

145.3.2.4 LAND ACQUISITION POLICY FRAMEWORK INTERPRETATION



Purpose

To seek the Land Development Agency (LDA) Board's input into Management's interpretation and implementation of the Land Acquisition Policy Framework (the Framework) at an operational level.

Background

On 14 June 2014, the Planning and Development (Land Acquisition Policy Framework) Direction 2014 (No 1) took effect. The Framework sets out the principles that govern the exercise of the LDA's functions under the *Planning and Development Act 2007* (the Act).

Section 32(3) of the Act outlines the functions of the LDA, which include developing land, carrying out works for the development and enhancement of land and carrying out strategic or complex urban development projects. Section 32(4) refers to the LDA exercising its functions in accordance with the latest Statement of Intent.

The framework was established "to enable the LDA to pursue business opportunities for the acquisition of land available on the market". The Framework outlines the approval thresholds that apply to acquisitions under the Framework, including an annual acquisition limit of \$20m, reporting requirements and the guiding principles. A copy of the Framework can be found at Attachment A.

Issues

There are two issues that require clarity when applying the Framework. They are:

- what land acquisitions does the framework apply to?
- at what point is the \$20m annual accumulation limit triggered?

Land acquisitions to which the Framework applies

The Framework can be interpreted to apply to land acquisitions in two different ways, namely:

- a) new land development opportunities outside the LDA's core business of delivering the Territory's Indicative Land Release Program; or
- b) all LDA land acquisitions including leased and unleased land.

The two interpretations and their implications are discussed in detail below.

A New business opportunities

Under this interpretation, the purpose of establishing the Framework is to provide the LDA guidance for land acquisition that is ‘opportunistic’ in nature allowing the LDA flexibility to respond to current market opportunities or future market conditions that will allow the Territory to achieve its strategic land use objectives, for example urban infill. Paragraph 1.2 of the Framework states “the Framework is to enable the LDA to pursue business opportunities for the acquisition of land available on the market”. [REDACTED]

This interpretation is based on the Framework applying to new opportunities only, such as “land banking” for future strategic outcomes, and not core LDA business activities.

The land acquisitions that are considered to fall under the description of ‘new business opportunities’ are:

- Land acquired for strategic development. The characteristics of these acquisitions are speculative and opportunistic in nature (with no particular project identified), and usually for longer term development. The final outcome is unknown. [REDACTED]
- Land acquired to facilitate a Government request/outcome such as [REDACTED]

B All land acquisitions

The second interpretation is broader. Under this interpretation, the framework is to be applied when the LDA exercises its functions under the Act. This would capture all land acquisitions made by the LDA, regardless of whether the acquisitions are opportunistic or part of the LDA’s core revenue program.

In addition to the acquisitions referred to under interpretation A, this interpretation would also include:

- Land acquired for the purposes of undertaking development on projects identified in the Indicative Land Release Program (ILRP) and thereby meeting our Statement of Intent targets. These objectives are set out in documents already approved by Cabinet and the targets represent the LDA’s committed projects and core business. These acquisitions can take various forms and are sourced from ACT Government or third parties including the Commonwealth Government, including:
 - the direct land acquisition for specific development projects such as the development of Moncrieff, and
 - the acquisition of ‘offset’ land or other land to enable the delivery of a development project on the ILRP such as [REDACTED]. Enabling acquisitions form part of the costs of delivering a particular project, similar to capital works, and should be attributed to the costs of the project. This would also include [REDACTED].
- Land acquired as part of a response to a known direct sale. This may involve land acquired as part of a bigger land sale transaction (which later becomes ‘residual’), in order to achieve the best outcome. For example [REDACTED].

Despite this interpretation providing Government with more transparency and involvement in the decision making for approving land acquisitions from the private sector, it does have some limitations.

From a practical perspective, there is an argument that:

- the threshold is insufficient, and would be reached very quickly;
- where the land to be acquired forms part of an existing project, the approval processes outside of the LDA could lead to bottlenecks in project delivery, because of the lack of project understanding and additional approval time required; and
- there is potential for the LDA to lose its flexibility and agility in responding to market opportunities.

Taking into consideration both interpretations, it is recommended that the LDA's position be that the Land Acquisition Policy Framework *applies to new business opportunities as outlined in A above*, rather than all land acquisitions.

The event that triggers the annual limit of \$20m

In order to apply the \$20m limit, clarity is required as to which event will trigger it. An analysis of possible events is discussed below.

Possible events to trigger the limit include:

- Physical acquisition of the land. That is when title transfers and all risks are transferred to the buyer. This usually takes place on settlement.
- Approval to proceed with the acquisition and an LDA commitment to spending the funds.

The underlying purpose in establishing the Framework was to allow the LDA flexibility in responding to relevant market opportunities for future land development for the Territory outside of current approved development outcomes (within the confines of approval limits and transparency to Government established by the Framework). In this context, an analysis of each possible trigger event is provided below.


- **Settlement.** The process from the decision to acquire land to actual settlement can be a lengthy process of negotiation, timing and agreement not wholly within the control of the LDA. To adopt "settlement" as the trigger to measure the \$20m limit, will not only be administratively burdensome, it could potentially create negative outcomes. This interpretation limits the LDA's agility to respond to market opportunities and therefore conflicts with the underlying purpose of having the Framework in place. For example, if settlements clashed, causing the limit to be exceeded, settlement may have to be deferred to another financial year, potentially resulting in a lost opportunity.
- **Approval.** If the limit is triggered at the time the delegate decides to proceed with the purchase, it more closely aligns with the intention of the Framework. This interpretation would allow the LDA to be agile and take advantage of market opportunities. From an administrative point of view, the LDA is immediately able to understand what commitments it has made at any point in time.

Given the above analysis, it is recommended that the LDA's position be that the limit is *triggered at the time of approval* rather than at settlement.

Recommendations

That the Board:

1. Note that the interpretation of the Land Acquisition Policy Framework (the Framework) is not exhaustive and alternative interpretations may be possible, requiring future analysis.
2. Provide input into Management's interpretation and implementation of the Framework at an operational level.


Acting Chief Finance Officer
20 August 2015

Planning and Development (Land Acquisition Policy Framework) Direction 2014 (No 1)

Notifiable instrument NI2014–264

made under the

Planning and Development Act 2007, subsection 37(1)

1 Name of instrument

This instrument is the *Planning and Development (Land Acquisition Policy Framework) Direction 2014 (No 1)*.

2 Commencement

This instrument commences on the day after notification.

3 Direction

I direct the Land Development Agency to act in accordance with the principles of the Land Development Agency - Land Acquisition Policy Framework, attached as a Schedule to this Instrument, when exercising the Agency's functions under the *Planning and Development Act 1997*.

Andrew Barr MLA
Minister for Economic Development
14 June 2014

SCHEDULE

LAND DEVELOPMENT AGENCY – LAND ACQUISITION POLICY FRAMEWORK

1. Introduction

- 1.1 The Land Acquisition Policy Framework provides the principles that are to govern the exercise of the Land Development Agency (LDA) functions under the *Planning and Development Act 1997*. The framework also supports the ACT Government's *Statement of Governance Arrangements* for the Land Development Agency.
- 1.2 The framework is to enable the LDA to pursue business opportunities for the acquisition of land available on the market.
- 1.3 The framework consists of two components, namely:
 - a. a process through which potential acquisitions are to be pursued; and
 - b. the principles to be applied in making decisions under clause 1.3(a).

2. The Acquisition Process and Framework

- 2.1 All proposed acquisitions are to be assessed against the principles and associated tests provided in this Land Acquisition Policy Framework. All tests must be followed for an acquisition.
- 2.2 **Acquisition Thresholds and Approved Decision Makers**
 - 2.2.1 The following thresholds and decision makers apply to all LDA land acquisitions:
 - a. below \$5 million – agreement by the LDA Board with advice to the Minister for Economic Development or the Minister responsible for administering Chapter 4 of the *Planning and Development Act 1997*;
 - b. between \$5 million and \$20 million – agreement by the Chief Minister and Treasurer. LDA is to provide a business case to ACT Treasury for all such proposals; and
 - c. above \$20 million - agreement by the government.
 - 2.2.2 The LDA Board may refer any acquisition below \$5 million to the government should it consider it is appropriate.
- 2.3 **Annual Acquisition Limit**
 - 2.3.1 Government agreement is required for any acquisition by the LDA that results in a cumulative annual total of \$20 million in acquisition being exceeded. The cumulative annual total means all acquisitions within a financial year - 1 July to 30 June.

2.4 Reporting Requirements

2.4.1 The LDA is to provide information to support the Economic Development Directorate (EDD), or the responsible government directorate, in the preparation of quarterly reports for the ACT Government.

2.4.2 The LDA must inform EDD, or the responsible government directorate, regarding the proposed acquisition of sensitive sites (including, but not limited to – sites containing heritage, contamination, cross-border issues) at an early stage in the process and prior to any purchase occurring.

2.4.3 Details of all acquisitions completed during a financial year, and this Direction, must be included in the LDA's annual report.

3. The Principles

3.1 The Intended Outcome Principle

3.1.1 An intended outcome must be identified for the 'to-be-acquired site'.

Guiding Questions

- a. Why is the site being purchased?
- b. What future use of the site is envisaged?

<i>Test 1: An intended outcome has been identified for the proposed acquisition site.</i>

3.2 The Policy Alignment Principle

3.2.2 The intended outcome for the acquisition aligns with other relevant government policies.

Guiding Questions

- a. Will the proposed acquisition advance the land development policy directions set out in the ACT Planning Strategy and other relevant Government strategic spatial planning documents and requirements (for example, but not limited to, any master plan that may apply to the location)?
- b. Is the proposed acquisition consistent with the *Statement of Government Policy for the Land Development Agency*?
- c. Is the proposed acquisition consistent with any other relevant Government policies?

<i>Test 2: The intended outcome for the proposed acquisition advances the Government's land development policies as set out in the ACT Planning Strategy and any other relevant Government strategic spatial planning documents and requirements.</i>

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

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

3.3 The Value for Money Principle

3.3.1 The acquisition represents value for money for the Territory.

Guiding Questions

- a. Is the proposed purchase price consistent with the independent market valuation of the site which has taken into account its current and anticipated uses?
- b. If a commercial outcome is sought from the site, does a business case suggest that a satisfactory commercial return will be realised, taking into consideration any holding costs, redevelopment costs, and opportunity costs?
- c. If a non-commercial outcome is sought from the site, what are the holding costs, redevelopment costs, and opportunity costs of the purchase?

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

Test 6: If a commercial outcome is sought from the proposed acquisition site, a business case has been prepared that demonstrates that a satisfactory commercial return will be realised, taking into consideration any holding costs, redevelopment costs, and opportunity costs.

Test 7: If a non-commercial outcome is sought from the proposed acquisition site, any holding costs, redevelopment costs, and opportunity costs have been demonstrated to be reasonable and not onerous.

3.4 The Risk Management Principle

3.4.1 Risks associated with the acquisition can be appropriately managed.

Guiding Questions

- a. Does triple bottom line assessment of the proposed purchase indicate that the Territory may be exposed to economic, social, or environmental risks, and if so, can these risks be appropriately managed?
- b. Does the proposed purchase expose the Territory to any other type of risk (including, but not limited to, legal or reputational risks) and, if so, can these risks be appropriately managed?
- c. Are there any barriers to achieving the intended outcome for the site (including, but not limited to, regulatory, engineering, or other technical barriers) and, if so, can these risks be reasonably overcome?

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

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