



2020

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

**GOVERNMENT RESPONSE TO THE STANDING COMMITTEE ON
PUBLIC ACCOUNTS
Report 11 - Tender for the Sale of Block 30 Dickson**

August 2020

**Presented by
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Introduction

On 21 February 2018, the Auditor-General provided to the Speaker of the Legislative Assembly *Report No. 3 of 2018: Tender for the sale of Block 30 (formerly Block 20) Section 34 Dickson* (the Auditor-General's Report). The Auditor-General's Report considered specific historical land transactions undertaken by a unit formerly within the Economic Development Directorate and with the supporting services of the former Land Development Agency. The Auditor-General's Report made four recommendations.

On 7 June 2018, the Minister for Urban Renewal tabled the Government Response to the Auditor-General's report. The response agreed to all four recommendations and acknowledged the Government has made significant improvements to the land transactions process since the land transactions which were the subject of the Auditor-General's Report.

On 1 August 2019, the Government provided the ACT Legislative Assembly an Implementation Progress Statement (the Statement) in relation to its response to the recommendations of the Auditor-General's Report detailing several initiatives that were being progressed collaboratively across the Environment, Planning and Sustainable Development Directorate (EPSDD), the City Renewal Authority (CRA) and the Suburban Land Agency (SLA). The Statement described the significant changes in relation to the nature, oversight and governance of the entities tasked with responsibility for urban renewal and suburban development that took effect after the events considered by the Auditor-General's Report, including:

- establishment of two new land entities, SLA and CRA, with enabling legislation emphasising a strong performance, transparency and accountability framework.
- legislative instruments notified to support the work of the SLA and CRA, including the declaration of the City Renewal Precinct, the Land Acquisition Directions, the Housing Target Determination, the Payment of Funds to the Territory Directions, the Statement of Expectations and the Statement of Operational Intent.
- commencement of the *Government Agencies (Land Acquisition Reporting) Act 2018* on 1 January 2019, introducing reporting requirements for all land acquisitions undertaken by ACT Government entities.
- development of relevant governance and policy guidance to support Government entities involved in the acquisition and disposal of land including the Land Release and Development Governance Framework, Portfolio Governance Framework, Valuations Policy, Purchase of Land by Portfolio Staff, Contracts and Public Sector Members Policy.
- implementation of an Electronic Document and Records Management System with associated training to staff to strengthen records management.

Since the Statement, the Government has been progressing the development of guidance documentation in relation to:

- tender processes for the acquisition and sale of land, addressing probity, documentation and record keeping, and transparency in decision making requirements.
- a portfolio Integrity Framework, which will outline the integrity management response arrangements, activities and obligation required of members of the ACT Public Service

On 28 February 2018 the Public Accounts Committee (PAC) resolved to inquire into the matters in the Auditor-General's Report. The PAC Report was completed in May 2020 and made 10 recommendations, with six endorsed by all committee members.

The Government notes that its response to the PAC Report builds on the work highlighted in the original Government Response to the Auditor-General's Report. That response acknowledged significant improvements to the land transactions process since the land transactions which were the subject of the Auditor-General's Report. The matters identified in the PAC Report provide an opportunity to further progress the Government initiatives taken in response to the Auditor-General's Report, and so refine the land transactions process.

It is critical to public confidence and trust in the work of Territory entities that operations are conducted properly and are open to scrutiny. Governance frameworks play a key role in ensuring that the community can be assured that Territory entities operate in the public interest, and to the highest standards of probity and accountability.

The Government welcomes the opportunity to address the recommendations of the Public Accounts Committee. These recommendations will direct continuous improvement of probity and governance practices in land transactions.

Government Response

Recommendation 1

Some members of the Committee recommend that the ACT Government advise the Assembly how it advertises nationally when it puts significant tenders to market.

Government Position – **Agreed** – All tenders are advertised on the Suburban Land Agency (SLA) and Tenders ACT websites which offer an email subscription service by theme. Email marketing is used to promote tender opportunity to a registered database of email accounts. Paid advertising with a national reach is also used to promote opportunities more generally and increase national awareness, where relevant.

The choice of which advertising media formats (e.g. Press Ad or Digital Banners) and media outlets used during a marketing campaign is dependent on the campaign's objectives and target audience.

Marketing campaigns above the value of \$40,000 also require approval from the Independent Reviewer—ACT Government Campaign Advertising.

Recommendation 2

Some members of the Committee recommend that the ACT Government review the role of Probity Advisers in tender evaluations.

Government Position – **Agreed** – Procurement ACT and the ACT Government Solicitor are reviewing practices for engaging probity Advice in procurement processes, consistent with the Government Response to Auditor-General's Report *No.1/2019 Total Facilities Management Procurement*.

Recommendation 3

The Committee recommends that the ACT Government inform the Assembly, by the last day of the sittings in August 2020, as to how it will ensure compliance with its development objectives for Block 30 in the absence of a project delivery agreement

Government Position – **Agreed** – Any proposed development of the site Block 30 Section 34 Dickson will be assessed under the *Planning and Development Act 2007* and against the relevant codes of the Territory Plan and the Territory Plan zone objectives.

The Dickson Precinct Map and Code (DPMC) of the Territory Plan details requirements for blocks in the Dickson Group Centre, including Block 30 Section 34, to support the achievement of the objectives identified in the Dickson Master Plan.

The DPMC includes rules and criteria to ensure developments meet the objectives for the Dickson Group Centre, including:

- provision of publicly accessible car parking;
- development of a pedestrian plaza;
- building heights;
- building design;
- plot ratio;
- main pedestrian areas and routes;
- active frontages; and
- awnings.

Recommendation 4

The Committee recommends that the ACT Government Solicitor (ACTGS) review and improve the process of providing Probity Advisers to ACT government agencies to ensure a uniform approach.

Government Position – **Agreed** – The ACT Government Solicitor is reviewing its process for providing probity advice to ACT Government agencies, consistent with the Government Response to Auditor-General's Report *No.1/2019 Total Facilities Management Procurement*.

Recommendation 5

The Committee recommends that all staff from the former Economic Development Directorate still employed by the ACT Government be given further training in record-keeping.

Government Position – **Agreed** – Since the land transactions which were the subject of the Auditor-General's Report, an Electronic Document and Records Management System (EDRMS) has been implemented to strengthen records management in Government agencies. Training has also been provided to staff focussing on records management, using the EDRMS, procurement, probity, and fraud and corruption prevention.

All ACT Government agencies provide their officers access to training and development opportunities required for their role, including on records management.

Many former Economic Development Directorate officers now work within EPSDD, the SLA or the CRA. These officers have access to a rolling program of training and development courses offered by EPSDD. This program is designed to enable public servants and their managers support employees to keep their skills up to date by making them aware of and providing access to appropriate refresher training covering areas including records management, procurement, probity and fraud and corruption prevention.

Recommendation 6

Some members of the Committee recommend that the Legislative Assembly for the ACT seek an independent legal opinion from a suitably qualified lawyer about the status and validity of the sale by the ACT Government of Block 30, Section 34 Dickson to the Canberra Tradesmen's Union Club (the Tradies) and that the opinion be tabled in the Legislative Assembly by the last sitting day of July 2020.

Government Position – Noted – The Solicitor-General has reconfirmed for the Government that the Block 30 Contract remains a valid and enforceable contract.

Recommendation 7

The Committee recommends that the ACT Government propose amendments to legislation which, if passed by the Assembly, would provide comprehensive legislative provision and guidance on acceptable practice for the acquisition or disposal of land.

Government Position – Agreed in principle – The Government will consider the effectiveness of the existing policy and legislative framework for the acquisition or disposal of land and the administration of tender processes as part of its continuous improvement activities. Should the Government identify a need for additional non-legislated or legislated practice guidance this will be progressed accordingly.

Since the land transactions which were the subject of the Auditor-General's Report occurred, the Government has made significant improvements to the land transactions process. These improvements have included both legislated and non-legislated practice changes that have been accompanied by appropriate guidance documentation. For example, as noted in the Implementation Progress Statement tabled with the Government Response to the Auditor-General's Report, the Government has introduced the *City Renewal Authority and Suburban Land Agency Act 2017*, and the *Government Agencies (Land Acquisition Reporting) Act 2018* and accompanying subordinate legislation, which contain requirements relating to the acquisition and purchase of land, including in relation to reporting requirements to ensure transparency. The *City Renewal Authority and Suburban Land Agency (Suburban Land Agency Acquisition) Direction 2017* issued by the Treasurer, sets out processes, standards and parameters for acquisition by the SLA.

The EPSDD, SLA and CRA have collaborated in the development and implementation of robust frameworks, policies and processes that support the practices of acquisition and disposal of land, including the portfolio Guideline on Acquisition of Land under the *Lands Acquisition Act 1994*, Land Release and Development Governance Framework, Portfolio Governance Framework, Valuations Policy, Purchase of Land by Portfolio Staff, Contracts and Public Sector Members Policy. These documents are not legislated but provide relevant guidance to support the acquisition and disposal of land.

The Government notes the interaction of multiple pieces of legislation which inform the legislative framework for Government land transactions and their disclosure, including the *Lands Acquisition Act 1994*, the *Planning and Development Act 2007*, *City Renewal Authority and Suburban Land Agency Act 2017*, *Government Agencies (Land Acquisitions Reporting) Act 2018*, *Annual Reports (Government Agencies) Act 2004* and *Financial Management Act 1996*. Any proposed legislative amendments must consider the interaction of this legislation, in addition to the *Australian Capital Territory (Planning and Land Management) Act 1988* (C'wlth), (Self-Government Legislation for the ACT), which provides for the administration of Territory Land.

Recommendation 8

The Committee recommends that the ACT Government propose amendments to legislation which, if passed by the Assembly, would provide comprehensive legislative guidance on the procurement and disposal of public assets, as in the Commonwealth Procurement Rules.

Government Position – **Agreed in principle** – See the response to recommendation 7 above.

The Government will consider the effectiveness of the existing procurement framework, including current legislation, for the procurement and disposal of public assets, as part of its continuous improvement activities.

In the context of procurement, any review will be limited to those acquisitions and disposals of public assets that are subject to the *Government Procurement Act 2001* (Procurement Act). In this regard, the Government notes that the Procurement Act does not apply to the grant, acquisition or sale of Crown leases, which is provided for by the *Planning and Development Act 2007*.

Recommendation 9

The Committee recommends that the ACT Government propose amendments to legislation which, if passed by the Assembly, would provide comprehensive legislative guidance on the conduct of tenders by government.

Government Position – **Agreed in principle** – See the response to recommendation 7 above.

The Government is progressing the development of non-legislative guidance documentation in relation to tender processes for the acquisition and disposal of land, addressing probity, documentation and record keeping, and transparency in decision making requirements.

The Government will also consider the effectiveness of the existing policy and legislative framework for the acquisition or disposal of land and the administration of tender processes as part of its continuous improvement activities.

Additionally, transparency around the acquisition of land is achieved through the *Government Agencies (Land Acquisition Reporting) Act 2018* (the GALR Act), which commenced operation on 1 January 2019. The Act requires a quarterly report on all land acquisitions made by Government agencies for the quarter just completed. The GALR Act covers all land acquisition by the Executive and ACT Government authorities and reinforces due diligence and procurement principles, such as value for money.

Under the GALR Act, the Government is required to present quarterly reports to the ACT Legislative Assembly and relevant committee. A SharePoint register has been established to facilitate reporting of land acquisitions. The Act requires that reports be prepared quarterly and published, as soon as practicable after the end of the quarter, on an ACT Government website

Recommendation 10

Some members of the Committee recommend that the ACT Integrity Commission investigate the ACT Government's sale of Block 30, Section 34 Dickson to the Canberra Tradesman's Union Club (the Tradies).

Government Position – **Noted** – This is a matter for the ACT Integrity Commission.