

Division/Agency: People Governance Parliamentary & Communication

Inquiry: Governance in the stewardship of public resources: Inquiry into Auditor-General's Reports 11, 31, 39 (2019-20) and 2 and 9 (2020-21)

Topic: Audit and Risk Committee

Proof Hansard Page: 11 (03 March 2021)

Mr Julian Hill asked:

Mr HILL: That's okay. I'll pass that on in a second. What changes in membership have there been to the Audit and Risk Committee since this episode? Mr Boyd, did you identify any changes? Or I can ask the secretary. Did the Audit and Risk Committee do its job? Are you satisfied with what's happened?

Mr Atkinson: I think it's important to go to the exact wording of the letter that you're talking about. It says:

We recommended that Infrastructure undertake a review of the acquisition process to determine if integrity and probity were maintained during the process, particularly in light of the later valuations obtained for the preparation of the financial statements noting a significant price differential. At the time of this report, Infrastructure had not yet written to us on the results of this review which is expected in the near future.

The letter continues: 'We will either issue a final management letter or the Auditor-General will write to the secretary on this matter and consider whether the matter should be included in our audits of the financial statements of Australian government entities for the period ended 30 June 2019 report.'

What the Auditor-General was referring to is that they decided to do the performance audit. The audit and risk committee considered these issues and, based on what was in front of them—although I can't enter their heads—I believe that they probably thought it was being properly reviewed and the Auditor-General would come back once there'd been correspondence back with the ANAO.

Mr HILL: So you're satisfied with the job that they did?

Mr Atkinson: This is one of those areas where I've asked Mr Harrison to review exactly what happened. One of the things that I think is important across all of these questions, and some of the assertions you made in your opening, Deputy Chair, but also some of the findings here, is to understand the conversations that went on, rather than just what was prepared in briefing material. If you're going to go to someone's understanding of an issue, it's important to talk to those people and get their perspective as to why that happened. Mr Harrison's audit has done that, and so we'll have what I call a richer text version of what happened in all of these things so that we can get to the bottom of what we can do, going forward, beyond the recommendations in the audit, to make sure that we address these issues and make sure they don't happen again.

Mr HILL: Have there been any changes in the membership of the audit committee or is it still the same people?

Mr Atkinson: Since that particular time, we've merged two audit and risk committees due to the machinery-of-government changes, so I can come back to you with the exact make-up of the current audit committee.

Mr HILL: Sure.

Answer:

The Department of Infrastructure, Transport, Regional Development and Communications Audit and Risk Committee comprises five independent members and two departmental members.

The independent members are:

- Mr Geoff Knuckey

Submission 4 - Supplementary Submission 2

Joint Committee on Public Accounts and Audit

ANSWERS TO WRITTEN QUESTIONS ON NOTICE

Infrastructure, Transport, Regional Development and Communications

- Mr Ian McPhee AO PSM
- Ms Susan Page PSM
- Ms Gayle Ginnane, and
- Mr Carl Murphy.

The departmental members are:

- Mr Brendan McRandle PSM, Deputy Secretary Water Infrastructure and Chief Executive Officer National Water Grid Authority, and
- Ms Pauline Sullivan, First Assistant Secretary, Content.

Division/Agency: Assurance Taskforce

Inquiry: Governance in the stewardship of public resources: Inquiry into Auditor-General's Reports 11, 31, 39 (2019-20) and 2 and 9 (2020-21)

Topic: Independent investigation and review processes

Proof Hansard Page: 12 and 13 (03 March 2021)

Mrs Lucy Wicks and Mr Julian Hill asked:

CHAIR: I would like to understand it in full simplicity, so to a representative of the department: I've heard terms like an 'independent review', 'we've other investigations' and you said that 'the matter is under review'. My first question is: can I ascertain how many reviews are underway, and exactly what they are?

Mr Atkinson: We have an independent review of the transaction. We have two Public Service Code of Conduct investigations, one unrelated to the acquisition probity issue and one in relation to the purchase of the Leppington Triangle, and we have a culture, capability and systems review underway as well.

CHAIR: A culture?

Mr Atkinson: Capability and systems—I think I've got the words right.

CHAIR: Is that also a departmental review?

Mr Atkinson: Yes.

CHAIR: That's separate from any other external reviews, inquiries or investigations?

Mr Atkinson: It's an independent external review as well.

CHAIR: Okay. Was the last one an independent external review?

Mr Atkinson: They're all done by independent external reviewers.

CHAIR: Thank you, I understand. You've said—

Mr HILL: Mr Atkinson, can I ask you to provide us, before the next hearing—I'm presuming there will be one—with a list and a description of the scope of all of the reviews which are underway?

Mr Atkinson: We've already tabled those at estimates. We table our terms of reference for them. Yes is the answer, because they're all public.

CHAIR: Thank you.

Mr HILL: Can you include who is doing the review, so we can satisfy ourselves about your claim that they are all independent.

Mr Atkinson: We've answered that as well.

Mr HILL: That would be terrific.

Mr Atkinson: It was Vivienne Thom, the former—

Mr HILL: Thank you.

Mr Atkinson: You don't want it now?

Mr HILL: No, when you can.

Answer:

The Department has initiated four independent investigation and review processes in response to Performance Audit No. 9 (2020-21) on *The Purchase of the 'Leppington Triangle' land for the Future Development of Western Sydney Airport* (ANAO Report). These are:

- an independent audit of the conduct of the Leppington Triangle transaction, being undertaken by Mr Mark Harrison from Sententia Consulting (terms of reference at [Attachment A](#));

Submission 4 - Supplementary Submission 2

Joint Committee on Public Accounts and Audit

ANSWERS TO WRITTEN QUESTIONS ON NOTICE

Infrastructure, Transport, Regional Development and Communications

- two independent investigation processes under the Public Service Act 1999 in relation to allegations of unethical conduct by Department officers - one investigation relating to the Leppington transaction being led by Dr Vivienne Thom and the other investigation in relation to the management of declared conflicts of interest being led by Ms Barbara Deegan (scope of investigations at [Attachment B](#)); and
- an independent culture and capability review to examine any underlying cultural and environmental factors in the former Western Sydney Unit that may have contributed to the findings and issues identified in the ANAO Report, being undertaken by KPMG (terms of reference at [Attachment C](#)).

Attachments

- A: Terms of reference for independent audit of Leppington Triangle transaction
- B: Scope of two *Public Service Act 1999* investigation processes
- C: Terms of reference for culture and capability review

DEPARTMENT OF INFRASTRUCTURE, TRANSPORT, REGIONAL DEVELOPMENT AND COMMUNICATIONS
LEPPINGTON TRIANGLE LAND ACQUISITION ASSURANCE REVIEW
TERMS OF REFERENCE – OCTOBER 2020

Context

The Australian National Audit Office has recently published its performance audit entitled "Purchase of the 'Leppington Triangle' Land for the Future Development of Western Sydney Airport". This report has been critical of aspects of the Department's management of acquisition of the Leppington Triangle piece of land, including raising questions around the integrity of the Department and its officers in connection with the acquisition.

The Department has commissioned a review to provide insight into the circumstances of the acquisition of the Leppington Triangle parcel of land with a view to identifying lessons learned for future similar engagements.

Objective

The objective of this review is to provide clear documentation of how the acquisition of the "Leppington Triangle" parcel of land and the subsequent holding and management of the asset were handled, with specific (but not exclusive) focus on the valuation of the acquisition and the compliance with policy and good practice as well as the Australian Government's standards of accountability.

The review has also provided recommendations to the Department on how to better manage similar transactions in the future.

Scope

The scope of the review included consideration of the following aspects of the acquisition:

- The management and implementation of an approved Acquisition Strategy
- The selection of a valuer for the Leppington Triangle
- The valuation of the Leppington Triangle
- The acquisition transaction
- Briefing and engagement with decision makers
- Management of probity
- Engagement with the Australian National Audit Office (ANAO)

Scope Extension

Following consideration of an initial draft report, the scope of the review was extended as follows:

- (a) Identify specific details of the interactions between the Department and the ANAO as part of the ANAO's financial statement audit and performance audit activities related to the Leppington Triangle parcel of land. Considering both provision of information to the ANAO as well as response to advice or recommendations, this component of the review will identify opportunities to improve the management of the relationship with the ANAO in the conduct of audit activities.
- (b) Identify specific details (if any) of deviations of the final acquisition transaction process from the approved acquisition strategy and from the process defined by the *Lands Acquisition Act 1989*, and the root cause of any such deviations.

- (c) Identify specific details of the development of the October 2016 Acquisition Strategy, including advice provided by the Department of Finance and any other relevant agencies that led to the strategy to acquire the Leppington Triangle land well ahead of when it would be required to construct a second runway.
- (d) Identify specific details of the interactions between the Department and the Department of Finance (and any other relevant agencies) throughout the acquisition process, particularly in relation to the steps involved in complying with the Lands Acquisition Act 1989.

Approach

In order to deliver against the review scope and the scope extension, the review considered:

- documentation from the Department made available to the review (a full catalogue of all documentation made available is maintained by the audit team)
- interviews with relevant personnel within the Department
- interviews with relevant personnel from the ANAO
- interviews with relevant personnel from the Department of Finance

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Australian Government

Department of Infrastructure, Transport,
Regional Development and Communications

[REDACTED]

Dear [REDACTED]

Notice of Suspected Breaches of the Australian Public Service (APS) Code of Conduct

The department has become aware of alleged conduct by you that may give rise to a breach (or breaches) of the APS Code of Conduct (Code) contained in section 13 of the *Public Service Act 1999* (PS Act).

The purpose of this letter is to advise you that an investigation under the procedures established by the Secretary under section 15(3) of the PS Act is being undertaken.

I have authorised Dr Vivienne Thom, of CPM Reviews Pty Ltd, to investigate the allegations. [REDACTED] is the Breach Decision Maker for this matter.

The allegations

Allegations 1 to 3 relate to alleged conduct which occurred in connection with the acquisition by the Australian Government of a 12.26 hectare parcel of land for \$29,839,026 (GST exclusive) in Bringelly NSW referred to as the 'Leppington Triangle'.

Allegation 1: Procurement of the valuer

It is alleged that you were involved in procuring M J Davis Valuations Pty Ltd (MJD) to conduct the valuation of the Leppington Triangle and you failed to ensure a sufficiently robust approach was taken to the engagement of MJD.

It is alleged that you:

- a) Selected, or caused to be selected, a supplier to conduct the valuation of the Leppington Triangle who was suggested by the Leppington Pastoral Company Pty Ltd, being MJD;
- b) Failed to conduct, or cause to be conducted, an openly competitive procurement approach when selecting MJD as the supplier to conduct the valuation of the Leppington Triangle;
- c) Failed to maintain, or cause to be maintained, records of any capability assessment conducted regarding MJD's suitability as the supplier to conduct the valuation of the Leppington Triangle.

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If proven, each instance of alleged conduct could give rise to breaches of one or more of the following sections of the Code:

- (1) *An APS employee must behave honestly and with integrity in connection with APS employment.*
- (2) *An APS employee must act with care and diligence in connection with APS employment.*
- (4) *An APS employee, when acting in connection with APS employment, must comply with all applicable Australian laws. For this purpose, Australian law means:*
 - (a) *any Act (including this Act), or any instrument made under an Act; or*
 - (b) *any law of a State or Territory, including any instrument made under such a law.*
- (8) *An APS employee must use Commonwealth resources in a proper manner and for a proper purpose.*
- (11) *An APS employee must at all times behave in a way that upholds:*
 - (a) *the APS Values and APS Employment Principles; and*
 - (b) *the integrity and good reputation of the employee's Agency and the APS.*

In respect of section 13(4) of the PS Act, this conduct may amount to a failure to comply with the obligations in and under the *Public Governance, Performance and Accountability Act 2013* (Cth).

In respect of section 13(11)(a) of the PS Act, this conduct may amount to a failure to uphold the 'Ethical' APS Value set out at section 10 of the PS Act:

Ethical

- (2) *The APS demonstrates leadership, is trustworthy, and acts with integrity, in all that it does.*

Allegation 2: Instructions to the valuer

It is alleged that the instructions you gave, or caused to be given, to M J Davis Valuations Pty Ltd (MJD) to conduct the valuation of the Leppington Triangle were inappropriate with respect to the valuation approach to be used and the basis on which the current market value of the land was to be assessed.

It is alleged that you:

- a) Initially caused MJD to conduct the valuation of the Leppington Triangle as a 'desktop valuation'. In a desktop valuation, the valuer does not inspect the property and produces an indicative assessment of its value;
- b) Subsequently caused the valuation being conducted by MJD to be conducted as a 'restricted assessment'. In a restricted assessment, the valuer is instructed by the client not to carry out the usual enquiries and investigations associated with a market valuation;
- c) Initially caused MJD to assess the market value of the Leppington Triangle 'having regard to the highest and best use, including industrial purposes, that may be undertaken on the Leppington Triangle';
- d) Subsequently caused MJD to assess the market value of the Leppington Triangle 'on an Englobo rate per square meter basis based on existing planning parameters with the highest and best use reflected in speculative industrial re-zoning potential within the Western Sydney Priority Growth Area (WSPGA) and Western Sydney Employment Area (WSEA)'.

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If proven, each instance of alleged conduct could give rise to breaches of one or more of the following sections of the Code:

- (1) *An APS employee must behave honestly and with integrity in connection with APS employment.*
- (2) *An APS employee must act with care and diligence in connection with APS employment.*
- (4) *An APS employee, when acting in connection with APS employment, must comply with all applicable Australian laws. For this purpose, Australian law means:*
 - (a) *any Act (including this Act), or any instrument made under an Act; or*
 - (b) *any law of a State or Territory, including any instrument made under such a law.*
- (8) *An APS employee must use Commonwealth resources in a proper manner and for a proper purpose.*
- (11) *An APS employee must at all times behave in a way that upholds:*
 - (a) *the APS Values and APS Employment Principles; and*
 - (b) *the integrity and good reputation of the employee's Agency and the APS.*

In respect of section 13(4) of the PS Act, this conduct may amount to a failure to comply with the obligations in and under the *Public Governance, Performance and Accountability Act 2013* (Cth).

In respect of section 13(11)(a) of the PS Act, this conduct may amount to a failure to uphold the 'Ethical' APS Value set out at section 10 of the PS Act:

Ethical

- (2) *The APS demonstrates leadership, is trustworthy, and acts with integrity, in all that it does.*

Allegation 3: Advice to decision-makers

It is alleged that, in preparing, contributing to, or approving formal briefings regarding the acquisition of the Leppington Triangle which were provided to the head of the Western Sydney Unit of the department, to other senior officials in the department, and/or to portfolio Ministers, you:

- a) omitted or failed to include relevant information;
- b) otherwise failed to adequately and diligently provide advice to the recipients of those briefings.

It is alleged that you:

- c) Failed to obtain, document, or cause to be documented, any approval for the mechanism for acquisition of the Leppington Triangle being changed from compulsory acquisition under the *Land Acquisition Act 1989* (Cth) to acquisition by agreement under the *Land Acquisition Act 1989* (Cth);
- d) Omitted from, or failed to ensure the inclusion in, briefings that the mechanism for acquisition of the Leppington Triangle had been changed from compulsory acquisition under the *Land Acquisition Act 1989* (Cth) to acquisition by agreement under the *Land Acquisition Act 1989* (Cth);
- e) Omitted from, or failed to ensure the inclusion in, the 6 March 2018 briefing adequate advice on the basis upon which the valuation undertaken by MJD of the Leppington Triangle was conducted;
- f) Omitted from, or failed to ensure the inclusion in, briefings references to other valuations of the Leppington Triangle which were in the possession of the

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department, including the valuation obtained by NSW Roads and Maritimes Services;

- g) Omitted from, or failed to ensure the inclusion in, the briefing of 4 July 2018 any reference to the price to be paid for the Leppington Triangle;
- h) Omitted from, or failed to ensure the inclusion in, the briefing of 17 July 2018 any reference to the price to be paid for the Leppington Triangle;
- i) Omitted from, or failed to ensure the inclusion in, the briefing of 25 July 2018 any reference to the price to be paid for the Leppington Triangle;
- j) Omitted from, or failed to ensure the inclusion in, the briefing of 31 July 2018 that, of the \$30 million dollars to be paid for the Leppington Triangle, an estimated \$29.84 million was to be paid by the Australian Government for its 12.26 ha portion, with an estimated \$0.16 million to be paid by the NSW Government for its 1.36 ha portion;
- k) Omitted from, or failed to ensure the inclusion in, the briefings of 4 July 2018, 17 July 2018, 25 July 2018 and 31 July 2018 that fact that the Australian Government was intending to pay significantly more per hectare than the NSW Government the NSW Government's portion of the Leppington Triangle;
- l) Omitted from, or failed to ensure the inclusion in, the briefings other than the 6 March 2018 briefing discussion of value for money in the terms of the acquisition of the Leppington Triangle.

If proven, each instance of alleged conduct could give rise to breaches of one or more the following sections of the Code:

- (1) *An APS employee must behave honestly and with integrity in connection with APS employment.*
- (2) *An APS employee must act with care and diligence in connection with APS employment.*
- (4) *An APS employee, when acting in connection with APS employment, must comply with all applicable Australian laws. For this purpose, Australian law means:*
 - (a) *any Act (including this Act), or any instrument made under an Act; or*
 - (b) *any law of a State or Territory, including any instrument made under such a law.*
- (8) *An APS employee must use Commonwealth resources in a proper manner and for a proper purpose.*
- (11) *An APS employee must at all times behave in a way that upholds:*
 - (a) *the APS Values and APS Employment Principles; and*
 - (b) *the integrity and good reputation of the employee's Agency and the APS.*

In respect of section 13(4) of the PS Act, this conduct may amount to a failure to comply with the obligations in the *Public Governance, Performance and Accountability Act 2013* (Cth).

In respect of section 13(11)(a) of the PS Act, this conduct might amount to a failure to uphold the 'Ethical' and 'Impartial' APS Values set out at section 10 of the PS Act:

Ethical

- (2) *The APS demonstrates leadership, is trustworthy, and acts with integrity, in all that it does.*

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Impartial

- (5) *The APS is apolitical and provides the Government with advice that is frank, honest, timely and based on the best available evidence.*

Allegation 4: Maintaining probity when engaging with individual landholder

Allegation 4 relates to your interactions with landowners in Western Sydney on Australian Government activities in which they may have an interest.

It is alleged that in your meetings and/or communications with an interested landholder, [REDACTED], you failed to ensure that probity was maintained.

It is alleged that you:

- a) Met with [REDACTED] on 17 October 2016 at a coffee shop without another employee of the department present;
- b) Failed to prepare a record of this meeting with [REDACTED]

If proven, each instance of alleged conduct could give rise to breaches of one or more of the following sections of the Code:

- (1) *An APS employee must behave honestly and with integrity in connection with APS employment*
- (2) *An APS employee must act with care and diligence in connection with APS employment*
- (4) *An APS employee, when acting in connection with APS employment, must comply with all applicable Australian laws. For this purpose, Australian law means:*
 - (a) *any Act (including this Act), or any instrument made under an Act; or*
 - (b) *any law of a State or Territory, including any instrument made under such a law.*
- (7) *An APS employee must:*
 - (a) *take reasonable steps to avoid any conflict of interest (real or apparent) in connection with the employee's APS employment*
- (11) *An APS employee must at all times behave in a way that upholds:*
 - (a) *the APS Values and APS Employment Principles; and*
 - (b) *the integrity and good reputation of the employee's Agency and the APS.*

In respect of section 13(4) of the PS Act, this conduct may amount to a failure to comply with the obligations in and under the *Public Governance, Performance and Accountability Act 2013* (Cth).

In respect of section 13(11)(a) of the PS Act, this conduct may amount to a failure to uphold the 'Ethical' APS Value set out at section 10 of the PS Act:

Ethical

- (2) *The APS demonstrates leadership, is trustworthy, and acts with integrity, in all that it does.*

Formal direction

You are directed not discuss the matters in this letter with other employees, including APS employees from other departments, other than members of the Conduct and Performance Team of Human Resources and Property Branch and your support person.

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The investigation process

Copies of the department's section 15(3) procedures mentioned above, and a copy of the department's Suspected Misconduct Guidelines are attached for your information.

I have also attached for your information a copy of Part 3 of the PS Act, which deals with the Code and related matters.

Dr Thom will prepare a report with findings of fact. Dr Thom will provide her report to the Breach Decision-Maker. Dr Thom will be in touch with you shortly regarding the investigation and to give you a reasonable opportunity to make a statement in relation to the suspected breach. This statement may be made in person and/or in writing. If you have questions concerning this matter, please contact Dr Thom at [REDACTED] or by telephone on [REDACTED].

Possible sanctions

If a finding of breach of the Code is made, a sanction delegate will be appointed. The possible sanctions which may be imposed for breach of the Code are:

- termination of employment;
- reduction in classification;
- re-assignment of duties;
- reduction in salary;
- deductions from salary, by way of fine (up to a maximum of 2% of salary); or
- a reprimand.

An Agency Head or Delegate may also determine that no sanction be imposed or that a less formal response such as counselling or training is appropriate in the circumstances.

Support Person

You are entitled to have a support person of your choice, such as a colleague, friend, family member, union or legal representative during the Code process if you wish. However, please note that a support person cannot be a person who either is or may be a potential witness, or is otherwise involved, in any of the matters connected with these suspected breaches of the Code as outlined above.

Personal Information

In the course of the investigation, personal information about you may be collected by the investigator from you, other employees or other people, or from within documentary records held by the department or other sources.

Any personal information about other people given to you during this investigation will be for the purpose of ensuring that you properly understand the matters under investigation and have a fair opportunity to provide your perspective. You are not to use or disclose any information about the investigation, including personal information about any person, without the prior express approval from me.

If you are found to have breached the Code, information about any breach or sanction imposed may be used in the course of making future decisions about your employment with the department. Other use or disclosure may be authorised under reg 9.2 of the *Public Service Regulations 1999*.

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Employee Assistance Program

I appreciate that the contents of this letter may be difficult for you. As such, you may consider it useful to talk to a professional counsellor. If you would like to talk to a professional counsellor, I would encourage you to contact the department's Employee Assistance Program on 1300 360 364.

Yours sincerely

Stephanie Bourke
Assistant Secretary Human Resources and Property
6 October 2020

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Australian Government
**Department of Infrastructure, Transport,
Regional Development and Communications**

[REDACTED]

Dear [REDACTED]

Notice of Suspected Breaches of the Australian Public Service (APS) Code of Conduct

The department has become aware of alleged conduct by you that may give rise to a breach of the APS Code of Conduct (Code) contained in section 13 of the *Public Service Act 1999* (PS Act).

The purpose of this letter is to advise you that an investigation under the procedures established by the Secretary under section 15(3) of the PS Act is being undertaken.

I have authorised Ms Barbara Deegan, a consultant of Ashurst, to investigate the allegations. [REDACTED] is the Breach Decision Maker for this matter.

The allegations

It is alleged that:

- 1) During the relevant period, you held an interest in South32, being ownership of shares.
- 2) You were involved in matters relating to South32 without having notified the department of your interest in South32.
- 3) On or around 22 October 2019, you notified [REDACTED] and [REDACTED] of a potential conflict of interest relating to South32, stating:

I would like to report that I own a small parcel of South32 shares that I acquired on the spin-off of this company from BHP. This may be a perceived conflict of interest as I am currently negotiating with South32 on the sale of pimelia as a biodiversity offset.

- 4) On or around 23 October 2019, [REDACTED] advised you that whilst advice from outside the unit was being sought in relation to the declaration, in the interim, he thought it would be appropriate to adopt the approach you had proposed and for you not to act as the financial delegate for the matter.
- 5) On or around 23 October 2019, [REDACTED] advised [REDACTED] that he had asked you to excuse yourself from any work involving the issue.
- 6) Between 23 October and 12 November 2019, you continued to be involved in matters relating to South32.

SENSITIVE: PERSONAL

SENSITIVE: PERSONAL

- 7) On or around 12 November 2019, you received an email from [REDACTED] in which [REDACTED] stated that [REDACTED] had advised you should:
 - a. complete the Declaration of Personal Interests Form;
 - b. to remove the potential or perception of a personal conflict, excuse yourself from any work involving this issue (or acting as financial delegate) until the Ethics team has considered your Declaration Form and provided advice; and
 - c. clearly document any involvement you do have in the matter.
- 8) You completed an updated Declaration of Personal Interests Form on 21 November 2019.
- 9) You failed to ensure that your interest in South 32 was notified to, or recorded on, the Western Sydney Unit probity register.
- 10) You failed to adequately and consistently report your interest in South 32 when reporting conflicts of interest to the department.
- 11) You failed to clearly document your involvement with or related to South 32.
- 12) After 12 November 2019, you continued to be involved in matters relating to South32 in circumstances where the Ethics team had not considered your Declaration Form and provided advice.

If proven, this conduct could give rise to breaches of one or more of the following sections of the Code:

- (1) *An APS employee must behave honestly and with integrity in connection with APS employment.*
- (2) *An APS employee must act with care and diligence in connection with APS employment.*
- (7) *An APS employee must:*
 - (a) *take reasonable steps to avoid any conflict of interest (real or apparent) in connection with the employee's APS employment; and*
 - (b) *disclose details of any material personal interest of the employee in connection with the employee's APS employment.*
- (10) *An APS employee must not improperly use inside information or the employee's duties, status, power or authority to gain, or seek to gain, a benefit or an advantage for the employee or any other person.*
- (11) *An APS employee must at all times behave in a way that upholds:*
 - (a) *the APS Values and APS Employment Principles; and*
 - (b) *the integrity and good reputation of the employee's Agency and the APS.*

SENSITIVE: PERSONAL

In respect of section 13(11)(a) of the PS Act, this conduct might amount to a failure to uphold the 'Ethical' and 'Impartial' APS Values set out at section 10 of the PS Act:

Ethical

- (2) *The APS demonstrates leadership, is trustworthy, and acts with integrity, in all that it does.*

Formal direction

You are directed not discuss the matters in this letter with other employees, including APS employees from other departments, other than myself or members of the Conduct and Performance Case Management Team and your support person.

The investigation process

Copies of the department's section 15(3) procedures mentioned above, and a copy of the department's Suspected Misconduct Guidelines are attached for your information.

I have also attached for your information a copy of Part 3 of the Act, which deals with the Code and related matters.

Ms Deegan will prepare a report with her findings of fact, which will be provided to the Breach Decision-Maker. Ms Deegan will be in touch with you shortly regarding the investigation and to give you a reasonable opportunity to make a statement in relation to the suspected breach. This statement may be made in person and/or in writing.

Possible sanctions

If a finding of breach of the Code is made, a sanction delegate will be appointed. The possible sanctions which may be imposed for breach of the Code are:

- termination of employment;
- reduction in classification;
- re-assignment of duties;
- reduction in salary;
- deductions from salary, by way of fine (up to a maximum of 2% of salary); or
- a reprimand.

An Agency Head or Delegate may also determine that no sanction be imposed or that a less formal response such as counselling or training is appropriate in the circumstances.

Support Person

You are entitled to have a support person of your choice, such as a colleague, friend, family member, union or legal representative during the Code process if you wish. However, please note that a support person cannot be a person who either is or may be a potential witness, or is otherwise involved, in any of the matters connected with these suspected breaches of the Code as outlined above.

Personal Information

In the course of the investigation, personal information about you may be collected by the investigator from you, other employees or other people, or from within documentary records held by the department or other sources.

SENSITIVE: PERSONAL

Any personal information about other people given to you during this investigation will be for the purpose of ensuring that you properly understand the matters under investigation and have a fair opportunity to provide your perspective. You are not to use or disclose any information about the investigation, including personal information about any person, without the prior express approval from me.

If you are found to have breached the Code, information about any breach or sanction imposed may be used in the course of making future decisions about your employment with the department. Other use or disclosure may be authorised under reg 9.2 of the *Public Service Regulations 1999*.

Employee Assistance Program

I appreciate that the contents of this letter may be difficult for you. As such, you may consider it useful to talk to a professional counsellor. If you would like to talk to a professional counsellor, I would encourage you to contact the department's Employee Assistance Program on 1300 360 364.

Yours sincerely

Stephanie Bourke
Assistant Secretary Human Resources and Property
15 October 2020

SENSITIVE: PERSONAL

Culture and Capability Review related to the Leppington Triangle Purchase

Context:

The Department of Infrastructure, Transport, Regional Development and Communications (the Department) seeks a suitably qualified supplier to undertake a review of the systems, processes, culture and capabilities of the former Western Sydney Unit, including whether these contributed to the findings and issues identified by the Australian National Audit Office (ANAO) in its performance audit on the *Purchase of the 'Leppington Triangle' Land for the Future Development of Western Sydney Airport* (the Report), published on 21 September 2020.

The Report found that the Department did not exercise appropriate due diligence in its acquisition of the Leppington Triangle land and that aspects of the operation of the Department fell short of ethical standards. The Department agreed to all of the ANAO's recommendations and is taking action to address identified shortcomings in processes and decision-making.

This review is being instigated in addition to the measures outlined in the Department's formal response to the Report, to look more broadly at any underlying cultural and environmental factors.

The review will complement and draw from the findings of the independent audit of the conduct of the Leppington Triangle transaction, which is currently underway.

Scope:

The review will:

- examine the systems, processes, culture and capabilities in the former Western Sydney Unit, including the circumstances that contributed to the findings and issues identified in the ANAO report
- examine the interactions between the former Western Sydney Unit and the Department's governance structures and corporate divisions, including how these interactions may have contributed to the findings and issues identified in the ANAO report, and
- reflecting the Department's commitment to continuous improvement, identify forward-looking lessons learnt for the systems, processes, culture and capabilities of the Department, and recommend any actions the Department should undertake in relation to the above.

The review will not make findings of fact relating to:

- specific transactions, including the Leppington Triangle purchase, and
- specific actions of individuals, including any potential Code of Conduct matters.

Approach:

In order to deliver against the scope, the review will:

- draw principally from the fact base established by the ANAO Report and the independent audit of the conduct of the Leppington Triangle transaction
- undertake consultation with relevant personnel, including former personnel, through interviews, group forums and other means as relevant
- consider the engagement and utilisation of the Department's key governance and enabling functions and the impact this had on decision-making, delivery and performance
- consider the alignment of capabilities required for the delivery of complex and unique projects, and
- where relevant, draw from past reviews and innovative and best practice approaches.

Timeframes and deliverables:

Subject to the advice of respondents, it is expected that this work commence immediately for a period of no more than two months and include:

- a project plan, outlining the approach and key milestones for undertaking the review
- a draft report for consultation, addressing the objectives of the review
- a final report addressing the objectives of the review, to be accompanied by a verbal briefing to the Secretary outlining key findings and lessons learnt, and
- subject to agreement to the final report, the contract may be extended to further develop a fit-for-purpose change management and implementation plan to embed any lessons learnt.

Conflict of Interest Requirements:

In keeping with the APS Values and APS Code of Conduct, and ensuring the integrity of the Department's response to the Report, respondents will be required to:

- (a) outline all prior work completed for the Department within the last five years, including any engagement with the Western Sydney Unit, the Inland Rail Division or the Major Transport and Infrastructure Projects Division, and
- (b) complete the attached conflict of interest disclosure.

Where conflicts of interest are identified (real or perceived), respondents are required to outline within their response how they propose to address such conflicts.