



Australian Government

Department of Infrastructure, Transport,
Regional Development and Communications

Secretary
Simon Atkinson

Phil Gaetjens
Secretary
Department of the Prime Minister and Cabinet

Peter Woolcott
Commissioner
Australian Public Service Commission

Phil and Peter

Dear Mr Gaetjens & Mr Woolcott

Further to our discussions regarding the Department of Infrastructure, Transport, Regional Development and Communications' response to the Australian National Audit Office's (ANAO) independent audit on the Purchase of the "Leppington Triangle" Land for the Future Development of Western Sydney Airport (the Report) released on 21 September 2020, I am writing to update you on my response to the audit and further actions I am undertaking.

The Department has agreed to all three recommendations of the Report, which relate to the administrative activities of officials of the Department two years ago.

The ANAO's recommendations and the Department's response are included at **Attachment A**.

The Department is also taking actions beyond the recommendations of the independent ANAO audit to ensure that all issues raised are addressed in detail and that the Government and the public can have full confidence in the integrity of the Department.

In addition to measures outlined in the Department's formal response to the Report, I have instigated:

- formal independent investigation processes under the APS Code of Conduct into the issues raised with regard to conduct of officers in the Department.
- an independent audit of the conduct of the transaction to identify any further areas for improvement or lessons learned.

I am also:

- putting in place protocols to ensure any future property acquisitions or disposals are agreed by the Department's Operations Committee, prior to the exercise of delegations.
- putting in place a protocol for the treatment of future ANAO recommendations to internally review issues, requiring independence of the reviewers (i.e. from outside the affected work

area), agreement to the review approach by the Department's Operations Committee and consideration of the outcomes by the Secretary.

- commissioning an independent review of the systems, processes, culture and capabilities in the Western Sydney Unit (WSU), and WSU's systemic engagement with the Department's governance structures and enabling divisions, to ensure the Department has the right mix to deliver in future and any lessons learned are embedded in the Department.
- establishing an "Assurance" taskforce to drive implementation and provide oversight of the response to the ANAO's recommendations, the other measures and any lessons learned for the organisation.

We are also progressing a new values and culture framework for the Department over the next six months, which will draw on the lessons learned.

Most of the Department's activities do not involve land transactions and are well-established programs which have had detailed ANAO scrutiny over years, and have not raised the types of issues identified in the Leppington Triangle audit. As part of continuous improvement, however, we will ensure the learnings from the Leppington Triangle audit are embedded across the organisation.

Due to the sensitivity of the Report and its findings, it is imperative that the investigations be allowed to run their full course without interference, and that due process is followed.

I will keep you appropriately updated as this work progresses.

Yours sincerely

Simon Atkinson
6 October 2020

ANAO's Recommendations on Leppington Triangle and the Department's response

Department's summary response

The Department of Infrastructure, Transport, Regional Development and Communications (the Department) notes the ANAO report and agrees with the recommendations.

The Department is concerned by the findings of the report, and is taking actions to address any shortcomings in the processes and decision making arrangements identified in relation to the Leppington Triangle acquisition.

The Department has a long track record of operating consistent with expected standards of integrity and ethics. In light of the allegation of individual breaches of integrity, the matters raised by the ANAO in the report are being investigated to ensure all such matters are fully understood and appropriate action can be taken.

The Department has established an independent review of the transaction arrangements to ensure the findings of the audit are addressed. The Department has also commenced management reviews into matters of staff conduct identified by the ANAO, and will ensure the concerns raised are specifically addressed.

An external probity advisor will be appointed to support ongoing functions related to major projects and land acquisitions, and will assist with the development of guidance materials on obtaining purchase valuations in consultation with the Department of Finance, to ensure that protocols are in line with operations of the Lands Acquisition Act 1989.

The Department notes the ANAO view that the purchase could have been made at a much later date, and considers that consistent with earlier approaches at Badgerys Creek, and with other airports, acquisition of the land as early as practicable has benefits. The acquisition of the Triangle represented the final parcel of land that needed to be acquired for the airport site, creating a complex market situation.

The acquisition of the Triangle came about alongside the establishment of the Western Sydney Airport Company and the public release of the Government's Airport Plan which committed to a two runway airport.

Early acquisition provided certainty to stakeholders for long term planning, has allowed Western Sydney Airport Company to plan effectively for the entire development of the Airport as identified in the Airport Plan, and has reduced the risk of future challenges on the Airport development.

The Department agrees that the valuation strategy was unorthodox. However, we note that the strategy was developed in consultation with the Department of Finance and the Australian Government Solicitor and was designed to mitigate the risk of costly and lengthy legal challenges.

As the report notes, the land-holding company had previously challenged land acquisitions at the airport site with the Department spending over ten years in legal proceedings.

The Department's Audit and Risk Committee has been consulted on the audit. They advised the Financial Statements Sub Committee were made aware prior to the Audit and Risk Committee recommending the financial statements be signed by the Secretary, that the accounting treatment of the transaction and its inclusion in the Department's financial statements, had been accepted by the ANAO and that an unmodified audit opinion would be issued.

The Committee was further advised that the ANAO intended to undertake further audit procedures of the purchase, internal reviews on probity and integrity were being undertaken by the Department, and that the ANAO may conduct a performance audit on the matter at a later stage.

Response to recommendations

Recommendation 1

The Department of Infrastructure, Transport, Regional Development and Communications prepare comprehensive and balanced written analysis on the benefits, costs and risks of proposals to spend public money.

Department response

Agreed. The Department has existing frameworks and guidance on the requirements associated with developing proposals to spend public money in accordance with the Public Governance, Performance and Accountability Act 2013.

The Department will review and update existing material to ensure there is a clear requirement for comprehensive and balanced written analysis on the benefits, costs and risks to support proposals to spend public money, and particularly in regard to valuations and land acquisitions. All staff will be reminded of their responsibilities and updated guidance material will be made available to all staff and appropriate training provided.

Recommendation 2

The Department of Infrastructure, Transport, Regional Development and Communications put in place meeting and communication protocols for when staff engage directly with individual landowners, developers or similar parties with heightened probity risks. The protocols should: include guidelines regarding suitable venues; require the presence of at least two departmental representatives; and to require properly recorded minutes of meetings and conversations.

Department response

Agreed. The Department has established protocols on meeting with interested parties developed specifically for the Western Sydney Unit. The guidance is available to all staff. The Department will review the protocols to expand coverage to other areas of the Department.

These will include, at a minimum, guidelines regarding suitable venues; require the presence of at least two departmental representatives; and properly recorded minutes of meetings and conversations. Staff will be reminded of their responsibilities and appropriate training provided.

Recommendation 3

The Department of Infrastructure, Transport, Regional Development and Communications develop policies and procedures to govern its approach to obtaining purchase valuations.

Department response

Agreed. The Department will develop specific guidance materials on obtaining purchase valuations in consultation with the Department of Finance, to ensure that protocols are in line with operations of the Lands Acquisition Act 1989. All guidance material will be made available to staff and appropriate training provided.