

**2021**

**THE LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY**

**Government Response to the Standing Committee on Public  
Accounts Report 13 – Inquiry into Auditor-General Report  
No 8 of 2018: *Assembly of Rural Land West of Canberra***

**Presented by  
Mick Gentleman MLA  
Minister for Planning and Land Management**

## Introduction

The Government has an important role in planning for the future of Canberra. We remain committed to achieving our vision of a sustainable, competitive and equitable city that respects Canberra as a city in the landscape and the National Capital, while being responsive to the future and resilient to change. Importantly, we remain committed to achieving this vision through the adoption of practices, processes and policies that meet the standards of probity, transparency, and accountability that our community is entitled to.

The Auditor-General's Report on the assembly of rural land west of Canberra was tabled in the Legislative Assembly on 29 June 2018, providing retrospective examination of the processes under which the former Land Development Agency (LDA) acquired nine rural properties against the requirements set out in the *Planning and Development (Land Acquisition Policy Framework) Direction 2014 (No 1)* (the Framework) over the period June 2014 to June 2017. The Report made eight recommendations relating to the Suburban Land Agency (SLA) and one relating to the Environment, Planning and Sustainable Development Directorate (EPSDD).

The Government Response to the Auditor-General's Report was presented to the Assembly by the Minister for Housing and Suburban Development, Yvette Berry MLA, on 20 September 2018. The response agreed to all nine recommendations and acknowledged that, since the time of the acquisitions which were the subject of the Report, the Government had established new land entities and made significant improvements to the land acquisition process.

A number of initiatives have been implemented subsequent to the audit, which strengthen governance and accountability and support staff involved in land transactions. Three years on from the commencement of the Territory's new land entities, the Government acknowledges the Standing Committee on Public Accounts' report, *Report 13: Assembly of rural land west of Canberra* (the PAC Report), which was tabled in the Assembly on 26 August 2020.

While examining the transactions which were the subject of detailed review through the Audit Report, the PAC Report makes broader recommendations related to the governance and administrative arrangements for governing boards of Territory authorities, dealings with former ACTPS Senior Executive and specific planning studies. The Government welcomes the opportunity to respond to these matters. This response addresses the following six recommendations made by the PAC Report.

## Recommendations

| No.              | Recommendations                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
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| Recommendation 1 | The Committee recommends that the ACT Government present legislation to the Assembly that would, if passed, specifically oblige the boards of Territory authorities to comply with all relevant legislation.                                                                                                                                                                                                                                                                             |
| Recommendation 2 | The Committee recommends that the ACT Government create advisory documentation to assist the boards of Territory authorities in meeting their legislative obligations.                                                                                                                                                                                                                                                                                                                   |
| Recommendation 3 | The Committee recommends that the ACT Government investigate appropriate arrangements for senior officers leaving the ACT Public Service and immediately taking up private sector roles in areas relevant to their service.                                                                                                                                                                                                                                                              |
| Recommendation 4 | The Committee recommends that the ACT Government propose to the Assembly legislation which, if passed, would divide agency responsibilities, so that decisions to determine the anticipated requirement for land for future development would be determined by one statutory agency, while another agency or agencies would be responsible for commercial aspects of the release and sale of Territory land, to meet the determined requirement and return a dividend to the Government. |
| Recommendation 5 | The Committee recommends that planning studies in the ACT be conducted independently of land tenure, including ACT Government ownership of leases on ACT land.                                                                                                                                                                                                                                                                                                                           |
| Recommendation 6 | Some members of the Committee recommend that the ACT Integrity Commission investigate the matters considered in Auditor-General Report No 8 of 2018: <i>Assembly of rural land west of Canberra</i> and the Standing Committee on Public Accounts inquiry into the Auditor-General's report.                                                                                                                                                                                             |

## **Government Response to the Standing Committee on Public Accounts Report 13 – Inquiry into Auditor-General Report No 8 of 2018: *Assembly of Rural Land West of Canberra***

### **Recommendation 1**

The Committee recommends that the ACT Government present legislation to the Assembly that would, if passed, specifically oblige the boards of Territory authorities to comply with all relevant legislation.

### **Response**

#### **Noted**

The Government considers that sufficient legislation already exists to oblige the boards of Territory authorities to comply with legislation.

The boards of Territory authorities are established by their enabling legislation, which assigns functions to the board. With respect to the Suburban Land Agency and City Renewal Authority boards, their enabling legislation, the *City Renewal Authority and Suburban Land Agency Act 2017* (CRASLA Act), provides that board members have a duty of good conduct to the Minister when acting as board members. This duty of good conduct includes a duty to act in good faith.

The duty of good conduct in the land agencies' boards' enabling legislation supplements the requirements that apply to all ACT Government boards found in existing legislation, such as the *Financial Management Act 1996* (FMA) and *Public Sector Management Act 1994* (PSM Act).

In particular, part 8 of the FMA provides for financial responsibilities of Territory boards, while part 9 of the FMA provides a comprehensive framework for the governance of Territory authorities including the role of a governing board and the duty of its members. Notably, section 77(1)(b) of the FMA provides that a governing board for a Territory authority must govern the authority consistently with both its establishing Act and other legislation, not just the FMA. Section 77(1)(d) of the FMA further provides that a governing board must ensure that the authority complies with any applicable governmental policy, as far as practicable.

Additionally, section 84(1)(b)(iii) of the FMA establishes a requirement that the CEO of a Territory authority with a governing board must manage the authority in accordance with each legal requirement that applies to the authority.

Other legislation to deal with any ACTPS officers, including members of the boards of Territory authorities, who fail to comply with statutory requirements, includes the PSM Act, which provides for public service standards.

## **Recommendation 2**

The Committee recommends that the ACT Government create advisory documentation to assist the boards of Territory authorities in meeting their legislative obligations.

### **Response**

#### **Noted**

The Government considers that sufficient advisory documentation already exists to assist boards in meeting their legislative obligations.

The ACT Government has a handbook entitled *Governance Principles – Appointments, Boards and Committees in the ACT*, which includes a part on governance and accountability of board appointees. Additionally, there has been significant collaborative work undertaken to give operational effect to robust governance frameworks and practices within the Suburban Land Agency, the City Renewal Authority and the Directorate.

The Suburban Land Agency provides an induction program and induction pack to all new Board members. Through this program new Board members meet with the CEO and key members of the management team and are provided with an induction pack which includes information on relevant legislation (including the CRASLA Act and the FMA). The program also includes a meeting with representatives from the ACT Government Solicitor's Office who provide an overview and documentation in relation to legislative obligations including those in relation to the CRASLA Act, FMA, the PSM Act and the *Planning and Development Act 2007*.

## **Recommendation 3**

The Committee recommends that the ACT Government investigate appropriate arrangements for senior officers leaving the ACT Public Service and immediately taking up private sector roles in areas relevant to their service.

### **Response**

#### **Agreed in principle**

The ACT Government has a whole of government policy on Commercial Engagements with former ACT Public Service Executives, which introduced additional considerations to manage the potential for conflicts of interest when engaging former executive employees.

Section 153(2) of the *Crimes Act 1900* applies to former ACT Public Service Executives. This legislative requirement creates an offence where a former executive publishes or communicates, without lawful authority, any fact or document which came to their knowledge, or into their possession, by virtue of the person having been an executive and which, at the time when they ceased to be an executive, it was their duty not to disclose the material or information.

#### **Recommendation 4**

The Committee recommends that the ACT Government propose to the Assembly legislation which, if passed, would divide agency responsibilities, so that decisions to determine the anticipated requirement for land for future development would be determined by one statutory agency, while another agency or agencies would be responsible for commercial aspects of the release and sale of Territory land, to meet the determined requirement and return a dividend to the Government.

#### **Response**

##### **Noted**

The Government considers that sufficient legislation already exists to determine agency responsibilities for the anticipated requirement for land for future development and commercial aspects of the release and sale of Territory land and to ensure proper accountability and clear processes.

The Chief Minister has responsibility under the PSM Act and *Australian Capital Territory (Self-Government) Act 1988* (Cwlth) to establish administrative arrangements allocating responsibility for matters relating to the powers of the Executive.

Under the *Administrative Arrangements 2020 (No 3)* (NI2020-707) the Environment Planning and Sustainable Development Directorate is the administrative unit accountable to the Minister for Planning and Land Management for executing and maintaining the Planning and Development Act, which establishes the legislative framework under which decisions as to strategic land use and land release policy are made. The development of the indicative land release program, which facilitates land release falls to the responsibility of the Minister for Planning and Land Management. The Minister for Housing and Suburban Development has oversight responsibility for developments which occur on land released by the ACT Government, with the SLA being responsible for developments.

The SLA is a statutory agency established under the *City Renewal Authority and Suburban Land Agency Act 2017*, with express objects and functions detailed under Part 3 of that Act. The objects of the SLA are to operate effectively in a way that delivers value for money in accordance with sound risk management practices, and encourage and promote:

- inclusive communities through the delivery of people-focussed neighbourhoods;
- suburban development that supports affordable living, a safe and healthy population, social inclusion, housing choice and environmental sustainability;
- urban renewal;
- growth and diversification; and
- social and environmental sustainability.

The functions of the SLA are to:

- buy and sell leases of land on behalf of the Territory;
- ensure a mixture of public and private housing in new suburbs;
- increase the supply of affordable and community housing;
- meet housing targets determined under the Act (affordable, community and public housing targets);
- carry out the development of land in a manner that is environmentally sustainable;
- exercise functions in a way that supports statutory greenhouse gas emissions targets and delivers environmentally sustainable development; and
- follow and support whole-of-government strategies.

### **Recommendation 5**

The Committee recommends that planning studies in the ACT be conducted independently of land tenure, including ACT Government ownership of leases on ACT land.

### **Response**

#### **Agreed**

A recommendation from the audit report is for the Chief Planning Executive 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). The Government response to the audit report's recommendation was - *Agreed*.

In December 2018, the ACT Planning Strategy (2018) was released and it contained the following strategic direction and action:

#### **Strategic Direction 1.2**

Investigate the potential for new residential areas to the west of the city to meet future housing need.

#### **Action 1.2.1**

Undertake environmental, infrastructure and planning studies for the western edge of the city to identify suitable areas for:

- potential urban areas (excluding Central Molonglo);
- nature reserves;
- environmental offset and potential environmental offset areas;
- the consideration of cultural and heritage values; and
- other uses, for example rural, broadacre, major infrastructure, transport and services.

### **Recommendation 6**

Some members of the Committee recommend that the ACT Integrity Commission investigate the matters considered in Auditor-General Report No 8 of 2018: *Assembly of rural land west of Canberra* and the Standing Committee on Public Accounts inquiry into the Auditor-General's report.

### **Response**

#### **Noted**

The Committee may refer matters to the ACT Integrity Commission.