

MEDIA RELEASE**29 June 2018****Assembly of rural land west of Canberra**

ACT Auditor-General Dr Maxine Cooper's report on **Assembly of rural land west of Canberra** was released today.

Dr Cooper says '\$43 million dollars has been spent 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 ownership by the ACT Government of the rural lands planning studies that will inform the update of the *ACT Planning Strategy (2012)* need to be independent of existing land tenure and cover the whole of the Territory' said Dr Cooper.

The audit highlights that there has been a disconnect in the priorities of the work undertaken by the former Land Development Agency and the Environment, Planning and Sustainable Development Directorate which means either there will be delays 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'. said Dr Cooper.

The audit found that 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 summary of the **Assembly of rural land west of Canberra** audit, with audit conclusions, key findings and recommendations is attached to this media release.

Copies of **Assembly of rural land west of Canberra: Report No. 8/2018**, are available from the ACT Audit Office's website www.audit.act.gov.au . If you need assistance accessing the report please phone 6207 0833 or go to 11 Moore Street, Canberra City.

EXTRACT OF SUMMARY CHAPTER

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.

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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.

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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

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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.

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.

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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'.

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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'.

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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

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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. 2.64

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 2.105

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.

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) 2.116

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.

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 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. 2.122

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 2.135

unnecessary risks and the reasonable achievability of the intended outcome of the purchase was followed for the majority of the purchases.

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.

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.

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.

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.

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.

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 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 3.25

properties (i.e. a commission-based arrangement for purchases by the former Land Development Agency based on an existing panel arrangement).

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 commissions' and sought the advice of the ACT Property Group who advised that the 3.55

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 behoven 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 3.79

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

3.127

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

3.141

no contemporaneous documentation to justify why the purchase of the whole block was not pursued, this presents a probity risk.

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 4.46

10 May 2018 that all properties have executed contracts (licences or subleases) except for Milapuru and Lands End which are being progressed.

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

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 5.15

\$12,754 per hectare, based on valuations and market dynamics discussed in this audit.

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 5.63

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.

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 *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. 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 5.114

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.

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

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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.

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

5.166

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.

The Chief Planning Executive advised that:

5.167

- 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.

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.