

- examined its meaning and agreed how it would be operationalised;
- established documentation and decision-making expectations; and
- monitored compliance on an ongoing basis from the commencement of the Direction.

The Framework's decision-making thresholds were applied for all purchases; there was a written record of the decision maker and the date, and the decision-maker's authority was in accordance with the thresholds for individual purchases in the Framework. Business cases were also provided to Treasury in the case of the Milapuru, Huntly, and Winslade purchases in accordance with the Framework.

2.147

The former Land Development Agency Board exceeded the annual \$20 million cumulative threshold in 2015-16 by \$8.83 million due to the Huntly purchase. In its

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response to the draft proposed report on 10 May 2018 the Suburban Land Agency advised that this was because of an incorrect interpretation of the Framework thresholds (i.e. previously the Framework thresholds were interpreted on the basis of the date of approval as opposed to the date of settlement) and not recognising acquisitions made for the purpose of the City to the Lake project. Following the receipt of legal advice in February 2017 a corrigendum was issued for the Land Development Agency's 2015-16 Annual Report, which presented the corrected information.

The former Land Development Agency advised the Minister for Economic Development in writing for all but one purchase under the \$5 million threshold prior to, or after, purchase as required under the Framework. The exception was the purchase of Fairvale. 2.158

Rural land purchases that were examined in the audit were all reported in the former Land Development Agency's annual reports (2014-15, 2015-16 and 2016-17) as required under the Framework. This was done to a sufficient level of detail notwithstanding the need for the former Land Development Agency to publish a corrigendum to its *2015-16 Annual Report* in March 2017. The corrigendum acknowledged that the former Land Development Agency did not previously comply with the Framework. 2.160

Between May 2015 and April 2017 the former Land Development Agency Board sought additional information from the Land Development Agency to facilitate its decision-making. The Board required that the former Land Development Agency provide it with additional information on proposed purchases to that required under the Framework. This requirement was met (partially or fully) in nearly all respects with later purchases reflecting an improvement in documentation for the consideration of the principles and tests in the Framework. 2.166

Two requests were made by the former Land Development Agency Board Audit and Review Committee (22 April 2016) and Land Development Agency Board (23 February 2017) for the former Land Development Agency to examine its application of the Framework. The internal audit report that resulted from the first review was criticised by Land Development Agency officers and the former Land Development Agency Board Audit and Review Committee for its 'lack of interrogation of the subject matter, narrow stakeholder engagement, flawed methodology and lack of alignment with the subsequent Auditor-General's Report and the McPhee review' and action on this item was closed. The second review focused on purchases that were not the subject of a paper that went to the former Land Development Agency Board; these purchases were 'in scope for retrospective assessment'. As the nine properties considered for the purpose of this audit were the subject of Board papers, the nine were not within the scope of the internal review. 2.180

Rural land purchases west of Canberra

Properties of interest to, but not purchased by, the former Land Development Agency

- 2.2 According to records of the former Land Development Agency and its Board, the first rural property to be considered for purchase under the Framework was Riverview at 1283 Cotter Road, Stromlo. This property was west of Canberra and in the Western Edge Study area (refer to Table 2-1) The former Land Development Agency was notified on 20 August 2014 by the Colliers International State Chief Executive, ACT of Riverview's impending listing on the open market. The property was the subject of a brief written report to the former Land Development Agency Board on 28 August 2014. The Board declined to pursue the purchase at its meeting on 25 September 2014. This followed a period in which the former Land Development Agency secured exclusive rights to consider purchasing the property.
- 2.3 The former Chief Executive Officer, the Executive Director, Greenfield of the Land Development Agency and a Board member in interviews under oath or affirmation referred to the Agency's interest in a neighbouring property (the Canberra Equestrian Centre) prior to the Riverview property coming onto the market. No Board records or Land Development Agency records exist that confirm the nature and timing of this interest. The Canberra Equestrian Centre was sold on 30 June 2014 but not to the former Land Development Agency.
- 2.4 While the former Land Development Agency held discussions with the owner of the Canberra Equestrian Centre it has since remained in the same private ownership.

Table 2-1 Properties to the west of Canberra of interest to, but not purchased by, the former Land Development Agency

Property	When and how Land Development Agency (LDA) became interested	LDA Board initial consideration	Outcome as at 30 June 2017
Canberra Equestrian Centre (Blocks 400 and 433)	No record of LDA interest to purchase but the Audit Office was advised of the LDA's interest in interviews.	None identified	Sold (30 June 2014) following negotiation on commercial terms
Riverview (Block 14)	Brought to the attention of the LDA through an agent (Colliers International) prior to a public listing ('pre-market')	28 Aug 2014, resulting in agreement to an LDA exclusivity period with the vendors until 25 Sept 2014 Board decision not to acquire	Sold following open market listing after 25 September 2014 Board decision
National Equestrian Centre (Block 418)	An agent (PRD Nationwide) contacted the owners on 30 September 2015 to establish whether the owner was interested in selling. No signal had been given by the owner to indicate any interest to sell prior to this point. PRD Nationwide then introduced an agent (Colliers International) to the owner.	On 11 Dec 2014 the LDA Board resolved for 'the LDA to initiate discussion with the owners of ... block 418 with a view to the possible strategic acquisition at a later date'.	Remains in the same private ownership

Source: Audit Office review of former Land Development Agency emails and Board records

Properties purchased by the former Land Development Agency

- 2.5 At its meeting on 11 December 2014 the former Land Development Agency Board considered the *District of Stromlo Acquisition Strategy* paper (refer to paragraph 5.108) and agreed that the former Land Development Agency should pursue the purchase of three properties identified in the strategy; Milapuru, Fairvale and the Canberra Equestrian Centre. This decision is a marker of the commencement of purchases to the west of Canberra (eight properties in the Western Edge Study area in the Districts of Stromlo and Belconnen, and one property (Wintergarden) north of Molonglo Valley in the District of Belconnen (refer to Figure 1-1)). Table 2-2 summarises the purchases of the rural properties.

Table 2-2 Summary of rural land purchases west of Canberra made by the former Land Development Agency between 2014 to 2017

Property	District (area)	Approval	Settlement date	Sale Price	Territory Plan (hectares)
Lands End (Blocks 1591 to 1597)	<i>Belconnen (Central Molonglo)</i>	Board	30 June 2015	\$3.0 million	NUZ3 (337 ha)
Milapuru (Block 19)	<i>Stromlo (Bulgar Creek)</i>	Chief Minister and Treasurer	31 July 2015	\$7.0 million	NUZ2 & 4 (290 ha)
Fairvale (Block 518)	<i>Stromlo (Bulgar Creek)</i>	Board	24 November 2015	\$3.1 million	NUZ2 & 4 (320 ha)
Huntly (Blocks 412, 413, 426, 487, 489)	<i>Stromlo (north and west of Stromlo Forest Park)</i>	Chief Minister and Treasurer	8 April 2016	\$10.0 million	NUZ2 & 4 (1,605 ha)
Wintergarden (Blocks 1491, 1492, 1587)	<i>Belconnen (adjoining Molonglo Valley)</i>	Board	30 August 2016	\$4.0 million	NCP Designated land (104 ha)
Winslade (Blocks 435, 439, 440, 441, 456, 476)	<i>Stromlo (north and west of Stromlo Forest Park)</i>	Chief Minister and Treasurer	30 June 2017	\$7.5 million	NUZ2-4 (486 ha)
Pine Ridge (Block 1600)	<i>Belconnen (Central Molonglo)</i>	Board	12 September 2017	\$4.6 million	NUZ3 (164 ha)
The Vines (Block 1582)	<i>Belconnen (Central Molonglo)</i>	Board	Agreed to be settled in 2017-18	\$2.2 million (estimated)	NUZ1 (62 ha)
Wagtail Park (12ha of Block 1601)	<i>Belconnen (adjoining Central Molonglo)</i>	Cabinet (24 November 2014)	Agreed to be settled in 2017-18	\$1.686 million (estimated)	NUZ3 (12ha)

Source: Audit Office review of former Land Development Agency Board records

The Framework

2.6 The *Planning and Development (Land Acquisition Policy Framework) Direction 2014 (No 1)* (the Framework) came into effect on 14 June 2014. The Notifiable Instrument states:

[The Minister for Economic Development] direct[s] the Land Development Agency to act in accordance with the principles of the Land Development Agency – Land Acquisition Policy Framework, attached as a schedule to this instrument, when exercising the Agency's functions under the *Planning and Development Act 1997*.

2.7 The Framework comprised:

- a brief statement of the process (refer to paragraph 2.16 to 2.28);
- four principles and nine tests that must be applied (refer to paragraphs 2.45 to 2.135);
- decision-making thresholds (refer to paragraph 2.143);
- an overall annual cumulative purchase limit (refer to paragraph 2.148); and
- reporting requirements (refer to paragraph 2.155).

2.8 The Framework states:

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

2.9 The Framework specifies the principles and tests:

The Intended Outcome Principle ...

Test 1: An intended outcome has been identified for the proposed acquisition site. ...

The Policy Alignment Principle ...

Test 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.

Test 3: The intended outcome for the proposed acquisition is consistent with the Statement of Government Policy for the Land Development Agency.

Test 4: The intended outcome for the proposed acquisition is consistent with any other relevant Government policies.

The Value for Money Principle ...

Test 5: The proposed purchase price for the site is consistent with the independent market valuation.

Test 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.

Test 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.

The Risk Management Principle ...

Test 8: The proposed acquisition will not expose the Territory to risks that are not able to be appropriately managed.

Test 9: The intended outcome for the proposed acquisition is reasonably achievable.

- 2.10 The Audit Office found no evidence in the former Land Development Agency's Board records for 2014-15, 2015-16 and 2016-17 of the Board's consideration of how the tests and principles of the Framework were to be followed other than the *Land Acquisition Policy Framework Interpretation* paper that was considered and approved on 27 August 2015 by the former Board. This paper did not consider the meaning of the principles and tests and how they should be followed, but did address:
- what land acquisitions the Framework applies to; and
 - the circumstances in which the \$20 million annual accumulation limit is triggered.

Applicability of the Framework

- 2.11 The purchase of a small part (12 hectares) of Wagtail Park was approved by Cabinet on 24 November 2014. At the same time, Cabinet also approved easements and the purchase of land to enable the siting of infrastructure for a second electricity supply on The Vines and Pine Ridge properties (but not the purchase of entire properties). The entire properties became the subject of separate proposals in 2016.

- 2.12 The Australian Government Solicitor provided the following advice on whether the Framework should apply to the decision making of Cabinet:

No. As a matter of law, the Direction is only capable of applying to the Land Development Agency. The provision of the *Planning and Development Act 2007* which allows the Minister to make the Direction does not allow the Minister to make a Direction which applies to the Chief Minister, the Treasurer or the Government.

- 2.13 In this respect, there was only an obligation on the former Land Development Agency and its Board to apply the Framework. Accordingly:

- the Cabinet's decision to approve the second electricity supply infrastructure on the properties of Wagtail Park, The Vines and Pine Ridge did not require the Framework to be followed (the subsequent purchase of the entire properties of The Vines and Pine Ridge that were approved by the former Land Development Agency Board did require the Framework to be followed); and
- the Chief Minister and Treasurer's decision to approve the purchase of the properties of Milapuru, Huntly and Winslade did not require the Minister(s) to follow the Framework.

- 2.14 However, to the extent that Framework required 'all proposed acquisitions are to be assessed against the principles and associated tests' the obligation remained with the former Land Development Agency to apply the Framework in proposing purchases of land to other decision-makers.

- 2.15 Evidence was sought with respect to the former Land Development Agency's consideration and application of the Framework and the principles and tests in making the purchases. In order to do so, the Audit Office sought advice from the Australian Government Solicitor on how the Framework and its principles and tests should be applied.

Application of the Framework principles and tests

- 2.16 The Australian Government Solicitor provided the following advice on how the nine tests in the Framework should be applied:

The better view is that 'all tests must be followed for an acquisition' is properly interpreted as imposing a requirement that the [Land Development Agency] only proceed with a potential acquisition if:

- the [Land Development Agency] assesses a potential acquisition against the 'tests'; and
- the acquisition satisfies the tests—that is, in order to 'follow' the test for an acquisition, the [Land Development Agency] must do more than simply assess the acquisition against the test, where 'follow' does not have any particular technical or legal meaning but, rather, carries its ordinary meaning in the context of cl 2.1 and the Direction more broadly. Relevantly in this regard, the ordinary meaning of 'follow' is to 'conform to' or 'comply with' (see the *Macquarie Dictionary*, online edition).

- 2.17 In their joint response to the draft proposed report on 10 May 2018 the Environment, Planning and Sustainable Development Directorate, the Suburban Land Agency, and Treasury advised:

The AGS advice reflects how it considers the principles and tests in the Framework should be applied. That advice indicates, inter alia, that, in order to proceed with an acquisition, the LDA would need to assess the acquisitions against the tests in a binary approach in a manner consistent with the definition of 'follow'. In giving this advice, the AGS has referenced the online Macquarie Dictionary meaning of 'follow' being to 'conform to' or 'comply with'.

We note the ACT Government Solicitor's Office (GSO) advice that the online Macquarie Dictionary definition of 'follow' contains in excess of 20 different potential meanings of that word. Therefore, the AGS advice that "...the ordinary meaning of 'follow' is to 'conform to' or 'comply with'..." would appear to be inaccurate given the other meanings found in the online Macquarie Dictionary.

The GSO advises that another relevant ordinary meaning of follow is to 'endeavour to obtain or to attain to'. The GSO advises that this definition would appear to sit equally well in the context of the wording of the Key Provision [of the Framework]".

...

We also note that the use in the report of the strict AGS interpretation of the Framework is not reflective of the wording used within the Framework itself. This includes terms such as 'consistent with', 'intended outcome' and 'reasonably achievable'. When combined with the equally relevant definition of 'follow' noted above (that is, 'endeavour to obtain'), this suggests that the tests should be applied to the extent possible, but are not binary.

- 2.18 The advice provided by the joint response from the Environment, Planning and Sustainable Development Directorate, the Suburban Land Agency, and Treasury about the view provided on the possible meaning of 'follow' is noted. However it is also noted that at the request of the former Board, the Land Development Agency undertook two reviews (an internal audit and an internal review) in 2016-17 of the former Land Development Agency's application of the Framework. Both the internal audit and the internal review explicitly sought to assess 'compliance' with the Framework (refer to paragraphs 2.170 to 2.179). This gives credence to the interpretation of the Framework as requiring conformance or compliance.

2.19 The Audit Office adopted the advice of the Australia Government Solicitor that, in the context of the Framework, to ‘follow’ ordinarily means to ‘conform’ or ‘comply with’. Accordingly, the Audit Office conducted an assessment of the former Land Development Agency’s consideration and application of the Framework for eight rural properties that were purchased (refer to paragraphs 2.45 to 2.139).²

2.20 With respect to the conduct of this assessment and the Audit Office’s application of the Framework and its principles and tests, in their response to the draft proposed report, on 10 May 2018 the Environment, Planning and Sustainable Development Directorate, the Suburban Land Agency and Treasury advised:

The GSO has also advised that there “...does not appear [to be] any explanatory material issued at the time of the Framework was notified to inform potential interpretation of it.” Furthermore, the GSO advises that it “...has not been able to identify any commentary in Hansard of the relevant period referable to the introduction of the Framework...”.

When considering all the relevant advice on the Framework, the enabling Planning and Development Act 2007 (the PD Act) and the LDA’s Statements of Intent, it is our view that the Framework was intended to provide guidance to the LDA to facilitate informed decision-making and, importantly, for the former Board to exercise its judgement, expertise and skills consistent with its mandate and agreed objectives and deliverables.

There is limited evidence presented in the report that supports a view that the Framework was prescriptive or detailed in the nature of how the assessments were to be undertaken; that the former Board did not meet requirements to consider and record its consideration of the Framework; nor the level of detail required to satisfy a test. On this basis, we strongly disagree with the findings in the report that the application of the Framework was not complied with by the LDA or the former Board.

2.21 In a response to the final proposed report on 22 June 2018 a former Board member advised:

The report indicates that all of the principles and tests in the Framework should have been “complied” with and better documented. Having been involved in the development of the Framework, this strict interpretation of compliance was not my understanding of how it was intended to be used. However, the Board was aware of the requirements of the Framework and applied them to the best of its understanding.

2.22 In its response to the final proposed report on 22 June 2018 the Suburban Land Agency further advised that it understood based on available records that:

... the Framework itself did not specify the level of detail required in considering and applying the principles. The notifiable instrument for the Framework states, ‘the LDA is to act **in accordance** [emphasis added] with the principles of the Framework when exercising the Agency’s functions’. A reasonable reading of this section is that the Framework should be considered as part of the Agency’s normal operation.

The Audit Office has placed a higher threshold on how the Framework should have been applied than is stipulated in the Framework or was commonly understood by the LDA Board and LDA management. In doing so, the Audit Office has adopted a subjective, rather than objective, position. ...

² Wagtail Park was not assessed as it was purchased for the purpose of the Territory’s second electricity supply infrastructure and was approved by Cabinet.

2.23 In its response to the final proposed report on 22 June 2018 the Suburban Land Agency also advised:

... another relevant ordinary meaning of “follow” according to the ACT Government Solicitor’s Office (GSO) is ‘to endeavour to obtain or to attain to’ and that definition would appear to sit equally well in the context of the wording of the Framework. ... the report ... continues to adopt the Australian Government Solicitor (AGS) application of the word ‘follow’ without reasoned justification. It is notable that the definition adopted by the Audit Office could be seen as the most narrow and, by that definition, each test must be fully ‘complied’ with in order to proceed with an acquisition.

2.24 In its response to the final proposed report on 22 June 2018 the Suburban Land Agency also advised based on available records:

- Had the intention been for all tests under the Framework to be fully complied with, it is reasonable to expect that the word ‘comply’ would have been used. This was not the case and use of the word ‘follow’ therefore reflects a lesser threshold than ‘comply’.
- The LDA did not have the benefit of seeking AGS legal advice, by virtue of the legal direction that applied to the LDA requiring it to use advice from the GSO. Therefore, GSO advice on this matter (as referenced in the response of 10 May 2018) should be taken to be the appropriate source, noting that the GSO is the Territory legal adviser and had an extensive understanding of the LDA’s operating environment and legislation.
- As noted previously, by favouring one definition of the word ‘follow’ above another where both definitions are valid, the Audit Office has taken a subjective, rather than objective, approach. Such an approach is inconsistent with the guidelines for the conduct of performance audits.
- While it is acknowledged that the LDA’s application of the Framework for earlier land acquisitions was less prescriptive than later acquisitions, this could be reasonably considered to be not unusual as the maturity of its processes and experiences developed over time. The principal question therefore would appear then to be whether the LDA acted reasonably in each case. Noting the different interpretations that could be made on the Framework’s application, the earlier acquisitions were consistent with the LDA acting ‘in accordance with the principles of the Framework when exercising the Agency’s functions’, as outlined in the Framework itself. The fact that the process for making later acquisitions was more ‘compliance’ focused, does not mean that the earlier acquisitions were not consistent with the Framework.

2.25 The Audit Office assessed how the former Land Development Agency considered and applied the principles and tests in the Framework, based on ‘all proposed acquisitions ... [being] assessed against the principles and associated tests’. In doing so, adherence to the Framework is assessed with a high threshold. In its response to the final proposed report on 22 June 2018 the Suburban Land Agency advised ‘the Audit Office has placed a higher threshold on how the Framework should have been applied than is stipulated in the Framework or was commonly understood by the LDA Board and LDA management’. It also advised ‘... another relevant ordinary meaning of “follow” according to the ACT Government Solicitor’s Office (GSO) is ‘to endeavour to obtain or to attain to’ and that definition would appear to sit equally well in the context of the wording of the Framework.

- 2.26 While the different views can be debated what needs emphasising is that the former Land Development Agency should have clarified how the Framework's principles and tests were to be applied; this did not occur. A *Land Acquisition Policy Framework Interpretation* paper was prepared in August 2015 but it only provided guidance on what purchases the framework applied to and how to apply the \$20 million 'accumulation limit'. No legal advice was sought by the former Land Development Agency at the time of the development of the Framework to assist its consideration and application of the Framework and its principles and tests. In the absence of interpretation guidance on how the principles and tests in the Framework were to be applied, it was important that the former Land Development Agency comprehensively document its consideration and application of the Framework principles and tests. This was not consistently or effectively done.
- 2.27 In its response to the final proposed report on 22 June 2018, in relation to the development of guidance on how to interpret and apply the principles and tests in the Framework, the Suburban Land Agency advised:
- ... the report's conclusion that "no guidance was developed by the former Land Development Agency to guide [how the Framework was to be applied]", does not recognise the relationship between the then Economic Development Directorate (EDD) and the LDA. EDD was the responsible entity for the preparation of any guidance material relevant to the application of the Framework, noting that EDD had also developed the Framework.
- 2.28 This comment is noted and it is also noted that the former Land Development Agency and Economic Development Directorate also had common senior executive leadership.

Evidence of the application of the Framework by the former Land Development Agency

- 2.29 Evidence was sought with respect to the former Land Development Agency's recognition and consideration of the Framework and application of the principles and tests in making the purchases. The purchase of Wagtail Park for the purpose of the second electricity supply infrastructure, which was approved by Cabinet, was not assessed.

Purchases of Lands End, Milapuru, Fairvale and Huntly

- 2.30 For the first four rural properties purchased west of Canberra (Lands End, Milapuru, Fairvale and Huntly) there was no contemporaneous record of the consideration and application of the principles and tests in the Framework for the purchases. However, various Board reports and business cases for the first four purchases assert that the purchases were in accordance with Framework. For example:
- for the purchase of Lands End, the relevant Board report of 28 May 2015 states:

The proposed acquisition set out in this paper is in accordance with the principles of the framework. Specifically it falls within clause 2.2.1 below \$5m.
 - for the purchase of Milapuru, a Business Case dated 12 June 2015 states:

The acquisition of this property falls within this framework.

- for the purchase of Huntly, the relevant Board report of 18 May 2015 states:

The proposed acquisition set out in this paper is in accordance with the principles of the framework. Specifically it falls within clause 2.2.1 b. between \$5m and \$20m.

2.31 For the purchase of Fairvale, neither the Board report nor minutes of the 24 September 2015 Board meeting make reference to the Framework, or its principle or tests.

2.32 While Board reports and Business Cases for the first four purchases recognise the Framework and identify the Framework's decision-making financial thresholds, there is no documentation on the specific principles and tests of the Framework and how the proposed acquisitions accorded with the principles and tests.

2.33 At the meeting at which the third and fourth purchases (Fairvale and Huntly) were approved by the former Land Development Agency Board on 24 September 2015, Board minutes identify a need for better documentation associated with strategic land purchases:

The Board discussed the need for a standard template for acquisition proposals to ensure all matters are considered and addressed in formulating advice to the Board [and that the LDA] develop an appropriate template for strategic land acquisitions.

2.34 At its meeting of 26 November 2015 the former Land Development Agency Board considered the *Strategic Land Acquisition template* report which also identified a need for better documentation associated with purchases under the Framework:

Notwithstanding that a business case is only required for proposed acquisitions exceeding \$5 million, the Land Acquisition Policy Framework requires all acquisitions to be assessed against the principles and associated tests as set out in the policy.

Although the Huntly Business Case satisfied Treasury's requirements to enable endorsement of the acquisitions, it is proposed to further improve the template for future acquisitions to explicitly identify and address the principles and tests required to be met under the Land Acquisition Policy Framework. This will be accompanied by an unambiguous assertion as to whether the relevant tests have been satisfied.

Purchases of Winslade, The Vines, Wintergarden and Pine Ridge

2.35 There is evidence of better and more comprehensive consideration of the principles and tests in the Framework for the purchases of Winslade, The Vines, Wintergarden and Pine Ridge. For the purchases of Winslade and The Vines there is evidence of partial consideration of the principles and tests in the Framework and for the purchases of Wintergarden and Pine Ridge there is evidence of full consideration of the principles and tests in the Framework.

Purchases of Winslade and The Vines

2.36 For the purchase of Winslade, the Business Case dated 13 April 2017 provides commentary on the principles identified in the Framework (i.e. intended outcome, policy alignment, value for money and risk management) but does not refer to, or address, the nine tests.

- 2.37 For the purchase of The Vines a Board report *Land acquisition policy framework - acquisitions for second power supply project for the ACT* was presented to the former Board on 27 April 2017. The report provides commentary on the principles identified in the Framework (i.e. intended outcome, policy alignment, value for money and risk management) but does not refer to the nine tests. The minutes from that meeting state:

The former Executive Director sought the Board's acknowledgment that the acquisition of [The Vines, Wagtail Park and Pine Ridge] which had been approved at the previous meeting – met the principles of the Land Acquisition Policy Framework Direction. The Executive Director led the Board through the paper which formally and explicitly addressed the LAPF Direction tests, and reiterated the importance of the acquisition to support the strategic location of a 2nd electricity supply to Canberra. The Board noted the report.

Purchases of Wintergarden and Pine Ridge

- 2.38 For the purchase of Wintergarden, a report titled *Possible Strategic Land Acquisition 'Wintergarden Estate' Belconnen* was presented to the former Land Development Agency Board on 11 July 2016. The Board report presented an assessment of the proposed purchase against the principles and tests identified in the Framework. The information on the nine tests is presented in the form of a statement of the test and affirmative response and brief description for each.

- 2.39 For the purchase of Pine Ridge, a report was presented to the former Land Development Agency Board on 25 May 2017. The Board report presented an assessment of the proposed purchase against the principles and tests identified in the Framework. The information on the nine tests is presented in the form of a statement of the test and affirmative response and brief description for each. In response to the 25 May 2017 report, the Board:

noted the intended outcomes and supporting reasoning for acquiring the property, and that the proposed acquisition had been formally assessed against and found to be consistent with the *Land Acquisition Policy Framework Direction 2014* and the thresholds contained therein.

- 2.40 For the purchases of Lands End, Fairvale, Wintergarden, Pine Ridge and The Vines the former Land Development Agency Board was the relevant decision maker and was obliged to apply the Framework prior to its approval of the purchases. For the purchases of Milapuru, Huntly and Winslade, the former Land Development Agency Board was not the decision maker but it was obliged to apply the Framework in proposing the purchases. In all purchases the former Land Development Agency should have demonstrated its consideration and application of the principles and tests in the Framework.

- 2.41 For the first four rural properties purchased west of Canberra (Lands End, Milapuru, Fairvale and Huntly) various Board reports and business cases assert that the purchases were in accordance with Framework, but there was no contemporaneous record of the consideration and application of the principles and tests in the Framework. For the subsequent rural properties purchased (Winslade, The Vines, Wintergarden and Pine Ridge) there is better documentation of the consideration of the principles and tests in the Framework. For the purchases of Winslade and The Vines there is evidence of partial consideration of the principles and tests in the Framework and for the purchases of Wintergarden and Pine Ridge there is evidence of full consideration of the principles and

tests in the Framework, including information in the form of a statement of the test and affirmative response and brief description for each.

Audit Office assessment of the application of the Framework

- 2.42 The Audit Office considered the former Land Development Agency's consideration and application of the principles and tests identified in the Framework to the eight rural properties that were purchased. The purchase of Wagtail Park for the purpose of the second electricity supply infrastructure, which was approved by Cabinet, was not assessed.
- 2.43 The Audit Office examined each purchase and sought documentary evidence related to each of the principles and nine tests to form a view on whether tests had been followed. The Audit Office's assessment involved examining documentary evidence (e.g. reports) provided to the former Land Development Agency Board, Board minutes, briefings and supporting documentation for decision makers including that for the Chief Minister and the Treasurer, and Cabinet. Other relevant documents, such as valuation reports or internal and external correspondence including emails, were also considered as part of this assessment.
- 2.44 Professor Holliday (audit Subject Matter Expert) assessed the Intended Outcome Principle (Test 1) and the Policy Alignment Principle (Tests 2, 3 and 4).

Intended Outcome principle (Test 1)

- 2.45 The Framework specified one test relating to the Intended Outcome Principle (refer to paragraph 2.9).
- 2.46 Professor Holliday (audit Subject Matter Expert) assessed relevant documentation for each of the eight purchases (excluding Wagtail Park) (refer to Table 2-3), principally based on the material provided to the former Land Development Agency Board. In each case an intended outcome was identified for each purchase (refer to Table 2-3). Specifically:
- Lands End (June 2015), the purpose is stated residential and other purposes ancillary to residential (Test 1 ✓);
 - Milapuru (July 2015), the purpose is stated as residential and other purposes ancillary to residential (Test 1 ✓);
 - Fairvale (November 2015), the purpose is stated as residential and other purposes ancillary to residential (Test 1 ✓);
 - Huntly (April 2016), the purpose is stated as residential and other purposes ancillary to residential (Test 1 ✓);
 - Wintergarden (August 2016), the purpose is stated as infrastructure purposes and other purposes ancillary to adjacent residential (Molonglo 3) such as district playing fields (Test 1 ✓);

- Winslade (June 2017), the purpose is stated as residential and other purposes ancillary to residential (Test 1 ✓);
- Pine Ridge (June 2017 decision), other than the (2.3 hectares) area identified for second supply infrastructure, the purpose is stated as residential and other purposes ancillary to residential (Test 1 ✓); and
- The Vines (June 2017 decision), other than the (4 hectares) area identified for second supply infrastructure, the purpose is stated as other purposes such as a school ancillary to residential development within the adjacent Joint Venture Partnership area of Ginninderry (Test 1 ✓).

2.47 For the eight rural property purchases assessed by the Audit Office, the Framework's Intended Outcome Principle (Test 1) was considered to have been followed as there was a documented reason why the former Land Development Agency proposed purchasing the properties. For the majority of properties (Lands End, Milapuru, Fairvale, Huntly, Winslade and Pine Ridge) it was residential development and other purposes ancillary to residential development. For some properties (Wintergarden, Pine Ridge and The Vines) it was for infrastructure and other purposes ancillary to residential.

Policy Alignment principle (Tests 2, 3 and 4)

2.48 Tests 2, 3 and 4 of the Framework (refer to paragraph 2.9), required the former Land Development Agency to assess a proposed purchase to ensure that the intended outcome aligned with Government policies. The Government policies referred to in the Framework are: the *ACT Planning Strategy* and other spatial planning documents (Test 2); and the *Statement of Government Policy* for the Land Development Agency (Test 3). The Audit Office also considered other stated Government policy (Test 4) as established through Cabinet decision making, ministerial announcements such as the Minister for Planning's *Statement of Planning Intent 2015*, and annual *Statements of Intent* agreed between the former Land Development Agency and the portfolio Minister.

2.49 Professor Holliday (audit Subject Matter Expert) assessed documentation for each of the eight purchases (excluding Wagtail Park) principally based on the material provided to the former Land Development Agency Board. The results of this assessment are shown in Table 2-3.

Table 2-3 Application of the Intended Outcome Principle (Test 1) and Policy Alignment Principle (Tests 2, 3 and 4)

Property and Purpose test (1)	Policy Alignment Principle tests (2, 3 and 4)
Lands End (30 June 2015) Purpose (Test 1 ✓): Residential and other	Test 2: Blocks are currently zoned NUZ3 (Hills, Ridges and Buffers) and are not residential zoned (RZ), or subject to a Future Urban Area overlay or a Structure Plan in the <i>Territory Plan</i> . The block is within the Western Edge Study area. No policy has been established by Government relating to

Property and Purpose test (1)	Policy Alignment Principle tests (2, 3 and 4)
purposes ancillary to residential	<p>changing land use in this area as identified in the <i>ACT Planning Strategy</i> (Test 2 ✕)</p> <p>Test 3: The 2015-16 <i>Statement of Government Policy</i> for the Land Development Agency has described an objective to ‘ensure that an adequate supply of land is maintained to meet market demand ...’. The purchase of the property may be interpreted as contributing to this objective. (Test 3 ✓)</p> <p>Test 4: In August 2008 the Government accepted the recommendation of the Standing Committee on Planning and Environment on the <i>Draft Variation to the Territory Plan No. 281</i>, that ‘Central Molonglo be removed in perpetuity from being considered as a future urban area’ noting in its response that ‘This recommendation is supported. The ACT Government will remove Central Molonglo from being considered as a future urban area’. This is considered to be Government policy until such time as it is changed. In May 2014 a Cabinet submission that proposed that ‘investigations to identify the next development front should commence by the end of 2015, in anticipation of a new front being required in or soon after 2025’ was not supported. Instead it was agreed ‘not to endorse the strategy outlined in the submission, but that a further submission be brought forward in 2015 outlining the key processes and corresponding timeframes for ensuring planning-ready land is available for release, and the roles and responsibilities of the ACT Government directorate in facilitating these processes’. A further submission was never provided by the Economic Development Directorate. (Test 4 ✕)</p>
Milapuru (31 July 2015) Purpose (Test 1 ✓): Residential and other purposes ancillary to residential	<p>Test 2: The block is currently zoned NUZ2 (Rural) and NUZ4 (River Corridor), is not residential zoned (RZ), or subject to a Future Urban Area overlay or a Structure Plan in the <i>Territory Plan</i>. The block is within the Western Edge Study area. No policy has been established by Government relating to changing land use in this area as identified in the <i>ACT Planning Strategy</i> (Test 2 ✕)</p> <p>Test 3: The 2015-16 <i>Statement of Government Policy</i> for the Land Development Agency has described an objective to ‘ensure that an adequate supply of land is maintained to meet market demand ...’. The purchase of the property may be interpreted as contributing to this objective. (Test 3 ✓)</p> <p>Test 4: In May 2014 a Cabinet submission that proposed that ‘investigations to identify the next development front should commence by the end of 2015, in anticipation of a new front being required in or soon after 2025’ was not supported. Instead it was agreed ‘not to endorse the strategy outlined in the submission, but that a further submission be brought forward in 2015 outlining the key processes and corresponding timeframes for ensuring planning-ready land is available for release, and the roles and responsibilities of the ACT Government directorate in facilitating these processes’. A further submission was never provided by the Economic Development Directorate. The acquisition is not consistent with other government policies which favor inner city development, development along public transport routes and close to employment. (Test 4 ✕)</p>

Property and Purpose test (1)	Policy Alignment Principle tests (2, 3 and 4)
<p>Fairvale (24 November 2015)</p> <p>Purpose (Test 1 ✓): Residential and other purposes ancillary to residential</p>	<p>Test 2: The block is currently zoned NUZ2 (Rural) and NUZ4 (River Corridor), is not residential zoned (RZ), or subject to a Future Urban Area overlay or a Structure Plan in the <i>Territory Plan</i>. The block is within the Western Edge Study area. No policy has been established by Government relating to changing land use in this area as identified in the <i>ACT Planning Strategy</i> (Test 2 ✕)</p> <p>Test 3: The 2015-16 <i>Statement of Government Policy</i> for the Land Development Agency has described an objective to 'ensure that an adequate supply of land is maintained to meet market demand ...'. The purchase of the property may be interpreted as contributing to this objective. (Test 3 ✓)</p> <p>Test 4: In May 2014 a Cabinet submission that proposed that 'investigations to identify the next development front should commence by the end of 2015, in anticipation of a new front being required in or soon after 2025' was not supported. Instead it was agreed 'not to endorse the strategy outlined in the submission, but that a further submission be brought forward in 2015 outlining the key processes and corresponding timeframes for ensuring planning-ready land is available for release, and the roles and responsibilities of the ACT Government directorate in facilitating these processes'. A further submission was never provided by the Economic Development Directorate. The Minister for Planning restated the Government's commitment to a compact city and urban renewal in his <i>Statement of Planning Intent 2015</i> (Test 4 ✕)</p>
<p>Huntly blocks (8 April 2016)</p> <p>Purpose (Test 1 ✓): Residential and other purposes ancillary to residential</p>	<p>Test 2: The block is currently zoned NUZ2 (Rural) and NUZ4 (River Corridor), is not residential zoned (RZ), or subject to a Future Urban Area overlay or a Structure Plan in the <i>Territory Plan</i>. The block is within the Western Edge Study area. No policy has been established by Government relating to changing land use in this area as identified in the <i>ACT Planning Strategy</i> (Test 2 ✕)</p> <p>Test 3: The 2015-16 <i>Statement of Government Policy</i> for the Land Development Agency has described an objective to 'ensure that an adequate supply of land is maintained to meet market demand ...'. The purchase of the property may be interpreted as contributing to this objective. (Test 3 ✓)</p> <p>Test 4: In May 2014 a Cabinet submission that proposed that 'investigations to identify the next development front should commence by the end of 2015, in anticipation of a new front being required in or soon after 2025' was not supported. Instead it was agreed 'not to endorse the strategy outlined in the submission, but that a further submission be brought forward in 2015 outlining the key processes and corresponding timeframes for ensuring planning-ready land is available for release, and the roles and responsibilities of the ACT Government directorate in facilitating these processes'. A further submission was never provided by the Economic Development Directorate. The Minister for Planning restated the Government's commitment to a compact city and urban renewal in his <i>Statement of Planning Intent 2015</i> (Test 4 ✕)</p>

Property and Purpose test (1)	Policy Alignment Principle tests (2, 3 and 4)
<p>Wintergarden (30 August 2016)</p> <p>Purpose (Test 1 ✓): Infrastructure purposes and other purposes ancillary to adjacent residential (Molonglo 3) such as district playing fields</p>	<p>Test 2: Blocks are 'designated land' within the <i>National Capital Plan (1990)</i>. The <i>Territory Plan</i> does not apply to land within designated areas. The Wintergarden Estate is within the Inner Hills, and is subject to <i>National Capital Plan (1990)</i> restrictions similar to Territory Plan NUZ3. The blocks are not in the Western Edge Study area. (Test 2 ✓)</p> <p>Test 3: There is a specific statement in the 2016-17 <i>Statement of Government Policy</i> 'to ensure an adequate supply of Government-owned land is in the planning and development pipeline for future release'. Uses identified for Wintergarden may further this policy (Test 3 ✓)</p> <p>Test 4: The Blocks are not within the Central Molonglo area. A key strategy in the 2016-17 <i>Statement of Intent</i> is that the former Land Development Agency establish 'an inventory of land for future development purposes'. The purchase took place after the <i>Statement of Intent</i> was agreed. No other policies identified that conflict with this proposal. (Test 4 ✓)</p>
<p>Winslade (30 June 2017)</p> <p>Purpose (Test 1 ✓): Residential and other purposes ancillary to residential</p>	<p>Test 2: The block is currently zoned NUZ2 (Rural), NUZ3 (Hills, Ridges and Buffers) and NUZ4 (River Corridor), is not residential zoned (RZ) is not subject to a Future Urban Area overlay or to a Structure Plan in the <i>Territory Plan</i>. The block is within the Western Edge Study area. No policy has been established by Government relating to changing land use in this area as identified in the <i>ACT Planning Strategy</i> (Test 2 ✕)</p> <p>Test 3: There is a specific statement in the 2016-17 <i>Statement of Government Policy</i> 'to ensure an adequate supply of Government-owned land is in the planning and development pipeline for future release'. Uses identified for Winslade may further this policy (Test 3 ✓)</p> <p>Test 4: A key strategy in the 2016-17 <i>Statement of Intent</i> is that the former Land Development Agency establish 'an inventory of land for future development purposes'. However, in May 2014 a Cabinet submission that proposed that 'investigations to identify the next development front should commence by the end of 2015, in anticipation of a new front being required in or soon after 2025' was not supported. Instead it was agreed 'not to endorse the strategy outlined in the submission, but that a further submission be brought forward in 2015 outlining the key processes and corresponding timeframes for ensuring planning-ready land is available for release, and the roles and responsibilities of the ACT Government directorate in facilitating these processes'. A further submission was never provided by the Economic Development Directorate. The Minister for Planning restated the Government's commitment to a compact city and urban renewal in his <i>Statement of Planning Intent 2015</i> (Test 4 ✕)</p>
<p>Pine Ridge (12 Sept 2017 decision), other than the (2.3 ha) area identified for second supply infrastructure,</p>	<p>Test 2: The block is currently zoned NUZ3 (Hills, Ridges and Buffers) and is not residential zoned (RZ), or subject to a Future Urban Area overlay or a Structure Plan in the <i>Territory Plan</i>. The block is within the Western Edge Study area. No policy has been resolved relating to changing land use in this area as identified in the <i>ACT Planning Strategy</i>. (Test 2 ✕)</p> <p>Test 3: There is a specific statement in the 2016-17 <i>Statement of Government Policy</i> 'to ensure an adequate supply of Government-owned land is in the</p>

Property and Purpose test (1)	Policy Alignment Principle tests (2, 3 and 4)
<p>Purpose (Test 1 ✓): Residential and other purposes ancillary to residential</p>	<p>planning and development pipeline for future release'. Uses identified for Pine Ridge may further this policy (Test 3 ✓)</p> <p>Test 4: A key strategy in the 2016-17 <i>Statement of Intent</i> is that the former Land Development Agency establish 'an inventory of land for future development purposes'. However, in August 2008 the Government accepted the recommendation of the Standing Committee on Planning and Environment on the <i>Draft Variation to the Territory Plan No. 281</i>, that 'Central Molonglo be removed in perpetuity from being considered as a future urban area' noting in its response that 'This recommendation is supported. The ACT Government will remove Central Molonglo from being considered as a future urban area'. This is considered to be Government policy until such time as it is changed. The <i>ACT Planning Strategy</i> (2012) does not conflict with, or amend, this policy. Also the Minister for Planning restated the Government's commitment to a compact city and urban renewal in his <i>Statement of Planning Intent 2015</i>. In May 2014 a Cabinet submission that proposed that 'investigations to identify the next development front should commence by the end of 2015, in anticipation of a new front being required in or soon after 2025' was not supported. Instead it was agreed 'not to endorse the strategy outlined in the submission, but that a further submission be brought forward in 2015 outlining the key processes and corresponding timeframes for ensuring planning-ready land is available for release, and the roles and responsibilities of the ACT Government directorate in facilitating these processes'. A further submission was never provided by the Economic Development Directorate. (Test 4 ✕)</p>
<p>The Vines (30 March 2017 decision), other than the (4 ha) area identified for second supply infrastructure, Purpose (Test 1 ✓): Other purposes such as a school ancillary to residential development within the adjacent Joint Venture Partnership area of Ginninderry</p>	<p>Test 2: The block is currently zoned NUZ1 (Broadacre). Some of the other purposes envisaged (e.g. a school) are permitted under NUZ1 (Broadacre). While an education establishment is permitted under the current NUZ1 (Broadacre) zoning, this is presented as an ancillary land use to the residential land use in the Joint Venture Partnership area (across a road) and so has the effect of extending the boundary of the structure plan into an area defined as the Western Edge Study area. No policy has been established by Government relating to changing land use in this area as identified in the <i>ACT Planning Strategy</i> (Test 2 ✕)</p> <p>Test 3: There is a specific statement in Government policy 'to ensure an adequate supply of Government-owned land is in the planning and development pipeline for future release'. Uses identified for The Vines may further this policy (Test 3 ✓)</p> <p>Test 4: A key strategy in the 2016-17 <i>Statement of Intent</i> is that the former Land Development Agency establish 'an inventory of land for future development purposes'. However, in August 2008 the Government accepted the recommendation of the Standing Committee on Planning and Environment on the <i>Draft Variation to the Territory Plan No. 281</i>, that 'Central Molonglo be removed in perpetuity from being considered as a future urban area' noting in its response that 'This recommendation is supported. The ACT Government will remove Central Molonglo from being considered as a future urban area'. This is considered to be Government policy until such time as it is changed. While an education establishment is permitted under the current</p>

Property and Purpose test (1)	Policy Alignment Principle tests (2, 3 and 4)
	NUZ1 (Broadacre) zoning, this is presented as an ancillary land use to the residential land use in the Joint Venture Partnership area (across a road) and so has the effect of extending the boundary of the structure plan into the moratorium area (Test 4 ✕)

Source: Audit Office records review with advice from Professor Holliday, the Subject Matter Expert (November 2017)

Suburban Land Agency response

2.50 In its response to the draft proposed report on 10 May 2018 the Suburban Land Agency, advised that it disagreed with the Audit Office assessment of Tests 2 and 4, based on available records.

Test 2

2.51 In relation to the application of Test 2 (relating to the intended outcome for the proposed acquisition and its alignment with the Government's land development policies as set out in the *ACT Planning Strategy* and any other relevant Government strategic spatial planning documents) in its response to the draft proposed report, the Suburban Land Agency advised:

The Draft Report incorrectly asserts that there would need to be a policy established by Government to change the land use in the area to satisfy this test. The test is specifically about ensuring that the acquisition "...advances the Government's land development policies set out in the Planning Strategy and other strategic spatial planning documents".

The Planning Strategy includes the following references relevant to the Western edge:

- Page 7 – key actions: "Initiate a study to assess the issues, best uses and management for the lands on the city's western boundary."
- Page 40 – Map: The map indicates that the Western edge planning investigations will commence.
- Page 43 – short term actions: "Following investigations prepare structure/concept plans for greenfield areas on the urban edge that appropriately add to the efficient use of existing infrastructure of Canberra."
- Page 59 – short term actions: "Initiate a study to assess the issues, best uses and management for the lands on the city's western boundary."

Through these statements, the Planning Strategy identifies that studies will commence on the Western edge and that, following investigations, structure/concept plans will be prepared for Greenfield area on the urban edge that will add to the use of existing infrastructure.

2.52 In its response to the final proposed report on 22 June 2018 the Suburban Land Agency advised, based on available records:

... the purchases can be viewed as offering 'certainty that the land will be available if it is in the scope for inclusion in the next Planning Strategy'. This is the basis on which the LDA purchased the land. Noting that the 2012 Planning Strategy identified land to the west of Canberra was to be 'the subject of future investigation', it was reasonable to consider that some of the land may be identified for urban development or a range of other uses already permitted under current Territory Plan zoning. This is confirmed in evidence provided by the former and current Chief Planning Executives who both acknowledged that identification of certain areas

for urban development was one of the likely outcomes from the studies. Government ownership of that land would enable any outcomes from the studies to be implemented, including for urban development, environmental offsets, or other uses.

The report states that “No policy has been established by Government relating to changing land use in this area as identified in the planning strategy”. This is misleading and does not reflect the wording of the test, which is that any acquisitions should advance the Government’s land development policies as set out in the planning strategy and other strategic spatial planning documents. While no commitment had been made to change the land use, the fact that the area has been identified for investigation demonstrates that the Government has an interest in potential uses of that land. The report itself acknowledges that identification of the land for future investigation was likely to cause land speculation in the area, which did occur. It is beyond question that the planned future investigation of the land west of Canberra will result in the identification of uses of the land other than rural (as acknowledged by the Chief Planning Executive). On that basis, the LDA’s decision to acquire land in the west of Canberra ‘advanced the Planning Strategy’ by placing the land in Territory hands so that any outcomes from the investigations could be implemented by Government. While these land acquisitions could have occurred after the investigations had been completed, the land values would reflect the proposed future zoning conditions which would, in most cases, be much higher than rural land values. Such an approach would not represent the optimal expenditure of public money, which is a fundamental government policy.

2.53 The Audit Office and the Suburban Land Agency have different views on whether the identification of the Western Edge Study area in the *ACT Planning Strategy* (2012) provided a clear policy direction to the former Land Development Agency for it to state its intended outcomes (i.e. residential in most instances) are aligned with other government policies in relation to rural land west of Canberra. The Audit Office considers that the identification of the need for further studies and investigation into the Western Edge Study area and its potential for development does not amount to an intention to change the land use of this area. The Suburban Land Agency advised that ‘it is beyond question that the planned future investigation of the land west of Canberra will result in the identification of uses of the land other than rural’.

2.54 In its response to the draft proposed report, on 10 May 2018 the Suburban Land Agency further advised, specifically with respect to The Vines, that based on available records:

... purchase of The Vines was undertaken with the specific intention of enhancing the Territory’s stake in the Joint Venture Agreement for the West Belconnen land. Government agreement to the Joint Venture project was given in accordance with its stated policy to “ensure that an adequate supply of land is maintained to meet market demand and to stimulate economic activity in the residential, commercial, industrial and community land development sectors.”

2.55 The Audit Office holds a different view on the assessment of The Vines in relation to Test 2, a test of strategic spatial planning alignment. ‘Government agreement to the Joint Venture project’ does not include a change to the Territory Plan that has not yet taken place. For example, the Structure Plan boundary of Territory Plan Variation No. 351 does not include The Vines. Professor Holliday (subject matter expert) advised:

While an education establishment is permitted under the current NUZ1 (Broadacre) zoning, this is presented as an ancillary land use to the residential land use in the Joint Venture Partnership area (across a road) and so has the effect of extending the boundary of the

structure plan into an area defined as the Western Edge Study area spatial planning documents.

Test 4

- 2.56 In relation to the application of Test 4 (relating to the intended outcome for the proposed acquisition and its consistency with any other relevant Government policies) in its response to the draft proposed report on 10 May 2018 the Suburban Land Agency advised, that it understood based on available records that:

Purchase of the properties is not inconsistent with the removal of central Molonglo from being considered as a future urban area or Cabinet's decision on site investigations, which the report incorrectly describes as Cabinet agreeing 'not to proceed'. A more accurate reflection of the decision was that Cabinet sought additional information for future consideration.

The intended outcome contemplated by the Board in pursuing land acquisitions along the Western edge (consistent with relevant planning uses) was to secure the land at rural values to enable future consideration by Government of potential uses. The Board was fully aware that the land use may not change in the future.

The approach taken by the Board is supported by statements made by the Chief Planning Executive [at paragraph 5.42] which indicate that the investigations to be undertaken would identify the potential uses of the land, including urban development, environmental protection, and agricultural use. As urban development was a potential outcome of the investigations, purchase of the sites by the LDA was consistent with Government policy.

Moreover, by securing the sites, the LDA was ensuring that any future decisions by Government about the land use could be implemented.

It should also be noted that the removal of central Molonglo from being considered as a future urban area did not prevent other relevant uses being contemplated, such as use of the land for environmental offsets, infrastructure, etc.

- 2.57 In its response to the final proposed report on 22 June 2018, specifically with reference to Central Molonglo's removal in perpetuity from being considered a future urban area, the Suburban Land Agency advised:

In 2012 the ACT Planning Strategy was released which identified Canberra's western edge for future investigation. Importantly, Central Molonglo was included in the future study area which signalled that the Government was interested in assessing the potential uses of that land. Due to the identification of the area for future investigation in 2012, the purchases were not inconsistent with Government policy ...

- 2.58 In its response to the final proposed report on 22 June 2018, the Suburban Land Agency advised that it understood based on available records that Cabinet's decision 'not to endorse the strategy outlined in the submission, but that a further submission be brought forward in 2015 outlining the key processes and corresponding timeframes for ensuring planning-ready land is available for release, and the roles and responsibilities of the ACT Government directorate in facilitating these processes' was not a 'government policy' and that the 'purchase of land to the west of Canberra was not inconsistent with Cabinet's decision'. The Suburban Land Agency further advised that based on available records:

It is notable that the Minister and Cabinet were fully aware that the LDA was purchasing land in the area ... Had there been a concern about those land purchases and consistency with Cabinet's decision, the relevant Ministers would have raised those concerns. The acquisitions were not inconsistent with Cabinet's decision ...

- 2.59 In its response to the final proposed report on 22 June 2018, specifically with reference to the statement 'The Minister for Planning restated the Government's commitment to a compact city and urban renewal in his Statement of Planning Intent 2015' the Suburban Land Agency advised its interpretation of available information was:

The short term action identified at page 43 of the Planning Strategy regarding the western edge study and the future urban investigation area, is "following investigations prepare structure/concept plans for greenfield area on the urban edge that appropriately add to the efficient use of existing infrastructure Canberra" which is consistent with the planning intent of a compact city.

The 'urban edge' referred to on page 43 of the Strategy includes the western edge study area. Any ordinary reading of this document would conclude that the western edge has been nominated as a potential urban development front (or, given its size, several fronts).

All of the properties acquired by the LDA, except Wintergarden, are within the western edge study area. Wintergarden is located closer to the Canberra CBD, to the east of the western edge study area.

- 2.60 The Audit Office has a different view to the Suburban Land Agency with respect to the status of central Molonglo, as the residential use indicated is not consistent with the August 2008 Government response to the recommendation 'that Central Molonglo be removed in perpetuity from being considered as a future urban area', which was and remains 'This recommendation is supported. The ACT Government will remove Central Molonglo from being considered as a future urban area'. This is discussed further in Chapter 3 (paragraphs 3.146 to 3.152).
- 2.61 In relation to the other matters, the Audit Office has been advised by the former Land Development Agency Board as to its strategic reasons for pursuing purchases in the Western Edge Study area (refer to paragraph 2.137). These are relevant to tests 2, 3 and 4 only where the reasons are also established in Government policies. For example, no Government policy has been identified that the Land Development Agency should have been securing sites, to ensure 'that any future decisions by Government about the land use could be implemented'.
- 2.62 For the eight rural purchases assessed by the Audit Office, the Framework's Policy Alignment Principle (Tests 2, 3 and 4) was considered to be followed for one property (Wintergarden). Test 3 was considered to be followed for all properties because the purchase of the properties were considered to be in conformance with the Statement of Government Policy objective for the Land Development Agency either to 'ensure that an adequate supply of land is maintained to meet market demand ...' or 'to ensure an adequate supply of Government-owned land is in the planning and development pipeline for future release'.
- 2.63 Test 2 (relating to the Government's land development policies as set out in the *ACT Planning Strategy* (2012) and any other relevant Government strategic spatial planning documents and requirements) was not considered to be followed for the majority of the properties as the land is not currently zoned for residential use and no policy had been established by Government relating to changing land use in this area. Test 4 (relating to

consistency with any other relevant Government policies) was not considered to be followed for the majority of the properties for different reasons including: the Government's 2008 agreement to 'remove Central Molonglo from being considered as a future urban area', Cabinet not agreeing in May 2014 to proceed with specific investigations that would inform the prioritisation of a new development front and the Government's commitment to a compact city and urban renewal in the *Statement of Planning Intent 2015*.

- 2.64 In response to the draft proposed and final proposed reports on 10 May 2018 and 22 June 2018 the Suburban Land Agency advised, based on its interpretation of available information, that it considers that Tests 2 and 4 were followed for all purchases. In considering that both Test 2 and Test 4 was followed, the Suburban Land Agency advised that the identification of the Western Edge Study area in the *ACT Planning Strategy (2012)* 'signalled that the Government was interested in assessing the potential uses of that land. Due to the identification of the area for future investigation in 2012, the purchases were not inconsistent with Government policy'. For the reasons outlined above, the Audit Office has a different view that the identification of the area as being subject to future investigation provides such certainty.

Value for Money principle (Tests 5, 6 and 7)

Test 5

- 2.65 For Test 5 (refer to paragraph 2.9), documentation relating to the development of the Framework (from a Cabinet decision on 17 October 2011 to the Minister for Economic Development's Direction on 14 June 2014) was examined for explanations as to the meaning of 'consistent with the independent market valuation' and 'current and anticipated uses'. No further detail was identified in records to explain the meaning.
- 2.66 The Australian Government Solicitor provided advice to the Audit Office as to the meaning of 'consistent with the independent market valuation':

The better view is that 'the proposed purchase price is consistent with the independent market valuation' requires that a relevant price accord with and not be significantly above or below the independent valuation.

...

We note that there is a well-developed legal framework within which market valuations occur. It appears that the Direction is contemplating a valuation which is undertaken within that framework and by a person appropriately qualified to apply it.

Market Value

- 2.67 The *Australia and New Zealand Valuation and Property Standards* (2012) subsection 15.3.3 advises that the following definition ‘paraphrases the elements of Market Value as defined in *Spencer v The Commonwealth* [of Australia (1907)] and it is intended that it includes the essential elements of that definition’, which is:

... the estimated amount for which an asset should exchange on the date of valuation between a willing buyer and a willing seller in an arms’ length transaction after proper marketing wherein the parties had each acted knowledgeably, prudently, and without compulsion.

- 2.68 The Australian Government Solicitor provided advice as to the meaning of ‘current and anticipated uses’:

An independent market valuation would also involve the application of established land valuation principles applied by professional valuers. In our view the words ‘anticipated uses’ would most probably be understood by a court to reflect the fact that the process of valuing land involves a consideration of the ‘highest and best use’ to which a prospective purchaser might put the land.

In the current context, the Direction is concerned with requiring a hypothetical valuation of a property against which to test a price which might be negotiated by a vendor and the [Land Development Agency]. In that context, we think that the ‘anticipated uses’ of a site would most probably be understood by both a court and a professional valuer as referring to the ‘highest and best use’ to which the particular land might be put (that is, the most advantageous purpose the land could be adapted to).

- 2.69 The Australia Property Institute defines ‘highest and best use’ as:

The use of an asset that maximises its potential and that is physically possible, legally permissible and financially feasible.

- 2.70 The land to the west of Canberra is under 99-year leasehold (refer to Figure 5-1) or is unleased Territory land (for example, Stromlo Forest Park). As leasehold land is held under a crown lease, land and property value is impacted by the terms of the Crown Lease, including the purpose clause of the lease, as well as the permitted land uses defined in the Territory Plan. Accordingly, the terms ‘independent market valuation’ taking into account ‘current and anticipated uses’ is:

An independent market valuation of the highest and best use of a site according to what is legally permissible within the terms of the Crown Lease and the Territory Plan, and what is physically possible and financially feasible.

- 2.71 Accordingly, the Audit Office considers Test 5 does not allow for an independent market valuation that includes speculation over changes to a Crown Lease that are not legally permissible, or changes to the Territory Plan that have not taken place.

- 2.72 In its response to the draft proposed report on 10 May 2018 the Suburban Land Agency advised:

This view supposes that zoning and lease provisions have no legal means of being altered and that experienced developers within the market may take a view that land in fact does have more value than that contemplated within the current Crown Lease. The fact that the ACT Government and private sector developers routinely follow legal process to amend lease and

planning controls demonstrates that the rezoning and changing of lease purposes is legally permissible.

Evidence of market valuation

- 2.73 Former Land Development Agency records were examined to establish how the former Land Development Agency had documented the independent market valuation of each of the eight purchases; those settled (Lands End, Milapuru, Fairvale, Huntly, Wintergarden, Winslade and Pine Ridge) and those with agreed contractual terms (The Vines). At least one valuation report or a letter of advice on value was identified in former Land Development Agency records for each of the eight properties. All were signed by Certified Practising Valuers.

Independence

- 2.74 In relation to the term 'independent' in the phrase 'independent market valuation', the Australian Government Solicitor provided advice that:

In the context of the Direction, we think that a court would likely conclude that the words refer to a valuation undertaken by a person with expert land valuation qualifications, who is independent of the Government and the LDA, and who has no personal or financial interest in the sale.

- 2.75 In advice to the Audit Office, the ACT Valuation Office provided advice as to the term 'independent':

Independence in a valuation context relates to the provision of valuation advice based purely on the market evidence. The considerations that might give rise to questions about independence include relationships either with the vendor, purchaser or both and pecuniary gain, direct or indirect resulting from the transaction. ... The relationships formed by instruction are generally not strong enough to sufficiently reduce the risk of outcomes that are not based on market evidence.

- 2.76 The ACT Valuation Office also advised that the Australian Property Institute's *Code of Professional Conduct*, Rule 3: Impartiality states:

A member must maintain the strictest independence and impartiality when making a valuation and/or where the exercise of objective judgement is required. In such circumstances, a members must not, *inter alia*:

(a) adopt the role of advocate in a case where their duty is to exercise independence and impartiality;

(b) act as an advocate and as an expert in the same matter;

...

Independent market valuation and price

- 2.77 Two interviewees (a landowner and the Colliers International State Chief Executive, ACT working on behalf of the former Land Development Agency) who were party to negotiations with the former Land Development Agency indicated under oath or affirmation that reference had been made in discussions to a ten per cent margin for negotiation over an

independent market valuation. Board records in July 2016 (relating to Wintergarden) also refer to a ten per cent margin:

Subject to receipt of the final valuation, a negotiation margin of 10 per cent above the valuation advice, reflecting the strategic and financial benefits the purchase would generate for the Canberra community.

...

Consistent with the Board's earlier agreement to a negotiation margin above the valuation, the current offer [...] by the vendor is approximately 11% above the 'market value' ...

2.78 Accordingly, with reference to the Australian Government Solicitor's advice that 'a relevant price accord with and not be significantly above or below the independent valuation', the Audit Office adopted a 'plus or minus ten per cent' threshold when considering independent market valuation and price in assessing how Test 5 had been addressed.

Audit Office assessment of Test 5

2.79 On the basis of the advice in paragraphs 2.66 to 2.78, the Audit Office assessed each of the eight former Land Development Agency purchases for the purpose of following Test 5 according to whether there is former Land Development Agency documentation of:

- a written market valuation, provided by a Certified Practising Valuer (CPV) (5.1);
- a market valuation which is stated as being on the basis of 'highest and best use' (5.2);
- a market valuation which is independent (5.3); and
- the proposed price being within ten per cent of the market valuation (5.4).

2.80 Table 2-4 summarises the results the Audit Office's assessment of evidence of independent market valuation and price for the eight purchases.

Table 2-4 Audit Office assessment of the Value for Money Principle (Test 5) for the rural purchases

Purchase	LDA document	Value (or range)	Price paid ex Stamp Duty	Premium paid over valuation	Test 5.1 Written, CPV	Test 5.2 Highest and Best	Test 5.3 Independent	Test 5.4 Consistent with
Lands End	Valuation Report (16 Feb 2015)	\$3.1m	\$3m	-3%	✓	✓	✓	✓
	Valuation Report (16 Feb 2016)	\$2.925m	\$3m	+3%	✓	✓	✓	✓
Milapuru	Valuation Report (11 Feb 2015)	\$3.15m	\$7m	+122%	✓	✓	✓	✗
	Letter (5 March 2015)	\$5m to \$6.35m	\$7m	+10%	✓	✗	✓	✓

Purchase	LDA document	Value (or range)	Price paid ex Stamp Duty	Premium paid over valuation	Test 5.1 Written, CPV	Test 5.2 Highest and Best	Test 5.3 Independent	Test 5.4 Consistent with
Fairvale*	No LDA document found	Unstated	\$5.45m (undivided)	n/a	✗	✓	✗	n/a
	Letter (14 Sept 2015)	\$3.1m	\$3.1m (divided)	0%	✓	✗	✗	✗
Huntly	Valuation Report (10 April 2015)	\$10m	\$10m	0%	✓	✓	✓	✓
Wintergarden	Valuation Report (7 July 2016)	\$2.75m to \$3.25m	\$4m	+23%	✓	✓	✓	✗
	Letter (19 July 2016)	\$5.05m	\$4m	-21%	✓	✗	✓	✗
Winslade	Valuation Report (11 May 2016)	\$6.5m to \$7.5m	\$7.5m	0%	✓	✓	✓	✓
Pine Ridge	Valuation Report (20 April 2017)	\$3.9m to \$4.7m	\$4.6m	-2%	✓	✓	✓	✓
The Vines	Valuation Report (2 October 2015)	\$1.2m to \$1.4m	Est \$2.2m	+57%	✓	✓	✓	✗
	No LDA document found	\$2m	Est \$2.2m	+10%	✗	✗	✗	✓

Source: Audit Office review of valuation records held by the former Land Development Agency

Note: For the purchase of Fairvale, a total of \$5.45 million was paid to the owner, as the property was sold in two parts, to the former Land Development Agency and a private buyer. The former Land Development Agency's part of the property was purchased for \$3.1 million.

2.81 Table 2-4 identifies that for four of the eight properties (i.e. Lands End, Huntly, Winslade and Pine Ridge) there is documentation that indicates that Test 5, the 'proposed purchase price for the site is consistent with the independent market valuation', was followed. With respect to the other four properties purchased (i.e. Milapuru, Fairvale, Wintergarden or The Vines) the Audit Office notes:

- for the purchase of Milapuru and Wintergarden the former Land Development Agency relied on letters of advice on value prepared on a basis other than 'highest and best use'. For both of these properties valuation advice on the basis of 'highest and best use' was initially sought and received but different advice was then requested. For Milapuru the former Land Development Agency was already aware of 'a counter offer for purchase of the land by a private developer' and for Wintergarden this followed the former Land Development Agency not being successful in its attempt to purchase the property at auction;

- for the purchase of Fairvale it is asserted that the former Land Development Agency relied on a market valuation prepared for the owner of the property that was prepared by a valuer who had an interest in purchasing part of the property and which the Audit Office could not locate in former Land Development Agency records. Subsequent advice sought and obtained, from a valuer, by the former Land Development Agency on how to apportion the purchase price of the entire property between the former Land Development Agency and the other purchaser was not a valuation of the property on a 'highest and best use' basis and was not independent. Accordingly, there was no record of an independent market valuation of Fairvale upon which to consider a purchase price; and
- for the purchase of The Vines, the former Land Development Agency relied on an offer received by the vendor as evidence of market valuation but there was no document found in the former Land Development Agency records to verify this assertion. On the basis of the original 'highest and best use' valuation, the difference between the valuation and the proposed price was 57 per cent, and therefore the price was not consistent with the valuation.

2.82 Further information on the valuation and agreed price of Milapuru and Wintergarden is presented in paragraphs 2.85 to 2.92, and Fairvale and The Vines in paragraphs 2.96 to 2.111.

2.83 For the eight rural purchases assessed by the Audit Office, the Framework's Value for Money Principle (Test 5 relating to the proposed purchase price being consistent with the independent market valuation) was considered to be followed for four of the eight properties (i.e. Lands End, Huntly, Winslade and Pine Ridge). For these purchases the price paid by the former Land Development Agency for the properties was within 10 percent of a documented, independent valuation provided by a Certified Practising Valuer that was based on the 'highest and best use' of the property.

Valuation prepared on a basis other than 'highest and best use'

2.84 For Milapuru and Wintergarden, the former Land Development Agency relied on letters containing advice on value prepared on a basis other than 'highest and best use'.

Milapuru

2.85 For the purchase of Milapuru the former Land Development Agency sought and received a 11 February 2015 valuation report prepared by Knight Frank Valuations Canberra, which identified a value of \$3.15 million for the property on the basis of 'highest and best use'. In 5 March 2015 the former Land Development Agency sought and received further valuation advice from Knight Frank Valuations Canberra, which identified a value of \$5 million to \$6.35 million. The updated valuation advice was prepared on the basis of 'speculative value' and not on the basis of 'highest and best use':

- the letter's subject line states 'Speculative Value Milapuru, 88 Hake Street, via Kambah (Block 19 Stromlo District) ACT';

- the first paragraph of the letter begins ‘We refer to our recent valuation of abovementioned property on 11 February 2015 and your subsequent request to provide advice on the “Speculative Value” of the property on the basis that it has Future Urban potential. We note there currently no town planning overlays for such use ...’; and
- the final substantive paragraph of the letter states ‘Knight Frank, however stress that this “speculative value” only applies in the event future urban development becomes a real potential. We confirm the value that a potential purchaser may pay in such circumstances to secure the property and does not reflect the current open market value of the property ...’

2.86 In its response to the draft proposed report on 9 May 2018 and the final proposed report on 22 June 2018 the valuer, Knight Frank Valuations Canberra, advised:

The letter of 5 March 2015 clearly states that the advice was not a valuation (9 May 2018)

[Knight Frank Valuations Canberra] provided an advice in accordance with instruction which was to prepare valuations for the properties of ‘Milapuru’ [...] based on ‘market value’ as per the properties’ rural zoning. Additional advice was then sought for valuations on a speculative value for ‘Milapuru’ ... (22 June 2018).

2.87 In its response to the draft proposed report on 10 May 2018 the Suburban Land Agency advised, that it understood based on available records:

The final purchase price for Milapuru was negotiated following the receipt of ‘advice on speculative value’. The request for consideration of a ‘speculative value’ was in direct response to a nearby land purchase made by a private developer.

The valuer provided an estimated value that took account of factors identified in the instruction provided. Those considerations were identified in the advice prepared by the valuer, and were therefore considered by the Board in coming to its decision.

2.88 In a response to the final proposed report on 22 June 2018 a former Board member also advised:

... the Board’s decision in this case [i.e. Milapuru] was influenced by advice of a counter offer for purchase of the land by a private developer. ...

Wintergarden

2.89 For the purchase of Wintergarden the former Land Development Agency relied on a letter dated 19 July 2016 containing advice on value from Knight Frank Valuations Canberra, which identified a value of \$5.05 million for the property. This letter followed an earlier valuation report by the same valuer (Knight Frank Valuations Canberra) dated 7 July 2016, which identified a value of \$2.75 million to \$3.25 million. The updated letter was prepared on a basis other than ‘highest and best use’:

- the subject line of the letter states ‘We refer to your most recent request to provide the LDA with post auction advice on the abovementioned property considering a range of scenarios’;

- the letter states ‘The purpose of this additional advice is to support a purchase price of the land for alternate uses at an amount beyond its current rural value as assessed by KFVC in our previous report’; and
- the letter outlines six value ranges for six ‘alternative uses’, from \$5,000 to \$25 million in benefits attributable to each of the six (e.g. offsets, impact of utilities and community facilities and a reserve).

2.90 The letter also outlines an ‘alternate scenario’ to the six alternative uses:

Should the LDA acquire the land and not pursue the anticipated uses as outlined previously, the LDA could if required sell down the property at three separate blocks ... This possible subdivision of the existing Crown Lease exists only for LDA and not for the Crown Lessee
... Adopted rural res value \$5.05 million

2.91 The letter then provides a conclusion:

The above preliminary advice provides indicative value ranges for potential uses within areas such as the subject property. We confirm this advice is not regarded as a formal valuation of any particular site/property but rather a likely value range should approval be granted for the various uses identified and/or opportunities created.

2.92 In its response to the final proposed report on 22 June 2018 the valuer, Knight Frank Valuations Canberra, advised:

[Knight Frank Valuations Canberra] provided an advice in accordance with instruction which was to prepare valuations for the properties of [...] ‘Wintergarden’ based on ‘market value’ as per the properties’ rural zoning. Additional advice was then sought for valuations [...] for an alternative use in the case of ‘Wintergarden’.

2.93 In its response to the draft proposed report on 10 May 2018 the Suburban Land Agency advised, that it understood based on available records:

The LDA bid at auction for the purchase of the Wintergarden estate on the basis of a market valuation of the property of \$2.75 million to \$3.25 million. The LDA’s highest offer of \$3.5 million reflected the Board’s approval for a 10% margin above the market valuation to be offered in order to secure the site. The property was passed in at \$3.6 million with the LDA being the second under bidder.

On the basis of the auction result, which set the market value at above \$3.6 million (i.e. both the owner and a separate party considered the site to be worth at least \$3.6 million), the LDA sought ‘post auction advice’ from Knight Frank Valuations.

... the advice considered a market value that took account of speculation in the market.

2.94 For the purchases of Milapuru and Wintergarden, the prices paid by the former Land Development Agency were not consistent with a valuation based on the ‘highest and best use’ of the property. The prices paid were consistent with, and based on, subsequent advice sought and received by the former Land Development Agency in response to market dynamics that prevailed. For Milapuru, the former Land Development Agency sought additional valuation advice. It was already aware of a counter-offer for the property, which was significantly higher than the valuation it had received on the basis of ‘highest and best use’. For Wintergarden, the former Land Development Agency sought valuation advice because it was not successful in purchasing the property at auction at a price consistent

with the valuation it had received on the basis of 'highest and best use' (the property was passed-in, with the former Land Development Agency being the second under-bidder).

Documented, independent market valuations

- 2.95 For the purchase of Fairvale and the proposed purchase of The Vines (since the settlement for The Vines had not occurred by 30 June 2017), the former Land Development Agency relied on information for which the Audit Office found no documentary evidence in former Land Development Agency records. In addition, for the purchase of Fairvale the former Land Development Agency also relied on a letter of advice on value that was not a valuation of the property and was not independent.

Fairvale

- 2.96 For the purchase of Fairvale, the Suburban Land Agency advised that it understood there were two pieces of valuation advice that the former Land Development Agency relied upon:

- a valuation prepared by the Director, Knight Frank Valuations Canberra for the owner of the property; and
- a letter of advice on value provided by the Colliers International State Chief Executive, ACT to the Land Development Agency (dated 14 September 2015).

- 2.97 In relation to the valuation report prepared by the Director, Knight Frank Valuation Canberra, in response to the draft proposed report on 10 May 2018 the Suburban Land Agency advised that it understood based on available information:

The land owner had obtained an independent market valuation ... This falls within the description of the Test under the Framework, regardless of who obtained the valuation.

- 2.98 In response to a request for clarification, the Suburban Land Agency further advised on 22 May 2018, that it understood based on available information that:

The land owner had obtained an independent market valuation. The negotiated price was \$4.95 million plus \$500,000 for improvements.

...

The owner and agent indicated a price for the sale of Fairvale ...

The LDA was advised that Knight Frank had been engaged by the owner to provide valuation services [and the LDA became aware of this] following a meeting between [the Director, Knight Frank Valuations Canberra] and the former LDA CEO on 10 August 2015.

- 2.99 The Audit Office did not locate, in former Land Development Agency records, a copy of this valuation but did obtain a copy of a draft valuation report from the Director, Knight Frank Valuations Canberra, prepared for the owner of the property. The draft valuation report identified a value of \$4.2 million to \$4.75 million for the property. In response to the final proposed report both the vendor of Fairvale and the valuer, Knight Frank Valuation Canberra, questioned whether the former Land Development Agency had access to the valuation report. On 22 June 2018 the valuer, Knight Frank Valuations Canberra, advised:

The report was only ever in draft, was only intended for use by the vendor and was not provided to the LDA by [Knight Frank Valuations Canberra] or to [Knight Frank Valuations Canberra's] knowledge.

- 2.100 This document, if it was obtained by the former Land Development Agency, would not represent an 'independent' market valuation, as the Director, Knight Frank Valuations Canberra had a personal interest in purchasing the property, regardless of when this was known by the former Land Development Agency prior to the Board's approval decision on 24 September 2015. The circumstances surrounding the purchase of Fairvale are described in paragraphs 3.98 to 3.141.

- 2.101 A three-page letter of advice on value from the Colliers International State Chief Executive, ACT was presented to the former Land Development Agency Board to inform its consideration of the proposal to purchase Fairvale at its meeting on 24 September 2015. The letter of advice notes that a price had already been agreed for the entire property (\$4.95 million plus \$500,000 for improvements) and this was to be apportioned according to the proposed split of the property. The letter of advice on value provided 'an assessment of value of the two (2) new Crown leases' that was to occur. The circumstances surrounding the purchase of Fairvale are described in paragraphs 3.98 to 3.141.

- 2.102 In response to the draft proposed report on 9 May 2018 the Colliers International State Chief Executive, ACT advised that:

Colliers International were not asked to value the property but [were] ... asked to provide advice on the apportionment of the agreed price of \$5.45 million ...

- 2.103 In response to the draft proposed report on 10 May 2018 the Suburban Land Agency advised that it understood:

The LDA sought advice from its agent, Colliers, on the appropriate apportionment of the land value across the two parcels. This advice indicated that the LDA portion of the land, on the basis of the previously determined market valuation, was \$3.1 million and this was the price paid by the LDA.

- 2.104 The letter containing advice on value was not an independent market valuation since the Colliers International State Chief Executive, ACT who provided the letter was not independent of the Fairvale negotiations. The Colliers International State Chief Executive, ACT was acting as the agent representing the former Land Development Agency's interests.

- 2.105 For the purchase of Fairvale, the former Land Development Agency did not have an independent market valuation. While a draft market valuation report was prepared by the Director, Knight Frank Valuations Canberra for the owner of the property, and this identified a value of \$4.2 million to \$4.75 million for the property, the Audit Office did not locate, in former Land Development Agency records, reference to, or a copy of, this advice. Furthermore, this document does not represent an 'independent' market valuation, as the Director, Knight Frank Valuations Canberra had a personal interest in purchasing the property.
- 2.106 The former Land Development Agency subsequently engaged the Colliers International State Chief Executive, ACT, who was already acting as the Agency's agent, to provide 'updated valuation and consultancy' advice on how a previously agreed purchase price could be apportioned for the purchase. The letter took the agreed purchase price for the entire property as a starting point (\$4.95 million plus \$500,000 for improvements) and provided advice on how this should be apportioned, according to the purchase arrangements that had already been agreed. Furthermore, this three-page letter containing advice on value is not an 'independent' market valuation, as the valuer was already acting as agent to the former Land Development Agency.

The Vines

- 2.107 For the purchase of The Vines the former Land Development Agency sought and received a valuation report from Knight Frank Valuations Canberra dated 2 October 2015, which provided a valuation range of \$1.2 million to \$1.4 million. No further valuation advice was obtained by the former Land Development Agency for the property. The former Land Development Agency subsequently purchased the property for an estimated \$2.2 million. In response to the draft proposed report the Suburban Land Agency advised on 10 May 2018 that it understood:

... an offer of over \$2 million had apparently been received. This was subsequently presented to the LDA as part of the business case.

The paper presented to the LDA Board in July 2016 stated that '... a valuation for the entire site conducted by Knight Frank suggests a price range of \$1.2 to \$1.4 million (excluding GST). It should be noted that the owners have set an asking price of \$2 million, based on advice ... that they have received an offer from a property developer for a figure in excess of \$2 million.' The offer of \$2 million consequently sets the market value, not the valuation advice received from Knight Frank. The Board subsequently agreed to progress on the basis of the market value being \$2 million.

...

In this instance the LDA was provided with clear advice that the seller had an offer for \$2 million which the LDA would need to match if it were to progress with the acquisition.

- 2.108 For the purchase of The Vines, the price paid by the former Land Development Agency was not consistent with a documented independent market valuation based on the 'highest and best use' of the property. While the former Land Development Agency sought and received a valuation report, which provided a valuation range of \$1.2 million to \$1.4 million, the former Land Development Agency subsequently paid an estimated \$2.2 million for the

property, based on its understanding that ‘an offer of over \$2 million had apparently been received’, which consequently ‘sets the market value’.

Suburban Land Agency response

- 2.109 In its response to the draft proposed report on 10 May 2018, the Suburban Land Agency advised, based on its interpretation of available information:

The references to Value for Money in the Framework relate to both current and anticipated uses, and as such it is appropriate that potential rezoning was considered. This section of the report implies that sites should never be sold above valuation, when in fact this is often the case. Valuations are often followed by negotiations or auctions at which the final price paid may be adjusted to reflect market value.

- 2.110 In its response to the final proposed report on 22 June 2018 the Suburban Land Agency further advised, based on its interpretation of available information:

The Audit Office provides extensive detail in support of the position it has taken in assessing Test 5, including creating four discrete elements of the test which, in the Audit Office’s view, all must be satisfied in order for the test to have been followed. However, I note that the wording of the test is “The proposed purchase price for the site is consistent with the independent market valuation”.

Importantly, the test refers to the ‘proposed’ purchase price. In all cases, the LDA Board decision to proceed with land acquisitions was on the basis of a proposed purchase price that was consistent with the independent market valuation. In some cases, this did not achieve a purchase and further negotiation was undertaken with the vendor to determine a mutually acceptable value for the land. Those further negotiations were generally supported by subsequent advice provided by an independent valuer. This process is a normal part of land transactions.

Based on a reasonable reading of the test, it was satisfied for all acquisitions made by the LDA.

- 2.111 In response to the draft proposed and final proposed reports on 10 May 2018 and 22 June 2018 the Suburban Land Agency advised that based on available information it considers that Test 5 was followed for all purchases. In considering that Test 5 was followed, the Suburban Land Agency identified the market dynamics that prevailed for the purchases of Milapuru, Wintergarden and The Vines, following its receipt of a valuation based on the ‘highest and best use’ of the property, as necessarily impacting on the former Land Development Agency’s ability to purchase the properties at a price consistent with the valuation. The Suburban Land Agency advised that ‘the references to Value for Money in the Framework relate to both current and anticipated uses, and as such it is appropriate that potential rezoning was considered’. The Audit Office considers that what was required to meet Test 5 was a strict application which means the effect of the Framework is limiting and does not expressly facilitate market dynamics being incorporated.

Fair value for financial reporting

- 2.112 Subsequent to settlement, an independent valuation of the Milapuru property was undertaken on instructions issued on 17 June 2016 by the former Land Development Agency’s Financial Controller. On 6 July 2016 Jones Lang LaSalle Advisory Services (JLL) performed the valuation with the stated purpose of providing a ‘fair value for financial

reporting'. Jones Lang LaSalle Advisory Services advised that the property's fair value was \$4 million. Consequently the former Land Development Agency recognised a reduction in the value of Milapuru (a loss) of \$3.362 million, based on the Jones Lang LaSalle Advisory Services valuation, in its financial statements for the financial year 2015-16. The valuation report by Jones Lang LaSalle Advisory Services refers to Milapuru's purchase price of \$7,000,000 (ex GST) in July 2015 and that the:

... value attributed to the sale price reflects a premium being paid for potential residential subdivision. We do not consider that that potential currently adds significant value to the subject property, due to the Crown Lease purpose clause and zoning. Hence we have valued the property below that purchase price.

- 2.113 Such an asset value risk had been foreseen. The supporting argument in a report put to the Budget Committee of Cabinet on 11 February 2014 made reference to 'write-downs' in one of 'the Land Development Agency's peer bodies' elsewhere:

In contrast, Places Victoria has experienced certain performance problems recently and a number of its property acquisitions had had to have been subsequently written-down. However, based on the information in the public domain, the extent to which these write-downs have been driven by various broader governance failures with the organisation or market conditions respectively is not yet fully clear.

- 2.114 Table 2-5 presents the 'fair value for financial reporting' information for Lands End, Milapuru, Fairvale and Huntly. No further requests have been made for such valuations of the rural land purchases of interest to the audit since 17 June 2016.

Table 2-5 Market value at 30 June 2016 for financial reporting purposes

Former LDA purchase	Fair Value	Date of valuation (valuer)	Purchase price by former LDA
Lands End (30 June 2015)	\$3 million	30 June 2016 (JLL)	\$3 million
Milapuru (31 July 2015)	\$4 million	30 June 2016 (JLL)	\$7 million
Fairvale (24 November 2015)	\$3.1 million	30 June 2016 (JLL)	\$3.1 million
Huntly (8 April 2016)	\$10 million	30 June 2016 (JLL)	\$10 million

Source: Jones Lang LaSalle Valuations Reports July 2016

- 2.115 In its response to the draft proposed report on 10 May 2018 the Suburban Land Agency advised:

The revaluation conducted for financial reporting is not reflective of whether or not the purchase price was consistent with market value at the time of purchase.

- 2.116 Noting the settlement dates of the purchases (between 30 June 2015 and 8 April 2016), the independent valuations for the purpose of establishing fair value for financial reporting as at 30 June 2016 aligned with the purchase prices paid for Lands End, Fairvale and Huntly. However, the purchase price of Milapuru was \$3 million more than the valuation conducted for the purpose of establishing fair value for financial reporting. This resulted in a reduction in value of Milapuru (a loss) of \$3 million plus \$0.362 million in stamp duty and other expenses in the former Land Development Agency's Financial Statements for 2015-16.

RECOMMENDATION 1 INSTRUCTING AND RECEIVING VALUATIONS

While the Suburban Land Agency was not the subject of this audit, since 1 July 2017 the Suburban Land Agency has had responsibility for activities considered in this audit that were previously those of the former Land Development Agency. Recommendations are therefore made to the Suburban Land Agency.

The Suburban Land Agency should:

- a) instruct valuers fully and in writing;
- b) clearly differentiate, in Territory records and verbal briefings, when a valuation is based on a letter or on a comprehensive valuation report;
- c) document clearly the salient aspects of professional standards such as ANZVGN 1 that have been addressed by a valuer (e.g. purpose, basis, methodology, Territory Plan uses) and bring this to the attention of decision makers relying on that valuation; and
- d) routinely test the application of valuation guidance.

Tests 6 and 7

- 2.117 With respect to Tests 6 and 7 (relating to the consideration of holding costs, redevelopment costs and opportunity costs associated with the purchase) (refer to paragraph 2.9) the following was found:
- Lands End (June 2015) – the relevant Board report provided no analysis as to the costs or benefits 'of the operation of the farm ... until such time as the land in part or as whole is required for urban development'. There was insufficient evidence presented to conclude that costs are 'reasonable and not onerous' (Test 7×).
 - Milapuru (July 2015) - a statement of intent as to the 'intermediate arrangement' is contained in paragraph 3.2 of the Business Case. However Board papers do not provide information as to consideration of holding costs and other opportunity costs. There was insufficient evidence presented to conclude that costs are 'reasonable and not onerous' (Test 7×).
 - Fairvale (November 2015) - the Board paper stated 'the ongoing management of the 320 hectares of land would take the form of a short-term licence to the [former owner] whilst the winding up of the current business takes place. Longer term, as is the case with Huntly, the land can be considered in isolation or as part of greater

expression of interest to run agricultural activities on the LDA's rural holdings. This would allow the operation of the farm land to continue until such time as the land in part or as a whole is required for urban development'. There was insufficient evidence presented to conclude that costs are 'reasonable and not onerous' (Test 7✗).

- Huntly blocks (April 2016) - the *Huntly Management Business Plan* provided an estimate of the possible rental income and rental term, and costs associated with due diligence and infrastructure requirements, ecological monitoring, master planning and statutory assessment, and timeframes. There was sufficient evidence to conclude that costs are 'reasonable and not onerous' (Test 7✓).
- Wintergarden (August 2016) - the Board paper 'provides the business case for the proposed acquisition and demonstrates that a satisfactory commercial return will be realised within Molonglo 3 beyond that which could be considered if the proposed site is not acquired'. The report included the terms of the proposal for ongoing land management through a leaseback arrangement. There was sufficient evidence to conclude that a 'satisfactory commercial return' was achievable (Test 6✓).
- Winslade (June 2017) - the Business Case included detail on due diligence work and associated costs, and the terms of the proposal for ongoing land management through a leaseback arrangement. There was sufficient evidence to conclude that costs are 'reasonable and not onerous' (Test 7✓).
- Pine Ridge (Sept 2017) - Board papers identified the terms of the proposal for ongoing land management through a leaseback arrangement as well as potential uses and management strategies and the acquisition's potential to enhance the Ginninderry development at West Belconnen. There was sufficient evidence to conclude that a 'satisfactory commercial return is achievable' (Test 6✓).
- The Vines (June 2017 Board decision) - Board papers identified the acquisition's potential to enhance the Ginninderry development at West Belconnen. There was sufficient evidence to conclude that a 'satisfactory commercial return is achievable' (Test 6✓).

Suburban Land Agency response

2.118 In its response to the draft proposed report on 10 May 2018 the Suburban Land Agency, advised, based on its interpretation of available information specifically with reference to the application of Test 7:

For each of the properties considered not to have met the test, the associated business case identified a proposed land management use, to be put in place once the land had been acquired. As business cases are required prior to the acquisition, it is not possible to provide advice on the specific costs that the site will incur as a land management agreement or licence is yet to be negotiated.

Noting that the intended outcome of the land acquisitions was for a range of current and future potential uses (should the land use be changed), the Board was satisfied that the proposed land management approach would result in costs being reasonable and not onerous.

Moreover, this was demonstrated to the extent possible subject to a formal land management agreement being put in place.

2.119 The Audit Office considers that Test 7 was not followed by the former Land Development Agency for the purchases of Lands End, Milapuru and Fairvale. In response to the draft proposed report on 10 May 2018 the Suburban Land Agency advised that 'business cases identified a proposed land management use'. The Audit Office found no record of a business case for Lands End or Fairvale other than the information presented in the Board report for each. For Milapuru, the Business Case (a separate document) stated that 'intermediate arrangements of Block 19 would be to continue its current use of rural lease and horse agistment activities with rent paid to the Territory' and that 'commercial terms of the license would be negotiated ...'. This information is considered insufficient to conclude that costs are 'reasonable and not onerous'.

2.120 In its response to the final proposed report on 22 June 2018 the Suburban Land Agency further advised, that it understood based on available records:

Costs associated with managing acquired land were discussed in detail by the LDA Board. Such discussions were undertaken as part of broader consideration of land acquisitions and not separately documented in LDA Board minutes. The opportunity cost of not purchasing the land, and the potential future value of the land, were also significant considerations in determining whether land management costs were reasonable.

2.121 For the eight rural purchases assessed by the Audit Office, the Value for Money Principle Test 6 or 7 (relating to consideration of any holding costs, redevelopment costs, and opportunity costs and their demonstration as reasonable and not onerous) was not followed for the first three properties purchased that were purchased: Lands End, Milapuru and Fairvale. There is evidence to show that these tests were followed for all subsequent purchases. For the purchase of Lands End the relevant Board report provided no analysis as to the costs or benefits 'of the operation of the farm ... until such time as the land in part or as whole is required for urban development', while for the purchase of Milapuru and Fairvale the relevant Board papers did not provide sufficient information to demonstrate consideration of holding costs and other opportunity costs and that costs are 'reasonable and not onerous'.

2.122 The Suburban Land Agency considers, based on available records, that Test 6 or 7 was followed for all purchases because the 'business cases identified a proposed land management use' and 'costs associated with managing acquired land were discussed in detail by the LDA Board' which were 'undertaken as part of broader consideration of land acquisitions and not separately documented in LDA Board minutes'. For the reasons outlined previously, the Audit Office does not agree that the former Land Development Agency's consideration of any holding costs, redevelopment costs, and opportunity costs and their demonstration as reasonable and not onerous was followed for the first three purchases.

Risk Management principle (Tests 8 and 9)

2.123 With respect to Tests 8 and 9 (refer to paragraph 2.9), for the purchase of Lands End, Milapuru, and Fairvale no commentary was provided in reports to the former Land Development Agency Board or was available in former Land Development Agency records to identify that a risk assessment was undertaken or that the intended outcome was demonstrated to be ‘reasonably achievable’.

2.124 For the purchases of Huntly and Winslade a Business Case or Management Plan did include an analysis of bushfire risk, asset maintenance risks, financial returns to government risks, land management risks, government commitment risk, landholding protection risks, timing risks and ecological risks. The risk analysis was complemented by mitigation strategies. There was sufficient evidence to conclude that risks were assessed and their management given due consideration.

2.125 The Board Report for the purchase of Pine Ridge provided specific commentary to address Test 8 relating to risk management:

The proposed acquisition will not expose the Territory to risks that are not able to be appropriately managed. Acquisition will result in immediate management of the property either through a licence or lease until such time as higher order uses are identified and agreed. If the Government decides not to proceed with the potential for other development the land can be offered back to the market to recoup purchase and holding costs.

2.126 No further information was provided in relation to Pine Ridge. The above response does not identify what risks the Territory is exposed to, or any timeframe, likelihood or impact for this exposure. There is no systematic response to each identified risk. The Framework, for example, prompts consideration of risk through a ‘Triple Bottom Line’³ assessment (i.e. Economic, Social, Environmental considerations). This was lacking.

2.127 Discrete commentary on the reasonable achievability of the intended outcome was not demonstrated for most of the properties except for the purchase of Winslade, where a statement was made and supported by analysis. For this purchase there was sufficient evidence to consider the issue of the reasonable achievability of the intended outcome.

2.128 In the case of Pine Ridge, where the former Land Development Agency’s intended outcome (Test 1) was stated as second supply infrastructure (2.3 hectares), residential and other purposes ancillary to residential, commentary provided to the Board (25 May 2017) to satisfy Test 9 stated:

If the land is acquired, the Territory is in a position to make an application to allow any proposed development to occur on the land. Therefore, the intended outcome for the proposed acquisition is reasonably achievable.

³ The TBL Assessment Framework provides a logical framework for identifying and integrating social, environmental and economic factors into the policy development cycle by ensuring that decisions are informed by assessments of all potential impacts.

- 2.129 No further information was provided on this risk management approach, which suggests that the risk management strategy for the purchase of the property anticipates the successful outcome of an application for ‘any proposed development’ that the Territory should make.

Suburban Land Agency response

- 2.130 In its response to the draft proposed report on 10 May 2018 the Suburban Land Agency provided an alternative view, based on its interpretation of available information regarding the application of Tests 8 and 9. In relation to the application of Test 8 (the potential exposure of the Territory to unnecessary risks) the Suburban Land Agency advised that based on available records:

The Board was aware of, and discussed, the Territory’s position as a substantial landowner, including its understanding of established processes and the roles and responsibilities of relevant entities for the management of land. Acknowledging this, bringing the western edge rural parcels into Territory ownership was not, of itself, a risk.

Holding costs are a factor, likely to be mitigated or negated by rental income, and would be dwarfed by the potential “upside” revenue if the land is found to be developable for urban residential purposes or if it improved the yield on other LDA owned land holdings.

If the land is found to be unsuitable for urban residential purposes then it can be used for other purposes, including environmental offsets and other uses, or re-sold at or above cost price, thus mitigating any ongoing risk.

As with any risk assessment, the risk of doing nothing is also relevant. Had the LDA not purchased the land, it was open to private developers to purchase land in the area thus presenting a substantial economic risk to the territory of the land where later rezoned for residential use.

- 2.131 In relation to the application of Test 9 (reasonable achievability of the intended outcome of the purchase) the Suburban Land Agency advised that based on available information:

The intended outcome for the acquisitions was to secure the land for potential future development by the Government. The key driver was to secure the land at rural prices and this objective was achieved. The intended outcome was not residential development of the land, as that purpose is not currently permitted on the land.

The Board’s agreement to the acquisition was given on the basis that the land may, at a future date, be required by Government, including potentially for residential development. Matters considered by the Board in agreeing to the acquisitions included:

- The diminishing supply of greenfield land available for future development;
- The Western Edge was to be the subject of future investigations;
- Private developers had shown interest in the area; and
- A decision was yet to be made by Government on future development fronts.

The combination of these factors provided the Board with sufficient basis on which to decide to purchase the land at, or close to, rural land values.

- 2.132 In its response to the final proposed report on 22 June 2018 the Suburban Land Agency also advised, based on its interpretation of available information:

Consistent with Test 8 of the Framework, risks associated with the proposed land acquisitions were discussed in detail by the LDA Board. Such discussions were undertaken as part of broader consideration of land acquisitions and not separately documented in LDA Board minutes.

- 2.133 In its response to the final proposed report on 22 June 2018 the Suburban Land Agency further advised, based on its interpretation of available information:

In making decisions to purchase land, the LDA Board considered 'possible' future development, subject to planning decisions. It also considered the implications of the land not being rezoned for residential development. As documented in LDA Board papers, the LDA Board considered that the land could be utilised for other purposes, such as environmental offsets, infrastructure or re-sale at rural land prices.

Given these considerations by the LDA Board, the primary intention for purchase of the land was for the Territory to secure ownership of the land for a range of possible future uses. This was achieved and Test 9 was therefore met.

- 2.134 The Audit Office notes that the Suburban Land Agency's advice on Tests 8 and 9 reflects the advice provided by former Land Development Agency Board members as to the Board's strategic reasons for purchasing land (refer to paragraph 2.137). However the Audit Office only identified documented property-specific assessments of risk for Huntly and Winslade. For the assessment of Test 9 for Pine Ridge the Audit Office does not agree that the explanation given to the Board (on 25 May 2017) or the Suburban Land Agency's advice provided on 10 May 2018 directly relate to the stated intended outcome which is for residential use (refer to Test 1).

- 2.135 For the eight rural purchases assessed by the Audit Office, the Risk Management Principle (Tests 8 and 9) was not considered to be satisfactorily followed for the majority of the eight rural purchases. Consideration of Test 8 (exposure of the Territory to risk) was considered to be satisfactorily followed for the purchase of Huntly and Winslade. Consideration of Test 9 (intended outcome for the proposed acquisition was reasonably achievable) was considered to be satisfactorily followed for the purchase of Winslade. The Suburban Land Agency considers, based on available information, that the Tests 8 and 9 were followed for all purchases, noting that 'The Board was aware of, and discussed, the Territory's position as a substantial landowner, including its understanding of established processes and the roles and responsibilities of relevant entities for the management of land. Acknowledging this, bringing the western edge rural parcels into Territory ownership was not, of itself, a risk'. The Suburban Land Agency also advised, based on available information that 'risks associated with the proposed land acquisitions were discussed in detail by the LDA Board. Such discussions were undertaken as part of broader consideration of land acquisitions and not separately documented in LDA Board minutes'. For the reasons outlined previously, the Audit Office does not agree that the former Land Development Agency's consideration of the potential exposure of the Territory to unnecessary risks and the reasonable achievability of the intended outcome of the purchase was followed for the majority of the purchases.

Summary of the consideration of the application of the Framework

2.136 Table 2-6 shows the results of the Audit Office's consideration of the tests identified in the Framework.

Table 2-6 Summary of the Audit Office's consideration of the application of the Framework's nine tests

Tests	1	2	3	4	5	6 or 7	8	9
Lands End	✓	✗	✓	✗	✓	✗	✗	✗
Milapuru	✓	✗	✓	✗	✗	✗	✗	✗
Fairvale	✓	✗	✓	✗	✗	✗	✗	✗
Huntly	✓	✗	✓	✗	✓	✓	✓	✗
Wintergarden	✓	✓	✓	✓	✓	✓	✗	✗
Winslade	✓	✗	✓	✗	✗	✓	✓	✓
Pine Ridge	✓	✗	✓	✗	✓	✓	✗	✗
The Vines	✓	✗	✓	✗	✗	✓	✗	✗

Source: Land Development Agency electronic and hardcopy folder records examined by Audit Office (June to November 2017)

2.137 Former members of the Land Development Agency Board in a written statement dated 9 May 2018 in response to the draft proposed report disagreed with the Audit Office's findings in relation to the application of the principles and tests in the *Land Acquisition Policy Framework*. The former Board members advised:

We note that the Framework does not specify the nature or form of documentation that Board was required to have to ratify its assessment of each principle and test, only that "All proposed acquisitions are to be assessed against the principles and tests provided in this Land Acquisition Policy Framework. All tests must be followed for an acquisition". In all cases, the Board was satisfied that the principles and tests of the Framework had been assessed and followed, as recorded in meeting minutes and decisions.

The [LDA's Statements of Intent] ... contemplated that the LDA would make 'commercial decisions on land' and that it was expected to 'ensure that an adequate supply of land' was maintained. In agreeing to the land acquisitions, the Board was carrying out these objectives.

The Board regularly held discussions with Ministers, industry representatives, and LDA and Economic Development Directorate staff on the Territory's future land supply (both minuted and otherwise). The Board's primary consideration for acquisition of the rural properties was to secure the land for the Territory for a range of potential uses, including that the zoning may be changed in the future to enable residential development. By purchasing the land at rural land prices, or at a small increment over that, any future development of the land would be expected to provide a significant margin to Government, and therefore to the benefit of the ACT community. We note that such benefits also include the economical provision of land for a range of housing options, including affordable housing, which is a long standing commitment of Government. We note also that the Board sought the advice of the GSO at various stages on the principles to be applied in determining what premium the LDA might pay for obvious potential in the parcels over the uses outlined in their various Purpose Clauses.

In considering the alignment with the 2012 ACT Planning Strategy and other relevant Government policies, the Board noted the central location of the western edge land and its

relative proximity to the city and existing development fronts. We noted that proposed future planning studies in the ACT Planning Strategy included “Western edge study commences” and “Future urban investigation area”, and that these could result in the land being rezoned for residential development and other purposes. These factors were recognised by the market and lead to land speculation in at least two cases. We also note that the area designated as “Future urban investigation area” in West Belconnen is now known as Ginninderry, has an approved Territory Plan Variation and that civil works have commenced in that development.

The Board was acutely aware of the evolving nature of the Territory’s planning overlay. Relevant examples, as noted above, are the Ginninderry development, which involved rural land being rezoned for residential development, as well as extensive zoning changes throughout the Gungahlin region over a relatively short period.

The risks of not acting on the approaches being made to the LDA were:

- The land may be purchased by private developers speculating in the area and therefore locking the Territory out of potential uplift should the land be rezoned or required for other uses; and
- If the land were rezoned for residential use following the planning studies, the land prices would be significantly above the prices paid by the LDA.

The Board’s decision to act commercially in these instances was entirely within its remit. All decisions were carefully weighed and assessed, with the best interests of the Territory at the forefront, consistent with Government policy. The land purchased became a Territory asset which enabled a range of uses, including potential environmental offsets. At worst the land could be resold to the market at prices consistent with the acquisition price. By any definition, the purchase of a scarce asset that has the potential for significant return is a sound commercial decision ...

2.138 In providing the above advice, the former Board members also advised:

During the period that the acquisitions were made, Board membership included extensive expertise and professional qualifications in public law, engineering, economics, business, town planning, architecture, land valuations and public administration. All members were professionally recognised in their relevant field, including through Order of Australia honours, national awards and academic achievements.

...

We draw your attention to the provisions of the *Planning and Development Act 2007* (the Act), under which the Board was constituted. The Act identifies the disciplines and areas of expertise that the Minister was expected to consider in making appointments to the Board. All of the disciplines identified in the Act were present in the Board’s membership. The identification of these disciplines in the Act was a clear signal that the Board was expected to exercise its professional judgement in respect of the matters it considered.

2.139 In a response to the final proposed report on 22 June 2018 a former Board member advised;

The key requirements of the Framework were that government policies, value for money and risks were considered in the acquisitions. ... those issues were front of mind for the Board and I maintain that the purchases are in the Territory’s best interests and that history will reflect this in years to come. ... the suggestion that the board did not give due consideration to these matters is completely inaccurate and reflects poorly on the integrity of the Board members who I can attest were dedicated to delivering the best outcomes for the Government and the people of Canberra.

- 2.140 In a response to the final proposed report on 22 June 2018 a former Board member further advised:

The LDA Board's decision to acquire rural leases was aimed at ensuring there would be an ongoing supply of land in the event that Government decisions determined that urban development on the Western Edge was appropriate (noting too that this area represents the most likely future development front given its central location). The alternative approach was to leave the rural leases in private hands. In that case, if the Government decided to develop the land in future, it would be significantly higher than the rural prices, or it would need to compulsorily acquire the land. Based on GSO advice, the latter approach presents legal challenges and it can also have a negative impact on the rural lessees. By buying the land on the open market at rural land prices, the LDA was seeking to act strategically in the best interests of the Territory. The issue of how to deal with rural land leases will haunt all future ACT government as the need to expand the current development boundaries becomes more evident.

- 2.141 In a response to the final proposed report, on 22 June 2018 the former Chief Executive Officer of the Land Development Agency advised:

I strongly disagree with the report findings that the LDA did not comply with the majority of tests under the Framework. Having worked closely with the Board for over five years, I can assure you that the principles and tests under the Framework were important considerations for the Board. Although the Board's consideration of those issues may not have always been documented in Board minutes and papers, it is incorrect to say that the Framework was not applied.

Government policies and value for money were, in particular, always front of mind for Board members, noting that Board membership included a former Head of Service, an experienced valuer and a planner, amongst a range of other experience. The report should acknowledge that the outcomes from the Board's decisions have the potential to generate significant revenue for the Territory, depending on future Government decisions. At the very least, the opportunity is now there for the Territory.

- 2.142 The Audit Office notes the advice of former Land Development Agency Board members as to the Board's remit, its capabilities and its strategic reasons in purchasing land. However as the former Land Development Agency was directed 'to act in accordance with the principles of the ... Framework ... when exercising the Agency's functions' it was also obliged to follow all tests of the Framework. Respecting that the former Land Development Agency and its Board have made statements that the Framework's tests were complied with, greater transparency and rigour was called for. It would have been prudent in responding to the new Ministerial direction in 2014 (i.e. the Framework) to have:

- examined its meaning and agreed how it would be operationalised;
- established documentation and decision-making expectations; and
- monitored compliance on an ongoing basis from the commencement of the Direction.

Decision-making thresholds, the annual purchase limit and reporting requirements of the Framework

2.143 The thresholds that apply to decision makers in the Framework are:

- a. Below \$5 million – agreement by the LDA Board with advice to the Minister for Economic Development or the Minister responsible for administering Chapter 4 of the *Planning and Development Act 1997*;
- b. Between \$5 million and \$20 million – agreement by the Chief Minister and Treasurer. LDA is to provide a business case to ACT Treasury for all such proposals; and
- c. Above \$20 million – agreement by the government

2.144 The Framework also placed an annual purchase limit on the former Land Development Agency in that:

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.

2.145 Several reporting requirements were imposed on the former Land Development Agency, including in:

- ... quarterly reports for the ACT Government
- ... details of all acquisitions completed ... must be included in the LDA's annual report.

Decision-making thresholds

2.146 The decision-making authority for each of the eight purchases was examined (refer to paragraph 2.143). For each purchase there was a written record of the decision maker and the date, and the decision-maker's authority is in accordance with the thresholds established at section 2.2.1 in the Framework (refer to Table 2-2). Business cases were also provided to Treasury in the case of Milapuru, Huntly, and Winslade acquisitions in accordance with section 2.2.1(b) of the Framework.

2.147 The Framework's decision-making thresholds were applied for all purchases; there was a written record of the decision maker and the date, and the decision-maker's authority was in accordance with the thresholds for individual purchases in the Framework. Business cases were also provided to Treasury in the case of the Milapuru, Huntly, and Winslade purchases in accordance with the Framework.

Annual purchase limit

2.148 Section 2.3.1 of the Framework imposed a cumulative \$20 million limit on the former Land Development Agency (refer to paragraph 2.144). On 27 August 2015 the former Land Development Agency Board agreed to monitor purchase activity for the purpose of the \$20 million limit at the approval decision date. This position was established in a Board report titled *Land Acquisition Policy Framework Interpretation*, dated 27 August 2015.

However, between October 2016 and March 2017 the former Land Development Agency Board sought further advice on this interpretation.

- 2.149 Table 2-7 illustrates the cumulative totals for all land purchases made under the Framework, according to those land purchases that were identified in former Land Development Agency annual reports. The table presents the purchase price for each land purchase at the settlement date (and not approval date) for the 2014-15, 2015-16 and 2016-17 financial years. The purchases are classified into those related to the Western Edge Study area and others. These sums take account of GST where there is a liability but they do not take account of Stamp Duty.

Table 2-7 Application of cumulative totals using settlement dates

	2014-15		2015-16		2016-17	
	Number	Value	Number	Value	Number	Value
Western Edge area purchase settlements	1	\$3.0m	3	\$20.1m	2	\$11.5m
Other purchase settlements	3	\$4.28m	10	\$8.73m	1	\$4.11m
Cumulative total	4	\$7.28m	13	\$28.83m	3	\$15.61m

Source: Audit Office, based on Land Development Agency annual reports, 2014-15, 2015-16 and 2016-17

- 2.150 The former Land Development Agency Board exceeded the Framework's \$20 million cumulative limit (section 2.3.1 of the Framework) in 2015-16.
- 2.151 In its response to the draft proposed report on 10 May 2018 the Suburban Land Agency advised that the \$20 million threshold was exceeded because the former Land Development Agency had:
- 'assumed that the cumulative total in each financial year was based on the amount approved rather than settled' and that the purchase of Milapuru, which was approved by the responsible Minister in June 2015 (but not settled until July 2015) was therefore included in the 2015-16 calculations; and
 - prior to the ACT Auditor-General's Report *Certain Land Development Agency Acquisitions* (Report No. 7 / 2016 30 September 2016) not recognised purchases associated with the City to the Lake project for the purpose of determining the cumulative total.
- 2.152 In its response to the draft proposed report on 10 May 2018 the Suburban Land Agency advised that advice was received from the ACT Government Solicitor's in February 2017 that this interpretation was incorrect and, accordingly, on 30 March 2017 a corrigendum to the former Land Development Agency's *2015-16 Annual Report* was published which stated:

In the previous two Annual Reports, the LDA was reporting under an interpretation of the *Land Acquisition Policy Framework Direction (2014)*, which has subsequently been identified as being incorrect.

- 2.153 The *2015-16 Annual Report* corrigendum acknowledges the former incorrect interpretation and presents properties purchased under the Framework and prices paid according to the date of settlement for each property.
- 2.154 The former Land Development Agency Board exceeded the annual \$20 million cumulative threshold in 2015-16 by \$8.83 million due to the Huntly purchase. In its response to the draft proposed report on 10 May 2018 the Suburban Land Agency advised that this was because of an incorrect interpretation of the Framework thresholds (i.e. previously the Framework thresholds were interpreted on the basis of the date of approval as opposed to the date of settlement) and not recognising acquisitions made for the purpose of the City to the Lake project. Following the receipt of legal advice in February 2017 a corrigendum was issued for the Land Development Agency's 2015-16 Annual Report, which presented the corrected information.

Reporting requirements

Advising the Minister for Economic Development

- 2.155 As stated in paragraph 2.143 the Framework identified the need for the former Land Development Agency to advise the Minister for Economic Development⁴ of those purchases the former Land Development Agency Board made under the Framework, that is, those under \$5 million in purchase price.
- 2.156 Records confirm that the required reporting occurred except for Fairvale. Given this the former Land Development Agency was requested to search for records that indicated the Minister had been advised of Fairvale. None were found.
- 2.157 In relation to the purchase of Fairvale, the former Director, Office of the Chief Executive Officer of the Land Development Agency, advised the Audit Office:
- I understand that advice to the Minister for Economic Development was provided verbally by the [former Chief Executive Officer]. I have not been able to locate documentary evidence of these discussions.
- 2.158 The former Land Development Agency advised the Minister for Economic Development in writing for all but one purchase under the \$5 million threshold prior to, or after, purchase as required under the Framework. The exception was the purchase of Fairvale.

Annual and quarterly reporting

- 2.159 The Framework identified the need for the former Land Development Agency to publish in its annual reports details of all acquisitions completed during the financial year (refer to paragraph 2.145).

⁴ Or the Minister responsible for administering Chapter 4 of the *Planning and Development Act 2007*

- 2.160 Rural land purchases that were examined in the audit were all reported in the former Land Development Agency's annual reports (2014-15, 2015-16 and 2016-17) as required under the Framework. This was done to a sufficient level of detail notwithstanding the need for the former Land Development Agency to publish a corrigendum to its *2015-16 Annual Report* in March 2017. The corrigendum acknowledged that the former Land Development Agency did not previously comply with the Framework.

Former Land Development Agency Board requirements

- 2.161 The former Land Development Agency Board's records were examined to identify any requirements that the Board had made of the former Land Development Agency to support the former Board's decision making and application of the Framework.
- 2.162 The following matters were recorded in Board minutes relating to developments in the application of the Framework:
- 29 May 2015 - the former Board asked for more detail on the 'management of sites proposed to be acquired' (Board requirement 1 in Table 2-8);
 - 27 August 2015 - the former Board endorsed the former Land Development Agency's interpretation of the Framework relating to 'strategic' versus 'business as usual' acquisitions and how the \$20 million threshold is to be applied (Board requirement 2 in Table 2-8);
 - 24 September 2015 - the former Board provided advice to the Land Development Agency as to its requirements and requested that the Land Development Agency use a template 'in formulating advice to the board'. On 26 November 2015 the former Board endorsed a template format, and agreed to the former Land Development Agency obtaining 'additional information to the requirements stipulated in the [Framework]' (Board requirement 3 in Table 2-8); and
 - 28 April 2016 - the Board noted that advice about potential acquisitions will be provided to the Board early in the assessment process to enable preliminary consideration and to determine whether a potential acquisition should proceed to a detailed assessment (Board requirement 4 in Table 2-8).
- 2.163 An examination was undertaken by the Audit Office of the extent to which documentation for proposed purchases demonstrated that the four former Board requirements were addressed (refer to Table 2-8). In some cases, a requirement has been assessed as 'partially' satisfied. This relates to where the former Board asked for more detail on a matter as the information provided was not detailed. In some cases the requirement is 'not applicable' as the proposed purchase activity predated the Board's making of that requirement.
- 2.164 Table 2-8 presents the results of the Audit Office's examination.

Table 2-8 Audit Office's assessment of the application of additional requirements of the former Land Development Agency Board

Requirement	1	2	3	4
Date of Board requirement	29 May 2015	27 August 2015	26 November 2015	28 April 2016
Theme	Ongoing land management	Board Interpretation paper	Use of template	Preliminary stage
Milapuru	✓Partially	Not applicable	Not applicable	Not applicable
Fairvale	✓Partially	×	Not applicable	Not applicable
Huntly	✓Partially	✓Partially	✓	Not applicable
Wintergarden	✓Partially	✓	✓	✓
Winslade	✓	✓	✓	✓

Source: Audit Office assessment of the application of Board requirements, based on Board reports

- 2.165 Of the five purchases that were considered by the former Board between May 2015 and April 2017, the former Land Development Agency provided information to address the Board's additional requirements in all cases, except in one instance (i.e. coverage of the Interpretation paper issues for Fairvale).
- 2.166 Between May 2015 and April 2017 the former Land Development Agency Board sought additional information from the Land Development Agency to facilitate its decision-making. The Board required that the former Land Development Agency provide it with additional information on proposed purchases to that required under the Framework. This requirement was met (partially or fully) in nearly all respects with later purchases reflecting an improvement in documentation for the consideration of the principles and tests in the Framework.
- 2.167 All four requirements were subsequently withdrawn following a decision of the former Chief Executive Officer to revoke 'all previous policies and procedures' in a Staff Instruction issued on 3 April 2017. The Staff Instruction stated that:
- All staff of the LDA must at all times comply with the requirements of the [Framework] ...
 - Board papers must at a minimum contain the following information to meet the required tests under the Framework:
 - Test 1: an intended outcome for the proposed acquisition is identified;

- Test 2: how the proposed acquisition advances the Government’s land development policies, including spatial planning requirements;
- Test 3: how the proposed acquisition is consistent with the *Statement of Government Policy* for the LDA
- Test 4: how the proposed acquisition is consistent with any other relevant government policies
- Test 5: whether the proposed purchase price for the site is consistent with the independent market valuation
- Test 6: if a commercial outcome is sought from the proposed acquisition site - the business case demonstrates how a satisfactory commercial return will be realised, taking into consideration any holding costs, redevelopment costs, and opportunity costs
- Test 7: if a non-commercial outcome is sought from the proposed acquisition site – how any holding costs, redevelopment costs, and opportunity costs can be demonstrated to be reasonable and not onerous
- Test 8: that the proposed acquisition will not expose the Territory to risks that are not able to be appropriately managed; and
- Test 9: how the proposed acquisition is reasonably achievable

2.168 The Audit Office notes that the Staff Instruction to comply with the requirements of the Framework cites the nine tests but includes additional wording e.g. ‘how’, ‘whether’, and ‘can demonstrate’ tests are met. This emphasises the need to make transparent in documentation how tests are addressed.

Board-requested assessments

2.169 In addition to the former Land Development Agency Board making its own requirements it also approved two discrete review activities to provide assurance that its decisions were in accordance with the Framework. Records identify that:

- an internal audit report of the former Land Development Agency’s compliance with the Framework was considered at the former Land Development Agency’s Board Audit and Review Committee on 20 October 2016; and
- the former Land Development Agency Board requested at its 23 February 2017 meeting that the former Land Development Agency ‘review all acquisitions since 2014 against the principles and tests contained within the current framework, and bring a progress report back to the next Board meeting’.

Internal audit of the former Land Development Agency’s application of the Framework (October 2016)

2.170 The proposal to undertake an internal audit of the former Land Development Agency’s compliance with the Framework was brought to the former Board Audit and Review Committee at its meeting on 22 April 2016 by the then former Deputy Chief Executive Officer of the Land Development Agency (who is the current Chief Planning Executive and

Director-General, Environment, Planning and Sustainable Development Directorate). This former Deputy Chief Executive Officer stated to the Audit Office in an interview on 14 September 2017:

When I came back off leave in 2016 I started to hear more conversation around these acquisitions and that there were more in the wings. And that sparked my interest, particularly in light of the fact that I'd been to an annual report hearing in November and there were questions around strategic acquisitions. And I'd been briefed in a particular way around strategic acquisitions.

But since then it was obvious to me that perhaps the understanding of the LDA team was not perhaps as it should be. So at that stage I got the acquisition policy out myself and started to read through. And in March – early March – I emailed [the Chief Executive Officer] advising him that I would feel more comfortable if we had our internal audit committee undertake an audit of our land acquisitions.

2.171 At its meeting on 22 April 2016 the former Board Audit and Review Committee 'agreed to schedule an internal audit into strategic land acquisitions' and to give priority to this audit. An external supplier was 'engaged to undertake a Compliance Audit of Strategic Land Acquisitions' with the purpose of providing 'assurance that the Land Development Agency process for strategic land acquisitions is consistent with the Land Acquisition Policy Framework'.⁵

2.172 The resulting draft internal audit report (August 2016) received criticism from the Land Development Agency internal audit representative and the former Chief Financial Officer, including that:

... the auditors are just accepting the letter to the Board and have not actually gone and looked into whether it complies at all.

and

The report seems to be missing the [audit's stated] outcomes of:

- The auditors' assessment of the consistency between the Land Acquisition Policy Framework and the processes that are in place;
- Whether the LDA has met its obligations under ACT Legislation; and
- Whether the LDA is achieving efficient outcomes in the strategic acquisition of land.

2.173 When the final report was taken to the former Board Audit and Review Committee on 20 October 2016 the Committee:

... discussed the [...] report's lack of timeliness, lack of interrogation of the subject matter, narrow stakeholder engagement, flawed methodology and lack of alignment with the subsequent Auditor-General's Report and the McPhee review.

and

[Agreed to] update [the] closed audit topics register to reflect closure of this report and list its recommendations.

⁵ From Internal Audit report on *Strategic Land Acquisitions* tabled at the Board Audit and Review Committee on 20 October 2016

Internal review of all purchases (February 2017)

- 2.174 A report provided to the former Land Development Agency Board on 23 February 2017 stated that:

The Chair of the [Land Development Agency] Board wrote to the Chief Minister on 18 October 2016 confirming that all future acquisitions would comply with the Framework.

- 2.175 The minutes of that Board meeting identify that the former Land Development Agency was to:

... review all acquisitions since 2014 against the principles and tests contained within the current framework, and bring a progress report back to the next Board meeting.

- 2.176 At the next meeting of the Board on 30 March 2017 (No. 163.3.10) a report to the Board (dated 23 March 2017) stated:

At the request of the Board, Economic Development has reviewed all acquisitions against the principles of the Framework and a total of 17 acquisitions are relevant. Of these, 7 were assessed at the time of approval against the Framework and are compliant, while the remaining 10 are currently being assessed. The list of these 10 acquisitions is at Attachment A and a paper on the findings will be provided to the Board at the March Meeting.

- 2.177 The minutes of that Board meeting identify that the former Land Development Agency 'tabled a draft compliance report relating to ten acquisitions which have not previously been assessed under the Framework' and that the Board:

... noted the draft report and requested that it be finalised and brought to the Board for its consideration at its next meeting.

- 2.178 The former Land Development Agency identified the following five purchases within the seven that 'were assessed at the time of approval ... as compliant': Lands End, Milapuru, Fairvale, Huntly and Wintergarden. On 16 August 2017 the Audit Office asked the Economic Development Directorate to confirm the basis on which these were judged to be compliant. Officers provided the following explanation on 4 September 2017:

We retrospectively assessed compliance long after the acquisitions were made at the request of the [Land Development Agency] Board. It was our judgement that those that didn't go via a [Land Development Agency] Board Paper were 'in scope for retrospective assessment' [the 10] while those that did go to the Board were 'deemed compliant' and not in scope [the 7]. This was done without sighting the board papers – compliance was assumed.

Following your questions about the ones that did go to the Board, we revisited them and sighted the Board Papers. They are predominantly high level summaries (i.e. short paragraphs) against either the 'principles' of the Framework, or a response to each of the specific 'tests' under the Framework. Each paper would have been prepared by the relevant project area within [Land Development Agency], cleared by the relevant [Land Development Agency] Executive and provided to the Board thereafter.

2.179 In its response to the draft proposed report on 10 May 2018 the Suburban Land Agency advised that it understood, based on available information that:

Further advice responding to the decision following consideration of Board Paper 163.3.10 was provided to the Board at its meeting on 29 June 2017. Significant discussion was undertaken by the Board on the issue. Advice provided to the Board included that 'An internal review of the identified acquisitions has confirmed that all rural acquisitions were tested against the Framework, and the Board notified appropriately'. Minutes from the meeting reflect this discussion and outcome.

2.180 Two requests were made by the former Land Development Agency Board Audit and Review Committee (22 April 2016) and Land Development Agency Board (23 February 2017) for the former Land Development Agency to examine its application of the Framework. The internal audit report that resulted from the first review was criticised by Land Development Agency officers and the former Land Development Agency Board Audit and Review Committee for its 'lack of interrogation of the subject matter, narrow stakeholder engagement, flawed methodology and lack of alignment with the subsequent Auditor-General's Report and the McPhee review' and action on this item was closed. The second review focused on purchases that were not the subject of a paper that went to the former Land Development Agency Board; these purchases were 'in scope for retrospective assessment'. As the nine properties considered for the purpose of this audit were the subject of Board papers, the nine were not within the scope of the internal review.

RECOMMENDATION 2

FOLLOWING MINISTERIAL DIRECTIONS AND CABINET DECISIONS

While the Suburban Land Agency was not the subject of this audit, since 1 July 2017 the Suburban Land Agency has had responsibility for activities considered in this audit that were previously those of the former Land Development Agency. Recommendations are therefore made to the Suburban Land Agency.

The Suburban Land Agency should:

- a) implement a process to verify that, for the purchase of any property, any directions given by the Minister and in Cabinet decisions are implemented in accordance with any approved framework;
- b) align internal guidance material and operating procedures so that these are consistent with any direction or policy the Government makes publically available;
- c) document compliance; and
- d) routinely test the application of guidance and operating procedures

3 PROBITY AND PROBITY RISKS

- 3.1 This chapter presents matters related to probity that became evident while examining other matters during this audit.

Summary

Conclusion

Probity was lacking in some of the actions by the former Land Development Agency in relation to its purchase of rural properties to the west of Canberra that were the subject of this audit: there was a lack of accountability and transparency in the engagement and management of agents' services; and in negotiation and decision-making leading to the purchase of Fairvale.

Basic procurement and contract management practices for the engagement of agents and advisors were also absent in some instances. Some services were provided free of charge, with inadequate management and scrutiny by the Agency, while some services were paid for without any evidence of them being requested or required.

The former Land Development Agency's management of the purchase of Fairvale was irregular and presented a probity risk. The former Land Development Agency initially sought to purchase the full property but subsequently supported its subdivision so that the valuer who undertook a valuation for the vendor could purchase part of the property. According to the former Land Development Agency's subsequent planning documents the block secured by the valuer is strategically important. There is no contemporaneous documentation that provides reasons as to why the former Land Development Agency agreed to the subdivision of the property to facilitate the valuer's purchase and thereby forego the opportunity to purchase the whole block.

Key findings

Paragraph

There is no documentary evidence that the former Land Development Agency presented important information to the former Land Development Agency Board (at meetings on 25 September 2014 and 11 December 2014) regarding the origins of the 'project consolidation' written advice and *District of Stromlo Acquisitions strategy paper*. In order to ensure transparency and facilitate the identification of potential conflicts of interest the Board should have been advised that the work was unsolicited and provided by Colliers International free of charge. It was incumbent on the former Agency to provide all relevant information to the Board; there is no written record that it did.

3.9

In July 2015 the Colliers International State Chief Executive, ACT commenced acting as the former Land Development Agency's agent for the purchase of rural land. No written agreement was ever prepared for these services. On 21 August 2015 the *District of Stromlo Acquisitions strategy paper* previously presented to the former Land Development Agency Board in December 2014 was amended to provide a basis for the payment of services from Colliers International in relation to the purchase of properties (i.e. a commission-based arrangement for purchases by the former Land Development Agency based on an existing panel arrangement).

3.25

On 23 December 2015 Colliers International invoiced the former Land Development Agency for \$298,045, which represented 'Fee for sale/acquisition of properties as part of Stromlo Acquisition Strategy Paper'. Of this \$36,363 is identified as relating to a property that was not purchased by the former Land Development Agency, i.e. part of the former Fairvale property, which was purchased by a private entity; and \$50,000 is identified as relating to an unsolicited 'Planning report', for which Colliers International also invoiced the adjacent block owner \$15,000. There was no reference to the 'Planning report' or payment for it in the amended *District of Stromlo Acquisitions strategy paper* (21 August 2015). The invoice was paid in full by the former Land Development Agency, notwithstanding that no Purchase Order had been found in records for the invoiced services, and no Purchase Order number was written on the signed approval stamp. This means that the former Land Development Agency's financial controls were not applied. Accountability and transparency were lacking in the payment of fees for services.

3.26

The Colliers International State Chief Executive, ACT provided the *District of Stromlo Acquisitions strategy paper* free of charge to the former Land Development Agency to guide its purchases of rural properties to the west of Canberra, all of which were in the Western Edge Study area. Subsequently, the Colliers International State Chief Executive, ACT engaged with rural leaseholders and provided information regarding what the former Land Development Agency might contend in making a purchase. Although the former Land Development Agency was aware of what was occurring, and sometimes requested the assistance of the Colliers International State Chief Executive, ACT, there were no written instructions for their engagement. There is also no evidence that Colliers International's activities were monitored and managed by the former Land Development Agency. Accountability and transparency were lacking in relation to the management of services provided by Colliers International.

3.34

The Audit Office has been advised that there were 'preliminary challenges identified by the former LDA [Land Development Agency] prior to establishing the Expression of Interest process for Huntly'. While noting this, basic procurement requirements were not met. There was a lack of: documentation to request a quotation; written acceptance of a quotation; written explanation for undertaking a 'single select' procurement (where three written quotes would be expected); an authorising delegate for the decision; and creation of a purchase order in advance of the services being provided. The decision to procure the services was not justified and the conduct of the process was poor.

3.52

The former Director, Sales, Marketing and Land Management of the Land Development Agency advised that they had 'no experience with rural leases and

3.55

commissions' and sought the advice of the ACT Property Group who advised that the fee from CBRE was 'high for what is being offered'. However, it needs to be acknowledged that there was no precedent for judging the scope of the work and interest. As it eventuated the interest was high. Although the circumstances were uncertain and complex it was beholden on the former Land Development Agency to justify accepting the fee, this was not done.

The Director, CBRE Agribusiness Transactions, was engaged by the former Land Development Agency to provide services for conducting an *Expression of Interest* process for procuring a long-term land manager for Huntly. The Director was a shareholder and non-executive director of another company that was proposed by one tenderer to be engaged under a sub-contract to manage Huntly. The Director, CBRE Agribusiness Transactions advised that this conflict of interest was communicated to the former Land Development Agency before appointment, and that this was communicated verbally rather than in writing. No record of this disclosure was found in former Land Development Agency records. 3.69

After the *Expression of Interest* process had commenced the former Land Development Agency took management action when other prospective tenderers alerted it of their concerns.. The former Land Development Agency requested that: *Expressions of Interest* be sent directly to the former Land Development Agency instead of the Director, CBRE Agribusiness Transactions as originally planned; and tenderers complete a warranty relating to any conflicts of interest. While these changes to the process were communicated to prospective tenders in the days preceding the closing date for *Expressions of Interest* the Director, CBRE Agribusiness Transactions did receive submissions that should have been sent to the former Land Development Agency. 3.70

The *Information Memorandum* provided to prospective tenderers for Huntly and Piney Creek stated that there was to be a sublease and separate grazing licence. The eventual sum of the two contracts entered into (\$285,000 and \$9,800 per annum, that is, \$294,800 per annum over ten years) is less than the sum tendered (\$65,200 less than the \$360,000 tendered). The Land Development Agency did not adequately document the negotiations that occurred that resulted in the agreed price that was different from the panel-endorsed tendered amount. 3.76

The agreed rent of \$285,000 per annum for Huntly was substantially higher than the former Land Development Agency's estimated rental income of \$95,000 per annum. On the basis of Huntly rental income alone, this is a good financial outcome compared to former Land Development Agency expectations. While the ten per cent fee agreed for CBRE (based on a multiple of five years rental income) being \$151,717 (ex. GST) exceeded a \$41,500 (ex. GST) fee that would have been applicable on the agreed rent (\$285,000) if ACT Property Group advice had prevailed it needs to be recognised that there was no precedent for judging the scope of the work and interest. As it eventuated the interest was high. While the circumstances were uncertain and complex it was beholding on the former Land Development Agency to justify accepting the fee, this was not done. 3.79

One valuer, Knight Frank Valuations Canberra, was the source of independent market valuation advice where a valuation report was prepared, for 75 per cent of the rural properties examined in this audit which were purchased or were being purchased by the former Land Development Agency. While acknowledging that there is a limited number of valuers with ACT rural land valuation expertise, there is no evidence that the former Land Development Agency took action to reduce the reliance on this one valuer. While acknowledging this is a challenging issue in the ACT options for securing valuation services from several valuers needs to be examined.

3.92

Instructions from the former Land Development Agency to valuers to undertake valuations were not always given to valuers in writing, and when provided in writing contained insufficient information. Without the availability of a detailed written instruction, prior to a property inspection, incorporating a clear purpose and basis for the valuation, there is a risk to the quality and integrity of the valuation.

3.97

On 11 December 2014 the former Land Development Agency Board approved the Land Development Agency to initiate discussion with specific landowners in the Western Edge Study area, including the owner of Fairvale, 'with a view to the possible strategic acquisition at a later date'. Independently, in May 2015 the owner of Fairvale undertook activity to prepare the block for sale, including engaging a selling agent and engaging a number of valuers to provide advice on the potential value of the block.

3.114

In an interview under oath or affirmation, Fairvale's vendor advised that they had become aware of the former Land Development Agency's interest in purchasing Fairvale on 29 July 2015, before the property was advertised on the market. On 3 August 2015, the Director, Knight Frank Valuations (one of the vendor's valuers) proposed an arrangement to the vendor whereby the Director and his spouse would purchase part of the property and the other part of the property would be sold to the Land Development Agency. Throughout early to mid-August 2015 negotiations for the purchase of Fairvale ensued.

3.115

On 10 August 2015 a price of \$5.45 million was provisionally agreed between the vendor's agent (Landmark Harcourts) and the former Land Development Agency's agent (Colliers International State Chief Executive, ACT) for the whole of Fairvale (Block 491, 470.8 hectares not subdivided). The sale price was documented in an exchange of letters between the Colliers International State Chief Executive, ACT (agent for the former Land Development Agency) and Landmark Harcourts (the vendor's agent) on 13 and 17 August 2015.

3.119

At some point between 7 August and 24 August 2015 it is apparent that the vendor agreed to sell Fairvale in two parts: one to the former Land Development Agency and one to the Director, Knight Frank Valuations Canberra. The Colliers International State Chief Executive, ACT (in their capacity as Director (ACT Division) of Colliers International Valuation and Advisory Services) was asked to provide advice on the value of the two proposed parts of the Fairvale block. This advice was provided on 14 September 2015 and was subsequently provided to the former Land

3.127

Development Agency Board at its 24 September 2015 meeting, at which the Board agreed to purchase part of Block 491, Fairvale (new Block 518).

No contemporary documentation existed that provided:

3.138

- the rationale why the former Land Development Agency supported the subdivision and purchase of part of Block 491 rather than pursuing the purchase of the whole block as originally envisaged by the Board on 11 December 2014; or
- the circumstances in which officers of the former Land Development Agency agreed to pursue the purchase of part of the property during negotiations.

Approximately 32 percent of the original Fairvale block (Block 491) that was apportioned to the new Block 517, was purchased by the Director, Knight Frank Valuations Canberra. This site appears, by February 2017, to be potentially strategically important as an urban front area; having significant frontage to the Cotter Road, and the site of a local centre according to the former Land Development Agency's *Draft Stromlo District Master Plan*. This site, compared with the one purchased by the former Land Development Agency, has far less of the NUZ4 River Corridor zoned land which may impede development yield.

3.139

While it was suggested that 'a significant portion of [the new Block 517] would likely be retained as an asset protection buffer and the curtilage surrounding the homestead, noting a heritage assessment has yet to be considered at this stage' it is also noted that there are no recorded or registered heritage places or objects on the Block according to the ACT Heritage Register. Furthermore, it was also asserted that Block 517 has drainage issues but there is no documentary evidence that this was examined by the former Land Development Agency.

3.140

There was no evidence that the former Land Development Agency identified and assessed risks related to not pursuing the entire purchase of the Fairvale block (Block 491) or risks associated the various roles of the Director, Knight Frank Valuations Canberra. The former Land Development Agency had knowledge of the Director's roles as a valuer for the vendor and as a prospective purchaser, yet the former Agency directly supported the subdivision for no apparent reasons or need. There is no contemporaneous documentation to justify why the purchase of the whole block was not pursued, this presents a probity risk.

3.141

References in some reports and briefs prepared by the former Land Development Agency for decision-makers relating to future residential growth fronts contained incomplete information related to the Government's planning policy. This presented potential risks to the transparency of information for decision-makers.

3.145

In former Land Development Agency Board reports and a Ministerial Brief, information about the area of Central Molonglo removed in perpetuity from being considered a future urban area was inaccurately presented. The Board reports and Ministerial Brief referred to as a '20-year moratorium' rather than being '... in

3.153

perpetuity from being considered as a future urban area'. This presented potential risks to the transparency of information for decision-makers.

Probity definition

- 3.2 In its *Guidelines for Probity in Public Sector Projects* (2005) the New South Wales Independent Commission Against Corruption defined the term probity as 'integrity, uprightness and honesty' and stated:

For public officials and public sector agencies, creating and maintaining probity involves more than simply avoiding corrupt or dishonest conduct. It involves applying and complying with public sector values and duties such as impartiality, **accountability and transparency** [Audit emphasis].

Ensuring probity in public sector activities is part of every public official's duty to adopt processes, practices and behaviour that enhance and promote public sector values and interests.

Effective probity management is concerned with the procedures, processes and systems used rather than the outcome of an activity, undertaking or project.

- 3.3 In undertaking the audit matters were identified that present probity risks. These related to:

- the management of agents' services (provided by Colliers International and CBRE);
- the conduct of the purchase of Fairvale; and
- inaccurate or incomplete information being presented to decision-makers.

- 3.4 While probity risks are presented no conclusions are reached regarding the conduct of individuals or entities other than Government entities.

Management of agents' services

Colliers International

- 3.5 The former Land Development Agency relied on the Colliers International State Chief Executive, ACT to assist in purchasing rural land to the west of Canberra, as an advisor on strategy and as a buyer's agent.

Management of unsolicited advice on strategy

- 3.6 The *District of Stromlo Acquisitions strategy paper* that was presented to the former Land Development Agency Board at its meeting on 11 December 2014, which prompted the first purchases in 2015, closely resembled unsolicited written advice (titled 'project consolidation', refer to paragraphs 5.101 to 5.115) provided by the Colliers International State Chief Executive, ACT in September 2014. The geographic scope and associated proposal in the 'project consolidation' advice closely aligned with the *District of Stromlo*

Acquisitions strategy paper, which provided the catalyst for the former Land Development Agency Board for purchasing Milapuru and Fairvale.

- 3.7 Minutes of the Board meeting on 11 December 2014 do not identify whether the former Land Development Agency Board approved the Strategy, its scope or rationale. There are no records that indicate the scope and rationale of the unsolicited advice or that the *District of Stromlo Acquisitions strategy paper* that followed were rigorously assessed by the former Board or that the Board was informed that the Colliers International State Chief Executive, ACT was the source of the initial unsolicited advice, including its geographic scope and rationale. This presents a risk that the Board progressed without having an opportunity to consider all matters including potential conflicts of interest.
- 3.8 In relation to the Colliers International *District of Stromlo Acquisitions strategy paper*, in an interview under oath or affirmation, the former Chair of the Land Development Agency Board advised:
- Someone has gone out and got that report. Whether it's paid for or not, I've got no idea, until you just say it. Then that's presented to us. I've got to express to you ... we have a very, very knowledgeable board. ... We have a valuer on it. We have a planner on it. We have people that want to do the right thing by Canberra ...
- ... I make that decision not based on what [the Colliers International State Chief Executive, ACT] said, not even based on what [the former Deputy Chief Executive Officer] said. That's the input. Where we're getting to now, we're not accepting that a Chief Executive Officer ... isn't entitled to use that experience and have a view, and the Board members, who are there for a specific reason, don't think, yes, that's a good thing to do. We're getting to the stage where no one will make a decision without getting two back-up reports.
- 3.9 There is no documentary evidence that the former Land Development Agency presented important information to the former Land Development Agency Board (at meetings on 25 September 2014 and 11 December 2014) regarding the origins of the 'project consolidation' written advice and *District of Stromlo Acquisitions strategy paper*. In order to ensure transparency and facilitate the identification of potential conflicts of interest the Board should have been advised that the work was unsolicited and provided by Colliers International free of charge. It was incumbent on the former Agency to provide all relevant information to the Board; there is no written record that it did.

Payment for work undertaken

- 3.10 The Colliers International State Chief Executive, ACT and a colleague from Colliers International prepared the *District of Stromlo Acquisitions strategy paper* (refer to paragraph 5.108). The paper contained recommended actions for the former Land Development Agency to progress with the assistance of Colliers International. It did not propose any basis for the payment of Colliers International for the preparation of the strategy or work arising from it.

- 3.11 The Colliers International State Chief Executive, ACT confirmed in an interview under oath or affirmation that no direct payment for the strategy was requested, but fees relating to specific purchases arising from the strategy were to be charged:

So under the document we produced, I think it was during 2015 when we were basically starting to acquire some properties, we said that we would be paid under the commercial agency panel arrangement, which was in place already. And there was one invoice done at the end of '15 I think for some of those acquisitions.

- 3.12 According to a file note provided to the Audit Office by Colliers International, an amendment to the *District of Stromlo Acquisitions strategy paper* presented to the Board on 11 December 2014 was made around 21 August 2015 at the request of the former acting Executive Director, Land Development of the Land Development Agency. The amendment proposed a basis for payment to Colliers International by the addition of Item (d) to Recommendation 5 on page 12 of the paper, which states:

(d) Our fee for the acquisition of these properties [in the strategy] on behalf of the LDA will be in accordance with the fees for the sale of multi-unit and englobo sales sites as per the agreed sliding scale commission rates identified in our submission for the provision of the panel of Commercial and Residential Property Agents.

- 3.13 Notwithstanding that a basis for payment was added to the *District of Stromlo Acquisitions strategy paper* around 21 August 2015, the Colliers International State Chief Executive, ACT was already acting as the former Land Development Agency's agent in the period 28 July 2015 to 21 August 2015 (refer to paragraph 3.104). Specific terms of payment had not been agreed between Colliers International and the former Land Development Agency prior to 21 August 2015 in relation to payment for the *District of Stromlo Acquisitions strategy paper* or Colliers International services resulting from it, although a panel contract (Agreement No. 2013.18426.213) was in effect for making sales commission-based payments.

- 3.14 The Audit Office sought information from Colliers International in relation to payments that were made for these services. In response to a request from the Audit Office, the Colliers International State Chief Executive, ACT provided an invoice dated 23 December 2015 that was submitted to the Economic Development Directorate for \$298,045. The invoice included the following items totalling \$255,000:

1. Fee for sale/acquisition of properties as part of Stromlo Acquisition Strategy Paper dated November 2014
 - Property Acquired:
 - i) Block 19 circa \$7 mill say \$112,500
 - ii) Block 14 circa \$5.5 mill say \$92,500
 - iii) Negotiated for ... to secure Blocks 400 & 433 \$11.5 mill flat fee \$50,000
 - i) Ongoing negotiation on Block 418

3.15 The invoice contains no further detail of the basis for the fees invoiced. A review of the invoice and its details shows:

- Block 19 (Milapuru) – a fee of \$112,500 was identified which reflects the appropriate fee derived from the sliding scale of fees in the ACT Government’s panel agreement fee schedule - Agreement No. 2013.18426.213)
- Block 14 and Blocks 400 and 433 – a fee of \$92,500 was identified for Block 14 and a flat fee of \$50,000 was identified for Blocks 400 and 433. These blocks were not purchased by the former Land Development Agency. As a commission-based fee on sales had been proposed (refer to paragraph 3.12) it was unclear on what basis a sum of \$142,500 could be invoiced for Block 14 and Blocks 400 and 433. During 2014 both properties were sold but not to the former Land Development Agency.

3.16 In response to the draft proposed report on 11 May 2018 the Colliers International State Chief Executive, ACT advised:

Block 14 was for Block 491 at \$5.45 mill. This is just a typo, the fee should have been \$92,000 not \$92,500 as calculated for \$5.5 mill.

No sale fee was charged for Block 400 and 433. This fee of \$50,000 was for the LDA share of a Planning report prepared which we also charged the owner of Lots 400 and 433 for part of the cost.

3.17 While this response is noted, it is also noted that the former Land Development Agency did not purchase the entire Block 491 (Fairvale) for \$5.45 million, but, purchased a part of Fairvale for \$3.1 million (the balance of the block was sold to a private entity, refer to paragraph 3.99). The fee for this purchase according to the panel agreement fee schedule would have been \$56,136, not \$92,500 (a \$36,363 difference).

3.18 Handwritten notes provided to the Audit Office by Colliers International State Chief Executive, ACT on 21 November 2017 indicate that the former Land Development Agency was to pay \$50,000 and the owner of the Blocks 400 and 433, \$5,000 for the ‘Planning report’. On 12 June 2018 the Colliers International State Chief Executive, ACT provided further advice relating to the ‘Planning report’:

Colliers commissioned the planning report for this area in 2014/2015. We got some initial advice before going down the path of the strategy paper and then got the greater work done so that those with a long term development view had a planning report done. We charged the LDA \$50,000 of the cost as they were who we were acting for in the acquisitions. The file note provided is incorrect as we charged [the owners of Blocks 400 and 433] \$15,000 due to share of area.

3.19 The Colliers International State Chief Executive ACT, on 22 June 2018, further advised that the planning report related to, and post-dated, the *District of Stromlo Acquisitions strategy paper* and that:

The LDA only paid for a share of the planning report done for this area with their share of the costs based on the area of land they had purchased or were acquiring. The owner of Block 400 and 433 paid for their share of the costs of the planning report which was \$15,000 plus GST. The total costs of the planning report was in excess of \$65,000.

- 3.20 The Colliers International State Chief Executive, ACT, on 25 June 2018, identified the planning report as a five-stage report undertaken on the initiative of Colliers International, commencing in early 2015 and titled the *Stromlo Future Urban Land Study*.
- 3.21 The terms agreed in the 21 August 2015 revision to *District of Stromlo Acquisitions strategy paper* (refer to paragraph 3.12) did not identify the unsolicited *Stromlo Future Urban Land Study* or who would paid for it.
- 3.22 The invoice was received from Colliers International on 23 December 2015 for \$298,045. The invoice was paid in full on 18 February 2016 on the basis of an authorising signature of an appropriate delegate (the former Chief Financial Officer of the Land Development Agency), and the former Director Sales, Marketing and Land Management authorising the receipt of the services rendered.
- 3.23 The former Land Development Agency's Chief Executive Financial Instruction No. 2 *Purchasing, contracts and payments* (dated 23 July 2015) states:
- A purchase order request must be prepared for all purchases of \$10,000 or greater and forwarded to Strategic Finance for entry into the Purchase Order system
- Land Development Agency Finance will review all approved tax invoices to ensure that documents are per purchase order
- 3.24 The former Land Development Agency's Strategic Finance team identified that no Purchase Order had been found in the team's records for the invoiced services, and no Purchase Order number written on the signed approval stamp. Appropriate financial controls were not applied.
- 3.25 In July 2015 the Colliers International State Chief Executive, ACT commenced acting as the former Land Development Agency's agent for the purchase of rural land. No written agreement was ever prepared for these services. On 21 August 2015 the *District of Stromlo Acquisitions strategy paper* previously presented to the former Land Development Agency Board in December 2014 was amended to provide a basis for the payment of services from Colliers International in relation to the purchase of properties (i.e. a commission-based arrangement for purchases by the former Land Development Agency based on an existing panel arrangement).
- 3.26 On 23 December 2015 Colliers International invoiced the former Land Development Agency for \$298,045, which represented 'Fee for sale/acquisition of properties as part of Stromlo Acquisition Strategy Paper'. Of this \$36,363 is identified as relating to a property that was not purchased by the former Land Development Agency, i.e. part of the former Fairvale property, which was purchased by a private entity; and \$50,000 is identified as relating to an unsolicited 'Planning report', for which Colliers International also invoiced the adjacent block owner \$15,000. There was no reference to the 'Planning report' or payment for it in the amended *District of Stromlo Acquisitions strategy paper* (21 August 2015). The invoice was paid in full by the former Land Development Agency, notwithstanding that no Purchase Order had been found in records for the invoiced services, and no Purchase Order number was written on the signed approval stamp. This means that the former Land Development

Agency's financial controls were not applied. Accountability and transparency were lacking in the payment of fees for services.

Management of Colliers International State Chief Executive, ACT acting as an agent

3.27 The former Chief Executive Officer advised in an interview under oath or affirmation:

As far as I know, and only the LDA could tell you, I'm not aware of [the Colliers International State Chief Executive, ACT] ever getting a commission for anything that he facilitated ...

3.28 The Colliers International State Chief Executive, ACT also advised in an interview under oath or affirmation that:

... Well, we didn't do work under instruction from the [Land Development Agency]. We did – prepared a strategy paper on our own doing following announcements that, you know, there were potential future land shortages in Canberra in 20 or 30 years.

3.29 Records and information provided in interviews under oath or affirmation identify that the Colliers International State Chief Executive, ACT was significantly involved in discussions with landowners, sales agents and the former Land Development Agency for properties identified in the *District of Stromlo Acquisitions strategy paper*. These discussions identify details of the Government's rationale and negotiating strategy such as:

- the headroom for negotiation over and above an independent market valuation before requiring Government approval;

... he informed me ... there was going to be no rush to vacate and that they can offer 10 per cent over the valuation without going to the government (a landowner referring to comments of the Colliers International State Chief Executive, ACT)

- the strategic importance of the 'western corridor' in the Government's long term plans;

And he said ... The Territory Plan and the Western Corridor and all the overarching ideas that, you know, where Canberra will go eventually ... and it was just put to us that the property was deemed to be of strategic importance to the LDA in their long-term plans (a landowner's agent referring to comments of the Colliers International State Chief Executive, ACT)

- that the Colliers International State Chief Executive, ACT had been given consent to purchase properties in the Cotter Road area;

And that, and I quote ... "[the Colliers International State Chief Executive, ACT] via [an agent from PRD Nationwide] and [the former Chief Executive Officer of the Land Development Agency] have given consent to purchase properties in the Cotter Road area" (a landowner referring to comments of the Colliers International State Chief Executive, ACT)

- the need for 'quick settlement' timeframes and the likelihood of Government funding being available to secure and purchase;

And ... he said that the – that the government was interested in a very quick settlement.

[The Colliers International State Chief Executive, ACT] said that he thought the money would be gone and then ... he thought the money would be gone, yeah, it wouldn't be

available any more. But he would chase it up ... (a landowner referring to comments of the Colliers International State Chief Executive, ACT)

- 3.30 The former Chief Executive Officer of the Land Development Agency in an interview under oath or affirmation was asked how information was shared with, or was authorised to be used by, the Colliers International State Chief Executive, ACT in their role as buyer's agent:

Audit Office

What authority has [the Colliers International State Chief Executive, ACT] got to send this? (referring to an offer letter to the vendor)

Former Chief Executive Officer

He must have been instructed by us. I can't recall.

- 3.31 Former Land Development Agency staff were asked to confirm how the Colliers International's State Chief Executive, ACT role was managed. Executives of the former Land Development Agency advised that no written instructions were provided, and they did not recall providing verbal instructions.

- 3.32 The former Executive Director, Greenfields of the Land Development Agency under oath or affirmation was shown a letter on Colliers International letterhead relating to the purchase of Fairvale, dated 13 August 2015 which makes reference to 'our client the ACT Government' and was asked about whether there were written instructions:

Audit Office

Have you seen any written instructions to Colliers for them to act as an agent of the Government in relation to the acquisition of rural properties since 2014?

Former Executive Director, Greenfields

Not that I can recall.

- 3.33 The former Chief Executive Officer of the Land Development Agency in an interview under oath or affirmation confirmed that no written instruction was given to the Colliers International State Chief Executive, ACT.

- 3.34 The Colliers International State Chief Executive, ACT provided the *District of Stromlo Acquisitions strategy paper* free of charge to the former Land Development Agency to guide its purchases of rural properties to the west of Canberra, all of which were in the Western Edge Study area. Subsequently, the Colliers International State Chief Executive, ACT engaged with rural leaseholders and provided information regarding what the former Land Development Agency might contend in making a purchase. Although the former Land Development Agency was aware of what was occurring, and sometimes requested the assistance of the Colliers International State Chief Executive, ACT, there were no written instructions for their engagement. There is also no evidence that Colliers International's activities were monitored and managed by the former Land Development Agency. Accountability and transparency were lacking in relation to the management of services provided by Colliers International.

- 3.35 In response to the draft proposed report on 11 May 2018 the Colliers International State Chief Executive, ACT advised that:

From [Colliers International's] point of view the Stromlo acquisition strategy paper was the framework to assist the LDA. [Colliers International] is one of the most experienced real estate groups in Canberra with the State Chief Executive being employed at the time for 26 years. [Colliers International] do not need to be told how to act as an agent - that is what we do.

...[Colliers International] has worked with Commonwealth and State Governments for 30 years and strongly refutes any suggestion that the relationship between [Colliers International] and the LDA would impact on [Colliers International's] advice.

- 3.36 While this comment is noted, the audit is not commenting on the credentials of Colliers International but the lack of process regarding the actions of the former Land Development Agency.

RECOMMENDATION 3 ENGAGING AND MANAGING AGENTS AND ADVISORS

While the Suburban Land Agency was not the subject of this audit, since 1 July 2017 the Suburban Land Agency has had responsibility for activities considered in this audit that were previously those of the former Land Development Agency. Recommendations are therefore made to the Suburban Land Agency.

The Suburban Land Agency should:

- a) formally engage agents and advisors through documented procurement and contracting arrangements; and
- b) manage and monitor their activities through appropriately documented contract management arrangements. Records of a quality that provides transparency for these activities should be maintained.

CBRE

- 3.37 The former Land Development Agency engaged CBRE to assist in the subleasing of Huntly (e.g. marketing, managing inspections, and shortlisting) and the licensing of a contiguous block 'Piney Creek'.

Huntly land management

- 3.38 The former Land Development Agency purchased Huntly (Stromlo Rural Blocks 412, 413, 487, 426 and 489, comprising 1,605 hectares in total) on 8 April 2016 with vacant possession.
- 3.39 The former Land Development Agency Board had begun planning for the land management arrangements of the Huntly land at least six months prior to its acquisition. Board Minutes of 24 September 2015 state:

The LDA has discussed possible commercial outcomes with the ACT Property Group and it has been agreed an Expression of Interest (EOI) would be the most suitable way to proceed to continue the operation of the property. There is potential that some or all of the LDA's rural holdings could be considered in an EOI for the ongoing management.

- 3.40 Land management arrangements for Huntly are presented in former Land Development Agency records as a significant business opportunity, that is, it would be capable of generating a substantial income stream. A review by Link Corporate Services Pty Ltd was undertaken for the former Land Development Agency of Huntly's farming operations and financial statements dated 13 August 2015. This review indicated an income stream of approximately \$110,000 per annum may be achievable from the licensed use of land and residential property rental using Huntly's existing infrastructure. In order to arrive at this estimate, the Link Corporate Services Pty Ltd review based its rental assumptions on pre-existing licence terms on an adjacent block owned by the Territory (Piney Creek) that was licenced to the former owners of Huntly. The review also identified that an income of \$150,000 per annum may be achievable with a change of use that would result in increasing capacity to agist horses. However, the *Huntly Strategic Acquisition – Management Business Plan* (March 2016, Board report, page 13) advised that:

... for the short term management of Huntly, an income to the Government in the order of \$70,000 to \$100,000 per annum is expected.

- 3.41 Immediately prior to settlement on 8 April 2016 no land management contracts were in place. However the former Land Development Agency was in the process of procuring for Huntly:
- a land manager in the short term, to be in place immediately following the purchase; and
 - a professional services agent to manage a tendering process to select a long-term land manager.

Short-term land manager

- 3.42 A contract was executed with a land manager for the period 8 April 2016 to 30 September 2016. The method of procurement (that is, 'single select'), the rationale for the method, and the decision to proceed was authorised by the former Chief Executive Officer of the former Land Development Agency and was documented in a three-page minute dated 7 April 2016.

Identification of CBRE as a potential service provider to identify a long term land manager

- 3.43 In an email dated 24 February 2016, the former Director, Sales, Marketing and Land Management of the Land Development Agency briefed a valuer at Specialised Valuation Services and asked for a recommendation for a suitable property agent 'to handle this process'. The valuer responded:

As to an agent I would recommend [a named Property Agent] now at CBRE as the best guy to handle it.

- 3.44 On 6 April 2016 the former Land Development Agency began working with CBRE to assist in the subleasing of Huntly (e.g. marketing, managing inspections, and shortlisting) and the licensing of a contiguous block 'Piney Creek' (comprising a further 451 hectares). An email dated 6 April 2016 from CBRE indicates that the former Director, Sales, Marketing and Land

Management of the Land Development Agency was the principal contact for CBRE for this activity. The principal contact for CBRE was the Director, CBRE Agribusiness Transactions, the 'named Property Agent' recommended by Specialised Valuation Services (refer to paragraph 3.43).

- 3.45 In its response to the draft proposed report on 10 May 2018 the Suburban Land Agency noted based on its understanding of available information:

... the preliminary challenges identified by the former LDA prior to establishing the Expression of Interest process for Huntly. The agent market in the region was identified to be small, with many interested in managing property not managing an EOI process. For example, at least one possible agent withdrew from the process because they wanted to manage the property.

Selection and appointment of CBRE

- 3.46 CBRE was on the ACT Government's *Panel of Commercial and Residential Property Agents* to provide 'sales and marketing services'. As the service required was not available through standard panel terms,⁶ special terms and conditions were proposed by the Director, CBRE Agribusiness Transactions of CBRE by letter dated 6 April 2016. CBRE's proposed terms and services included an agreed percentage of the annual rent over five years in return for:

- marketing the opportunity and supporting prospective tenderers; and
- short-listing tenderers for the former Land Development Agency's final selection process.

- 3.47 No record was found by either the former Land Development Agency or by CBRE to confirm the request to CBRE to provide a quote or to confirm the former Land Development Agency's acceptance of CBRE's terms.

- 3.48 The service provided by CBRE is identified on the ACT Government's contracts register as Panel Contract no. L170274 with a value of \$160,000 commencing 6 April 2016 and expiring 15 February 2017, and as based on a 'single select' procurement and exempted on the basis of 'only one suitable supplier' being available.⁷ The creation of the contracts register entry was on or after 30 June 2017, more than a year after CBRE's appointment and more than three months after an invoice for the services had been paid (23 March 2017). The details for the contracts register were authorised by the former Director, Sales, Marketing and Land Management of the Land Development Agency on 30 June 2017.

- 3.49 The contracts register entry states that the former Chief Executive Officer of the Land Development Agency approved the 'single select' procurement process. Although there is a contracts register entry, officers of the former Land Development Agency were unable to locate:

- evidence of the former Chief Executive Officer's approval;

⁶ Part A: Block sales %age commission, Part B: Consultancy services hourly rates, or Part C: Auctioneering fees per sale or per hour

⁷ Exempted from a requirement to seek at least three written quotations i.e. 'simple purchasing' procurement route

- a contract other than CBRE's letter proposing terms dated 6 April 2016;
 - a minute that identifies the delegate who made the decision to appoint CBRE, including the reasoning that determined a 'single select' procurement route was necessary.
- 3.50 A Purchase Order was created by the former Land Development Agency on 8 March 2017, a week after the receipt of the invoice for services from CBRE.
- 3.51 It is inappropriate to select a panel member for services if there is a substantial departure from specified services of the panel without explanation. It is also inappropriate to determine a 'single select' route for the provision of services in excess of \$25,000 (that is 'simple purchasing') without demonstrating why this exemption outweighs the benefit of complying with the tender and quotation requirement to obtain three written quotes.
- 3.52 The Audit Office has been advised that there were 'preliminary challenges identified by the former LDA [Land Development Agency] prior to establishing the Expression of Interest process for Huntly'. While noting this, basic procurement requirements were not met. There was a lack of: documentation to request a quotation; written acceptance of a quotation; written explanation for undertaking a 'single select' procurement (where three written quotes would be expected); an authorising delegate for the decision; and creation of a purchase order in advance of the services being provided. The decision to procure the services was not justified and the conduct of the process was poor.

CBRE's proposed terms

- 3.53 In early April 2016 there was communication by email between the former Director, Sales, Marketing and Land Management, the former Executive Director, Greenfields of the Land Development Agency, the ACT Property Group and the Colliers International State Chief Executive, ACT (who had been approached to provide informal advice to the former Director) in relation to the fee proposed by the Director, CBRE Agribusiness Transactions. Emails identify doubt as to whether the fee structure proposed by CBRE was appropriate:

Former Director, Sales, Marketing and Land Management of the Land Development Agency:

Are you happy with the scope and proposed fee from [CBRE]? I understand this fee is normal industry standard. [6 April 2016 11:12am, to the Executive Director, Greenfields, Land Development Agency]

I have no experience with rural leases and commissions and am not sure about an appropriate fee to pay. The attached is the proposed fee from [CBRE]. Comments below are from ACT Property Group ... I always value your opinion so what do you reckon is an appropriate fee to pay for this work? [7 April 2016 8:30am, to the Colliers International State Chief Executive, ACT]

ACT Property Group:

We have reviewed the [...] proposal and believe the fee proposal is high for what is being offered.

[CBRE] is effectively seeking \$66,000 [inc GST] for a leasing fee which doesn't include management of the property during the term of the lease. As a guide, a fee of approximately 10% of the first year's rent is regarded as normal commercial practice for leases. This would

equate to a leasing fee of \$12,000 [that is, \$120,000 rent per annum]. On top of the leasing fee, disbursements and costs such as photographs, marketing material, advertising, additional travel etc are treated as outgoings incurred by the agent and are reimbursed. Depending on requirements, this could take the cost to \$20,000. If you wished to add a premium because it is a rural property, an additional \$5,000 could be considered. Unless [the Property Agent] can demonstrate specific additional work or time involved in this aspect of the project, I believe the proposed fee is high, particularly as it doesn't cover the ongoing management of the property. [6 April 2016 4:05 pm to the Director, Sales, Marketing and Land Management of the Land Development Agency].

Former Director, Sales, Marketing and Land Management of the Land Development Agency:

We also have to resolve the agreed commission which some/most think our proposal from CBRE is too high. [12 April 2016 1:09pm, to the Executive Director, Greenfields, Land Development Agency]

- 3.54 In their response to the final proposed report on 22 June 2018, the Director, CBRE Agribusiness Transactions advised that:

There was more work in this job, than if we were taking the property to market for sale. ... I don't think anyone understood the enormity of the process...

The response from the market was immense. Over 80 parties inspected the property, many more made enquires, which resulted in 32 submissions being lodged. Inspecting 4,000 acres is not like running an open home for a residential property...

Upon reflection, this was an outstanding campaign, that resulted in high engagement from the market that drove an extremely strong result for the client.

- 3.55 The former Director, Sales, Marketing and Land Management of the Land Development Agency advised that they had 'no experience with rural leases and commissions' and sought the advice of the ACT Property Group who advised that the fee from CBRE was 'high for what is being offered'. However, it needs to be acknowledged that there was no precedent for judging the scope of the work and interest. As it eventuated the interest was high. Although the circumstances were uncertain and complex it was beholden on the former Land Development Agency to justify accepting the fee, this was not done.

- 3.56 The effect of the higher fee on the resulting selected tenderers' rental amount is examined in paragraphs 3.78 to 3.80.

Conduct of Expression of Interest process by CBRE

- 3.57 CBRE invited *Expressions of Interest* and issued an *Information Memorandum* on 4 July 2016 with a submission deadline of 5 August 2016. The *Information Memorandum* describes Huntly and Piney Creek as:

The opportunity to secure a long-term lease of a large scale grazing property conveniently located close to the nation's capital in a reliable climate is rare, and should not be missed.

- 3.58 Records of the former Land Development Agency provide evidence of the lodgement process. Records identify that there were:

- changes made to the place of lodgement of *Expressions of Interest* prior to the deadline; and

- an additional pro forma requirement was issued prior to the deadline.
- 3.59 Records also indicate that the former Land Development Agency became aware of at least two prospective tenderers who had concerns about possible conflicts of interest between those intending to lodge an *Expression of Interest* and those administering the process; specifically the Director, CBRE Agribusiness Transactions (the lead representative from CBRE working with the former Land Development Agency on the tender). Information about these concerns was shared with the former Land Development Agency on 22 July 2016.
- 3.60 On 25 July 2016 the former Director, Sales, Marketing and Land Management shared these concerns with the ACT Government Solicitor's Office and sought advice as to what measures would reduce the risk of a conflict of interest between those intending to lodge a tender submission and those administering the process:
- Please see email below from [an interested party] to [...] our agent from CBRE and my email to [ACT Property Group] with a concern from another interested party wishing to lease the Huntly/Piney Creek properties. Can we please have some probity advice on this as it is a worry that our agent is being implicated as having an interest in a company/ies submitting an interest in Huntly/Piney Creek. Concerns were also raised if [our agent from CBRE] was to be in the EOI/tender evaluation team. At this stage we have not settled on a tender/EOI evaluation team but based on concerns and perception I believe we cannot have [our agent from CBRE] involved. Please advise.
- 3.61 Advice provided by the ACT Government Solicitor's Office on 27 July 2016 identified a lack of guidance in the *Information Memorandum* on conflicts of interest:
- We have further reviewed the [Information Memorandum] which we note is currently silent in relation to how the [Land Development Agency] will deal with any conflicts of interest. ...To ensure that the tender process continues without any issues in relation to potential conflicts of interest, we recommend that the [Information Memorandum] be updated to include a declaration in relation to conflicts of interest and requiring that each tenderer declare that they don't have any conflict that has not been disclosed to the [Land Development Agency].
- 3.62 The former Land Development Agency's panel convenor for the *Expression of Interest* process (the former Director, Sales, Marketing and Land Management) did not include the Director, CBRE Agribusiness Transactions on the Evaluation Panel to be convened following the submission deadline. The former Land Development Agency also sent an addendum to the *Information Memorandum* on 29 July 2016, and again on 2 August 2016 with a further minor amendment, to CBRE to communicate to prospective tenderers. The addendum included revised instructions to tenderers:
- to lodge their tender submission with the former Land Development Agency rather than through the Director, CBRE Agribusiness Transactions as originally outlined in the *Information Memorandum*; and
 - to complete a warranty relating to any conflicts of interest.
- 3.63 The final addendum was communicated to prospective tenderers on 2 August 2016 three days before the submission deadline. Furthermore, a *Questions and Answers* briefing was also communicated to prospective tenderers on 4 August 2016, one day before the deadline.

- 3.64 In response to the revised requirement to disclose relevant interests, as part of its *Expression of Interest*, one tenderer advised the former Land Development Agency in a letter dated 3 August 2016:

In the interest of full disclosure, it should be noted that [the Director, CBRE Agribusiness Transactions involved in] the tender process [...] is also a shareholder and non-executive director of the company proposed for the comprehensive management of Huntly and Piney Creek [to be engaged under sub contract to the tenderer].

- 3.65 This tenderer was one of five tenderers that did not meet minimum requirements in the first round of scoring, and accordingly did not proceed to the second round of scoring and ranking.

- 3.66 In a response to the draft proposed report on 10 May 2018 the Suburban Land Agency advised that based on available records, it understood that regardless of the obligations set out in the *Information Memorandum* or addendum, there were already obligations on the agent in that:

... it was still incumbent on the [agent] to advise if they held a conflict of interest. The Rules of Conduct at Schedule 8 of the Agents Regulation 2003 require that 'An agent must not accept an appointment to act, or continue to act, as an agent if doing so would place the agent's interests in conflict with the client's interests.' In addition the Real Estate Institute of Australia's National Principles of Conduct state at paragraph five 'act ethically, fairly and honestly when dealing with all parties and not allow any person to believe that they are acting for any party other than their client'.

- 3.67 In their response to the final proposed report on 22 June 2018, the Director, CBRE Agribusiness Transactions advised that:

[They] told the LDA before CBRE was appointed to conduct the Huntly campaign of [their interest in a company, which] provided farm management services to ... and that it would be highly likely that they would have an interest in leasing Huntly. I advised that if that was deemed a conflict of interest, I would have to excuse myself from the job. The LDA advised that they thought this was a manageable conflict of interest.

...

I know that all parties lodged their bid armed with the same knowledge, and that no party was favoured. All of my conflicts of interest were disclosed before being appointed, and they were appropriately managed.

- 3.68 No record was found in former Land Development Agency records of a verbal or written disclosure of a potential conflict of interest provided by the Director, CBRE Agribusiness Transactions prior to inviting Expressions of Interest on 4 July 2016.

- 3.69 The Director, CBRE Agribusiness Transactions, was engaged by the former Land Development Agency to provide services for conducting an *Expression of Interest* process for procuring a long-term land manager for Huntly. The Director was a shareholder and non-executive director of another company that was proposed by one tenderer to be engaged under a sub-contract to manage Huntly. The Director, CBRE Agribusiness Transactions advised that this conflict of interest was communicated to the former Land Development Agency before appointment, and that this was communicated verbally rather than in writing. No record of this disclosure was found in former Land Development Agency records.

- 3.70 After the *Expression of Interest* process had commenced the former Land Development Agency took management action when other prospective tenderers alerted it of their concerns.. The former Land Development Agency requested that: *Expressions of Interest* be sent directly to the former Land Development Agency instead of the Director, CBRE Agribusiness Transactions as originally planned; and tenderers complete a warranty relating to any conflicts of interest. While these changes to the process were communicated to prospective tenders in the days preceding the closing date for *Expressions of Interest* the Director, CBRE Agribusiness Transactions did receive submissions that should have been sent to the former Land Development Agency.

Tender submission evaluation, selection and approval

- 3.71 Following the lodgement deadline on 5 August 2016, the former Land Development Agency maintained records of the tenders submitted and submission dates, and the Evaluation Panel's activities and outcomes.
- 3.72 A panel convened by the former Director, Sales, Marketing and Land Management of the former Land Development Agency undertook the scoring and ranking of tenders. Records confirm how each tender submitted was evaluated and ranked. The panel received financial advice informing the weighting and scoring of two of the criteria. The ranking resulted in a preferred tenderer which was presented in an Evaluation Panel report dated 6 September 2016.
- 3.73 The Evaluation Panel report was prepared for, and approved by, the delegate (the Executive Director, Marketing and Property Management of ACT Property Group) on 7 September 2016 in accordance with Government procurement requirements.
- 3.74 The preferred tenderer proposed in its *Expression of Interest* that it pay an annual rent of \$360,000 per annum for a term of ten years and three months for both Huntly and Piney Creek. The \$360,000 comprised two elements; \$285,000 for the Huntly Estate and \$75,000 for the Piney Creek licence. In a minute dated 12 December 2016, the former Chief Executive Officer of the Land Development Agency authorised the Agency to enter into a sublease with the preferred tenderer for an annual rental income of \$300,000.
- 3.75 A sublease was executed on 4 January 2017 for an annual rental income of \$285,000, commencing on 1 October 2016 for ten years and three months for Huntly alone. The authorising delegate for the sublease was the former Chief Executive Officer of the Land Development Agency. On 11 December 2017 a Licence was agreed for Piney Creek for a term of ten years from 1 October 2017 for \$2,450 per quarter. This is equivalent to \$9,800 per annum, and is \$65,200 per annum less than the figure tendered, evaluated, selected and endorsed by the Evaluation Panel (\$75,000).
- 3.76 The *Information Memorandum* provided to prospective tenderers for Huntly and Piney Creek stated that there was to be a sublease and separate grazing licence. The eventual sum of the two contracts entered into (\$285,000 and \$9,800 per annum, that is, \$294,800 per annum over ten years) is less than the sum tendered (\$65,200 less than the \$360,000

tendered). The Land Development Agency did not adequately document the negotiations that occurred that resulted in the agreed price that was different from the panel-endorsed tendered amount.

- 3.77 According to records held by the Suburban Land Agency, the sublessee had paid \$357,133 in rent to the former Land Development Agency for the period 1 October 2016 to 31 December 2017. This is in accordance with the terms of the executed sublease of 4 January 2017 for Huntly, that is, a rent of \$285,000 per annum.

Payment for services

- 3.78 The former Land Development Agency paid a fee of \$151,717 (ex GST) to CBRE on 23 March 2017 for CBRE's work in procuring the sublessee for Huntly. The CBRE fee did not include a fee in relation to Piney Creek as the licence had not been entered into by 23 March 2017. The Huntly fee exceeded the original estimated fee of \$47,500 (ex GST) based on an estimated rental income⁸ of \$95,000 (ex GST) for Huntly (or \$120,000 for both Huntly and Piney Creek). The agreed fee of \$151,717 (ex GST) was based on a percentage (ten per cent) of five years' rental income plus additional disbursements.

Table 3-1 Estimated and actual fees (ex GST) for the leasing of Huntly and Piney Creek

Property	Original LDA/CBRE estimate of rental income	Original LDA estimate of CBRE fee	Tender and panel endorsed rental income	Estimate of CBRE fee based on agreed rental income	Estimate of 'industry standard' fee as advised by ACT Property Group
Huntly (1,605 hectares)	\$95,000	\$47,500	\$285,000	\$142,500	\$28,500 (10% of first year's rent)
Piney Creek (451 hectares)	\$25,000	\$12,500	\$75,000	\$37,500	\$7,500 (10% of first year's rent)
CBRE 'additional disbursements'				\$9,217	\$13,000 (\$8,000 + \$5,000)
Total	\$120,000 (the figure used in discussing terms)	\$60,000	\$360,000	\$189,219 (or \$151,717 excluding Piney Creek)	\$49,000 (or \$41,500 excluding Piney Creek)

Source: Audit Office calculations based on Huntly records held by the former Land Development Agency

⁸ The estimated figure used by CBRE and the former Land Development Agency in discussions about terms (6 to 12 April 2016).

- 3.79 The agreed rent of \$285,000 per annum for Huntly was substantially higher than the former Land Development Agency's estimated rental income of \$95,000 per annum. On the basis of Huntly rental income alone, this is a good financial outcome compared to former Land Development Agency expectations. While the ten per cent fee agreed for CBRE (based on a multiple of five years rental income) being \$151,717 (ex. GST) exceeded a \$41,500 (ex. GST) fee that would have been applicable on the agreed rent (\$285,000) if ACT Property Group advice had prevailed it needs to be recognised that there was no precedent for judging the scope of the work and interest. As it eventuated the interest was high. While the circumstances were uncertain and complex it was beholding on the former Land Development Agency to justify accepting the fee, this was not done.
- 3.80 As discussed in paragraph 3.62, CBRE was not involved in the Panel Evaluation process. There is no evidence in the former Land Development Agency records that any adjustment was made to CBRE's fee to reflect that this service was not required. The former Director, Sales, Marketing and Land Management as the Delegate approved the payment of \$151,717 (GST exclusive) on 7 March 2017.

RECOMMENDATION 4**PROBITY IN SELECTING AGENTS, CONTRACTORS AND CONSULTANTS**

While the Suburban Land Agency was not the subject of this audit, since 1 July 2017 the Suburban Land Agency has had responsibility for activities considered in this audit that were previously those of the former Land Development Agency. Recommendations are therefore made to the Suburban Land Agency.

The Suburban Land Agency should:

- a) document reasons for proposing to engage an agent, contractor or consultant and have this agreed and approved;
- b) monitor the implementation of contracts and authorise in writing reasons for any departure from the agreed contract; and
- c) give particular attention to scrutinising and authorising in writing any contractual terms, such as terms for the payment of an agent, that are a departure from standard terms.

Selection of, and instructions to, valuers

- 3.81 The former Land Development Agency was provided with valuation reports or letters containing advice on value by three companies in relation to the nine purchases or proposed purchases (refer to Table 3-2).

Table 3-2 Valuation reports or letters containing advice on value

Purchase	Document stated purpose / dated	Valuer
Lands End (Blocks 1591 to 1597)	Valuation Report (16 February 2015)	Knight Frank Valuations Canberra
	Valuation Report (16 February 2016)	Specialised Valuation Services
Milapuru (Block 19)	Valuation Report (11 February 2015)	Knight Frank Valuations Canberra
	Referred to as 'advice on speculative value' (letter 5 March 2015)	Knight Frank Valuations Canberra
Fairvale (part of former Block 491)	Referred to as 'updated valuation and consultancy' (letter 14 September 2015)	Colliers International Valuation and Advisory Services
Huntly (Blocks 412, 413, 426, 487, 489)	Valuation Report (10 April 2015)	Knight Frank Valuations Canberra
Wintergarden Blocks 1491, 1492, 1587)	Valuation Report (7 July 2016)	Knight Frank Valuations Canberra
	Referred to as 'post auction advice' (19 July 2016)	Knight Frank Valuations Canberra
Winslade (Blocks 425, 439, 440, 441, 456, 476)	Valuation Report (11 May 2016)	Knight Frank Valuations Canberra
Pine Ridge (Block 1600)	Valuation Report (20 April 2017)	Knight Frank Valuations Canberra
The Vines (Block 1582)	Valuation Report (2 October 2015)	Knight Frank Valuations Canberra
Wagtail Park (12ha of Block 1601)	Valuation Report (2 October 2015)	Knight Frank Valuations Canberra
	Valuation Report (21 September 2015)	Specialised Valuation Services

Source: Former Land Development Agency records of valuations

3.82 The former Land Development Agency Chief Executive Officer advised that there is a limited pool of valuers that are expert in undertaking rural leasehold land valuations in the ACT:

This comes back to the fact of not having a very big pool of valuers that understand the market. ... There two or three valuers that can actually do rural valuations ...

3.83 In an interview under oath or affirmation, a former Land Development Agency Board Member stated:

There's not many competent, established, experienced practitioners. ...There's probably about half a dozen people around the town, if that, that I would regard as competent long-term established valuers. ... This is a very niche area of valuation, this urban land consolidation and the potential then, you know, for urban development of land adjacent to englobo lands and so forth.

3.84 In advice to the Audit Office, the ACT Valuation Office advised:

The procurement of independent services is also complicated by a small valuer subset in the ACT with requisite capability. This means that the valuers used to provide advice for the Territory would invariably be the same or linked with valuers that provide advice to opposite parties in a transaction.

Selection of valuers

3.85 Thirteen valuation reports or letters containing advice on value were provided for the nine properties purchased by the former Land Development Agency. These were undertaken by three companies:

- Knight Frank Valuations Canberra;
- Specialised Valuation Services; and
- Colliers International Valuation and Advisory Services.

3.86 One company (Knight Frank Valuations Canberra) provided valuation reports to the former Land Development Agency for eight of nine properties. (Knight Frank Valuations Canberra provided valuation advice to the former owner of Fairvale).

3.87 For two properties (Lands End and Wagtail Park) the former Land Development Agency received two valuation reports (from Knight Frank Valuations Canberra and Specialised Valuation Services). For six other properties (not including Fairvale where no valuation report was commissioned by the Land Development Agency) one valuation report was obtained from Knight Frank Valuations Canberra by the former Land Development Agency.

3.88 The independent market valuations by Knight Frank Valuations Canberra were undertaken from February 2015 to April 2017. Knight Frank Valuations Canberra also provided letters with advice on value in addition to valuation reports in two cases (Milapuru and Wintergarden). Knight Frank Valuations Canberra was therefore the sole source of valuation information (valuation report and/or letters containing advice on value) for six of eight properties (75 per cent) and was one of two sources of advice for the other two.

3.89 There were risks associated with the former Land Development Agency concentrating its independent valuation information:

- as valuation is not an exact science, two or more valuations are more likely to highlight and counterbalance outlier values;
- as valuation methodologies often require comparators which are based on market information and market intelligence, using more than one valuer ensures a broader range of information and intelligence upon which to base valuations;
- concentrating independent valuations with one valuer may lead to the compounding of errors as a following valuation relies on prior valuations as comparators;
- association and influence between valuers and agents due to the scale and uniqueness of ACT rural property market;

- confirmation bias, since a valuer is less likely to produce a valuation that calls into question the accuracy of prior valuations by them; and
- the concentration of privileged and commercially sensitive material in the hands of one company.

3.90 In relation to the work of valuers and other agents, while valuers and agents are obliged to act in accordance with professional codes (e.g. refer to 3.66), the Audit Office did not find evidence that any declaration had been made by individuals or organisations, or binding agreements entered into by individuals or organisations and the former Land Development Agency:

- to maintain information confidentiality; or
- to prevent commercial or private advantage being taken from privileged information.

3.91 Given the limited number of valuers and the importance of establishing an independent market valuation to guide the purchase price it would have been prudent for the former Land Development Agency to have implemented measures to manage this dependency, including examining possible conflicts of interest and reducing reliance on primarily one valuer. While this may be difficult if there is a limited pool of valuers with expertise in ACT rural land valuation, there was no evidence that any actions were taken to manage this risk.

3.92 One valuer, Knight Frank Valuations Canberra, was the source of independent market valuation advice where a valuation report was prepared, for 75 per cent of the rural properties examined in this audit which were purchased or were being purchased by the former Land Development Agency. While acknowledging that there is a limited number of valuers with ACT rural land valuation expertise, there is no evidence that the former Land Development Agency took action to reduce the reliance on this one valuer. While acknowledging this is a challenging issue in the ACT options for securing valuation services from several valuers needs to be examined.

Instructions to valuers

3.93 A vendor could reasonably expect former Land Development Agency valuations to be in accordance with the Framework, as this was the publically-available Government policy. As mentioned in paragraph 2.65 the Framework identifies the need for an independent market valuation. The market valuation could reasonably be expected to accord with accepted valuation standards, such as the *Australia and New Zealand Valuation and Property Standards* (2012). These standards state, for example, that:

Instructions should be confirmed in writing, and include details regarding access arrangements, identification, ownership, agreed fee (or basis for its calculation) and, if applicable, the purchase price and the selling agent.

The instructions should also list the parties intended to rely on the valuation, the purpose of the valuation, and agreed time for completion of the report.

3.94 Transparency is of particular importance where valuations instructed by the former Land Development Agency were intended to be, or were subsequently, shared with the

prospective vendor. Records identify that valuation reports were shared with vendors with respect to two purchases: Huntly and Winslade.

3.95 Instructions for undertaking valuations that were issued by the former Land Development Agency were examined. Instructions were found but served a more limited purpose than that established in the *Australia and New Zealand Valuation and Property Standards*. For example:

- in nine instances, the purpose of the valuation was not explicit in the instruction; and
- for Lands End and Milapuru properties, an email from the former Land Development Agency referred to ‘as per our discussion/brief this morning’ without any further detail.

3.96 For Lands End, Pine Ridge and Wagtail Park properties an instruction to commence was appended to the valuer’s report.

3.97 Instructions from the former Land Development Agency to valuers to undertake valuations were not always given to valuers in writing, and when provided in writing contained insufficient information. Without the availability of a detailed written instruction, prior to a property inspection, incorporating a clear purpose and basis for the valuation, there is a risk to the quality and integrity of the valuation.

The purchase of Fairvale

3.98 Negotiations for the sale of Fairvale (Block 491) involved several parties and a subdivision. At the conclusion of negotiations, two separate sale transactions were agreed:

- one between the vendor and one of the vendor’s valuers for a part of Block 491 (new Block 517); and
- another between the vendor and the former Land Development Agency for the remainder of Block 491 (new Block 518).

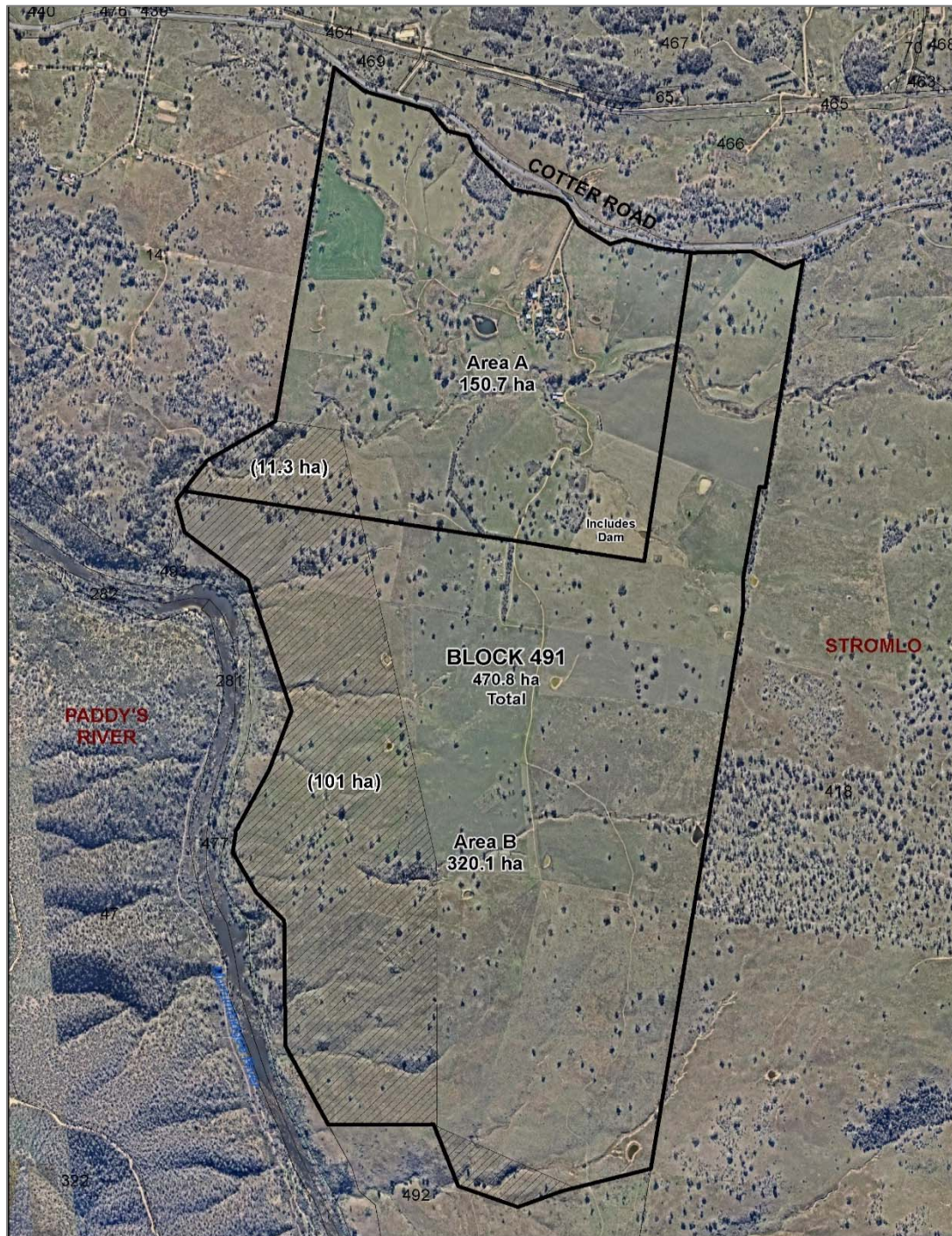
3.99 The parties involved in negotiations for the sale of Fairvale included:

- the vendor;
- Landmark Harcourts, as the vendor’s agent;
- the Director, Knight Frank Valuations Canberra, as a valuer for the vendor and subsequently in their private capacity with their spouse as the purchaser of part of Fairvale;
- the former Land Development Agency as the purchaser of part of Fairvale; and
- the Colliers International State Chief Executive, ACT, as an agent for the former Land Development Agency in the purchase and in providing valuation advice to the former Land Development Agency (in their capacity as Director (ACT Division) of Colliers International Valuation and Advisory Services).

3.100 Figure 3-1 shows Fairvale (Block 491) as 470.8 hectares of which 112.3 hectares is zoned NUZ4 (River Corridor – crossed hatched) and 358.5 hectares is zoned NUZ2 Rural Land. Also shown is the subdivision of Block 491 that resulted:

- Area A (new Block 517) - sold to the Director, Knight Frank Valuations Canberra and their spouse; and
- Area B (new Block 518) - sold to the former Land Development Agency.

Figure 3-1 Proposed subdivision of Fairvale, including NUZ4 River Corridor (hatched)



Source: Former Land Development Agency Board report (No. 146.2.3a 24 September 2015)

Interests in the purchase of Fairvale

- 3.101 On 11 December 2014 the former Land Development Agency Board approved the Land Development Agency to:

... initiate discussion with the owners of the adjoining sites [to Block 19], Blocks 418 and 491, with a view to the possible strategic acquisition at a later date.

- 3.102 No evidence was found to confirm that the former Land Development Agency acted on this until 29 July 2015.

- 3.103 In an interview under oath or affirmation, Fairvale's vendor advised that they had begun preparatory actions to put the property on the market in May 2015, and on 2 July 2015 engaged Landmark Harcourts to be their selling agent. In response to the draft proposed report, Fairvale's vendor advised that they sought valuation advice for the purpose of preparing for the sale and that they eventually sought four separate valuations. The last valuation was sought from the Director, Knight Frank Valuations Canberra, who provided a draft valuation report dated 31 July 2015 to the vendor on 3 August 2015, which valued Block 491 in the range of \$4.2 million to \$4.75 million (GST exclusive).

Former Land Development Agency interest

- 3.104 In an interview under oath or affirmation, Fairvale's vendor advised that they had first become aware of the former Land Development Agency's interest in purchasing Fairvale on 29 July 2015, before the property was advertised on the market, following a telephone call from their agent (Landmark Harcourts). The vendor subsequently attended a meeting on 4 August 2015 with their agent, where they met with the Colliers International State Chief Executive, ACT (the agent for the former Land Development Agency). The vendor advised that they were told at that meeting:

[Colliers International State Chief Executive, ACT] via [PRD Nationwide] and [the former Chief Executive Officer of the Land Development Agency] have [been] given consent to purchase properties in the Cotter Road area. They have a strategic interest.

Director, Knight Frank Valuations Canberra's interest

- 3.105 According to information provided under oath or affirmation by the vendor and the Director, Knight Frank Valuations Canberra, in the course of providing valuation advice the Director, Knight Frank Valuations Canberra proposed to the vendor an arrangement whereby part of Fairvale would be sold to the former Land Development Agency and part of Fairvale would be sold to the Director, Knight Frank Valuations Canberra and his spouse.

- 3.106 The Director, Knight Frank Valuations Canberra advised that this proposition was put to the vendor on 3 August 2015. In an interview under oath or affirmation the Director, Knight Frank Valuations Canberra advised:

So I had a private, personal conversation with [the vendor] around what might be able to happen. I said to [the vendor] ... "You need – you and [your spouse] need to be comfortable." And [the vendor] said, "Well, you and [your spouse] need to be comfortable also if we're going

to pursue this.” And I said, “I’m not sure that [Landmark Harcourts] will understand that the ACT Government is acquiring properties and would know anyone in the ACT Government to – to assist.” So I said, “I’m happy to act on your behalf in this instance in this process.” And so that’s how it sort of came to pass.

...

I said “Look, in order to progress things – I’m happy to talk to the ACT Government/LDA if you want me to, on your behalf.

Audit Office

Why would you do that?

Director, Knight Frank Valuations Canberra

Because they may well - I said “I can’t afford the whole property. They may be interested. They may not. I don’t know”.

...

And I said, “Look, there’ll have to be a three-way view.” And then [the vendor] said, “Look, if you ring them – I’m happy for you to ring them.” So I rang.

...

I think I called [the Chief Executive Officer of the Land Development Agency]. And I think I met ... with [the Chief Executive Officer of the Land Development Agency] very soon after, the following days.

- 3.107 In their response to the draft proposed report on 9 May 2018 the Director, Knight Frank Valuations Canberra advised that:

To the best of [the Director’s] knowledge, the vendor was not aware of any interest by the LDA [prior to the Director’s proposition that was put to the vendor on 3 August 2015].

- 3.108 On 6 August 2015 the Director, Knight Frank Valuations Canberra sent an email to the vendor’s agent, Landmark Harcourts, stating:

Further to our discussion a few moments ago, please find enclosed a brief description from my draft [valuation] report.

As mentioned I have discussed a possible alternate approach with [the vendor] and disclosed a potential interest to purchase the front third of the property assuming the ACTG would still be interested in the balance.

In the first instance I would like to discuss it with [the Chief Executive Officer of the Land Development Agency] (when he is available) then happy to get together with yourself and [the Chief Executive Officer of the Land Development Agency] and [the Colliers International State Chief Executive, ACT representing the Land Development Agency’s interests] if need be.

- 3.109 In response to the draft proposed report on 1 May 2018 the vendor advised that they responded to the proposal to divide Fairvale for the purpose of sale with words to the effect of ‘I don’t think that is possible, but if you wish to pursue the option of purchasing a part of the property with the government that is up to you’ and ‘if you know what to do go for it’. In response to the draft proposed report Fairvale’s vendor also advised that the Director, Knight Frank Valuations Canberra was not acting on the vendor’s behalf, and that the Director was not the vendor’s agent.

3.110 In response to the draft proposed report on 9 May 2018 the Director, Knight Frank Valuations Canberra advised of the various discussions that took place in the ensuing days:

On 7 August 2015 at 8am [he] met with the LDA CEO and ran through the proposal and declared [his] interest in acquiring part of the property. The LDA CEO said that he would engage Colliers Chief as he had him chasing a number of rural leases and said that it would work if it was agreed 'off market' and if all parties agreed. The LDA CEO said it could well be a *'win for all parties'* as the LDA did not want the property with the improvements.

On Friday 7 August 2015 at 9.50am [he] telephoned the vendor and went through the discussions he had that morning with the LDA CEO. On 7 August 2015 at 10.15am the Colliers Chief telephoned [and he] explained that:

1. He had recently had to do a valuation of a property called Fairvale, on the Cotter Road for the vendor; and
2. He had put a proposal to the vendor relating to the purchase of part of the property in conjunction with the LDA, if they were interested in purchasing the balance of lands and that he had met with the LDA CEO and explained the situation.

At that point [he] stated [his] intent to purchase part of the property and was acting on behalf of the vendor and was happy to work with the LDA regarding the balance of the lands. The Colliers Chief explained that he had a role with the ACT Government/LDA ... He explained he had not been advised about 'Fairvale' and [the Director, Knight Frank Valuations Canberra] said that he had met that morning with the LDA CEO who had confirmed interest in acquiring part of the property ... [The Director, Knight Frank Valuations Canberra] said that the LDA CEO was comfortable with his proposal for the LDA to purchase approx. two-thirds of the property and that it may even help with LDA cash flow, as it would not be buying a block with improvements.

3.111 Notwithstanding these discussions, the Colliers International State Chief Executive, ACT asserts they continued to proceed on the assumption that the sale of Fairvale would be between the vendor and the former Land Development Agency as the sole purchaser. In an email to the former Chief Executive Officer of the Land Development Agency on 24 August 2015 the Colliers International State Chief Executive, ACT stated:

... I was not aware that we changed the process.

3.112 The Colliers International State Chief Executive, ACT was asked the meaning of the email of 24 August 2015 in an interview under oath or affirmation and advised:

Well, that now that they were going to – someone else was going to buy part of the property.

And that was my surprise, because I wasn't aware that – all of a sudden now [the Director Knight Frank Valuations Canberra] had had a conversation with the owner and ... [they] wanted to buy part of the property

3.113 The Audit Office notes that there are potential differences in the recollection of the Director, Knight Frank Valuations Canberra (paragraphs 3.107 to 3.110) and Colliers International State Chief Executive, ACT (paragraphs 3.111 and 3.112) as to the timing of Colliers International State Chief Executive, ACT's knowledge of the parties to the purchase of Fairvale.

- 3.114 On 11 December 2014 the former Land Development Agency Board approved the Land Development Agency to initiate discussion with specific landowners in the Western Edge Study area, including the owner of Fairvale, 'with a view to the possible strategic acquisition at a later date'. Independently, in May 2015 the owner of Fairvale undertook activity to prepare the block for sale, including engaging a selling agent and engaging a number of valuers to provide advice on the potential value of the block.
- 3.115 In an interview under oath or affirmation, Fairvale's vendor advised that they had become aware of the former Land Development Agency's interest in purchasing Fairvale on 29 July 2015, before the property was advertised on the market. On 3 August 2015, the Director, Knight Frank Valuations (one of the vendor's valuers) proposed an arrangement to the vendor whereby the Director and his spouse would purchase part of the property and the other part of the property would be sold to the Land Development Agency. Throughout early to mid-August 2015 negotiations for the purchase of Fairvale ensued.

Negotiation of a price for Fairvale - not subdivided

- 3.116 According to information provided in an interview under oath or affirmation and in advice received in response to the draft proposed report from the Director Knight Frank Valuations Canberra on 9 May 2018, the Director was at a meeting on 10 August 2015 with the Colliers International State Chief Executive, ACT (agent of the former Land Development Agency) and the former Land Development Agency Chief Executive Officer at which:

... the [Colliers International State Chief Executive, ACT] proposed that the vendor sells to the LDA for a purchase price of \$4.95m plus \$500,000.

- 3.117 The Colliers International State Chief Executive, ACT under oath or affirmation also advised of an exchange of emails between 10 August and 13 August:

Audit Office

So that – the 10th of August gives you the basis for then forming a heads of agreement, as some terms that are being sent on 13 August?

Colliers International State Chief Executive, ACT

That, and following [the Director, Knight Frank Valuations Canberra's] email and – because I believe [the agent from Landmark Harcourts] went overseas then on holidays. [The Director, Knight Frank Valuations Canberra] took charge of the conversation and he sent an email to me saying that the client had met with [their] accountant, as we'd recommended, and advised they wanted the offer provided in two components ...

- 3.118 The sale price of \$5.45 million and terms discussed on 10 August 2015 were for the entire Fairvale property (470.8 hectares). This was confirmed in an exchange of letters between the Colliers International State Chief Executive, ACT (agent for the former Land Development Agency) and Landmark Harcourts (the vendor's agent) on 13 and 17 August 2015. The letter of 13 August 2015 from the Colliers International State Chief Executive, ACT and the response from the vendor's agent does not refer to any proposed subdivision for the property or part sale of the property to the Director, Knight Frank Valuations Canberra. The Director, Knight Frank Valuations Canberra was copied in to the letter of 13 August 2015 from the Colliers International State Chief Executive, ACT.

- 3.119 On 10 August 2015 a price of \$5.45 million was provisionally agreed between the vendor's agent (Landmark Harcourts) and the former Land Development Agency's agent (Colliers International State Chief Executive, ACT) for the whole of Fairvale (Block 491, 470.8 hectares not subdivided). The sale price was documented in an exchange of letters between the Colliers International State Chief Executive, ACT (agent for the former Land Development Agency) and Landmark Harcourts (the vendor's agent) on 13 and 17 August 2015.

Sale of subdivided Fairvale

- 3.120 Contrary to the terms exchanged in letters between the former Land Development Agency and the vendor of Fairvale, dated 13 August and 17 August, at some point between 7 August and 24 August 2015 it is apparent that the vendor agreed to sell Fairvale in two parts: one to the former Land Development Agency and one to the Director, Knight Frank Valuations Canberra. This was to be achieved through the subdivision of Block 491 (refer to Figure 3-1). On 24 August 2015 the vendor's agent (Landmark Harcourts) emailed the vendor, the Director, Knight Frank Valuations Canberra, the Colliers International State Chief Executive, ACT, and the former Executive Director, Greenfields (Land Development Agency) noting:

I would like to stress that while [the vendors] are happy to cooperate to facilitate a transaction to the benefit of all parties, they are very motivated to keep the process quick and simple. There has been a price for the whole property previously agreed and it is our expectation that the sum of the now proposed two contracts will equal \$5.45 million. The [vendors] also wish to sell the whole property, so I would expect that the contracts will have to be interdependent.

- 3.121 On 24 August 2015 the former Land Development Agency instructed the ACT Government Solicitor to advise on:

How can the LDA acquire the desired part of the Block [491] from the Crown lessee; and
How long will that process take?

- 3.122 The ACT Government Solicitor's letter (28 August 2015) states, as background:

The vendor is open to the prospect of divesting [themselves] of the Desired part of the Block to LDA on commercial terms, however [the vendor] is also entertaining at least one other offer for the remainder of the Block (Remainder) from a third party.

The LDA does not wish to acquire the Remainder and has no objection to the third party acquiring it. However LDA wishes to complete its acquisition of the Desired Part as soon as possible and is concerned that dealings with the third party may affect its timetable.

LDA has the capacity to purchase the entire Block from [the vendor] with a view to divesting itself of the remainder however, it is concerned that the *Planning and Development Act 2007* may restrict its ability to sell the Remainder by direct sale to the third party.

Advice on value of separate parts

- 3.123 In the process of the Land Development Agency purchasing a share of Block 491 the former acting Executive Director, Land Development of the Land Development Agency requested the Colliers International State Chief Executive, ACT (in their capacity as Director (ACT Division) of Colliers International Valuation and Advisory Services) provide advice on the value of the two proposed parts of the Fairvale block. In an email dated 14 September 2015

the former acting Executive Director, Land Development of the Land Development Agency requested:

Can you check the proposed subdivision to confirm the value [the Director, Knight Frank Valuations Canberra] has proposed is close to our expectation on the land value

- 3.124 The Colliers International State Chief Executive, ACT provided a response in a letter titled *Acquisition of Block 491, Stromlo ACT* dated 14 September 2015:

We refer to your instructions to provide updated valuation and consultancy in respect to the apportionment of the purchase price of Block 491 Stromlo, ACT based on the surrender and grant of two (2) separate Crown Leases.

A purchase of Block 491, Stromlo has been agreed at \$4,950,000 for the 470.80 hectares plus \$500,000 for the improvements on the land in Area A of the site.

The agreed land areas for the new Crown Leases that will be issued following the surrender of the existing Crown Lease are summarised below.

Portion A – Crown Lease (include improvements)	150.70 hectares
Portion B – Crown Lease 2	320.10 hectares

- 3.125 The three-page letter from the Colliers International State Chief Executive, ACT letter contained advice on value. The letter was provided to the former Land Development Agency Board at its 24 September 2015 meeting, at which the Board agreed to purchase part of Block 491, Fairvale (new Block 518).

- 3.126 In response to the draft proposed report on 10 May 2018 the Suburban Land Agency advised that based on available records it understood:

The LDA sought advice from its agent, Colliers, on the appropriate apportionment of the land value across the two parcels. This advice indicated that the LDA portion of the land, on the basis of the previously determined market valuation, was \$3.1 million and this was the price paid by the LDA.

- 3.127 At some point between 7 August and 24 August 2015 it is apparent that the vendor agreed to sell Fairvale in two parts: one to the former Land Development Agency and one to the Director, Knight Frank Valuations Canberra. The Colliers International State Chief Executive, ACT (in their capacity as Director (ACT Division) of Colliers International Valuation and Advisory Services) was asked to provide advice on the value of the two proposed parts of the Fairvale block. This advice was provided on 14 September 2015 and was subsequently provided to the former Land Development Agency Board at its 24 September 2015 meeting, at which the Board agreed to purchase part of Block 491, Fairvale (new Block 518).

Former Land Development Agency's agreement to the subdivided sale of Fairvale

- 3.128 On 24 November 2015 the vendor surrendered the leasehold on the 471 hectare property and was re-granted a subdivision of 151 hectares (new Block 517). The former Land Development Agency paid \$3.1 million to the vendor for surrendering 320 hectares of leasehold, which then became Territory unleased land (new Block 518, i.e. the southern end of former Block 491). On 9 February 2016, the vendor sold the 151 hectare subdivision (new

Block 517, i.e. the northern end) to the Director, Knight Frank Valuations Canberra and their spouse, having exchanged contracts on 11 November 2015.

- 3.129 The former Chief Executive Officer of the Land Development Agency under oath or affirmation was asked about the Director, Knight Frank Valuations Canberra's interest in Fairvale:

Audit Office

When did you become aware that there was a third party interest?

Former Land Development Agency Chief Executive Officer

When I went out and met with [the vendor] and [the Director Knight Frank Valuations Canberra] was there.

- 3.130 A former Land Development Agency email containing a proposed visit date identifies that the former Chief Executive Officer visited the Fairvale property on 18 August 2015. It is noted that this view is inconsistent with the views of the Director, Knight Frank Valuations Canberra relating to a discussion on 7 August 2015 (refer to paragraphs 3.106 to 3.111)

- 3.131 The former Chief Executive Officer of the Land Development Agency was asked by the Audit Office in an interview under oath or affirmation how they responded when presented with the proposal from the Director, Knight Frank Valuations Canberra to purchase part of Fairvale. They stated:

Well I probably rejected it out of hand to start with. But then again you start thinking about different bits and pieces, and you then look at logical sequences as well.

...

You know, as long as there was the right formula approach. I was looking at it more for a long-term for future land development.

Consideration of risks associated with subdivision

- 3.132 The information accompanying the instruction to the Colliers International State Chief Executive, ACT dated 14 September 2015 and the resulting 'updated valuation and consultancy' three-page letter (refer to paragraph 3.125) were examined. Neither identifies any differences in the 'per hectare' land values for either part of the subdivision, other than in relation to the area of each subdivision defined as NUZ2 i.e. Rural, and NUZ4 i.e. River Corridor. On the basis that NUZ2 Rural is more 'developable' than NUZ4 River Corridor, the part of the Fairvale block not purchased by the former Land Development Agency is proportionately more developable (139 of 150 hectares i.e. 93 per cent) than the part purchased by the former Land Development Agency (219 of 320 hectares i.e. 68 per cent) (refer to Figure 3-1).
- 3.133 Through interview and a review of the former Land Development Agency's records the rationale for agreeing to the proposed subdivision was examined, given that the former Land Development Agency Board had provisionally agreed on 11 December 2014 to acquire the whole Block 491 (Fairvale).

3.134 The report to the Land Development Agency Board on 24 September 2015 stated:

... [the vendor] has indicated a willingness to sell the part property immediately. The part sale of the property by the owner would leave approximately 150 [hectares] surrounding the existing homestead on the western side of the current Block, which is understood to be the subject of a separate sale to another private interest.

With the acquisition of this significant portion of Block 491 the LDA will have secured 45% of the land identified in the December 2014 strategy to acquire land in the District of Stromlo. At some point in the future there may be opportunity to acquire the residual 150 ha of block 491 however a significant portion of this land would likely be retained as asset protection buffer and the curtilage surrounding the homestead, noting a heritage assessment has yet to be considered at this stage.

3.135 No other information or documentation was evidenced for:

- the rationale for the former Land Development Agency's interest in part of the Block, rather than the whole block as originally envisaged by the Board on 11 December 2014, and how this related to the broader intentions of the former Land Development Agency to accumulate land in the Western Edge Study area for the purpose of ensuring the supply of residential land in the future; and
- the circumstances in which officers of the former Land Development Agency agreed to the subdivision of the property during negotiations for its purchase.

3.136 The former Chief Executive Officer of the Land Development Agency was asked under oath or affirmation why a 'part sale of the property' was of interest to the former Land Development Agency and stated:

We want it for developable purposes, and so forth. And then that's when we did start looking at it. And as I said to you as well, this is very boggy, if you go out. It's probably not developable, a lot of this. And the houses. And I thought - and again I thought, well, if we don't have to outlay all of the money at the time, it's probably not a bad option.

3.137 In a response to the final proposed report on 22 June 2018 the former Chief Executive Officer of the Land Development Agency advised:

... the LDA entered into discussions with the lessee for the purchase of the site. The vendor later decided to sell their block in two parts and offered one of those parts to the Territory and this was purchased by the LDA. The LDA did not influence the decisions made by the vendor and acted in good faith throughout the negotiations.

3.138 No contemporary documentation existed that provided:

- the rationale why the former Land Development Agency supported the subdivision and purchase of part of Block 491 rather than pursuing the purchase of the whole block as originally envisaged by the Board on 11 December 2014; or
- the circumstances in which officers of the former Land Development Agency agreed to pursue the purchase of part of the property during negotiations.

3.139 Approximately 32 percent of the original Fairvale block (Block 491) that was apportioned to the new Block 517, was purchased by the Director, Knight Frank Valuations Canberra. This site appears, by February 2017, to be potentially strategically important as an urban front

area; having significant frontage to the Cotter Road, and the site of a local centre according to the former Land Development Agency's *Draft Stromlo District Master Plan*. This site, compared with the one purchased by the former Land Development Agency, has far less of the NUZ4 River Corridor zoned land which may impede development yield.

- 3.140 While it was suggested that 'a significant portion of [the new Block 517] would likely be retained as an asset protection buffer and the curtilage surrounding the homestead, noting a heritage assessment has yet to be considered at this stage' it is also noted that there are no recorded or registered heritage places or objects on the Block according to the ACT Heritage Register. Furthermore, it was also asserted that Block 517 has drainage issues but there is no documentary evidence that this was examined by the former Land Development Agency.
- 3.141 There was no evidence that the former Land Development Agency identified and assessed risks related to not pursuing the entire purchase of the Fairvale block (Block 491) or risks associated the various roles of the Director, Knight Frank Valuations Canberra. The former Land Development Agency had knowledge of the Director's roles as a valuer for the vendor and as a prospective purchaser, yet the former Agency directly supported the subdivision for no apparent reasons or need. There is no contemporaneous documentation to justify why the purchase of the whole block was not pursued, this presents a probity risk.

RECOMMENDATION 5 PROBITY AWARENESS

While the Suburban Land Agency was not the subject of this audit, since 1 July 2017 the Suburban Land Agency has had responsibility for activities considered in this audit that were previously those of the former Land Development Agency. Recommendations are therefore made to the Suburban Land Agency.

The Suburban Land Agency should provide training and guidance to its staff on identifying and managing probity. This should be part of induction training and be refreshed annually.

Inaccurate or incomplete information

- 3.142 In reviewing documentation in support of decision making, the Audit Office identified information that was either inaccurate or incomplete. This information is in relation to:
- the presentation of policy rationale in Board reports; and
 - conveying the meaning of the Government's Central Molonglo '... removed in perpetuity from being considered as a future urban area'.

Presentation of policy rationale in Board reports

- 3.143 As stated in paragraph 2.30, reports prepared by the former Land Development Agency for its Board and other decision makers in 2015 included limited explanation as to how a proposed purchase would satisfy the Framework's principles and tests.
- 3.144 In a number of reports between 2015 and 2017, there were instances where explanations did not either accurately or completely present information related to Government planning policy. The current *ACT Planning Strategy* (2012) is the ACT Government's planning policy. This strategy should have been explicitly referenced in the planning context for purchases. There were instances where the commentary on Government policy in reports, presented as supporting rationale for considering a purchase, either did not reference the *ACT Planning Strategy* (2012) or emphasised details of the *Canberra Spatial Plan* (2004) that are articulated differently in the *ACT Planning Strategy* (2012). For example:
- Board report No. 143.3.1 (May 2015) (a six-page initial report on the prospective Huntly purchase) states that while concentrating the 'development focus in the Eastern Precinct (Molonglo stages 1, 2 and 3), the key principles of the *Canberra Spatial Plan* would equally apply to cover the Huntly property'. The report does not refer to the *ACT Planning Strategy* (2012) and the *Canberra Spatial Plan's* seven key principles, as stated in the report, were not included in the *ACT Planning Strategy* (2012).
 - a Brief to the Minister for Economic Development dated 10 July 2015 states Lands End '... was identified as an urban capable area and then as a future urban area in the *Canberra Spatial Plan 2004*'. No reference is made to the *ACT Planning Strategy* (2012) in which the term 'urban capable' is neither delineated nor defined. In relation to the reference 'future urban area', the *ACT Planning Strategy* (2012) did not identify any of the Central Molonglo precinct as a 'future urban area'.
 - Board report No. 165.2.2 (May 2017), in relation to the narrative on the policy alignment principle of the Framework, states the '*Canberra Spatial Plan* (2004) shows the location of Pine Ridge which falls in the future Urban Area land use between West Belconnen and Molonglo stage 3. This was re-affirmed in the *ACT Planning Strategy* in 2012'. This area has not been re-affirmed as a Future Urban Area in the *ACT Planning Strategy* in 2012. In the *ACT Planning Strategy* the area (i.e. Pine Ridge) is identified as in the Western Edge Study area, which is not a Future Urban Area.
- 3.145 References in some reports and briefs prepared by the former Land Development Agency for decision-makers relating to future residential growth fronts contained incomplete information related to the Government's planning policy. This presented potential risks to the transparency of information for decision-makers.

Central Molonglo ‘... removed in perpetuity from being considered as a future urban area’

- 3.146 On 13 May 2008 the Chief Minister and Minister for the Environment, Water and Climate Change announced that the ACT Government would place a moratorium on development in Central Molonglo. The media announcement stated:

... based on current projections, land releases in Gungahlin and the rest of Molonglo mean this land will not be needed for housing for 20 years. This moratorium will allow better monitoring and evaluation ... and will help future governments to make a more informed decision as whether to proceed with the development of Central Molonglo.

- 3.147 At the time a *Draft Variation to the Territory Plan No. 281 Molonglo and North Weston* was being considered by the Standing Committee on Planning and Environment. The resulting Committee report made 16 recommendations. On 19 August 2008 the Minister for Planning, in his tabling statement for Variation No. 281 to the Territory Plan stated:

Mr Speaker, Variation Number 281 to the Territory Plan, is the next important step in the implementation of the strategic direction for Canberra’s urban growth as documented in *The Canberra Spatial Plan*.

The Committee’s fourth recommendation is that Central Molonglo be **removed in perpetuity** [Audit emphasis] from being considered as a future urban area.

This recommendation is supported. The ACT Government will remove Central Molonglo from being considered as a future urban area.

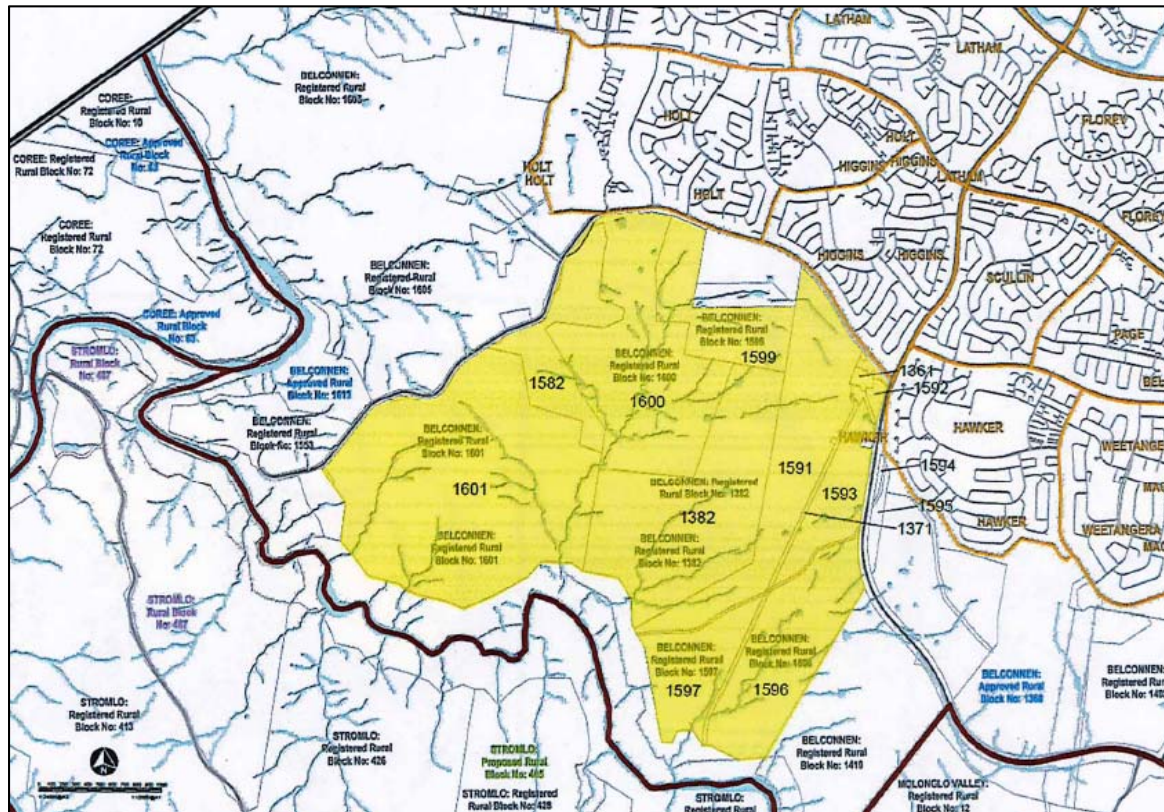
- 3.148 In August 2008 the Government accepted the recommendation of the Standing Committee on Planning and Environment on the *Draft Variation to the Territory Plan No. 281*, that ‘Central Molonglo be removed in perpetuity from being considered as a future urban area’ noting in its response that ‘This recommendation is supported. The ACT Government will remove Central Molonglo from being considered as a future urban area’. This is Government policy until such time as it is changed. The *ACT Planning Strategy* (2012) does not conflict with, or amend, this policy.

- 3.149 The former Land Development Agency referred to Central Molonglo’s removal in perpetuity from being considered a future urban area in Board reports and Briefs commencing with the first purchase, that is, Lands End in June 2015. For example:

- Board report No. 142.3.2 (May 2015) states that ‘while seven years have passed since the moratorium was announced, the commitment to future urban development continues and the initial block releases in nearby Molonglo Stage 3 is scheduled for 2021-2022’; and
- a Brief to the Minister for Economic Development dated 10 July 2015 states ‘Lands End was later identified in the Molonglo Valley Structure Plan 2008 as land within the moratorium in the Central Molonglo Precinct The Commitment to future urban development continues The purchase of Lands End is considered a strategic acquisition in securing land for Government in the Central Molonglo precinct’.

- 3.150 The Board report of 28 May 2015 also included a map attachment, which identified the area the former Land Development Agency referred to as the Central Molonglo precinct (refer to Figure 3-2, in yellow) as having development potential. This is the area of Central Molonglo removed in perpetuity from being considered a future urban area.

Figure 3-2 'Development Potential of the wider Precinct' Board report referring to the Central Molonglo precinct



Source: Former Land Development Agency Board report (No. 142.3.2, 28 May 2015 page 2 and 5)

- 3.151 The area of Central Molonglo removed in perpetuity from being considered a future urban area was also referred to in Board report No. 162.4.1 'LDA Strategy for Stromlo District Land Acquisitions' dated 23 February 2017. The report's Appendix A presents information on demand and supply previously provided to the former Land Development Agency Board in May 2014 (No. 130.4.3), which appears to reference the 13 May 2008 announcement of the Chief Minister and Minister for the Environment, Water and Climate Change of a 'moratorium' and a '20-year' time period. The report states:

The 20 year moratorium on Central Molonglo has delayed the development of 9,000 dwelling sites until 2028 or later and the Gungahlin Strategic Assessment resulted in the removal of approximately 10,000 sites from the Territory's future Greenfield land supply. This equates to a loss of 14.5 years demand for Greenfield land.

3.152 In response to the final proposed report on 22 June 2018 the Suburban Land Agency advised in relation to the 1 May 2014 and the 23 February 2017 reference, based on its interpretation of the reports it understood that:

... the context of the reference to the removal of Central Molonglo from being considered as a future urban area was to highlight that the announcement and a number of other decisions relating to land suitable for residential development had resulted in a significant diminishment in the available supply of land in the ACT.

3.153 In former Land Development Agency Board reports and a Ministerial Brief, information about the area of Central Molonglo removed in perpetuity from being considered a future urban area was inaccurately presented. The Board reports and Ministerial Brief referred to as a '20-year moratorium' rather than being '... in perpetuity from being considered as a future urban area'. This presented potential risks to the transparency of information for decision-makers.

4 MANAGEMENT OF PURCHASED RURAL LAND

- 4.1 In this chapter, the former Land Development Agency's ongoing management of rural land following its purchase is examined. In doing so consideration is given to how ongoing land management has been planned for and implemented, and the extent of executed contractual terms and Land Management Agreements in place.

Summary

Conclusion

The former Land Development Agency gave inadequate attention to the establishment of contracts (licences/subleases) for the use and ongoing management of some rural properties to the west of Canberra that were the subject of this audit. This includes not collecting revenue from the first three purchases (Lands End, Milapuru and Fairvale), which the Audit Office estimates could amount to more than \$200,000.

There are no executed Land Management Agreements in place even though the first purchase was almost three years ago. This presents a risk to sustainably managing these rural lands.

Given the former Land Development Agency purchased areas of land in the Bushfire Abatement Zone to the west of the urban edge of Canberra, it was incumbent on the former Land Development Agency to include these in its Bushfire Operations Plans; this did not occur initially. The Suburban Land Agency has included all purchased lands in its Bushfire Operations Plans since 2016-17.

The former Land Development Agency's property-by-property approach for managing land has not been examined and there may be better approaches if properties are managed in larger holdings; options for the use and on-going management on a large scale warrants examination. Huntly, one of the larger properties purchased (1,605 hectares), is yielding a considerably higher rental return than was anticipated.

Key findings

Lands End (purchased 30 June 2015), Milapuru (31 July 2016), Huntly (8 April 2016), Wintergarden (30 August 2016), Winslade (30 June 2017) and Pine Ridge (31 July 2017) each need to have an executed Land Management Agreement but do not. By December 2018, the latest extension time granted for developing the agreements, properties will have been in the ownership of the Territory for a considerable time, including Lands End being owned for over three and a half years, with no executed Land Management Agreement. Not having a Land Management Agreement in place in a timely manner presents a risk of not achieving the principal

Paragraph

4.15

objective of Land Management Agreements: 'sustainable agricultural management practices and good farm biosecurity for the subject land while maintaining ecological and cultural values present on the land, and protecting the environment from harm'. Reasons why Land Management Agreements have not been secured need to be examined to identify options for preventing this in the future.

The former Land Development Agency did not include all of the properties it purchased in its *Bushfire Operations Plans*; Lands End and Milapuru were not included in the *2015-16 Bushfire Operations Plan* and should have been. They were included in the *2016-17 Bushfire Operations Plan*. The Suburban Land Agency's inclusion of purchased properties in its *2017-18 Bushfire Operations Plan* is comprehensive. However the 2017-18 plan makes reference to licencing and subleasing arrangements for Lands End and Fairvale, but these have not been put in place and so the responsibility to meet fire management obligations is unclear.

4.25

The former Land Development Agency did not establish an adequate contractual basis for the daily management of all former Land Development Agency rural purchases to the west of Canberra. The Suburban Land Agency advised on 10 May 2018 that all properties have executed contracts (licences or subleases) except for Milapuru and Lands End which are being progressed.

4.46

Although agreements were in place for Milapuru (residential tenancy agreements and an agricultural licence), more than \$90,000 in rent that was due up to 31 December 2017 has not been collected. There is also a risk that approximately \$130,000 in rent (a figure estimated by the Audit Office derived from draft terms exchanged, but not settled) for Lands End and Fairvale was foregone up to 31 December 2017.

4.47

Sublease or licence arrangements with the former owners of Wintergarden, Winslade and Pine Ridge are adequate for the purpose of clarifying who is responsible for land management, and some aspects of land management are included in contracts. However for these properties, Land Management Agreements have not been entered into. This means that the full extent of the sublessee or licensee responsibilities is not clear in terms of daily land management practices.

4.48

Arrangements for the daily management of the 3,378 hectares of rural land purchased to the west of Canberra has been on a property-by-property basis. There has been no strategic consideration as to whether or not this is the best arrangement, for example, several properties being under the one contract.

4.49

Management responsibilities

- 4.2 In making the nine rural land purchases the former Land Development Agency acquired responsibility as the leaseholder⁹ for the ongoing daily use and management of the land. This includes:
- entering into a Land Management Agreement in accordance with section 283 of the *Planning and Development Act 2007* and implementing that Land Management Agreement; and
 - making a 'Bushfire Operational Plan' in accordance with section 78 of the *Emergencies Act 2004*, and implementing that Bushfire Operational Plan.
- 4.3 For the daily use and management of the nine rural properties the former Land Development Agency either entered into, or was in the process of entering into, subleases and licences. Some of the former landowners have remained on the property under a sublease/licence.

Land Management Agreements

- 4.4 Section 283 of the *Planning and Development Act 2007* sets out the circumstances when a Land Management Agreement is required. Specifically, paragraph 283(3)(b) provides for the signing of an agreement between the Conservator of Flora and Fauna and the leaseholder when the Planning and Land Authority is by virtue of subsection 283(1):
- (a) granting a rural lease;
 - (b) granting a further rural lease;
 - (c) varying a rural lease; or
 - (d) consenting to the assignment or transfer of a rural lease.
- 4.5 Section 286 (Delayed requirement to enter into land management agreement), specifically subsection 286(2) of the *Planning and Development Act 2007* requires that Land Management Agreements be entered into within six months (or any extended time) of a lease transfer. An extension to the period granted under subsection 286(2) is granted if the Planning and Land Authority (in the Environment, Planning and Sustainable Development Directorate) authorises this in writing (subsection 283(3)).

⁹ With the exception of part (new Block 518) of the former Fairvale (Block 491) which upon the surrender has become Territory unleased land

4.6 The Approved Form (made under section 425 of the *Planning and Development Act 2007*) states:

The principal objective of this Agreement is to establish appropriate sustainable agricultural management practices and good farm biosecurity for the subject land while maintaining ecological and cultural values present on the land, and protecting the environment from harm.

This objective is to be achieved by:

- a) agreeing on general management goals and regimes;
- b) documenting the current state of the subject property; and
- c) proposing appropriate action for the management of specific issues or resolving particular problems

4.7 The ACT Parks and Conservation Service (in the Environment, Planning and Sustainable Development Directorate) has a role in the process of developing a draft Land Management Agreement and has administrative responsibility for monitoring and auditing a leaseholder's compliance with the agreement.

4.8 The former Land Development Agency concluded the purchase of six properties (i.e. where settlement had taken place), for Lands End, Milapuru, Fairvale, Huntly, Wintergarden and Winslade on or before 30 June 2017. In the case of Fairvale, the former Land Development Agency's purchase of Block 518 (a subdivision of the former Block 491) resulted in the surrender of the lease and the land becoming unleased Territory land. Accordingly subsection 283(1) of the *Planning and Development Act 2007*) does not apply and no Land Management Agreement is required.

4.9 For the five other properties on 30 June 2015 (Lands End), 2 July 2015 (Milapuru), 26 February 2016 (Huntly), 26 August 2016 (Wintergarden) and 16 June 2017 (Winslade), the former Land Development Agency wrote to the Environment, Planning and Sustainable Development Directorate requesting consent to transfer the lease and in so doing stated that it would 'undertake to enter into a Land Management Agreement within the meaning of the *Planning and Development Act 2007*, within six months of the transfer of the Crown lease being registered'. Consent to the lease transfer was granted on 30 June 2015, 6 July 2015, 9 March 2016, 29 August 2016, and 27 June 2017¹⁰, respectively. No Land Management Agreements have been executed.

4.10 There is evidence in former Land Development Agency records of preparatory work being undertaken in 2016 and 2017 on draft Land Management Agreements for Lands End, Milapuru, Huntly and Wintergarden.

4.11 Correspondence held by the Leasing Services team (in the Environment, Planning and Sustainable Development Directorate) indicates that the Leasing Services team wrote to the former Land Development Agency on 21 February 2017 reminding it of its (Subsection 286(2)) undertaking to enter into Land Management Agreements within six months of lease

¹⁰ These transfer consent dates were provided in a letter from the Leasing Services team of the Environment, Planning and sustainable Development Directorate to the Suburban Land Agency on 10 November 2017

transfer and that these were outstanding for Lands End, Milapuru, Huntly and Wintergarden. Furthermore the Leasing Services team's letter of 21 February 2017 granted an extension to the former Land Development Agency to 31 December 2017, in accordance with Subsection 286(3) of the *Planning and Development Act 2007*, in order to enter into a Land Management Agreement.

4.12 On 10 November 2017 the Leasing Services team wrote to the Suburban Land Agency reminding it of the former Land Development Agency's undertaking to enter into Land Management Agreements within six months of lease transfer and the subsequent granting of an extension to 31 December 2017 for Lands End, Milapuru, Huntly and Wintergarden. The Leasing Services team's letter of 10 November 2017 also granted an extension to the Suburban Land Agency to 31 December 2018 for the above four properties as well as Winslade and Pine Ridge.

4.13 In its response to the draft proposed report on 10 May 2018 the Suburban Land Agency advised that action had been undertaken and draft Land Management Agreements had been submitted to the ACT Parks and Conservation Service, but these had not been agreed to or endorsed. The Agency advised:

... the execution of Land Management Agreements (LMAs) requires cooperative effort across the ACT Government, and that to formalise this arrangement, extensions were appropriately granted by the relevant agency, and interim measures were in place.

...

Within six months, for all properties other than Milapuru, the former Land Development Agency had submitted the relevant information to the ACT Parks and Conservation Service to allow the LMA process to commence.

...

Updated LMAs for Lands End, Milapuru, Fairvale, Huntly and Wintergarden are in progress. Templates have been lodged with ACT Parks and Conservation Service and the Suburban Land Agency is awaiting responses.

Winslade and Pine Ridge require updated LMAs.

4.14 In its response to the draft proposed report on 10 May 2018 the Suburban Land Agency also advised that the draft Land Management Agreements had been submitted to the ACT Parks and Conservation Service in accordance with the information in Table 4-1.

Table 4-1 Action taken by the former Land Development Agency to progress Land Management Agreements

Property	Settlement	LMA Initiated	Draft Land Management Agreement submitted to ACT Parks and Conservation Service
Lands End	30 June 2015	10 November 2015	8 February 2016
Milapuru	31 July 2015	7 March 2016	27 July 2016
Huntly	8 April 2016	28 June 2016	26 July 2016
Wintergarden	30 August 2016	4 August 2016	4 November 2016
Winslade	30 June 2017	9 November 2017 (SLA)	27 November 2017 (SLA)
Pine Ridge	31 July 2017 (SLA)	9 November 2017 (SLA)	27 November 2017 (SLA)
Fairvale	No Land Management Agreement needed as this is unleased Territory Land. All conditions written into 303 Licence which was never executed but is in draft form		

Source: Suburban Land Agency response to the draft proposed report (10 May 2017).

- 4.15 Lands End (purchased 30 June 2015), Milapuru (31 July 2016), Huntly (8 April 2016), Wintergarden (30 August 2016), Winslade (30 June 2017) and Pine Ridge (31 July 2017) each need to have an executed Land Management Agreement but do not. By December 2018, the latest extension time granted for developing the agreements, properties will have been in the ownership of the Territory for a considerable time, including Lands End being owned for over three and a half years, with no executed Land Management Agreement. Not having a Land Management Agreement in place in a timely manner presents a risk of not achieving the principal objective of Land Management Agreements: 'sustainable agricultural management practices and good farm biosecurity for the subject land while maintaining ecological and cultural values present on the land, and protecting the environment from harm'. Reasons why Land Management Agreements have not been secured need to be examined to identify options for preventing this in the future.
- 4.16 In its response to the draft proposed report on 10 May 2018 the Suburban Land Agency advised that relevant documentation has been provided to the ACT Parks and Conservation Service (in the Environment, Planning and Sustainable Development Directorate).

RECOMMENDATION 6**LAND MANAGEMENT AGREEMENTS**

While the Suburban Land Agency was not the subject of this audit, since 1 July 2017 the Suburban Land Agency has had responsibility for activities considered in this audit that were previously those of the former Land Development Agency. Recommendations are therefore made to the Suburban Land Agency.

The Suburban Land Agency should work with the Conservator of Flora and Fauna to:

- a) finalise Land Management Agreements for rural leasehold land purchased by the former Land Development Agency by December 2018 but preferably sooner;
- b) identify why Land Management Agreements for all the properties purchased in the Western Edge were not developed in a timely manner and identify options to prevent this in the future; and
- c) execute Land Management Agreements for all future rural land purchases within six months of transfer unless there are exceptional circumstances and these are documented.

Fire management

- 4.17 Section 71 of the *Emergencies Act 2004* provides that the Emergency Services Agency Commissioner may declare a Bushfire Abatement Zone. The Bushfire Abatement Zone is an important designation as it heightens the importance of, and makes requirements for, fire management activity to reduce the risk of fire on the urban edge. The ACT Government's *Strategic Bushfire Management Plan* (2014), made under section 72 of the *Emergencies Act 2004*, states:

The Bushfire Abatement Zone [...] is established with consideration of the risk of ignition and fire spreading to the urban edge. All land in this zone, which includes government managed land as well as 74 rural leases, will be subject to more intensive planning and management to maximise its value as a fire abatement zone.

...

With the support of the ACT Government, rural land managers will undertake a planned, whole-of-property approach to reduce the risk of bushfire to their business and surrounding areas.

...

Rural landholders inside the [Bushfire Abatement Zone] are required to produce a [Bushfire Operational Plan] which is subject to approval by the Commissioner, and needs to be reviewed every five years. Auditing and assessment of these [Bushfire Operational Plan] will be undertaken as required to ensure compliance with standards.

Property level fire management plans developed under the ACT [Rural Fire Service's] Farm Firewise program will meet the requirements for [Bushfire Operational Plan]

- 4.18 The nine purchased properties, comprising a total of 3,378 hectares, are west of Canberra in the Bushfire Abatement Zone. Accordingly, there is a statutory obligation on the former Land Development Agency (now the Suburban Land Agency) to have a *Bushfire Operational Plan* to cover the properties.
- 4.19 On 18 February 2016 the Emergency Services Commissioner was advised, who in turn advised the former Chief Executive Officer of the former Land Development Agency, that the Bushfire Council at its meeting on 3 February 2016 had:
- ... discussed that the [Land Development Agency] were purchasing significant sections of land on the Western side of the ACT
 - ... expressed concern as they were uncertain of any fire plans that the [Land Development Agency] were putting in place were in place, noting that rural landholders who previously held the leases for those properties would have had plans to mitigate fire risk
 - ... noted that any land purchased by the Land Development Agency would need to be added to their Bushfire Operations Plan.
- 4.20 The former Land Development Agency's *Bushfire Operations Plans* for:
- 2015-16 did not include the Lands End or Milipuru properties that were purchased on 30 June 2015 and 31 July 2015, respectively; and
 - 2016-17 covered Lands End, Milapuru, Fairvale, Huntly and Wintergarden. Properties purchased up to the end of the first quarter of 2016-17 were included.
- 4.21 In their response to the draft proposed report on 10 May 2018 the Suburban Land Agency advised that, notwithstanding that the Milapuru and Lands End properties were not included in the Land Development Agency's *2015-16 Bushfire Operations Plan*:
- ... both these properties did have cattle grazing to keep the fire fuel loads down at this time. The decision to include these two properties the following financial year was made after meetings with the Emergency Services Agency.
- 4.22 The Suburban Land Agency's *2017-18 Bushfire Operations Plan* covers all seven purchased properties (that had reached settlement) up to the end of the first quarter of 2017-18 (i.e. Lands End, Milapuru, Fairvale, Huntly, Wintergarden, Winslade, and Pine Ridge).
- 4.23 The Suburban Land Agency's *2017-18 Bushfire Operations Plan* identifies fuel management and fuel reduction works for specific blocks and properties. With respect to Lands End and Fairvale the *2017-18 Bushfire Operations Plan* identifies 'licensee' or 'lessee' responsibilities. However, sublessee and licensee responsibilities have not yet been effectively established (refer to paragraphs 4.26 to 4.50) and this creates uncertainty as to who is responsible for undertaking the fuel management work specified in the plan (refer to Table 4-3).
- 4.24 In their response to the draft proposed report on 10 May 2018 the Suburban Land Agency advised that in relation to the *2017-18 Bushfire Operations Plan* that:
- ... there were letters sent to the proposed licensees giving them permission to graze the properties on a short term basis until the respective agreements were put in place. The letters outlined their responsibilities whilst they are occupying the land.

- 4.25 The former Land Development Agency did not include all of the properties it purchased in its *Bushfire Operations Plans*; Lands End and Milapuru were not included in the *2015-16 Bushfire Operations Plan* and should have been. They were included in the *2016-17 Bushfire Operations Plan*. The Suburban Land Agency's inclusion of purchased properties in its *2017-18 Bushfire Operations Plan* is comprehensive. However the 2017-18 plan makes reference to licencing and subleasing arrangements for Lands End and Fairvale, but these have not been put in place and so the responsibility to meet fire management obligations is unclear.

RECOMMENDATION 7 BUSHFIRE OPERATIONS PLAN OBLIGATIONS

While the Suburban Land Agency was not the subject of this audit, since 1 July 2017 the Suburban Land Agency has had responsibility for activities considered in this audit that were previously those of the former Land Development Agency. Recommendations are therefore made to the Suburban Land Agency.

The Suburban Land Agency should align licencing and subleasing arrangements with responsibilities in its fire management *Bushfire Operations Plans* or vice versa.

Arrangements for engaging a land manager

- 4.26 The former Land Development Agency Board papers provided estimates as to when each purchased property may be released for urban (residential) development subject to decisions by the ACT Government and the National Capital Authority (refer to Table 4-2). For seven of the nine properties the estimated timeframe from purchase to the commencement of estimated urban (residential) development is between 9 and 25 years (2025 to 2040). For The Vines and Wagtail Park, the timeframe is two years as their purchase relates to the development of utilities infrastructure.

Table 4-2 Proposed development timeframe

Property	Year of Purchase (settlement)	May be developed from
Lands End	2015	2024
Milapuru	2015	2025
Fairvale (Part Block)	2015	2025
Huntly	2016	2025 - 2030
Wintergarden	2016	2016 - 2026
Winslade	2017	2035 - 2040
Pine Ridge	2017	2030
The Vines	2018 (est)	2020
Wagtail Park	2018 (est)	2020

Source: Audit Office review of former Land Development Agency Board papers (May 2015 to June 2017)

4.27 Former Land Development Agency Board papers indicate that consideration was given to the engagement of a land manager for the time between the purchase of rural land and the commencement of development. For example, the Decision Item report for the purchase of Lands End on 28 May 2015 stated:

Ongoing management of the land would take the form of a licence to either the existing lessee or another interested party through a land management agreement with the LDA. This would allow the operation of the farm to continue until such time as the land in part or as a whole is required for urban development.

4.28 Records identify that the former Land Development Agency Board intended that the former Land Development Agency as the leaseholder should enter into arrangements with others to meet its land ownership responsibilities, for example via a sublease or licence. Records indicate the following was proposed by the former Land Development Agency:

- a sublease with each of the former property owners for Lands End, Milapuru, Wintergarden, Winslade and Pine Ridge;
- a sublease with someone other than the former property owner for Huntly; and
- a licence with someone other than the former owner for the part of Fairvale, that is Block 518 purchased by the former Land Development Agency.

4.29 Subleases have the following characteristics:

- parties must have an intention to create a legal relationship with each other;
- the leaseholder must give the sublessee exclusive possession of the property; and
- there must be a fixed lease term with a set periodic rent.

4.30 Licences have the following characteristics:

- parties have an intention to create a legal relationship; but
- the licensor does not provide the licensee with exclusive possession.

4.31 For example, in relation to Territory unleased land or leasehold land held by the Government, from time to time the Territory offers to the public licensed grazing opportunities.

4.32 Table 4-3 summarises the arrangements for a land manager to occupy and/or manage seven rural landholdings following their purchase as at 31 December 2017. The purchase of The Vines and Wagtail Park had not been completed (i.e. reached settlement) prior to 31 December 2017.

4.33 On 28 June 2018 the Suburban Land Agency advised that settlement had taken place for Wagtail Park (1 June 2018) and The Vines (27 June 2018).

Table 4-3 Arrangements for engaging a land manager as at 1 December 2017

Land purchased (settlement)	Arrangement	Comment
Lands End (30 June 2015)	<p>No written arrangement with the former land owner for the first year after settlement. Owner remained on the property.</p> <p>Former LDA proposed that a licence be entered into with former land owner. This did not eventuate.</p> <p>A year after settlement letters dated 14 July 2016 and 12 August 2016 were sent to the former owner so they could 'occupy and manage' the land on an ongoing basis. There was no mention of rent.</p> <p>A draft licence was prepared (dated 1 April 2017) with terms including rental at \$30,000 pa. The licence was not executed.</p>	<ul style="list-style-type: none"> • Inadequate arrangements for engaging a land manager. No arrangements in place for first 12 months after settlement. • No rent has been received up to 31 December 2017. There is a risk that approximately \$75,000 in rent has been foregone by the LDA (based on 2.5 years of foregone rent calculated at \$30,000 p.a., as per the draft April 2017 licence). • No Land Management Agreement entered into. • Bushfire Operational Plan responsibilities unclear (refer to paragraph 4.21) as no licence in place. • LDA relies on the goodwill of the former owner (now land manager) to address the LDA's leasehold obligations and risks.
Milapuru (31 July 2015)	<p>An arrangement was made with the former land owner.</p> <p>Special conditions as part of contract of sale (3 July 2015) provide for a 12 month licence to occupy and graze, rent free for first six months, thereafter at market rent. Land Management Agreement responsibilities are identified in conditions.</p> <p>Two residential tenancy agreements have been in place from 1 June 2016, which specify rental terms (\$44,820 pa).</p> <p>An agricultural licence (from 1 June 2016) is in place, which specifies ongoing rental terms (rent free for first six months, thereafter at rent of \$3,900 pa). Land Management Agreement responsibilities identified in the agricultural licence.</p>	<ul style="list-style-type: none"> • Inadequate arrangement for engaging a land manager. • Notwithstanding a residential tenancy agreement in place since 1 June 2016, no rent has been collected. Rent due but not collected up to 31 December 2017 amounts to \$85,905. • Notwithstanding an agricultural licence in place since 1 June 2016, no rent has been collected. Rent due but not collected up to 31 December 2017 amounts to \$5,525. • Land management obligations clear in licence but need a Land Management Agreement to be in place to deliver. No Land Management Agreement entered into.
Fairvale (Block 518) (24 November 2015)	<p>An arrangement was made by letter with adjacent landowners to manage the land.</p> <p>Eight months after settlement arrangement made via letters from the former LDA (dated 10 and 20 July 2016). The letters refer to managing the property.</p>	<ul style="list-style-type: none"> • Inadequate arrangement for engaging a land manager • No rent has been received up to 31 December 2017. There is a risk that approximately \$58,333 in rent has been foregone by the LDA

	<p>Former LDA proposed a licence to graze. This was drafted on 1 April 2016 but not executed. Draft licence terms provided to two parties. Rental at \$14,000 p.a. for each of the two adjacent landowners proposed.</p>	<p>(based on 25 months of foregone rent calculated at \$28,000 p.a. for the two adjacent properties as per the April 2016 draft licences).</p> <ul style="list-style-type: none"> • LDA relies on the goodwill of the licensee to address the LDA's leasehold obligations and risks. • Bushfire Operational Plan responsibilities unclear (refer to paragraph 4.21) as no licence in place.
<p>Huntly (8 April 2016)</p>	<p>Arrangements have been made.</p> <p>There was an arrangement with a private person who was not the former land owner or an abutting land owner to manage the land in the short term under a services agreement (8 April 2016 to 30 September 2016) for \$48,000.</p> <p>A longer term land manager was agreed following a tendering process. A sublease (1 October 2016 to 31 December 2026) for \$285,000 pa was executed. In short and long term contracts land management responsibilities were specified. Rent has been paid.</p>	<ul style="list-style-type: none"> • Adequate arrangements for engaging a land manager. • No Land Management Agreement entered into.
<p>Wintergarden (30 Aug 2016)</p>	<p>An arrangement has been made with the former owner to occupy and manage the land.</p> <p>The contract of sale incorporated terms for agricultural and residential subleases to be entered into with the former land owner. These include a \$1 nominal rent pa for a 10 year term.</p> <p>Special conditions schedules also include Land Management Agreement obligations.</p> <p>No subleases executed.</p>	<ul style="list-style-type: none"> • Adequate arrangement for engaging a land manager. • No Land Management Agreement entered into.
<p>Winslade (30 June 2017)</p>	<p>An arrangement has been made with the former owner to occupy and manage the land via a sublease.</p> <p>Special conditions agreed at contract exchange, (rent, to whom, term of agreement).</p> <p>An executed sublease is in place (30 June 2017) with \$1 nominal rent pa agreed for a 10 year term. Conditions also include Land Management Agreement obligations.</p>	<ul style="list-style-type: none"> • Adequate arrangements for engaging a land manager. • No Land Management Agreement entered into.
<p>Pine Ridge (12 September 2017)</p>	<p>An arrangement has been made with the former owner to occupy and manage the land via a sublease.</p> <p>Special conditions agreed at contract exchange, (rent, to whom, term of agreement).</p> <p>An executed sublease is in place (31 July 2017) with \$1 nominal rent pa agreed for a 10 year</p>	<ul style="list-style-type: none"> • Adequate arrangements for engaging a land manager. • No Land Management Agreement entered into.

	term. Conditions also include Land Management Agreement obligations.	
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Source: Audit Office review of agreements, cross-checked with Suburban Land Agency officers 1 December 2017

Huntly

- 4.34 Huntly, which was purchased on 8 April 2016 being 1,605 hectares is one of the largest properties owned by the Government to the west of Canberra. It was purchased with vacant possession, and the former Land Development Agency put in place short-term management arrangements with a land manager, which were then followed by long-term land management arrangements. These arrangements allowed for continuous contracted land management responsibilities from the settlement date to the present day.
- 4.35 The arrangements for securing a long-term land manager are in paragraphs 3.37 to 3.80.
- 4.36 Of significance to the strategic consideration of the totality (3,378 hectares) of the former Land Development Agency's purchased land to the west of Canberra is that the former Land Development Agency had estimated the rental yield of Huntly to be between \$70,000 and \$100,000 per annum (refer to paragraph 3.40) and for Huntly and Piney Creek to be \$120,000 per annum (refer to paragraph 3.78) prior to inviting tenders. However, the highest of the 35 tenders submitted proposed a rent of significantly more than this amount (\$360,000 for Huntly and Piney Creek). This market response indicates that it would be prudent to examine the merits of aggregating smaller properties and offering larger parcels of land for future land management arrangements. This action is the subject of Recommendation 9: parts a) and b).

On-going land use and management with the former owner

- 4.37 For five of the seven rural land purchases the former Land Development Agency entered into an arrangement with former owners (Lands End, Milapuru, Wintergarden, Winslade and Pine Ridge) to occupy and manage the land. For three properties (Wintergarden, Winslade and Pine Ridge) there were explicit terms agreed in the contract of sale that included a peppercorn rent (\$1 p.a.) for ten years. For four properties (Milapuru, Wintergarden, Winslade and Pine Ridge) there was reference to the former owners' obligations in relation to Land Management Agreement activities in the contract of sale terms. However, as previously stated in paragraph 4.9 there was no Land Management Agreement in place for any of the five properties purchased on or before 30 June 2017.

Lands End land management

4.38 For Lands End there was no transfer of responsibility in writing for the ongoing land management of the property until one year after settlement when the former Land Development Agency sent a one-page letter on 14 July 2016 to the former owners providing authority to 'occupy and manage' the property rent-free. A draft 38-page licence dated 1 May 2017 to occupy has not been executed. No rent has been received by the former Land Development Agency or Suburban Land Agency, although the terms in the draft licence to occupy proposed a rent of \$30,000 per annum.

4.39 In its response to the draft proposed report on 10 May 2018 the Suburban Land Agency advised of progress since 30 December 2017:

Lands End – the SLA is in the process of formalising a grazing arrangement with the current occupant which will include a licence fee for occupying the land and renting the dwelling Once the dwellings have been renovated the SLA will have the premises rented at market value.

Milapuru land management

4.40 With respect to Milapuru, two residential tenancy agreements and one agricultural licence have been executed. Special conditions included a reference to the licensee's obligation in relation to a Land Management Agreement. Although an arrangement is in place no rent was received for the period 1 August 2015 to 31 December 2017. In its response to the draft proposed report on 10 May 2018 the Suburban Land Agency advised of progress since 30 December 2017:

Milapuru – the SLA has executed a new residential tenancy agreement. The SLA terminated the informal arrangement with the previous tenant and has since appointed a property manager who will undertake grazing at Milapuru. The Licence is currently being prepared and will be executed shortly.

Fairvale land management

4.41 For the part of Fairvale purchased by the former Land Development Agency (Block 518) and Huntly, vacant possession was agreed at settlement, that is, on 24 November 2015 and 8 April 2016 respectively. The former Land Development Agency sought to enter into a licence agreement (Block 518) or sublease (Huntly) for ongoing land management responsibilities which did not involve the former land owners.

4.42 The former Land Development Agency's management of the subleasing of Huntly is considered in detail in Chapter 3 (paragraphs 3.37 to 3.80).

- 4.43 In the case of Fairvale the former Land Development Agency purchased the southern two-thirds (that is, Block 518, refer to Figure 3-1). There is no dwelling on this part of Fairvale. The former Land Development Agency sought to secure land management arrangements for Block 518 through a licence arrangement and was negotiating with neighbouring properties. The former Land Development Agency sent a one-page letter on 10 July and 20 July 2016 to two neighbours authorising short-term management:

This letter is to advise that the LDA is happy for you to manage Part Block 518 Stromlo consistent with Attachment [A Block map] in the short term while a licence is being prepared formalising this arrangement.

- 4.44 Draft licences had been prepared by the former Land Development Agency in May 2016. Emails between the neighbours and the former Land Development Agency at that time indicate that a rent of \$14,000 per annum for each neighbour was being negotiated. No licence agreement in relation to the management of the former Land Development Agency's purchase has been executed.
- 4.45 In its response to the draft proposed report on 10 May 2018 the Suburban Land Agency advised of progress since 30 December 2017:

Fairvale – the SLA has terminated the two informal arrangements that were in place at Fairvale. The SLA has now formalised the arrangement with one occupier to graze the entire Block 518 Stromlo. Being unleased Territory land, the ACT Planning and Land Authority is preparing a Section 303 Licence.

- 4.46 The former Land Development Agency did not establish an adequate contractual basis for the daily management of all former Land Development Agency rural purchases to the west of Canberra. The Suburban Land Agency advised on 10 May 2018 that all properties have executed contracts (licences or subleases) except for Milapuru and Lands End which are being progressed.
- 4.47 Although agreements were in place for Milapuru (residential tenancy agreements and an agricultural licence), more than \$90,000 in rent that was due up to 31 December 2017 has not been collected. There is also a risk that approximately \$130,000 in rent (a figure estimated by the Audit Office derived from draft terms exchanged, but not settled) for Lands End and Fairvale was foregone up to 31 December 2017.
- 4.48 Sublease or licence arrangements with the former owners of Wintergarden, Winslade and Pine Ridge are adequate for the purpose of clarifying who is responsible for land management, and some aspects of land management are included in contracts. However for these properties, Land Management Agreements have not been entered into. This means that the full extent of the sublessee or licensee responsibilities is not clear in terms of daily land management practices.
- 4.49 Arrangements for the daily management of the 3,378 hectares of rural land purchased to the west of Canberra has been on a property-by-property basis. There has been no strategic consideration as to whether or not this is the best arrangement, for example, several properties being under the one contract.

- 4.50 In response to the draft proposed report on 10 May 2018 the Suburban Land Agency advised that since 30 December 2017:

In the past six months a review has been conducted on these rural estates. While the SLA did identify a number of issues that needed consideration, steps have been taken to address the issues.

RECOMMENDATION 8 PLANNING AND CONTRACTING LAND MANAGEMENT

While the Suburban Land Agency was not the subject of this audit, since 1 July 2017 the Suburban Land Agency has had responsibility for activities considered in this audit that were previously those of the former Land Development Agency. Recommendations are therefore made to the Suburban Land Agency.

The Suburban Land Agency should:

- a) undertake a strategic analysis of options for the daily management of purchased rural properties including considering use and ongoing management at a larger scale;
- b) implement the preferred option; and
- c) execute contracts for the management of all rural land purchases managed on its behalf.

5 PLANNING CONTEXT

- 5.1 This chapter presents the planning context in which the former Land Development Agency purchased the nine rural land properties. Also, presented is background context information on 99 year leases.

Summary

Conclusion

The 3,378 hectares purchased, or in the process of being purchased, by the former Land Development Agency, under the *ACT Planning Strategy* (2012) are rural lands, with 3,274 hectares being in the Western Edge Study area; 'the subject of future investigation'. There is no certainty that the Western Edge Study area will ever become a future urban development front. To date the investigation has not commenced.

The purchases can be viewed as 'pre-emptive' of planning considerations or as offering 'certainty that the land will be available if it is in the scope for inclusion in the next Planning Strategy'. Regardless of how they are viewed there is a need for the long-term land use for the Western Edge Study area to be defined.

It is important that the Chief Planning Executive progresses a Territory-wide, independent planning study so that there is an updated planning context for decisions regarding the long-term land use of the Western Edge Study area. If such a study is undertaken it is important that the community is aware that the Chief Planning Executive has advised that it would be independent of existing land tenure.

Key findings

Paragraph

Between 2001 and 2006, 99-year leases commenced for each of the nine rural land properties that are the subject of this audit. For the seven properties where a transfer of the lease to the former Land Development Agency (or the Suburban Land Agency in the case of Pine Ridge) has occurred, the Lands End 99-year lease was secured for \$39,440, Milapuru for \$60,800, Fairvale for \$71,900, Huntly for \$204,295, Wintergarden for \$79,000, Winslade for \$73,730 and Pine Ridge for \$56,600. For three properties (Lands End, Fairvale and Pine Ridge) the long-term lease did not have a withdrawal clause to allow the Government to resume the land. For four properties (Milapuru, Huntly, Wintergarden, Winslade) a minor portion of the property was subject to withdrawal clauses. All leases were subject to a ten-year discharge provision during which time a premium was to be paid to the Government based on any uplift in value on the sale of the property. All nine properties were sold

5.13

or agreed to be sold (in the case of The Vines and Wagtail Park) shortly after the ten-year discharge period lapsed between 30 June 2015 and 30 June 2017.

Between 2001 and 2006 owners of the 3,378 hectares of rural land west of Canberra purchased their long-term (99-year) leases for the equivalent of between \$117 and \$759 per hectare. This was based on 'Dry Sheep Equivalent' rates which 'meant that the prices paid for these leases were set as if their only value was that derived from the rearing of sheep'. Between 2015 and 2017 the owners received an average of \$12,754 per hectare, based on valuations and market dynamics discussed in this audit. 5.15

During the development of the *ACT Planning Strategy* (2012) the Western Edge Study area was not consistently identified as a priority for inclusion nor was its purpose consistently defined. However, in finalising the strategy the Economic Development Directorate requested that Cabinet consider the '... provision ... for a western Broadacre study for ... areas to the west of Canberra's current urban boundary'. The Western Edge Study area was then delineated and described in text in the published *ACT Planning Strategy* (2012) as a study area in which 'issues, best uses and management for the lands' would be investigated. 5.34

The inclusion of the Western Edge Study area in the *ACT Planning Strategy* (2012) does not amount to a decision by the Government to urbanise this area but, once the Western Edge Study was flagged as a 'study area', a risk is created that there will be land speculation based on the possible outcomes of any investigation and subsequent decision making by the Government. For rural lessees in the area this could be considered an opportunity as their land values may increase. In the period 2001 to 2006, 99 year leases were issued. At that time the Government's intentions was that the 'areas [were] no longer required for urban development'. 5.49

For five rural properties, former owners initiated a discussion with the former Land Development Agency about selling their property either directly (Lands End and Winslade) or indirectly via a third party (Milapuru, Fairvale and Huntly). One property (Wintergarden) came to the attention of the former Land Development Agency through being placed on the market for auction. For three properties (Pine Ridge, The Vines and Wagtail Park) discussions about selling the property occurred after contact had been made with owners for securing easements for electricity supply infrastructure. As landowners contacted the former Land Development Agency this indicates that there was an awareness that the former Land Development Agency was interested in purchasing properties. 5.51

In January 2013 the Government purchased 227 hectares of land known as Glenloch for \$10 million (including GST). The property was under negotiations with the Territory for development and/or purchase by the Territory when it was re-zoned in the Territory Plan from rural to 'future urban'. As rural land it had a value of \$4 million (excluding GST) but a 'speculative value', taking account of the re-zoning and the potential to amend the Crown Lease, was also provided at \$9 million (excluding GST). The agreed price of \$10 million (including GST) was close to the speculative value. 5.61

The experience in purchasing Glenloch was influential in the subsequent development of the former Land Development Agency's approach to purchasing rural land as a potential long-term supply of residential development land. The former Land Development Agency sought to secure rural lands before there was any prospect of their value being affected by any Government indication of potential urban development.	5.63
The ACT Government's 2016-17 Statement of Government Policy (approved in March 2016) specifically required the former Land Development Agency to 'Ensure an adequate supply of Government-owned land is in the planning and development pipeline for future release'. Prior to this, the Government's Statements of Government Policy for the former Land Development Agency provided a broad mandate to 'Ensure an adequate supply of residential land to meet market demand and develop an inventory of serviced land'.	5.74
According to former Board reports, residential development managed by the former Land Development Agency on Territory-owned land (i.e. Land Development Agency Estates) was estimated to yield the highest revenue dividend of all the delivery models, thus contributing to a key objective of the former Land Development Agency of providing 'agreed returns to the Territory'.	5.78
The former Land Development Agency, while being a source of revenue for the Government, also had a role in facilitating the provision of affordable housing. Twenty per cent of the land released by the former Land Development Agency was to be for affordable housing. A reduction in achieving land release targets affected the availability of land for affordable housing.	5.82
In May 2014 a Cabinet submission proposed that 'investigations to identify the next development front should commence by the end of 2015, in anticipation of a new front being required in or soon after 2025'. Cabinet agreed on 27 May 2014 'not to endorse the strategy outlined in the submission, but that a further submission be brought forward in 2015 outlining the key processes and corresponding timeframes for ensuring planning-ready land is available for release, and the roles and responsibilities of the ACT Government directorate in facilitating these processes'. A further submission was never provided by the Economic Development Directorate.	5.92
The former Chief Executive Officer briefed the Land Development Agency Board on 26 June 2014 about the Cabinet's response to the <i>Long-term land release in the ACT: Issues and options</i> paper. Recollections of the former Deputy Chief Executive Officer and a former Board member were that Cabinet in May 2014 did not view the need for a new development front to be determined with the same degree of urgency as the former Land Development Agency Board.	5.99
Unsolicited advice provided by the Colliers International State Chief Executive, ACT was the catalyst for, and basis of, the strategy used by the former Land Development Agency for the purchasing of Milapuru and Fairvale. There is no documentary evidence that this advice was rigorously assessed or conflicts of interest identified. In relation to these events:	5.114

- on 8 September 2014, the Colliers International State Chief Executive, ACT provided an unsolicited (four-page) 'project consolidation' proposal to the former Deputy Chief Executive Officer, indicating that the properties of Canberra Equestrian Centre, Riverview, Fairvale, National Equestrian Centre, and Milapuru would be worth considering for purchase or 'taking control of';
- on 8 September 2014 the Colliers International State Chief Executive, ACT stated in an email in relation to the 'project consolidation' proposal that 'I have spoken to [the Chief] ... but she has asked me to discuss further with you ... then she can go get Cabinet support'. An interaction of this kind was not substantiated;
- former Land Development Agency Board records of the 25 September 2014 Board meeting do not acknowledge that the unsolicited 'project consolidation' proposal had been made. The Board requested that 'a paper on long-term land supply options, incorporating a strategic acquisition program' be prepared for its consideration. The rationale and scope of the program were not recorded in minutes; and
- on 11 December 2014, a *District of Stromlo Acquisition strategy paper* was presented to the former Land Development Agency Board. It had also been prepared by the Colliers international State Chief Executive, ACT and a colleague from Colliers International. The *District of Stromlo Acquisition strategy paper* is specific to the properties of Canberra Equestrian Centre, Riverview, Fairvale, National Equestrian Centre, and Milapuru which were under 99-year leases. The paper reflects the same geographic scope and similar recommendations as the unsolicited 'project consolidation' proposal provided on 8 September 2014.

Notwithstanding that it was a commitment made in the *ACT Planning Strategy* (2012), between 2012 and 2017 '... a study to assess the issues, best uses and management for the lands on the city's western boundary' was not commenced. The former Chief Planning Executive advised that 'the [Planning and Land Authority] was undertaking the work that was at that stage the priority of the Government. It was not the [Planning and Land Authority's] independent decision to give [other] work priority over the Western Edge Study'. Documentation indicates that the Minister for the Environment and Sustainable Development did not support the Planning and Land Authority's funding proposals to progress the study in 2012-13 and 2013-14, and funding proposals were not put to the portfolio Minister thereafter. The Planning and Land Authority focused on the *ACT Planning Strategy* (2012) priority of urban intensification.

5.127

The documented views in the first half of 2016 provided by the Economic Development Directorate and the Planning and Land Authority relating to the priority for urban development were different. The Planning and Land Authority was seeking to conduct a formal review of the *ACT Planning Strategy* (2012), emphasising emerging challenges, particularly those around the 'travel and infrastructure implications of the increasing mismatch between new greenfields settlement occurring to the west of Canberra and new employment growth in central and

5.143

eastern Canberra'. The Economic Development Directorate sought to progress 'the coordinated body of work to investigate and identify the next urban development front which is likely to be along the western edge of the urban boundary'. Documentation indicates that these two Government entities held different views about the priority of urban growth to the west of Canberra.

From 2014 to 2017 the former Land Development Agency (or the Economic Development Directorate) and the Planning and Land Authority placed different priorities on the Western Edge Study area. The former Land Development Agency was purchasing rural lands in the Western Edge Study area to secure a long-term supply of land in Government control; the 'next urban development front [...] is likely to be along the western edge'. At the same time the Planning and Land Authority was focused on planning activities related to urban intensification in accordance with the Minister for Planning's *Statement of Planning Intent 2015* and not progressing a Western Edge Study area investigation as committed to in the *ACT Planning Strategy* (2012). These priorities may have been clarified from a whole of Government perspective had the former Land Development Agency (or Economic Development Directorate) addressed the 27 May 2014 Cabinet decision that a further submission be brought to Cabinet in 2015 on the topic of *Long-term land release in the ACT: Issues and options*.

5.153

In its response to the draft proposed report the Suburban Land Agency advised on 10 May 2018 based on its interpretation of available records that 'No agencies disagreed with the assumptions underpinning the Strategy, and there was ongoing dialogue within government. The former LDA was not operating in isolation or in its own direction, but shared a common understanding with other agencies, including ACT Treasury'.

5.154

The former Land Development Agency undertook internal planning activities for the Western Edge Study area and presented this to the former Land Development Agency Board and Economic Development Subcommittee of Cabinet. This was reflective of its focus on this area.

5.157

Two ways the purchases of the Western Edge rural properties can be considered; purchases made 'pre-emptive' of planning consideration (Professor Holliday, the Subject Matter Expert) or they provide '... certainty that the land will be available if it is in scope for inclusion in the next Planning Strategy' (the former Chief Executive Officer of the Land Development Agency). Either way there is a need for the long-term land use for the Western Edge study area to be defined. To inform this it is important that the Chief Planning Executive undertake a planning study to define the Territory's long-term future urban form and in so doing identify development fronts for the Government's consideration in updating the *ACT Planning Strategy* (2012). The planning study needs to be based on sound planning processes and principles which includes the identification of appropriate land uses not being influenced by land tenure.

5.166

The Chief Planning Executive advised that:

5.167

- In simple terms ... tenure is not a relevant consideration to a planning study into the Territory's long term future urban form or

potential development fronts. The focus of such a study is on understanding and testing the inherent development capacity of land within the ACT, in this case the Western Edge. Planning studies consider the limitations, constraints and opportunities (hydrology, geology, environmental issues, topography etc), relevant to identified sites, districts or regions in the context of a full range of development options (e.g. urban or suburban development, capacity for environmental offset etc). This analysis is not constrained by property boundaries or tenure, and in turn may inform the preparation of independent expert advice on the ACT spatial planning framework by the Chief Planning Executive to the Government.

The introduction of 99-year leases

5.2 Historically, rural leases in the ACT were of a duration of no more than 50 years.¹¹ In December 1996 a Rural Policy Taskforce was convened to consider and provide advice on the appropriateness of rural land management policies. The Rural Policy Taskforce's 1997 *Towards a sustainable future* report made key recommendations in relation to:

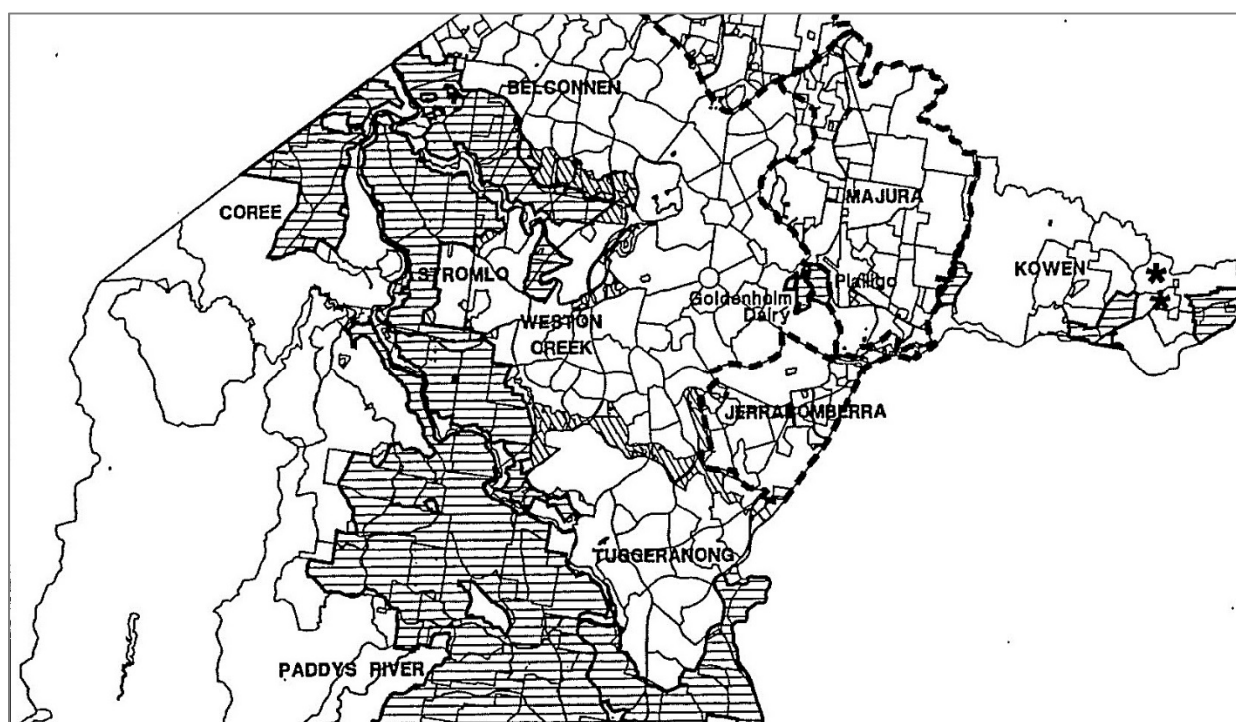
- providing rural leaseholders with greater certainty over leaseholder tenure;
- offering most rural leaseholders the option of a 99-year lease; and
- strengthening the use of property management agreements, so that 'changing land management practices, land uses and conservation requirements can be readily accommodated'.

5.3 The Rural Policy Taskforce's recommendations are reflected in the February 2000 *Farming in the ACT* report which states:

Areas no longer required for urban development have been mapped and given the opportunity of having the security of a 99-year lease, with others identified for short-term leases.

¹¹ The *Report into the Administration of the ACT leasehold*, (Stein, June 1996) recommended that the maximum lease term of 50 years continue.

Figure 5-1 Extent of the area of potential 99-year leases in *Farming in the ACT*



Source: *Farming in the ACT* (February 2000, p 4). The horizontal hatching is the area where a maximum 99-year lease could be granted.

- 5.4 In March 2000, the Government announced that 99-year leases would be available to many rural leaseholders. The cost of acquiring a 99-year lease was established in *Farming in the ACT*, and linked to the carrying capacity (in 'Dry Sheep Equivalent') of the land.
- 5.5 Much of the land under long-term leases in the District of Stromlo (refer to Figure 5-1), is Rural Zone (NUZ2) whose objectives, under the Territory Plan are:
- a) Conserve the distinctive rural landscape setting of Canberra and maintain its ecological integrity
 - b) Conserve sufficient wildlife habitats to adequately protect native plant and animal species
 - c) Make provision for the productive and sustainable use of land for agriculture
 - d) Make provision for other uses which are compatible with the use of the land for agriculture
 - e) Ensure that land parcels are appropriate in size for their approved uses
 - f) Offer leases for time periods which reflect planning intentions for the locality
 - g) Reinforce a clear definition between urban and rural land
- 5.6 It is to be noted that that one objective (f) is to:
- Offer leases for time periods which reflect planning intentions for the locality.
- 5.7 Four of the rural purchases (Huntly, Winslade, Fairvale and Milapuru) in the Western Edge Study area are predominantly in the Rural Zone (NUZ2) and had 99-year leases. The leases had been granted in the last 15 years. This indicates that at the time of issuing leases the long-term planning intention for this locality was rural.

- 5.8 In response to the draft proposed report on 10 May 2018 a former Land Development Agency Board member advised:

The general difficulty that has arisen was the lack of a longer term perspective on which properties should have access to these 99 year leases, having regard to the medium to longer term urban development needs of Canberra. The west Canberra rural properties acquired by LDA are all examples of such properties.

- 5.9 In response to the draft proposed report on 10 May 2018 the Suburban Land Agency advised:

It would be correct to state that at the time of the Rural Policy Taskforce's 1997 report and the February 2000 Farming in the ACT report the long-term planning intention for the land was rural. This reflected planning and urban growth rate expectations at that time. For example, the 1998 ACT Sub Region Planning Strategy (generally concurrent with Rural Taskforce Policy papers) nominated Goorammon-Jeir (wholly in NSW) and Lower Jerrabomberra (partially in NSW) for 'future long-term urban development'.

However since that time Jerrabomberra has been found to be unavailable for residential development because of flight path constraints and the benefits to the Territory of development within the border have been recognised, leading to a need to identify development fronts within the ACT rather than at Goorammon-Jeir. There has also been a steady erosion of the available developable land in Gungahlin due to environmental constraints.

In light of these factors it was appropriate to reconsider the long-term planning intentions across the Territory. This was done by way of the Spatial Plan and then the Strategy. The Strategy indicated that the western edge warranted investigation as a development front. This is more consistent with the long-term planning intentions for this area, at the time the purchases were made, than the position of the late 1990s/early 2000s.

- 5.10 For the seven purchases where a transfer of the lease to the former Land Development Agency (or the Suburban Land Agency in the case of Pine Ridge) had occurred by 31 December 2017, the 'per hectare' equivalent paid by the former owners for acquiring a 99-year lease (between 2001 and 2010) was in the range of \$117 to \$759. Table 5-1 presents information on 99-year lease commencements for the seven rural properties, lease values paid to acquire the long-term lease and the residual term of the lease on transfer to the former Land Development Agency.

Table 5-1 Properties granted 99-year leases and lump sums paid

Property	Former leaseholder's 99-year lease commencement	Lease value assessed at the time of the offer of a 99-year lease (granted)	Per hectare equivalent paid	Settlement date with former Land Development Agency	Lease remaining at Settlement / transfer	Withdrawal clause
Lands End	1 August 2001	\$39,440 (2001)	\$117	30 June 2015	85 years	No
Milapuru	14 October 2005	\$60,800 (2002)	\$209	31 July 2015	85 years	River corridors (20 ha)
Fairvale	21 June 2001	\$71,900 (2001)	\$152	24 November 2015	85 years	No

Property	Former leaseholder's 99-year lease commencement	Lease value assessed at the time of the offer of a 99-year lease (granted)	Per hectare equivalent paid	Settlement date with former Land Development Agency	Lease remaining at Settlement / transfer	Withdrawal clause
Huntly	30 October 2001	\$204,295 (2001)	\$127	8 April 2016	84 years	River corridors (239 ha in four blocks)
Wintergarden	31 December 2005	\$79,000 (2010)	\$759	30 August 2016	89 years	3.6 ha
Winslade	19 June 2002	\$73,730 (2002)	\$151	30 June 2017	84 years	River corridors (43 ha)
Pine Ridge	10 February 2006	\$56,600 (2001)	\$345	12 September 2017	84 years	No

Source: Audit Office review of Leasing Services team records in the Environment, Planning and Sustainable Development Directorate

5.11 *Farming in the ACT* (February 2000) established the basis for the calculation of the payment a leaseholder needed to make to be granted a 99-year lease. The methodology included an assessment of land value based on a schedule of 'Dry Sheep Equivalent' rates and the carrying capacity of the land. In its response to the final proposed report on 19 June 2018 the Suburban Land Agency noted that payments for the 99 year leases, based on 'Dry Sheep Equivalent', 'meant that the prices paid for these leases were set as if their only value was that derived from the rearing of sheep'. The Suburban Land Agency further noted 'as rural holdings adjacent or very close to a major city, the real value was as 'lifestyle' properties which would have far exceeded the 'DSE' value'.

5.12 In response to the draft proposed report on 10 May 2018 the Chief Planning Executive advised that:

... withdrawal clauses in crown leases are not the only mechanism available to Government to acquire leased land. Land can be acquired through purchase and under *Land Acquisition Act 1994*.

5.13 Between 2001 and 2006, 99-year leases commenced for each of the nine rural land properties that are the subject of this audit. For the seven properties where a transfer of the lease to the former Land Development Agency (or the Suburban Land Agency in the case of Pine Ridge) has occurred, the Lands End 99-year lease was secured for \$39,440, Milapuru for \$60,800, Fairvale for \$71,900, Huntly for \$204,295, Wintergarden for \$79,000, Winslade for \$73,730 and Pine Ridge for \$56,600. For three properties (Lands End, Fairvale and Pine Ridge) the long-term lease did not have a withdrawal clause to allow the Government to resume the land. For four properties (Milapuru, Huntly, Wintergarden, Winslade) a minor portion of the property was subject to withdrawal clauses. All leases were subject to a ten-year discharge provision during which time a premium was to be paid to the Government based on any uplift in value on the sale of the property. All nine properties were sold or

agreed to be sold (in the case of The Vines and Wagtail Park) shortly after the ten-year discharge period lapsed between 30 June 2015 and 30 June 2017.

- 5.14 These nine properties comprise an area of 3,378 hectares of rural land located to the west of Canberra and to the east of the Murrumbidgee River corridor. The total cost of purchasing the nine properties including estimates for two properties for which contracts had been entered into but for which settlement had not taken place prior to 31 December 2017 (The Vines and Wagtail Park) will be \$43.086 million. This equates to \$12,754 per hectare.
- 5.15 Between 2001 and 2006 owners of the 3,378 hectares of rural land west of Canberra purchased their long-term (99-year) leases for the equivalent of between \$117 and \$759 per hectare. This was based on 'Dry Sheep Equivalent' rates which 'meant that the prices paid for these leases were set as if their only value was that derived from the rearing of sheep'. Between 2015 and 2017 the owners received an average of \$12,754 per hectare, based on valuations and market dynamics discussed in this audit.

Urban planning in the ACT

- 5.16 Urban planning¹² is important as it:

... is a valuable force for city leaders to achieve sustainable development. It is a means to bring about a difference. Planning helps make the most out of municipal budgets by informing infrastructure and services investments, balancing demands for growth with the need to protect the environment. It distributes economic development within a given territory to reach social objectives and creates a framework for collaboration between local governments, the private sector and the public at large.

- 5.17 The *National Capital Plan* and the *Territory Plan* are established under the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth). This Act does not specify the requirement for a strategic spatial plan, that is, a high-level spatial planning strategy for the Territory. However in March 2004 the ACT Government published the Territory's first strategic spatial plan, the *Canberra Spatial Plan* which:

... outlines a strategic direction that will help manage change and provide for growth to achieve the social, environmental and economic sustainability of Canberra.

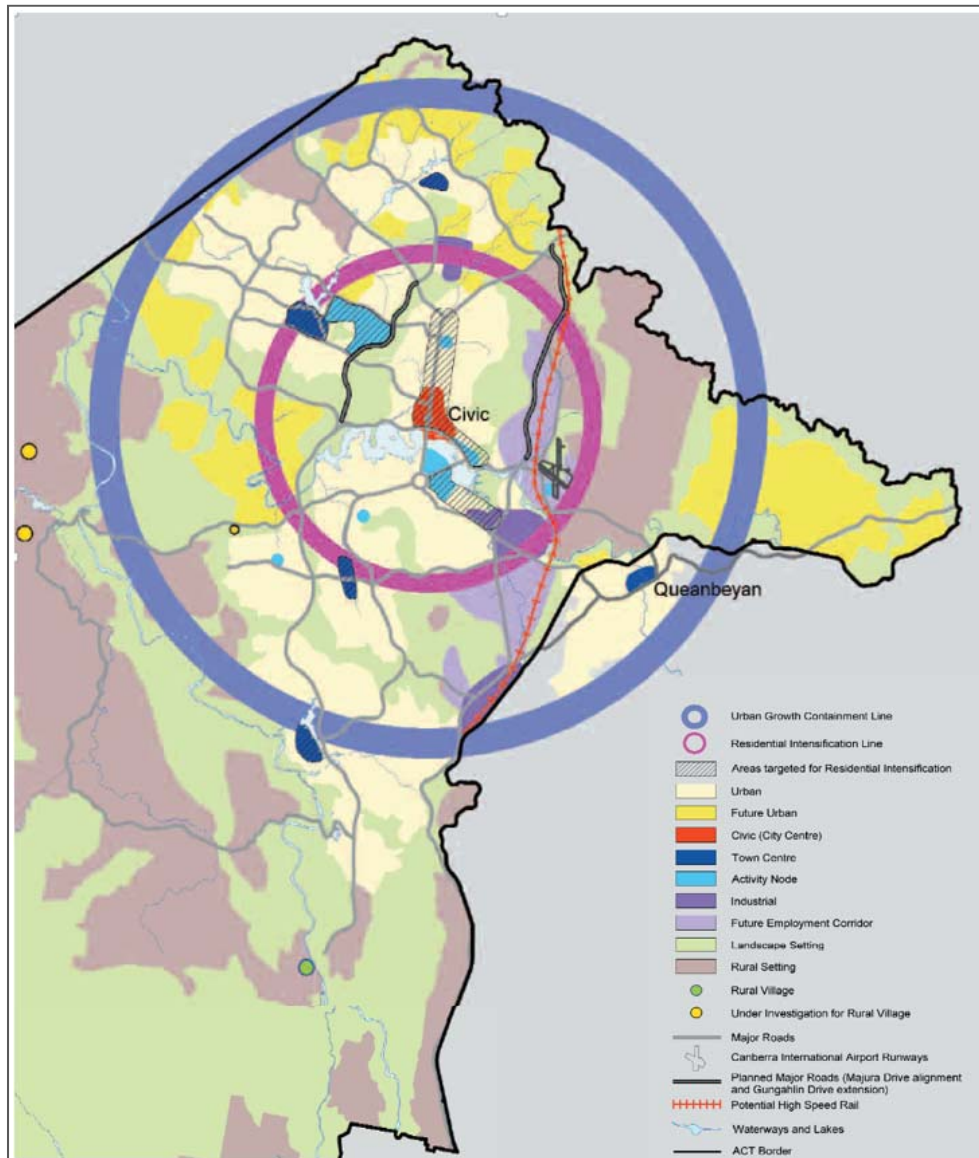
- 5.18 The *Canberra Spatial Plan* (2004) presents a map of the strategic direction of Canberra (refer to Figure 5-2), and refers to a 'more compact city':

The Strategic Direction is that the metropolitan structure of Canberra should be contained, and centred around the principal business and cultural district, Civic, with a degree of local self-containment based on a series of town centres, including Queanbeyan. To achieve this more compact city structure, a greater proportion of population growth is planned to be accommodated within the ACT rather than assuming it will be taken up by surrounding NSW.

¹² Meltzer, S. Urban Times (25 July 2015) and republished in Urban Gateway Top ten Reasons why cities need Urban Planning. According to its website 'Urban Gateway is an online community to help cities and urban practitioners across the world unite to share knowledge and take action. It is supported by Swedish funding and developed by Public Zone, a UK agency that helps organizations use digital to improve people's lives'. (Retrieved 1 February 2018).

This city structure will provide, over time, the urban concentrations necessary for a more sustainable transport system and for the efficient provision of infrastructure. The more compact city form will also ensure a lesser impact in terms of resource consumption and environmental protection.

Figure 5-2 Strategic Direction - The Canberra Spatial Plan (2004)



Source: ACT Planning and Land Authority, The Canberra Spatial Plan (2004) Map 1 inside cover

- 5.19 In the *Canberra Spatial Plan* (2004) some rural areas to the south, west, north and east of the urban extent of Canberra are described as 'urban capable' (page 11).
- 5.20 All nine rural properties are located in areas that were defined as 'urban capable' in the *Canberra Spatial Plan* (2004). A subset of the areas defined as 'urban capable' in the *Canberra Spatial Plan* (2004) is described as 'urban suitable' (page 13). The 'urban suitable' areas, also referred to as 'future urban', are located:
- to the east of the airport, coterminous with the extent of Kowen Forest;

- within an employment corridor running north-south, from the Majura Road south to Hume;
- north and east of the extent of Gungahlin at the time; and
- in Molonglo Valley (either side of the Molonglo river) running up to the New South Wales border.

5.21 Four properties to the north of the Molonglo river corridor (Lands End, Pine Ridge, The Vines, Wagtail Park) are located in areas defined as 'urban suitable' and as 'future urban' in the *Canberra Spatial Plan* (2004).

The *ACT Planning Strategy* (2012)

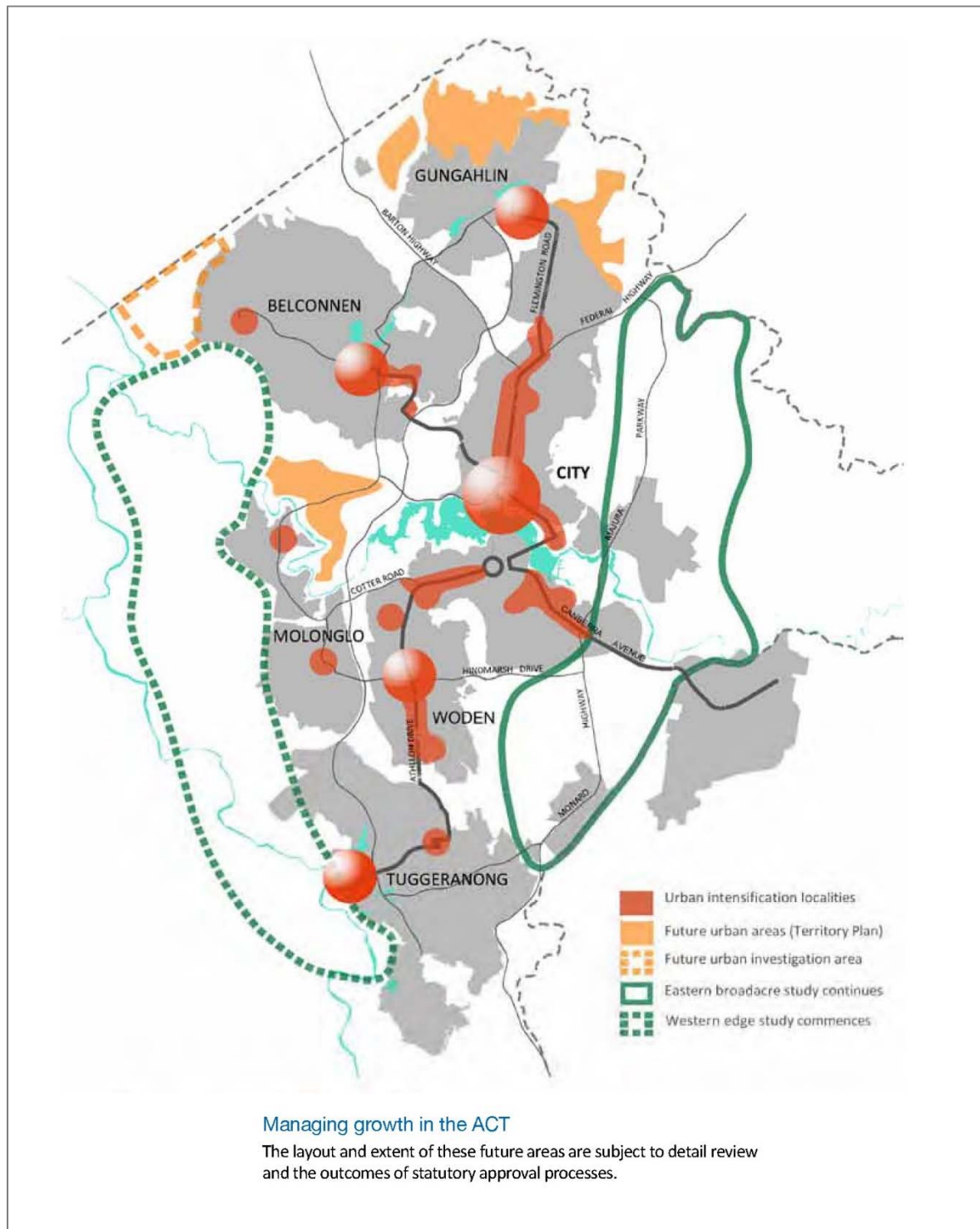
5.22 The *Canberra Spatial Plan* (2004) was replaced by the *ACT Planning Strategy* on 31 August 2012 (NI2012-456). The *ACT Planning Strategy* (2012) states it:

... is one of many ACT Government policies that inform the future development of Canberra. The Strategy's purpose is to provide guidance to the future spatial planning, development and management of Canberra and the ACT to help achieve the economic, cultural and environmental aspirations of its people.

5.23 In relation to greenfield expansion, the *ACT Planning Strategy* (2012) identifies three areas where future urban intentions are expressed. Two 'future urban areas' are defined and delineated, in accordance with the Territory Plan, in the Molonglo Valley and in Gungahlin. The *ACT Planning Strategy* (2012) also defines and delineates a 'future urban investigation area' at West Belconnen. Two further areas are defined and delineated as 'study' areas for future investigation: the Eastern Broadacre Study is to continue; and the Western Edge Study is to commence.

5.24 Eight of the rural properties are in the northern half of the Western Edge Study area and one nearby. This covers an area to the north of Kambah Pool running up to the southern edge of the current urban extent of Belconnen (refer to Figure 5-2).

Figure 5-3 *ACT Planning Strategy (2012) - Eastern Broadacre and Western Edge Study areas*



Source: *ACT Planning Strategy* (August 2012) page 40

Draft and final strategy

5.25 Given the extent of the rural lands to the south and west of Canberra under 99-year leasehold, described as ‘areas no longer required for urban development’ in *Farming in the ACT* (February 2000), an examination of how the Western Edge Study area developed, as defined in the *ACT Planning Strategy* (2012), was undertaken. This was achieved through examining:

- the *Canberra Spatial Plan* (2004);
- the *Canberra Plan - Towards our second century* (2008); and
- the *ACT Planning Strategy* (2012): September and October 2011 consultation drafts, Consultation Outcomes report (February 2012), draft final (March 2012) and the final *ACT Planning Strategy* (31 August 2012).

5.26 These documents indicate that ‘the Western Edge’ was not delineated on maps or defined in text within these plans and strategies until the first draft of the *ACT Planning Strategy* (September 2011). While the *Canberra Spatial Plan* (2004) identifies urban ‘capable’ and ‘suitable’ land to the west of the urban edge of Canberra it is not defined as a discrete area, and no particular priority is placed on rural land for urban expansion to the west, rather than to the north, south or east. In the case of the 2008 *Canberra Plan*, the plan refers to the Eastern Broadacre Study but is otherwise not explicit about the direction of urban expansion. It instead seeks that:

... this document will be a launching pad ... for conversations about future urban form and sustainable transport, conversations about reducing our ecological footprint, and conversations about the implications of our shifting demographic.

5.27 In June 2011 the Chief Minister announced that a new ACT Planning Strategy was a Government priority. An iterative drafting process commenced, as is usual for a strategic document.

5.28 In an early draft of the *ACT Planning Strategy* dated 15 September 2011, ‘Preparing a Western Edge Broadacre Study’¹³ is established as one of five actions to implement a strategy (Strategy 7) for ‘managing growth responsibly’:

Areas along the western edge of Canberra, particularly to the north and south west have previously been identified as urban capable. Other areas have high ecological and landscape value. Undertaking more detailed investigations of the western edge will provide a clear defensible policy position on how best to manage this area.

5.29 This area is delineated in both the September 2011 draft (page 59 of the draft refers to ‘land use investigation areas’ to the south, west and east of Canberra) and the October 2011 draft (pages 50 and 51 refer to ‘investigation of areas for potential future urban uses’ to the west

¹³ It is noted that the term ‘Broadacre’ has a particular meaning in the ACT and that there is no broadacre (NUZ1) land to the west of Canberra with the exception of two blocks in Central Molonglo.

and east of the urban extent of Canberra), with an area extending from the New South Wales border at West Belconnen south to West Murrumbidgee.

5.30 Further reference is made to a 'Western Edge Broadacre Study' in the public consultation response and in the *consultation outcomes* report (February 2012). However, it receives no mention in the 30 March 2012 draft *ACT Planning Strategy*, referred to as the *illustrated final* report. In this draft:

- Strategy 8 is to 'value the land and natural resources of the region by working collaboratively to manage urban growth, ensure connectivity and continuity in the natural systems and conserve agriculturally productive land';
- Strategy 8 implementation includes 'Areas for possible future settlement with the ACT including Kowen Plateau in the east and West Belconnen will be considered; and
- 'Urban growth will be focused on existing urban areas, towns and villages instead of supporting rural residential development that leads to the fragmentation of rural land and is expensive to service'.

5.31 The Western Edge is again referred to in text but is not delineated in the draft provided to Cabinet by the Minister for Environment and Sustainable Development, dated 18 May 2012. A map on page 40 of the draft delineates urban intensification areas within the existing urban extent and the proposed future urban areas of Gungahlin and Molonglo Valley. No study areas are delineated or defined in text.

5.32 During the consultation on the exposure draft prior to the Cabinet meeting on 19 June 2012, the Economic Development Directorate commented that it:

... wishes to see West Belconnen explicitly identified as a future urban development area both in the Strategy's text and relevant maps. [The Economic Development Directorate] also wants to see explicit provision made for a Western Broadacre planning study for other areas to the west of Canberra's current urban boundary (excluding West Belconnen).

5.33 On 31 August 2012 (via Notifiable Instrument NI2012-456) the *ACT Planning Strategy* (2012) became Government policy. It delineates a future urban investigation area (West Belconnen, in orange) and two study areas (Eastern Broadacre and Western Edge in green, refer to Figure 5-2), and describes a short-term action (on page 59 of the strategy) to 'initiate a study to assess the issues, best uses and management for the lands on the city's western boundary'.

5.34 During the development of the *ACT Planning Strategy* (2012) the Western Edge Study area was not consistently identified as a priority for inclusion nor was its purpose consistently defined. However, in finalising the strategy the Economic Development Directorate requested that Cabinet consider the '... provision ... for a western Broadacre study for ... areas to the west of Canberra's current urban boundary'. The Western Edge Study area was then delineated and described in text in the published *ACT Planning Strategy* (2012) as a study area in which 'issues, best uses and management for the lands' would be investigated.

ACT Planning Strategy: growth options

5.35 Strategy 8 of the *ACT Planning Strategy* (2012) relates to managing urban growth. Accompanying actions include to:

- initiate a study to assess the issues, best uses and management for the lands on the city's western boundary (page 59 – short term action);
- continue to undertake more detailed planning for the Eastern Broadacre area (which extends from the Majura Valley to Hume and includes Symonston and the Jerrabomberra Valley) to determine the capability for providing future light industrial and other uses, given it also has important environmental values (page 59 – short term action); and
- undertake investigations of the Kowen Plateau in consultation with New South Wales and other stakeholders (page 59 – long term action).

5.36 Strategy 1 of the *ACT Planning Strategy* (2012) is to:

Create a more compact, efficient city by focusing urban intensification in town centres, around group centres and along the major public transport routes, and balancing where greenfield expansion occurs.

5.37 Accompanying actions include:

- 'following investigations prepare structure/concept plans for greenfield areas on the urban edge that appropriately add to the efficient use of existing infrastructure' (page 43 – short term action); and
- 'investigate the environmental significance and assess the suitability of areas for greenfield development that will better utilise existing infrastructure' (page 43 – long term action).

5.38 The map's rubric on page 40 of the *ACT Planning Strategy* (2012) differentiates 'Future Urban areas' in orange which are part of the *Territory Plan*, and a broken orange line for a 'future urban investigation area' which was not part of the *Territory Plan* in 2012. In the case of the two study areas, the Eastern Broadacre Study area is delineated by a solid green line and is referred to as 'study continues'. The Western Edge Study area is delineated with a broken green line, and it is stated that the 'study commences'.

5.39 The significance of these distinctions was examined. Professor Sue Holliday (audit Subject Matter Expert) provided advice regarding whether it is reasonable to assume that the identification of the 'Western Edge Study commences' in the *ACT Planning Strategy* (2012) means that the Government had decided to urbanise the area. Professor Holliday advised that:

No. The *ACT Planning Strategy* (2012) indicated that the area identified would be subject to land investigations to analyse if that land was suitable and if so, which part of the large area identified was suitable and when that might be needed for urban purposes.

However, land speculation is widespread and it is fair that lessees in the identified area would be either (1) nervous that their rural business might be under threat prior to the lease period expiring or (2) pleased that their land might have a higher 'lease' value in the near future.

As leases in the identified Western Edge Study area had only been granted around 2005 for 99 years, it seems unusual that the Government would be thinking about changing the zoning in that area in any short time frame.

- 5.40 In its response to the draft proposed report on 10 May 2018 the Suburban Land Agency advised that:

A crown lease does not mandate future uses, which may (and commonly do) vary within constraints set by the Territory Plan. Additionally, the Territory Plan is regularly amended to reflect changing Government policy. This statement ... does not acknowledge that governments may change their priorities or that new information may come to light.

- 5.41 When asked about the meaning of the phrase 'Western Edge Study commences' in an interview with the Audit Office, the former Chief Planning Executive advised:

Former Chief Planning Executive

... so really what constitutes this western edge, would be an assessment of potential expansion of the urban footprint.

Audit Office

... so to professional planners, to yourself, seeing this – this is – this can only really mean one thing and that is the potential for extension of an urban footprint?

Former Chief Planning Executive

Well, I think in the ACT context, it probably would, but it would also identify, you know, what land would actually be suitable for urban development and what land would be environmentally sensitive and would need to be protected and possibly what land should be retained for agriculture purposes.

- 5.42 The Audit Office asked the Chief Planning Executive (who is also the Director-General, Environment, Planning and Sustainable Development Directorate) in an interview about the meaning of the phrase 'Western Edge Study commences'. The Chief Planning Executive advised:

Chief Planning Executive

So clearly the Government, by including this, had an expectation that, at some point in the future, work will be done to determine the urban capability of this land.

It's understanding the extent of that, because until you do the fine grain work, you don't know – you won't know that there's – necessarily if there's habitat for threatened species, or you won't know what is under the ground, in terms of geology, and you may not be able to build. Once you start doing your planning for infrastructure, road connections, how you deal with the sewer and water, that's when you start to realise, well, how much of this – and this is a very large area.

Audit Office

So the signal is sent out through this in 2012 – there's an area that the Government is interested in examining and investigating ... as to its urban capability, but also other aspects of its value – of its land value.

Chief Planning Executive

Yes, that's right, because it may be that the further work identifies areas that will be put into nature reserve, for example.

Audit Office

Or it may mean that it's taken off completely as an urban development front?

Chief Planning Executive

Yes. That's right. Yes. Or you knew it could be identified but in fact know it's too steep or whatever and we just need to put in more river corridor or whatever it might be.

... but it certainly says that within that area the Government intends to do work to better understand the potential.

5.43 Although this audit is focused on the former Land Development Agency's assembly of rural land in and near an area described as the Western Edge, in examining the Government's spatial planning strategies it was identified that another area has also received attention.

5.44 The *Canberra Spatial Plan* (2004) identifies that:

If the city continues to grow in population beyond the capacity of these [i.e. Gungahlin and Molonglo Valley] areas, further settlement will be accommodated on the Kowen Plateau.

...

Should these investigations identify further constraints, additional greenfield areas will be needed to cater for population growth up to 500,000. Kowen Plateau is the next best location after Molonglo Valley for future urban development within the ACT and within a reasonable travel distance of major employment centres and services.

5.45 The *Canberra Plan – Towards our second century* (2008) does not refer to the Kowen Plateau.

5.46 The *ACT Planning Strategy* (2012) states that 'areas for future possible settlement within the ACT, including Kowen Plateau in the east and west Belconnen will be considered', and that undertaking '... investigations of the Kowen Plateau in consultation with NSW and other stakeholders' is a long term action and that:

To meet the community's desire for a more compact city as well as provide for more diversity in where and how people live, there must be a mix of greenfield development and urban intensification. The balance that is struck between these will affect when the development of the more remote Kowen Plateau is required and Canberra's overall sustainability.

5.47 A former Executive Director, Strategic Planning of the Environment, Planning and Sustainable Development Directorate identified that:

While Kowen Forest in the east of the ACT has had some preliminary studies undertaken for the current Strategic Plan, further investigation is warranted given the potential benefits to the ACT to have a large workforce living adjacent to a region of the ACT with high levels of employment and further strong job growth potential.

5.48 In its response to the draft proposed report on 10 May 2018 the Suburban Land Agency advised that based on its interpretation of available records:

... the Kowen Plateau investigations are proposed as a long term action (refer to page 59 of the Strategy), whereas the western edge studies are proposed in the short term (refer to page 43 of the Strategy). It is appropriate that there was an initial focus on the western edge, as it was

consistent with the priority given to these development areas in the Strategy. As outlined at page 41 of the Strategy, short term actions are 'one to five years' and 'are urgent because they are critical to achieving current policy or to initiating more substantial long lasting change'. In contrast, longer term actions are defined as 'beyond five years'.

- 5.49 The inclusion of the Western Edge Study area in the *ACT Planning Strategy* (2012) does not amount to a decision by the Government to urbanise this area but, once the Western Edge Study was flagged as a 'study area', a risk is created that there will be land speculation based on the possible outcomes of any investigation and subsequent decision making by the Government. For rural lessees in the area this could be considered an opportunity as their land values may increase. In the period 2001 to 2006, 99 year leases were issued. At that time the Government's intentions was that the 'areas [were] no longer required for urban development'.

Former Land Development Agency's interest in rural properties in or near the Western Edge Study area

- 5.50 Table 5-2 summarises who initiated contact between the former Land Development Agency and the vendor regarding the purchase of the nine rural properties relating in or near the Western Edge Study area.

Table 5-2 Initiation of contact with the former Land Development Agency

Property	When and how initially attained by Land Development Agency (LDA)	LDA Board record of initial consideration	Outcome as at 30 June 2017
Lands End	13 Mar 2014 (file note of phone call) the LDA received an unsolicited approach from the vendor. The property was not put on the open market.	29 May 2015	Sold to LDA (30 June 2015), following negotiation on commercial terms
Milapuru	The vendor indicated their interest to sell in a letter to a third party circa 5 Sept 2014. The third party discussed this interest with the LDA circa 6 January 2015, and then prompted the vendor to contact the LDA. The vendor then emailed the LDA on 23 Jan 2015. The property was not put on the open market.	On 11 Dec 2014, the LDA Board resolved that 'the LDA move to acquire Block 19, District of Stromlo'.	Sold to LDA (31 July 2015) following negotiation on commercial terms
Fairvale	The vendor had engaged a sales agent (Landmark Harcourts) (2 July 2015). Prior to public listing, the LDA's interest was communicated by the LDA's agent (Colliers International) to the vendor's agent via another property agent (PRD Nationwide) on 28 July 2015. The property was not put on the open market.	11 Dec 2014 the LDA Board resolved for 'the LDA to initiate discussion with the owners of ... Block 491 with a view to the possible strategic acquisition at a later date'.	Sold part of property (24 November 2015) to LDA, following negotiation on commercial terms Other part of property sold to third party (Jan 2016)
Huntly	On 3 December 2014 the vendor contacted the Environment, Planning and Sustainable Development Directorate (EPSDD) via a third party by email. EPSDD and the LDA met with the third party and the vendor on 8 December 2014. The	25 June 2015	Sold to LDA (8 April 2016), following negotiation on commercial terms

Property	When and how initially attained by Land Development Agency (LDA)	LDA Board record of initial consideration	Outcome as at 30 June 2017
	property was not put on the open market at any stage.		
Wintergarden	Identified from media by the LDA (listed in the Chronicle and the Canberra Times) prior to public auction.	30 June 2016	Sold to LDA (30 August 2016), following negotiation on commercial terms after public auction did not meet reserve
Winslade	Unsolicited approach by vendor to the LDA around 11 March 2016.	6 June 2016	Sold to LDA (30 June 2017), following negotiation on commercial terms
Pine Ridge	Cabinet decision on 24 Nov 2014 to secure easement. Discussion of opportunity for LDA to acquire arises out of easement discussions. The property was not publically listed as on the market at any stage.	27 April 2017	Agreement to sell to LDA and deposit paid (30 June 2017). Sold to SLA (12 September 2017), following negotiation on commercial terms
The Vines	Cabinet decision on 24 Nov 2014 to secure easement. Discussion of opportunity for LDA to acquire arises out of easement discussion. The property was not publically listed as on the market at any stage.	6 June 2016	Deed of surrender, agreement to sell to LDA and deposit paid (30 June 2017), through negotiation on commercial terms
Wagtail Park (12ha of Block 1601)	Cabinet decision on 24 Nov 2014 to secure easement	6 June 2016	Deed of surrender, agreement to sell to LDA and deposit paid (30 June 2017), through negotiation on commercial terms

Source: Former Land Development Agency records, agents and vendors interviews (August to October 2017)

5.51 For five rural properties, former owners initiated a discussion with the former Land Development Agency about selling their property either directly (Lands End and Winslade) or indirectly via a third party (Milapuru, Fairvale and Huntly). One property (Wintergarden) came to the attention of the former Land Development Agency through being placed on the market for auction. For three properties (Pine Ridge, The Vines and Wagtail Park) discussions about selling the property occurred after contact had been made with owners for securing easements for electricity supply infrastructure. As landowners contacted the former Land Development Agency this indicates that there was an awareness that the former Land Development Agency was interested in purchasing properties.

Former Land Development Agency's objectives and deliverables

- 5.52 The acting Director, Strategy and Program Design of the Economic Development Directorate identified in preliminary audit interviews that the challenge faced in the purchase of a 227-hectare rural property known as 'Glenloch' to the north of the National Canberra Arboretum was influential in the subsequent development of the former Land Development Agency land purchase approach. This view was supported by information provided in an interview under oath or affirmation with the former Chief Executive Officer of the Land Development Agency:

I think actually what the driver was [of the Framework] is that it came back to some –what the driver probably was when Glenloch was bought, Glenloch property which is close to the Arboretum.

... we ended up buying that property. I remember the [Chief Minister] at the time wasn't excited about that because there was no real policy. We felt we needed to buy it otherwise we were going to lose control of 1200 residential sites.

Effect of the Glenloch purchase

- 5.53 The Government's purchase of the 98-year Glenloch crown lease was concluded on 22 January 2013 for \$10 million (including GST). The vendors' rural leasehold had commenced in 2004, and had no withdrawal clause, although it contained an early discharge clause. The lease purpose clause permitted use of the land for agriculture, horse agistment, two dwellings and a farm tourist development. A former Minister for Planning made a decision not to support a proposal for the urban development of Glenloch in March 2006.
- 5.54 On 12 December 2008 as part of a *Territory Plan Variation* (No 281) much of Glenloch was re-zoned as a 'Future Urban Area'. Negotiations with the leaseholders were influenced in part by the extent to which it was considered reasonable by each party to factor in an uplift in land value given:
- Glenloch's change in *Territory Plan* zoning in 2008 to a 'Future Urban Area'; and
 - the possibility that restrictions within the leasehold's existing purpose clause could be amended, and if so, the extent of the Lease Variation Charge.
- 5.55 The Government's negotiating position was initially based on a rural land value of \$4 million provided by CBRE Valuation and Advisory Services on 27 May 2011, in accordance with the land's *Territory Plan* zoning and leasehold purpose clause when the leasehold commenced in 2004.
- 5.56 This also accords with a Cabinet decision on 23 November 2009 that:
- a) The Policy for proposals for conversion of rural leases be that:
 - i) the Territory preserve the right to resume rural leases to prevent private land speculation;

- ii) the Territory will not enter into arrangements that deliver financial gains to rural lessees from the conversion of their Territory leases: and
- iii) all of the benefits should accrue to the Territory.

5.57 However, the valuation report prepared by CBRE Valuation and Advisory Services on 27 May 2011 also provided advice on the 'speculative' and 'englobo' values of Glenloch:

Basis 1 – Rural land

The current value of Glenloch as a rural Crown Lease subject to the existing Crown Lease purpose clause without development rights ... \$4 million

Basis 2 - Speculative Value

The value of Glenloch if the current lessees transferred the property to a third party who may speculate about and attempt to develop the property in accordance with its current zoning under the Territory Plan ... \$8.55 million to \$9.90 million.

Basis 3 – Englobo

The value of Glenloch to the Territory if the Territory held the property and developed the land in accordance with its current zoning under the Territory Plan, assuming that all the necessary approvals were in place, the Crown Lease had been surrendered and Change of Use Charge was not payable ... \$92,750 million.

5.58 Successive decisions of Cabinet agreed price ceilings of \$4.8 million (7 February 2012), \$7.25 million (4 September 2012) and \$9.25 million (11 September 2012). In January 2013 the Government purchased Glenloch for \$10 million (including GST).

5.59 The possibility of the Government acquiring the leasehold compulsorily through the *Lands Acquisition Act 1994* was also considered. The ACT Government Solicitor's Office provided a 'compendium of risks' which:

Len[t] support to a negotiated outcome as the preferred course of action.

5.60 During the period of negotiations with Glenloch's vendors Cabinet decided on 7 February 2012 that:

... for future land use allocation and planning purposes long term leases (99-year) only be granted where there is absolutely no prospect of future development.

5.61 In January 2013 the Government purchased 227 hectares of land known as Glenloch for \$10 million (including GST). The property was under negotiations with the Territory for development and/or purchase by the Territory when it was re-zoned in the Territory Plan from rural to 'future urban'. As rural land it had a value of \$4 million (excluding GST) but a 'speculative value', taking account of the re-zoning and the potential to amend the Crown Lease, was also provided at \$9 million (excluding GST). The agreed price of \$10 million (including GST) was close to the speculative value.

5.62 In response to the draft proposed report on 9 May 2018 former members of the Land Development Agency Board advised that:

The Board was acutely aware of the evolving nature of the Territory's planning overlay. Relevant examples, as noted above, are the Ginninderry development, which involved rural

land being rezoned for residential development, as well as extensive zoning changes throughout the Gungahlin region over a relatively short period.

The risks of not acting on the approaches being made to the LDA were:

- The land may be purchased by private developers speculating in the area and therefore locking the Territory out of potential uplift should the land be rezoned or required for other uses; and
- If the land were rezoned for residential use following the planning studies, the land prices would be significantly above the prices paid by the LDA.

5.63 The experience in purchasing Glenloch was influential in the subsequent development of the former Land Development Agency's approach to purchasing rural land as a potential long-term supply of residential development land. The former Land Development Agency sought to secure rural lands before there was any prospect of their value being affected by any Government indication of potential urban development.

Objectives and deliverables

5.64 The objectives for, and deliverables of, the former Land Development Agency were presented in governance arrangements which were initially defined in April 2012 in a:

... Statement of Governance Arrangements [that] reflects the accountabilities of the Land Development Agency Board and Chief Executive Officer under ACT legislation, sets out the ACT Government's governance, policy and reporting requirements for the Land Development Agency (LDA) and formalises the relationship between the LDA and the Economic Development Directorate (EDD).

5.65 The statement refers to an 'Annual Statement of Government Policy, incorporating objectives and deliverables [that] will be provided to the [Land Development Agency] Board by the Minister for Economic Development after Cabinet consideration in November of any given year'.

5.66 Key objectives in the 2014-15 and 2015-16 Statements of Government Policy were to:

- Ensure that an adequate supply of land is maintained to meet market demand and to stimulate economic activity in the residential, commercial, industrial and community land development sectors.
- Contribute to the provision of advice to Government on the ACT property market to support the development of its land release targets.
- Contribute to the delivery of the Government's policies and priorities as they relate to land development, urban renewal, urban sustainability (and the asbestos response)¹⁴.
- Cultivate and maintain productive relationships across the ACT Government.
- Cultivate and maintain productive working relationships and linkages with the private sector.
- Operate efficiently in the markets in which it operates and provide agreed returns to the Territory.
- Ensure that key commercial decisions on land in the ACT are consistent with the long-term sustainability of the Territory.

¹⁴ 'The asbestos response' was not included in the 2014-15 statement

- Engage the community in a timely manner in the land development process and continue to improve community engagement processes for high profile redevelopments.

Providing agreed returns to the Territory on its investment in the agency

5.67 In relation to the former Land Development Agency's key objective to provide agreed returns to the Territory on its investment, Table 5-3 shows the former Land Development Agency's target and actual 'total return to the Government' in its annual reports between 2013-14 and 2016-17.

Table 5-3 Former Land Development Agency returns to the Government

Year	2013-14		2014-15		2015-16		2016-17	
\$ millions	Actual return	Target return	Actual return	Target return	Actual return	Target return	Actual return	Target return
Dividends paid	67	79	78	49	173	157	259	211
Payments for land acquisitions [purchases]	52	203	46	77	92	80	40	51
Others inc. income tax equiv. payments	34	47	39	26	84	77	62	97

Source: Land Development Agency Annual Reports 2013-14 to 2016-17

5.68 The 'payments for land acquisitions [purchases]' shown in Table 5-3 comprises payments for land purchased for the then current Indicative Land Release Program projects and for strategic land purchases, that is, those that are not yet related to a land release in the four-year rolling Indicative Land Release Program. Strategic land purchases were reflected in the former Land Development Agency's financial statements as 'Inventory' until 2014-15, but thereafter were classified as 'Plant, Property and Equipment' (PPE). This reclassification indicates that there was no intention to develop the land in the immediate future.

Objectives and deliverables 2016-17

5.69 The 2014-15 and 2015-16 Statements of Government Policy included a key objective for the former Land Development Agency to 'Ensure that an adequate supply of land is maintained to meet market demand and to stimulate economic activity in the residential, commercial, industrial and community land development sectors'. The *2016-17 Statement of Government Policy* (dated March 2016) further articulated that the former Land Development Agency was to:

Ensure an adequate supply of Government-owned land is in the planning and development pipeline for future release.

5.70 This statement is significant as it mandated in policy that the former Land Development Agency was to secure land:

- in anticipation of the needs of land release programs into the long term, that is, create a 'development pipeline' beyond the four-year planning horizon of the Indicative Land Release Programs approved by Government; and
- to ensure an adequate supply of land that is Government owned. This focuses on Government ownership, rather than the supply of land from the Government working in partnership with others or from private sector provision.

5.71 In its response to the draft proposed report on 10 May 2018, based on its interpretation of available records the Suburban Land Agency advised, with respect to the former Land Development Agency's mandate for acquiring land, that:

It is self-evident that the supply of land needs to be acquired, zoned and developed to meet [the] outcome [of ensuring that an adequate supply of land is maintained to meet market demand]. It was clear from modelling by the Economic Development Directorate that suitable greenfield land was going to be exhausted much sooner than originally expected due to significant sustained population growth. Given the time required to undertake acquisition, zoning and development can be up to 15 years, it was clear actions were imperative.

... the Government had clearly and consistently required the former LDA to ensure an adequate supply of land as reflected in annual Statements of Intent.

5.72 The former Land Development Agency's response in its 2016-17 *Statement of Intent*, agreed with the portfolio Minister,¹⁵ included a key strategy of:

... undertaking strategic acquisition of land to assist in establishing an inventory of land for future development purposes.

5.73 While the 2016-17 *Statement of Government Policy* established that the former Land Development Agency was to 'Ensure an adequate supply of Government-owned land is in the planning and development pipeline for future release', this is in addition to the obligation to meet the requirements of the Framework if a purchase is being considered through the application of the Framework.

5.74 The ACT Government's 2016-17 Statement of Government Policy (approved in March 2016) specifically required the former Land Development Agency to 'Ensure an adequate supply of Government-owned land is in the planning and development pipeline for future release'. Prior to this, the Government's Statements of Government Policy for the former Land Development Agency provided a broad mandate to 'Ensure an adequate supply of residential land to meet market demand and develop an inventory of serviced land'.

5.75 In an interview under oath or affirmation the former Chief Executive Officer of the Land Development Agency emphasised the importance of maintaining the supply of land that is Territory-owned since this provides the potential for a much higher financial return to the Government, depending on the development model adopted. This increased the former Land Development Agency's capacity to 'provide agreed returns to the Territory' on its

¹⁵ Chief Minister, Treasurer, and Minister for Urban Renewal

investment (refer to paragraph 5.66) through its annual dividend to the Government. The former Chief Executive Officer stated:

Well if we didn't acquire that land, the private sector would acquire the land....

... you've got to be able to provide choice to people, whether it's infill or in some of the greenfield sites. If, for example, it was all purchased by the private sector the Territory is not going to get any real revenue are they.

- 5.76 A Board report titled *Land Release Models – Summary* identified the revenue estimates from one suburb (Moncrieff) by the former Land Development Agency according to three different 'development methods' of residential land release.

Table 5-4 Yield of alternate models compared to Englobo development model

Development model	Yield rate
Englobo estates	1 x dividend yield per hectare
Land Development Agency estates	1.91 x dividend yield per hectare
Joint Venture Partnership	1.575 x dividend yield per hectare
Privately developed private held land	Zero except for a share of infrastructure and taxes

Source: Audit Office calculations based on former Land Development Agency Board report *Land Release Models - Summary* (undated)

- 5.77 Table 5-4 illustrates the financial benefit (i.e. dividend yield) to the former Land Development Agency of it securing, maintaining and developing a supply of residential land in the ownership of the Territory. Table 5-4 indicates the highest yields would result from the former Land Development Agency directly managing the development of land owned by the Territory, that is, an LDA Estate. The former Land Development Agency Board report *Land Release Models - Summary* states that an LDA Estate is:

... where the LDA manages the delivery, by the private sector, of the planning design and approval and construction works. The LDA will manage the sales agent and provides post occupancy community development programs such as 'mingle'.

- 5.78 According to former Board reports, residential development managed by the former Land Development Agency on Territory-owned land (i.e. Land Development Agency Estates) was estimated to yield the highest revenue dividend of all the delivery models, thus contributing to a key objective of the former Land Development Agency of providing 'agreed returns to the Territory'.

Contributing to the delivery of the Government's key policies and priorities related to affordable housing

- 5.79 Statements of Intent and annual reports of the former Land Development Agency identify targets and outputs, and actions planned and implemented by the former Land Development Agency relating to the delivery of affordable housing in the ACT.

5.80 For example, the former Land Development Agency's *2011-12 Annual Report* stated:

Housing affordability is a key issue in the ACT. The 2012-13 [Statement of Intent] includes non-financial KPIs to ensure both engloba and LDA delivered greenfield developments include 20 per cent of dwelling sites released for the purpose of providing affordable housing.

Table 5-5 Residential land release 2009-10 to 2013-14

	2009-10	2010-11	2011-12	2012-13	2013-14
Target (sites)	3,014	5,000	5,500	5,000	4,800
Achieved (sites)	4,279	5,048	2,466	4,354	3,299

Source: Former Land Development Agency Annual Reports 2009-10 to 2013-14

5.81 In the three years preceding the former Land Development Agency's first rural land purchase west of Canberra (Lands End) it did not meet its land release targets. Meeting land release targets affected the provision of affordable housing land as the former Land Development Agency had an obligation to release 20 per cent of dwelling sites for this purpose.

5.82 The former Land Development Agency, while being a source of revenue for the Government, also had a role in facilitating the provision of affordable housing. Twenty per cent of the land released by the former Land Development Agency was to be for affordable housing. A reduction in achieving land release targets affected the availability of land for affordable housing.

Former Land Development Agency's perceived growing urgency

5.83 The former Deputy Chief Executive Officer of the Land Development Agency reported to the 1 May 2014 Land Development Agency Board meeting that:

The [Land Development Agency] Board has discussed the issue of long-term greenfield land supply in the ACT at a number of meetings in recent months and it was raised as a primary area of concern at the recent strategic planning day.

5.84 The Board minutes of this matter:

... noted the analysis on future greenfield land supply in the Territory and the intention that this information be provided to the Strategic Board and Urban Development Sub-Committee of Cabinet. Given the importance of this issue, the Board requested a quarterly update on activity supporting the development of a sustainable, long-term planning pipeline for the [Land Development Agency].

5.85 In an interview under oath or affirmation, a former Land Development Agency Board member advised:

So here we are with authority charged with subdividing and selling land and meeting the supply and all the things that are set out in the – the Act. And we were able to see that at some point in time in the not too distant future that we would run out of land to sell, and develop. So it seemed sensible to think in terms of reacquiring blocks in the area that we deemed most likely to be developed first in terms of existing infrastructure, and most likely in terms of urban capability. That brings into account things like, you know, soil profiles, rocks, infrastructure, proximity to existing built-up areas, et cetera, et cetera, et cetera.

So, yes, it was a general policy here. It was a concern of the Board. We expressed it vigorously. It was transmitted I believe by the – by [the former Chair of the Board] to the Minister. And the Minister [for Economic Development] I think at the time acknowledged it, that it was an issue.

- 5.86 In an interview under oath or affirmation, the former Chair of the Land Development Agency Board advised:

This was driven by me right from day one. I went to the LDA. I was asked to get them to perform ...

...

It became pretty clear to me fairly early in the piece that no one was thinking beyond our four-year term, because that's the program we had. I had discussions with various people. That would have included Ministers, but I can't remember which ones, and senior bureaucrats, and [the former Deputy Chief Executive Officer] most certainly, and [former Chief Executive Officer] and said, "Somebody has got to be looking further ahead." And I'm the one – I don't know whether there's a board resolution – I'm the one that suggested, when this all came up, that somebody do a report and just have a look at how much land we've got. And I've got to tell you, when [the former Deputy Chief Executive Officer] did his report, everybody got very concerned. I'd been pushing for people to plan ahead – not necessarily us, but somebody. There were reactions from various Ministers over my push. So we did this report.

- 5.87 An agenda paper titled *Future Greenfield Land Supply* was presented to the ACT Government's Strategic Board meeting of 14 May 2014 by the former Chief Executive Officer and Deputy Chief Executive Officer of the Land Development Agency.¹⁶ This report provided an analysis of housing demand and supply scenarios over the forward 25 years based on land then zoned for urban development:

The following three growth scenarios estimate the time remaining until the current supply of greenfield land is exhausted. The scenarios assume 50 per cent of land release occurs in greenfield estates and the private sector contributes 500 new dwellings on leased land, which contributes to the 50 per cent infill component.

- 5.88 In response to the highest growth scenario, the report concluded that greenfield land would be exhausted in 17 years (that is, by 2031). The report identified that:

Investigations to identify the next development front should commence immediately in anticipation of a new front being required in or soon after 2025 ...

The following areas may provide opportunities for future greenfield developments; Central Molonglo, Stromlo Valley, Bolger Creek [sic], West Murrumbidgee, Kowen, NSW such as Sutton or Gooromon ...

Extensive investigation is required to determine the preferred site(s). All options will involve significant capital works in order to establish a new front and will raise a range of environmental infrastructure and transport issues. Based on past experience this process can take 10 years before initial dwelling occupation occurs.

- 5.89 A report titled *Long-term land release in the ACT: Issues and options* was provided to Cabinet on 27 May 2014. It presented the scenario of greenfield land being exhausted by 2031 and of seven development front options, and recommended that 'investigations to identify the

¹⁶ In their roles as Director-General and Deputy Director-General, Economic Development Directorate, as policy development was within the Economic Development Directorate portfolio

next development front should commence by the end of 2015, in anticipation of a new front being required in or soon after 2025'. In response Cabinet:

... agreed not to endorse the strategy outlined in the submission, but that a further submission be brought forward in 2015 outlining the key processes and corresponding timeframes for ensuring planning-ready land is available for release and the roles and responsibilities of the ACT Government directorates in facilitating these processes.

- 5.90 A further submission was never provided. The acting Director, Land Development Projects of the Environment, Planning and Sustainable Development Directorate advised that no further paper has been prepared for Cabinet on this topic:

The only follow-up paper was an LDA Board paper around October 2015. A paper from Elton's Consulting also went to the Board which elaborated on this work and highlighted cross-border opportunities.

The then Environment and Planning Directorate put a paper to Director General's Committee in April 2016 as part of background work on the Planning Strategy review which also touched on this area.

- 5.91 A search of the Cabinet Coordination Office register confirmed that no further Cabinet submission was provided. A draft minute of the Policy Council meeting on 11 September 2014 states:

Policy Council note [the Deputy Director-General, Economic Development Directorate's] update in assessing greenfield land supply. The assessment follows Cabinet's consideration of an information paper in May 2014.

- 5.92 In May 2014 a Cabinet submission proposed that 'investigations to identify the next development front should commence by the end of 2015, in anticipation of a new front being required in or soon after 2025'. Cabinet agreed on 27 May 2014 'not to endorse the strategy outlined in the submission, but that a further submission be brought forward in 2015 outlining the key processes and corresponding timeframes for ensuring planning-ready land is available for release, and the roles and responsibilities of the ACT Government directorate in facilitating these processes'. A further submission was never provided by the Economic Development Directorate.

- 5.93 Former Land Development Agency Board records were examined for the period following the 27 May 2014 Cabinet decision. Reference was made to the Cabinet's response in the former Chief Executive Officer's Board Report, marked 'Cabinet in Confidence', to the 26 June 2014 meeting:

The Minister has indicated that his Ministerial colleagues expressed very strong views towards issues raised in the Information Paper. Comments raised included concerns about the Central Molonglo moratorium; Division of responsibility between Government agencies for determination of future development activity; and consideration of the current 50:50 ratio of greenfield/urban infill with a possible increase in the level of urban infill. These matters are currently before government.

- 5.94 The minutes of that Board meeting on 26 June 2014 do not refer to the Cabinet response or to an acknowledgement of that response by the former Land Development Agency Board.

5.95 The former Deputy Chief Executive Officer who had authored the report presented to the former Land Development Agency Board on 1 May 2014 and to the ACT Government Strategic Board on 14 May 2014 was asked whether the Land Development Agency Board was advised of the Cabinet decision not to proceed with investigations.

5.96 The former Deputy Chief Executive Officer provided information in a phone interview (with summary notes taken that were agreed in writing):

Audit Office

Did you know what the Cabinet decision was on the 27 May 2014 paper? And if so were you aware whether the LDA Board was advised of this?

Deputy Chief Executive Officer

... was made aware of the outcome from the Cabinet meeting but couldn't recall whether this was a verbal update or via the formal Cabinet decisions (which were circulated to EDD senior executives through a secure system). Also indicated that the outcome was shared with the LDA Board via a verbal briefing from [the former Chief Executive Officer] in the next LDA Board meeting after the Cabinet decision.

... recollection of the Cabinet outcome is that Cabinet did not view the situation with the same degree of urgency as the LDA Board and that there were no specific actions arising from the Cabinet decision.

5.97 In an interview under oath or affirmation, a former Land Development Agency Board Member was asked about their knowledge of Cabinet's consideration:

Audit Office

Can you recall the conversation or recall the outcome of the Board's learning what the Cabinet had resolved in late May? Or can you recall what the – first of all, can you recall what the Cabinet made of that paper?

Former Board Member

No. Well, of course, you know, I only had the report of the – of the [former Chair of the Board] and [former Chief Executive Officer] as to, you know, the Cabinet's attitude ...

... and their response to the paper. I do recollect the [former Chair of the Board] saying they didn't seem terribly keen or terribly concerned beyond their four-year term of government.

5.98 Former Land Development Agency Board records indicate that the first proposed purchase of a property (Riverview) in the Western Edge Study area was brought to the Board meeting on 28 August 2014 (refer to paragraph 2.2).

5.99 The former Chief Executive Officer briefed the Land Development Agency Board on 26 June 2014 about the Cabinet's response to the *Long-term land release in the ACT: Issues and options* paper. Recollections of the former Deputy Chief Executive Officer and a former Board member were that Cabinet in May 2014 did not view the need for a new development front to be determined with the same degree of urgency as the former Land Development Agency Board.

Unsolicited proposal from Colliers International

- 5.100 On 20 August 2014 the former Land Development Agency was advised by the Colliers International State Chief Executive, ACT, about Riverview, shortly before its intended listing for sale on the open market. The Colliers International State Chief Executive, ACT sent an email on 20 August 2014 to the former Chief Executive Officer and former Deputy Chief Executive Officer of the former Land Development Agency:

This property has come across my desk ... I think the Territory should own it for future development land. We need to move fast because when the market finds out what the [buyer] paid for the property next door, it will go up in value.

- 5.101 Two weeks later, in a letter dated 5 September 2014, the Colliers International State Chief Executive, ACT provided a four-page proposal to the former Deputy Chief Executive Officer (and copied to the former Chief Executive Officer), titled 'project consolidation' in which the Colliers International State Chief Executive, ACT proposed a range of actions the former Land Development Agency Board should consider with the stated aim to:

Acquire and take control of six (6) rural parcels west of the existing suburb of Chapman for future residential subdivision land [namely the Canberra Equestrian Centre (two blocks), Riverview, Fairvale, National Equestrian Centre, and Milapuru].

- 5.102 In the covering email of 8 September 2014, the Colliers International State Chief Executive, ACT stated to the former Deputy Chief Executive Officer:

... please find attached an updated letter and a paper setting out the project potential if we have a strategy around getting control of all the sites in this valley.

I have spoken to the Chief but due to assembly sitting Mon – Weds she cannot meet, but has asked me to discuss further with you and the [Chief Executive Officer], then she can go get Cabinet support.

This is a great opportunity to deliver a massive upside to the territory and we can have a chat over dinner.

- 5.103 The former Deputy Chief Executive Officer in a telephone interview, and the former Chief Executive Officer and the Colliers International State Chief Executive, ACT in an interview under oath or affirmation, were asked about the email and whether the Colliers International 'project consolidation' proposal was unsolicited. The responses indicated the initial proposal was an initiative of the Colliers International State Chief Executive, ACT and that no plan or strategy had been agreed by, or shared with, the former Land Development Agency prior to 8 September 2014 for purchasing multiple rural properties in this area, that is the District of Stromlo south of Cotter Road.

- 5.104 The former Chief Minister was asked about the email of 8 September 2014 from the Colliers International State Chief Executive, ACT that referred to the former Chief Minister and the attached letter referred to in that email:

Audit Office

[Referring to the email (8 September 2014)] ... there's no suggestion that either document was sent to you directly.

Former Chief Minister

... No, I don't believe it was. I've got no recollection of that – ever seeing that document.

...

Audit Office

And we'd just like to know whether you gave any implicit or explicit direction regarding this issue [i.e. a strategy around getting control of all the sites in this valley]?

Former Chief Minister

No. ... if that's how my name is being used, it's – that was actually what [the Colliers International State Chief Executive, ACT] put to me. Probably not as strongly as that... So, no, ... there was no direction from me. ... it was one less-than-five minute conversation ... that I had with the [Colliers International State Chief Executive, ACT] where he put to me that the government should be buying this....

...

And he said "I've been thinking about this bit. I could do some work on it..."

And I said "Fine. Sounds interesting ... let me know. Talk to the [former Land Development Agency Chief Executive Officer]. Talk to the [former Land Development Agency] ...

...

... and I don't think I ever saw anything back from the department about like probably looking at this timeline ...

... so I am almost a hundred per cent sure I never saw anything or had another conversation with him about it. And certainly there was no paper to Cabinet...

- 5.105 The former Land Development Agency Board minutes of 25 September 2014 indicate that the Board decided not to pursue the purchase of Riverview but discussed the need 'for a more strategic approach to consideration of new greenfield development fronts, with a long-term, whole-of-government approach rather than ad hoc site identification'. The Board requested that the former Land Development Agency:

... prepare a paper on long-term land supply options, incorporating a prospective strategic acquisition program.

- 5.106 No details were recorded in the minutes as to the geographic scope of the 'prospective acquisition program' or to the rationale for its scope.

- 5.107 Prior to the former Land Development Agency Board discussion on 25 September 2014, the former Land Development Agency's Chief Executive Officer and former Deputy Chief Executive Officer had already received an unsolicited proposal from the Colliers International State Chief Executive, ACT relating to 'acquiring' and 'taking control' of five contiguous rural properties (the Canberra Equestrian Centre, Riverview, Fairvale, National Equestrian Centre, and Milapuru) in the District of Stromlo. There is no evidence in Board reports or minutes that the Board was made aware of the unsolicited proposal.

Board consideration of a 'prospective acquisition program'

5.108 A *District of Stromlo Acquisitions strategy paper* (12-page report) was presented to the former Land Development Agency Board at its meeting on 11 December 2014. It was prepared by the Colliers International State Chief Executive, ACT and a colleague from Colliers International. The strategy is specific to one area of one district (Stromlo) in the Western Edge Study area and to five privately-owned properties under 99-year leases (the Canberra Equestrian Centre, Riverview, Fairvale, National Equestrian Centre, and Milapuru). The paper has the same geographic scope and proposes very similar options to those identified in the unsolicited 'project consolidation' letter dated 5 September 2014 from Colliers International to the former Deputy Chief Executive Officer of the Land Development Agency (refer to paragraph 5.101).

5.109 An accompanying paper prepared by the former Deputy Chief Executive Officer for the 11 December 2014 Board meeting provides an explanation behind the particular geographic focus:

The Land Development Agency has since undertaken a desktop analysis of the existing lease arrangements for a number of the development options identified in the earlier work; and

In light of these constraints, the [Land Development Agency] sought more detailed analysis from Colliers on the Bolger Creek [sic] properties that are adjacent to the Stromlo land ('Riverview') that was previously considered for a strategic acquisition .

5.110 There is no evidence in the 11 December 2014 Board report or in Board minutes that it was made aware of the original unsolicited proposal from Colliers International that was shared with the former Land Development Agency on 8 September 2014.

5.111 Information was sought as to the link between the 'project consolidation' letter (5 September 2014), the 25 September 2014 Board decision to obtain a 'prospective acquisition program' and the *District of Stromlo Acquisitions strategy paper* taken to the 11 December 2014 Board. The former Deputy Chief Executive Officer provided information in a phone interview (with summary notes were taken and agreed by the former Deputy). Following are extracts from the summary notes:

Audit Office

Was the November 2014 Colliers 12-page paper related to the 25 September 2014 LDA Board action to prepare a prospective strategy acquisition program?

Former Deputy Chief Executive Officer

Agrees that the short (5 September) and the long (November 2014) strategy are related and that the 25 September Board signalled interest in getting a strategy up – reasonably certain that is what led to the November 2014 Colliers paper.

Audit Office

Was the November 2014 paper specifically requested by the LDA. If so, how?

Former Deputy Chief Executive Officer

... noted that the short paper was sent by Colliers unsolicited. However he could only 'assume' that there would have been an offer from, or request to, Colliers to develop the more in-depth paper but could not recall the exact circumstance.

- 5.112 The Audit Office sought, but did not locate any, written instruction to Colliers International to prepare the *District of Stromlo Acquisitions strategy paper*. Neither the former Land Development Agency nor the Colliers International State Chief Executive, ACT could locate a written instruction for this task when asked (refer to paragraphs 3.31 to 3.33).
- 5.113 The report to the former Land Development Agency Board accompanying the *District of Stromlo Acquisitions strategy paper* requested that the Board consider and confirm the approach proposed. At its meeting on 11 December 2014 the Board resolved to agree specific actions related to the strategy paper, but it did not confirm or endorse the strategy paper.
- 5.114 Unsolicited advice provided by the Colliers International State Chief Executive, ACT was the catalyst for, and basis of, the strategy used by the former Land Development Agency for the purchasing of Milapuru and Fairvale. There is no documentary evidence that this advice was rigorously assessed or conflicts of interest identified. In relation to these events:
- on 8 September 2014, the Colliers International State Chief Executive, ACT provided an unsolicited (four-page) 'project consolidation' proposal to the former Deputy Chief Executive Officer, indicating that the properties of Canberra Equestrian Centre, Riverview, Fairvale, National Equestrian Centre, and Milapuru would be worth considering for purchase or 'taking control of';
 - on 8 September 2014 the Colliers International State Chief Executive, ACT stated in an email in relation to the 'project consolidation' proposal that 'I have spoken to [the Chief] ... but she has asked me to discuss further with you ... then she can go get Cabinet support'. An interaction of this kind was not substantiated;
 - former Land Development Agency Board records of the 25 September 2014 Board meeting do not acknowledge that the unsolicited 'project consolidation' proposal had been made. The Board requested that 'a paper on long-term land supply options, incorporating a strategic acquisition program' be prepared for its consideration. The rationale and scope of the program were not recorded in minutes; and
 - on 11 December 2014, a *District of Stromlo Acquisition strategy paper* was presented to the former Land Development Agency Board. It had also been prepared by the Colliers international State Chief Executive, ACT and a colleague from Colliers International. The *District of Stromlo Acquisition strategy paper* is specific to the properties of Canberra Equestrian Centre, Riverview, Fairvale, National Equestrian Centre, and Milapuru which were under 99-year leases. The paper reflects the same geographic scope and similar recommendations as the unsolicited 'project consolidation' proposal provided on 8 September 2014.
- 5.115 This matter is addressed further in the first section of Chapter 3 (paragraphs 3.6 to 3.9).

Progressing the *ACT Planning Strategy* (2012)

- 5.116 The report to the former Land Development Agency Board on 11 December 2014 from the former Deputy Chief Executive Officer accompanying the *District of Stromlo Acquisitions strategy paper* makes reference that:

There are mixed views within Government on the development of this area with much of the concern to date stemming from the prospect of further urban sprawl through additional small lot detached residential dwellings.

- 5.117 From this point onwards, although not confirmed in a minuted Board decision, the former Land Development Agency proceeded on the basis the Board had approved it to take a:

... strategic approach [...] to acquire development capable lands adjacent to the existing western urban edge of Canberra (Board report No. 165.2.2, 25 May 2017, page 2).

- 5.118 The *ACT Planning Strategy* (2012) identifies a short-term action 'to initiate a study to assess the issues, best uses and management for the lands on the city's western boundary'. The progress of this action was examined, given that in December 2014 the former Land Development Agency Board had begun pursuing prospective purchases as part of its 'acquisition strategy for future developable land' in the Bulgar Creek area of Stromlo District which is within the Western Edge Study area.

Western Edge Study area investigations status

- 5.119 The Strategic Planning team of the Planning Policy Division of the Environment, Planning and Sustainable Development Directorate performs functions of the Planning and Land Authority. The Strategic Planning team is responsible for progressing and monitoring the implementation of the *ACT Planning Strategy* (2012). Senior officers in that team identified that as at 8 August 2017, the Western Edge Study had not commenced.
- 5.120 Documentation provided by the Division identified that for the first four years from the commencement of drafting of the *ACT Planning Strategy* (2012) in three of these years the Strategic Planning team had put forward a proposal to secure funding of between \$250,000 and \$900,000 in order to progress a Western Edge Study.¹⁷ No proposal was put forward in 2014-15 by the Strategic Planning team.
- 5.121 Documentation provided indicates the proposals were not put to the Minister for Planning in one case (in 2015-16) and were not supported by the Minister for the Environment and Sustainable Development in two cases (in 2012-13 and 2013-14).
- 5.122 In 2016-17 and 2017-18 proposals were put forward by the Strategic Planning team in the Planning Policy Division for \$1.1 million over three years to fund a project referred to as

¹⁷ Referred to as Western Lands investigation, Western Broadacre Investigation study or Western Edge Study in budget proposals in 2012-13, 2013-14 and 2015-16

Planning Strategy implementation - the next development front. These proposals were not put to the Minister for Planning and Land Management.

- 5.123 The former Chief Planning Executive, who retired from the ACT Government in April 2017, was asked whether the Strategic Planning team had sought advice as to where in the five-year timeframe of the *ACT Planning Strategy* (i.e. 2012 to 2017) a Western Edge Study area investigation may fit. The former Chief Planning Executive advised:

... there were two conversations, three perhaps, three issues that were being discussed: the need for us to get it – because 2017 was rapidly approaching and that means that it was time for the strategic planning to be reviewed. And that was an important priority that we get rid of the bulk of the master plans and we would put our resources into substantial reviews of the whole planning strategy, and in that context we would have regard to what was happening in terms of supply and demand in the town centres, along the Northbourne corridor, city to the lake.

- 5.124 The former Chief Planning Executive further advised:

... The 2012 Planning Strategy also highlighted that master plans would be required for a number of areas around the city, particularly the town centres and the group centre ... and so a lot of our strategic focus was on actually completing that program of master plans

... given the minister I was working for ... was in no hurry to actually dilute the effect of urban intensification and that with the – you know, with the resources that I had, that that's where I should be continuing to put my emphasis.

- 5.125 In response to the draft proposed report, on 7 May 2018, the former Chief Planning Executive advised that:

The [Planning and Land Authority] was undertaking the work that was at that stage the priority of the Government. It was not the [Planning and Land Authority's] independent decision to give this work priority over the Western Edge Study. Indeed, there was a clear decision of Cabinet in May 2014 that this work should not be progressed. Hence, subsequent budget proposals were not pursued. The [Planning and Land Authority] was not advised of any reversal of this Cabinet decision to warrant pursuing further budget bids.

- 5.126 Professor Holliday (audit Subject Matter Expert) advised that while the theme of urban intensification is evident in the *Canberra Spatial Plan* (2004), it predominates in the *ACT Planning Strategy* (2012): urban intensification is a major aspect to Themes 1, 2, 5, 6, and 7 of the *ACT Planning Strategy* (2012). In addition, Urban Renewal was introduced as a key priority of the Government in the Chief Minister, Treasury and Economic Development Directorate's 2015-16 budget statement and this is reflected in the Minister for Planning's *Statement of Planning Intent 2015* (November 2015):

Canberra has just celebrated its 100 year anniversary ...

We are transitioning from a regional city to a major metropolitan centre as well as maturing as the national capital. We are embarking on a period of significant urban renewal.

- 5.127 Notwithstanding that it was a commitment made in the *ACT Planning Strategy* (2012), between 2012 and 2017 '... a study to assess the issues, best uses and management for the lands on the city's western boundary' was not commenced. The former Chief Planning Executive advised that 'the [Planning and Land Authority] was undertaking the work that was at that stage the priority of the Government. It was not the [Planning and Land

Authority's] independent decision to give [other] work priority over the Western Edge Study'. Documentation indicates that the Minister for the Environment and Sustainable Development did not support the Planning and Land Authority's funding proposals to progress the study in 2012-13 and 2013-14, and funding proposals were not put to the portfolio Minister thereafter. The Planning and Land Authority focused on the *ACT Planning Strategy* (2012) priority of urban intensification.

- 5.128 In its response to the draft proposed report on 10 May 2018 the Suburban Land Agency advised that the 27 May 2014 Cabinet decision:

... was for Economic Development Directorate to bring forward a further submission. Cabinet at no time made a decision that the Planning and Land Authority should not proceed with investigations or studies outlined in the Strategy as short term actions.

The Planning and Land Authority and former Land Development Agency

- 5.129 Paragraph 5.125 identifies that by 2014-15 the former Chief Planning Executive stated they were acting in accordance with a Cabinet decision of 27 May 2014 not to progress work relating to the Western Edge Study area. In contrast, paragraphs 5.108 to 5.114 identify that the former Land Development Agency was preparing advice for the former Land Development Agency Board about a 'prospective acquisition program' within a geographic area it presents as its preference for future urban development.

- 5.130 In its response to the draft proposed report, based on its interpretation of available records the Suburban Land Agency advised on 10 May 2018 that with respect to the *ACT Planning Strategy* (2012):

... it was reasonable for the LDA, which was required to operate over long timeframes, to move forward in line with the published policy. While the policy would be subject to review, including by way of a formal review in 2018, there was no reason to expect that there would be any change with respect to the western edge. A high-level understanding of planning in the ACT would lead to the conclusion that the western edge was by far the most likely prospect for the next urban front. If a revised policy removed the western edge then the LDA would re-order its priorities as is ordinarily the case with any Government agency in response to a policy change. Until such a change was made, the LDA was obliged to continue with its role.

- 5.131 This indicates that the former Land Development Agency and the Planning and Land Authority had different priorities for their activities with respect to the Western Edge Study area. Former executives of the former Land Development Agency and the Planning and Land Authority presented different views to the Audit Office on the extent to which there was a shared awareness of the activities of the former Land Development Agency relating to the rural land west of Canberra.

- 5.132 A former Executive Director, Strategic Planning of the Environment, Planning and Sustainable Development Directorate in the period 2014 to 2017 advised:

I have not been consulted about the purchasing activities of the Land Development Agency and I am not informed on their charter on land banking for future development. At this stage in the development of Canberra, there is no strategic planning work that we have undertaken or deliberated on that would give confidence that the urban footprint of Canberra will move to

the west or that land in the Western Edge Study area might be rezoned for urban development.

- 5.133 In response to the draft proposed report the Suburban Land Agency advised on 10 May 2018 that the views provided by the former Executive Director:

... do not accurately reflect the numerous interactions between the former Land Development Agency, Economic Development Directorate and Environment, Planning and Sustainable Development Directorate over a number of years.

- 5.134 The former Chief Planning Executive advised that they:

... knew the [Chief Executive Officer of the Land Development Agency] had [said they] were looking at purchasing some land in Bulgar Creek, but that was fairly informally

... [did] not have exposure to the rationale and the actual strategy

... [were] conscious of a level of anxiety, that the [Land Development Agency] wanted to have a clearer line of sight about the planning for new greenfields areas.

- 5.135 The former Chief Executive Officer of the Land Development Agency, in an interview under oath or affirmation, advised:

I would be working with the [former Chief Planning Executive and their deputy] within [the Planning and Land Authority] who would have then set up meetings.

I used to have meetings with [them] on a fairly regular basis about different things and how we could get on and get things happening.

- 5.136 In response to the draft proposed report on 15 May 2018 the former Chief Executive Officer further advised that:

... the Purchases were made with Board and Ministerial approval, and in consultation with the ACT Planning and Land Authority. The Purchases were also on the public record, being the subject of an article in the Canberra Times.

...

... I met regularly with the Chief Planning Executive and would keep them updated of LDA activities. The relationship between the agencies was collaborative, and should be described as such.

Planning for the *ACT Planning Strategy* five-year review

- 5.137 In November 2015 the Strategic Planning team in the Environment, Planning and Sustainable Development Directorate began preparing a report card in response to the Planning and Land Authority's commitment to monitoring and reporting on the implementation of the *ACT Planning Strategy* (2012) (page 65). The report card was in the process of being prepared between November 2015 and June 2016. The precedent for such an approach was the annual progress reports to be prepared for the implementation of the *Transport for Canberra* initiative. (The first, and to date only, such report (the *Transport for Canberra Report Card*) was published in September 2014, covering the period from June 2012 to July 2014).

- 5.138 The Strategic Planning team identified that the final version of the 2015 report card (an 88-page report) was provided to the then Deputy Director-General of the Environment,

Planning and Sustainable Development Directorate in June 2016 but the report card was not subsequently approved or published by the Minister for Planning and Land Management.

Feedback on the draft *ACT Planning Strategy Report Card* (2015)

- 5.139 During the preparation of the report card, on 23 March 2016 feedback was sought from the former Land Development Agency and the Economic Development Directorate on the draft *ACT Planning Strategy Report Card*. On 18 April 2016 the Deputy Director-General of the Economic Development Directorate responded to the Chief Planning Executive in a two-page letter.¹⁸ (The Deputy Director-General of the Economic Development Directorate at that time is the current Chief Planning Executive and Director-General, Environment, Planning and Sustainable Development Directorate). The letter stated:

Economic Development has a concern about the lower priority afforded to preliminary land capability assessments to prioritise the next urban development front.

...The planning strategy specifically mentions a short term strategy to 'initiate a study to assess the issues, best uses and management for the lands on the City's western boundary.

[Economic Development Directorate] estimates suggest that the current supply of planning ready greenfield land in the ACT could be near exhaustion by 2025. [The Economic Development Directorate] suggests that a coordinated body of work to investigate and identify the next urban development front which is likely to be along the western edge of the urban boundary ought to commence by the end of 2016.

- 5.140 The Planning and Land Authority's *Long Term Urban Development Strategy – Review of the ACT Planning Strategy* (a document circulated within the Planning and Land Authority on 1 March 2016), outlines the direction the Planning and Land Authority intended to take:

There is a need to better plan regional demand for new settlement with cross-border infrastructure, transport connection and governance arrangements, and do so within the context of a strategic plan that can spatially provide for metropolitan and cross-border land development.

It is proposed that over the next year the Environment and Planning Directorate (EPD) will undertake the background technical work required to build the evidence base for the formal review point for the ACT Planning Strategy.

- 5.141 The Planning and Land Authority's *Long Term Urban Development Strategy – Review of the ACT Planning Strategy* also refers to challenges relating to the growth of western Canberra:

While the current Strategy provides a broad context for development it does not ... address the growing disparity between population growth to the west of Canberra and employment location occurring in the centre and east which is leading to increased travel and infrastructure costs

...

A key [question is] the travel and infrastructure implications of the increasing mismatch between new greenfields settlement occurring to the west of Canberra and new employment growth in central and eastern Canberra.

¹⁸ It was the Land Development Division of the Economic Development Directorate that provided the feedback.

5.142 In relation to the urgency of establishing new development fronts, the Planning and Land Authority's *Long Term Urban Development Strategy – Review of the ACT Planning Strategy* does not refer to any scenario whereby 'greenfield land in the ACT could be near exhaustion by 2025' as stated in the Deputy Director-General of the Economic Development Directorate's letter of 18 April 2016. The *Long Term Urban Development Strategy paper* instead (page 12) states:

... supply, theoretically, is sufficient to accommodate demand to around 2045 ... while the greenfields supply in Gungahlin is likely to be exhausted in around 2030.

5.143 The documented views in the first half of 2016 provided by the Economic Development Directorate and the Planning and Land Authority relating to the priority for urban development were different. The Planning and Land Authority was seeking to conduct a formal review of the *ACT Planning Strategy* (2012), emphasising emerging challenges, particularly those around the 'travel and infrastructure implications of the increasing mismatch between new greenfields settlement occurring to the west of Canberra and new employment growth in central and eastern Canberra'. The Economic Development Directorate sought to progress 'the coordinated body of work to investigate and identify the next urban development front which is likely to be along the western edge of the urban boundary'. Documentation indicates that these two Government entities held different views about the priority of urban growth to the west of Canberra.

Future development area workshops

5.144 The former Chief Planning Executive identified that the Planning and Land Authority commenced cross-directorate work in preparation for an *ACT Planning Strategy* review in 2016. Two workshops were held in 20 July and 13 December 2016 referred to as 'Future development area workshops', with invitations to Economic Development Directorate, the former Land Development Agency, and Planning and Land Authority officers and executives. ACT Treasury and Transport Canberra and City Services Directorate officers and executives were invited to the second meeting.

5.145 The record of the outcome of the first workshop on 20 July 2016 identifies actions for the Economic Development Directorate and Planning and Land Authority officers and executives to take forward. Substantive items on the 20 July 2016 agenda were:

- Item 2 Discussion of future development areas;
- Item 3 Preliminary ranking of future developable areas; and
- Item 4 Next Steps

5.146 At the second of these workshops on 13 December 2016 all substantive agenda items were led by either Economic Development Directorate or the former Land Development Agency staff:

- Item 2 Actions from Previous meeting;
- Item 3 LDA Board paper – Huntly Management Business Plan; and

- Item 4 Discussion next steps

5.147 One agenda item for the second meeting involved a discussion associated with the *Land Development Agency Board paper - Huntly Management Business Plan* and for this item a 7-page paper was presented based on extracts from a 14-page Board report dated 31 March 2016. The extracts included information about staging and timing, and costs to the former Land Development Agency:

... to undertake the necessary due diligence and participate in other studies to convert the property to urban land use in the time period from 2016 through to 2035

...

Note that the time period is dependent on Government policies [sic] directions.

5.148 The attendees list indicates that the 13 December 2016 meeting was not attended by any Planning and Land Authority staff. Planning and Land Authority officers met separately in January 2017, and advised the Audit Office on 26 June 2018:

... regarding any further records of [Planning and Land Authority] involvement in discussions on future urban areas (work undertaken by [the Economic Development Directorate]), there are no records of further meetings following the 10 January 2017 meeting with the [Planning and Land Authority].

[The Economic Development Directorate] previously chaired an Infrastructure Coordination Group, a meeting was proposed to be organised for May-June 2017, however the [Planning and Land Authority] suggested this be held off pending organisational changes due to come into effect on 1 July 2017

The meeting was held in September 2017. ... The minutes from the September 2017 Infrastructure Coordination Group ... indicate the [Planning and Land Authority] was represented at this meeting. A mention of future work on future urban fronts is highlighted.

5.149 Cross-directorate interaction during the latter part of 2016 between the Economic Development Directorate, the former Land Development Agency and the Planning and Land Authority in preparation for an *ACT Planning Strategy* review did not achieve the collaboration intended by the former Chief Planning Executive. The second of two future development area workshops planned for the year did not progress cross-directorate dialogue until September 2017. Differences in priority remained evident: differences in growth options for consideration, in the urgency of the task to secure a pipeline of release-ready land, and in the approach to strategic planning.

5.150 During 2017, the former Land Development Agency continued to emphasise the district of Stromlo and the Western Edge Study area as its preferred location for future urban development. The former Board received a report titled *Land Development Agency Strategy for Stromlo District Land Acquisitions* at its 23 February 2017 meeting. This report's stated purpose was:

To update the Board on the status of undertakings on land in the Stromlo District including the extent of possible development as depicted in the draft Stromlo District Master Plan.

5.151 In this report it is stated that:

All these areas will provide a comprehensive land package for future development forming a new development front.

5.152 In former Land Development Agency Board meetings in March, April and May 2017 the Board discussed four further proposed purchases, one in the District of Stromlo (the National Equestrian Centre) and three in the District of Belconnen in the Central Molonglo precinct (Pine Ridge, The Vines and Wagtail Park) and approved the latter three.

5.153 From 2014 to 2017 the former Land Development Agency (or the Economic Development Directorate) and the Planning and Land Authority placed different priorities on the Western Edge Study area. The former Land Development Agency was purchasing rural lands in the Western Edge Study area to secure a long-term supply of land in Government control; the 'next urban development front [...] is likely to be along the western edge'. At the same time the Planning and Land Authority was focused on planning activities related to urban intensification in accordance with the Minister for Planning's *Statement of Planning Intent 2015* and not progressing a Western Edge Study area investigation as committed to in the *ACT Planning Strategy (2012)*. These priorities may have been clarified from a whole of Government perspective had the former Land Development Agency (or Economic Development Directorate) addressed the 27 May 2014 Cabinet decision that a further submission be brought to Cabinet in 2015 on the topic of *Long-term land release in the ACT: Issues and options*.

5.154 In its response to the draft proposed report the Suburban Land Agency advised on 10 May 2018 based on its interpretation of available records that 'No agencies disagreed with the assumptions underpinning the Strategy, and there was ongoing dialogue within government. The former LDA was not operating in isolation or in its own direction, but shared a common understanding with other agencies, including ACT Treasury'.

Internal Land Development Agency land planning

5.155 An 18-page report provided to the former Land Development Agency Board on 23 February 2017 provides an explanation as to the timing of the former Land Development Agency's planning activity:

The first draft of this preliminary master plan has been undertaken well in advance of management arrangements being agreed and put in place across relevant directorates to commence strategic planning for the area covered by the Western Edge Study discussed earlier under the ACT Planning Strategy 2012.

It has been undertaken using available sources such as aerial photography, early ecological constraints, bushfire initial risk analysis, slope analysis, contamination and strategic planning logic in relation to possible location of roads, servicing infrastructure, possible retail centres and schools etc. Also, a preliminary guide to dwelling capacities and potential financial outcomes is included.

- 5.156 The Board report of 23 February 2017 that relates to the 'draft Stromlo District Master Plan' (Figure 5-4) was, in an amended form, provided to the Economic Development Subcommittee of Cabinet on 13 July 2017 in relation to a subcommittee item titled *Strategy for Western Edge Land acquisitions*.
- 5.157 The former Land Development Agency undertook internal planning activities for the Western Edge Study area and presented this to the former Land Development Agency Board and Economic Development Subcommittee of Cabinet. This was reflective of its focus on this area.

Risks relating to the former Land Development Agency and the Planning and Land Authority's different priorities

- 5.158 On the completion of fieldwork by the Audit Office (3 January 2018) Professor Holliday (the audit Subject Matter Expert) was asked to comment on the risks of the land purchases and prevailing planning considerations, and advised:

In the ACT, there is a clear process for identifying and then implementing the release of new land for urban purposes. There is the overarching *ACT Planning Strategy* reviewed approximately every five years and in between, there are more detailed studies to verify and evaluate areas that have been identified for possible future urban purposes in the *ACT Planning Strategy*. However, the identification of possible future urban areas does not, in itself, confirm that these areas will definitely become zoned for those purposes. The responsibility for these investigations and evaluations rests clearly with the Planning and Land Authority and eventually for Cabinet to make a decision.

In the instance of the Western Edge Study area, the Land Development Agency proceeded to acquire land prior to any such evaluation being undertaken, prior to Cabinet approval to proceed and even prior to their own 'planning' analysis. It appears that they relied on 'real estate' advice and the fact that the area had been identified in the *ACT Planning Strategy* as a possible 'study' area. They committed \$43 million in acquiring land without the appropriate studies being undertaken. This is highly unusual as the investigations required to confirm that this area would indeed become the next area to be zoned for urban purposes were not undertaken.

The Land Development Agency committing \$43 million of Government funds, whether at market or above market prices for rural land, places the Government in an invidious position. An evaluation of alternative locations for the next urban front has not taken place and is due to take place as part of the update of the *ACT Planning Strategy* in 2018. The Government may find it very difficult, irrespective of the outcome of any planning analysis, to make a decision that ignores such a significant investment in land. The Land Development Agency's action has effectively pre-empted a proper policy making process. Should the analysis show that the Eastern edge of the ACT is preferable for the next urban development area, the consequences are either significant land holding costs for land already acquired in the Western Edge Study area, or ignoring the planning analysis.

- 5.159 In relation to the advice that 'should the analysis show that the Eastern edge of the ACT is preferable for the next urban development area, the consequences are either significant land holding costs for land already acquired in the Western Edge Study area, or ignoring the planning analysis' in a response to the draft proposed report on 10 May 2018 the Chief Planning Executive advised:

This conclusion implies that the purchase of the identified properties by the former LDA creates a static asset inventory for the Suburban Land Agency that continues in perpetuity. The conclusion does not reflect the legal ability for the Suburban Land Agency to sell its interest in the identified properties should it wish to do so and within the same planning context that applied at the time of the purchase.

- 5.160 In response to the draft proposed report, the former Land Development Agency Chief Executive Officer advised on 15 May 2018 that they:

... refute the assertion that the LDA has "pre-empted" the Territory's land-planning process through the Purchases; rather it has provided certainty that the land will be available if it is in scope for inclusion in the next Planning Strategy. The Purchases provide land supply to support the growth of the ACT. The Purchases also mitigate risks associated with the fact that the Government cannot rely solely on compulsory acquisition as a method of acquiring property in the future.

- 5.161 The Suburban Land Agency advised on 10 May 2018 that based on its interpretation of available information:

Rural land acquisitions were undertaken by the former LDA consistent with its enabling Act, its annual Statements of Intent (reflecting Cabinet approved Government Policy) and the Land Acquisition Framework.

There was no requirement by Government that the Western Edge planning studies were to be completed before the LDA could acquire land consistent with current zoning and purposes.

The LDA was not formally required to complete 'internal planning analysis' before acquiring rural land.

The former LDA and its Board relied on a range of commercial advice, planning and industry knowledge and its highly credentialed expertise, experience and skills to assess and decide to acquire rural land consistent with current zoning and purposes at relevant market prices.

Providing planning clarity

- 5.162 The *Planning and Development Act 2007* establishes the Chief Planning Executive as the Planning and Land Authority of the Territory under subsection 10(3) of the Act. The Planning and Land Authority's functions under subsection 12(1), (a) to (o) include:

- (a) preparing and administering the territory plan;
- (b) continually reviewing the territory plan and proposing amendments as necessary;
- (c) planning and regulating the development of land; and
- (d) advising on planning and land policy, including the broad spatial planning framework for the ACT;

5.163 Section 105 of the Act establishes that the Executive, that is, the Government:

... must make a planning strategy for the ACT that sets out long term planning policy and goals to promote the orderly and sustainable development of the ACT, consistent with the social, environmental and economic aspirations of the people of the ACT.

and

The Executive must, at least once every 5 years, consider whether the planning strategy should be reviewed (s110 (1))

5.164 It is the Chief Planning Executive's responsibility to advise the Government on the broad spatial planning framework for the ACT, and it is the Government's responsibility to consider, approve and publish a planning strategy.

5.165 Given the ACT Government's ownership of the Western Edge rural properties it is important to clarify the effect of tenure on strategic planning studies. The Chief Planning Executive was asked 'if you were to undertake a planning study, to define the long term future urban form and identify the Territory's future development fronts to guide the update of the *ACT Planning Strategy* (2012), is tenure a consideration?' The Chief Planning Executive advised that:

In simple terms, no, tenure is not a relevant consideration to a planning study into the Territory's long term future urban form or potential development fronts. The focus of such a study is on understanding and testing the inherent development capacity of land within the ACT, in this case the Western Edge. Planning studies consider the limitations, constraints and opportunities (hydrology, geology, environmental issues, topography etc), relevant to identified sites, districts or regions in the context of a full range of development options (e.g. urban or suburban development, capacity for environmental offset etc). This analysis is not constrained by property boundaries or tenure, and in turn may inform the preparation of independent expert advice on the ACT spatial planning framework by the Chief Planning Executive to the Government.

5.166 Two ways the purchases of the Western Edge rural properties can be considered; purchases made 'pre-emptive' of planning consideration (Professor Holliday, the Subject Matter Expert) or they provide '... certainty that the land will be available if it is in scope for inclusion in the next Planning Strategy' (the former Chief Executive Officer of the Land Development Agency). Either way there is a need for the long-term land use for the Western Edge study area to be defined. To inform this it is important that the Chief Planning Executive undertake a planning study to define the Territory's long-term future urban form and in so doing identify development fronts for the Government's consideration in updating the *ACT Planning Strategy* (2012). The planning study needs to be based on sound planning processes and principles which includes the identification of appropriate land uses not being influenced by land tenure.

5.167 The Chief Planning Executive advised that:

- In simple terms ... tenure is not a relevant consideration to a planning study into the Territory's long term future urban form or potential development fronts. The focus of such a study is on understanding and testing the inherent development capacity of land within the ACT, in this case the Western Edge. Planning studies consider the limitations, constraints and opportunities (hydrology, geology, environmental issues, topography etc), relevant to identified sites, districts or regions in the context of a full range of development options (e.g. urban or suburban development, capacity for environmental offset etc). This analysis is not constrained by property boundaries or tenure, and in turn may inform the preparation of independent expert advice on the ACT spatial planning framework by the Chief Planning Executive to the Government.

RECOMMENDATION 9 FUTURE URBAN FORM OPTIONS

The Chief Planning Executive should undertake a planning study, to define the long term future urban form and identify the Territory's future development fronts to guide the update of the *ACT Planning Strategy* (2012).

APPENDIX A: AUDIT QUESTIONS AND CRITERIA

Revised criteria (February 2018). The criteria were modified in response to understanding the process and factors that affected the purchase of the nine rural properties.

Criterion 1: What was the policy framework under which the former Land Development Agency sought to assemble rural land? (Chapter 2)

- 1.1 Were there policies and powers to enable the Land Development Agency to pursue the assembly of rural leasehold land through the negotiation of commercial terms for available properties?
- 1.2 Did the Land Development Agency have sound operating procedures to implement the policies and powers it had for undertaking rural land assembly activity?

Criterion 2: Did the former Land Development Agency assemble rural land between 14 June 2014 and 30 June 2017 in accordance with the policy framework? (Chapter 2)

- 2.1 Was Land Development Agency rural land assembly activity conducted in accordance with policy, and were operating procedures followed?

Criterion 3: Was probity addressed effectively by the former Land Development Agency in assembling rural land? (Chapter 3)

- 3.1 Did the Land Development Agency in pursuing land assembly activities ensure a standard of officer conduct and behaviour, and administrative probity (e.g. transparency, accountability and rigour) appropriate to an entity operating as part of the ACT Public Service?

Criterion 4: Following the purchase of rural lands by the former Land Development Agency were they appropriately managed? (Chapter 4)

- 4.1 Did the Land Development Agency plan effectively for the ongoing management of land following its purchase?
- 4.2 Were contracts established to clarify obligations where agents, contractors, consultants were involved?

Criterion 5: What was the planning context for the lands assembled by the former Land Development Agency? (Chapter 5)

- 5.1 Had the Government established objectives for the assembly of rural leasehold land by the Territory for future urban development?
- 5.2 Were goals stated to guide the Land Development Agency in its purchasing activity in relation to Government objectives?

APPENDIX B: INITIAL AUDIT QUESTIONS

The following questions and criteria were shared with the auditee on 10 May 2017.

Line of inquiry 1: Why does the ACT Government seek to assemble rural land?

Criteria 1

- 1.1 What are the ACT Government's objectives in assembling rural land?
- 1.2 Are goals stated clearly to guide the LDA in its lease resumption, compulsory acquisition and purchase activity in relation to Government objectives?

Line of inquiry 2: How does the LDA seek to assemble rural land?

Criteria 2

- 2.1 What are the policies and powers that enable the LDA to pursue the assembly of rural leasehold land through market-based purchasing and other mechanisms?
- 2.2 Does the LDA have sound operating procedures to implement the policies and powers it has for undertaking rural land assembly activity?

Line of inquiry 3: How has the LDA assembled rural land since 2012?

Criteria 3

- 3.1 Has rural land assembly activity been conducted in accordance with policy? What operating procedures are being followed?
- 3.2 In pursuing land assembly activities, has the LDA ensured a standard of officer conduct and behaviour, and administrative probity (e.g. transparency, accountability and rigour) appropriate to an entity operating as part of the ACT Public Service?

Line of inquiry 4: How effective has the LDA been in assembling rural land?

Criteria 4

- 4.1 Has the LDA achieved its stated goals?
- 4.2 Has the LDA monitored and reported its progress in achieving land assembly and related goals?
- 4.3 Has the LDA improved its administration and governance of its land assembly activity in response to review, scrutiny and learning?

APPENDIX C: SUBJECT MATTER EXPERT

Sue Holliday is a City Planner and Economist. She is Managing Director, Strategies for Change, and Professor of Planning Practice at UNSW.

Sue was the Director General of Planning in NSW from 1997 to 2003. Prior to that, she had a 25 year career with the NSW State Government where she implemented reform in both planning and building policy and managed the significant urban renewal projects of the 1990s including Ultimo Pyrmont, Walsh Bay, and the Olympic site. She was President of the Building Professionals Board from 2008 to 2013.

She has been a member of many government advisory boards including the Urban Policy Forum, the COAG Expert Panel on Cities, the High Speed Rail Advisory Group and the National Housing Supply Council. She chaired the Built Environment Industry Innovation Council. Sue is Deputy Chair of Hume Community Housing Association.

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