



PURCHASE OF LAND BY PORTFOLIO STAFF, CONTRACTORS AND PUBLIC SECTOR MEMBERS STANDARD OPERATING PROCEDURE

Standard Operating Procedure Purpose

This Procedure outlines the obligations and actions that are required when staff, public sector members, and contractors from the Environment, Planning and Sustainable Development Portfolio and other agencies assisting in the sale of land or a member of their immediate family intends to buy land from the City Renewal Authority or Suburban Land Agency, including from a Territory Joint Venture or under a Territory sponsored program.

This Procedure, in conjunction with the *Purchase of Land by Portfolio Staff, Contractors and Public Sector Members Policy*, is designed to ensure that the Government and the community perceive the Portfolio as impartial, effective and fair, and have confidence in the transparency and integrity of the Portfolio's administration of land programs.

Scope

This procedure applies across the Portfolio which comprises the Environment, Planning and Sustainable Development Directorate (Directorate), Suburban Land Agency and City Renewal Authority. This recognises that land development and sale functions sit across the Portfolio and that people engaged in support or contract roles may be exposed to information which could be perceived to advantage them in the event that they or their families purchase land.

This Procedure applies to:

- all Portfolio staff, including permanent and temporary ACT Government employees and non-government contractors or consultants acting on behalf of any entity within the Portfolio;
- staff in ACT government agencies assisting in the sale of land. For example, ACT Property Group and Government Solicitor Office;
- statutory office holders within the Portfolio such as Board members, who are defined as 'public sector members', and
- The people listed above, and their immediate families, with an interest in a business which may purchase land.

Under this Procedure the staff member, contractor and public sector member is also responsible for notifying of the intentions of their immediate family members.

In this procedure 'immediate family' is defined as:

- a person who is:
 - a domestic partner (including a former domestic partner); or
 - a child or an adult child, parent, grandparent, grandchild or sibling of the employee or the domestic partner of the employee; or
 - a person related to the employee through Aboriginal and/or Torres Strait Islander kinship structures; or
 - a child who is the subject of permanent caring arrangements; or
 - an adopted child.

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'Immediate family' includes adopted, step, fostered or ex-nuptial immediate family where these circumstances exist.

The scope of this procedure applies to the purchase of land not only from City Renewal Authority or Suburban Land Agency, but also to purchases from a Territory Joint Venture or under a Territory sponsored program, referred to in this Procedure as 'land suppliers covered by this Procedure'.

A sponsored program is partnership or other formal arrangement between a builder and the portfolio (Suburban Land Agency, City Renewal Authority or the Directorate) that involves a level of influence by the portfolio over to whom properties can be sold or leased. This may include house land packages or sale of apartments.

A 'level of influence' means where the portfolio has an ongoing interest and a reasonable person would consider that staff in the portfolio have an opportunity to influence the sale.

Procedure – Description of activities

Public Sector Values and Principles

Portfolio and other agency staff members are public employees, bound by the values and principles set out in the *Public Sector Management Act 1994 (PSMA)*. Section 9 of the *PSMA* "General Obligations of public employees", sometimes referred to as the ACT Code of Ethics, sets out a number of obligations that apply to public employees when performing their duties.

Some of these obligations that may be relevant when a staff member or a member of their immediate family are interested in buying land from suppliers covered by this Procedure, include:

"if the employee has an interest, pecuniary or otherwise, that could conflict, or appear to conflict, with the proper performance of his or her duties –

- I. disclose the interest to his or her supervisor
- II. take reasonable action to avoid the conflict.

"As soon as possible after the relevant facts come to the employee's notice (s9(j));

- not take, or seek to take, improper advantage of his or her position in order to obtain a benefit for the employee or any other person (s9(k)); and
- not take, or seek to take, improper advantage, for the benefit of the employee or any other person, of any information acquired, or any document to which the employee has access, as a consequence of his or her employment" (s9(l)).

Section 150 of the *PSMA* defines statutory office holders such as board members as "public sector members" to whom the public sector standards in section 9 apply as long as it is consistent with the exercise of the member's functions. Board members also have an obligation under the *Financial Management Act 1996* to ensure that they comply with its conflict of interest provisions and applicable governmental policies generally.

Failure to comply with the *PSMA* values and this Procedure risks actual or a perception of conflict of interest and unfair advantage by those covered in this Procedure and risks the reputation of the Portfolio, its entities and the ACT Government.

Conflict of Interest

Those covered by this Procedure must ensure that their personal and financial interests do not conflict, or do not appear to conflict, with their official responsibilities. Personal and financial interests include the interests of their immediate family. This is to ensure that the Government and

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the community perceive the Portfolio as impartial, effective and fair, and have confidence in its integrity to administer land programs.

This covers situations where there is potential for a conflict of interest, or for others to gain a reasonable impression or perception of a conflict of interest, or to form the view that Portfolio staff have acted unfairly, or have somehow taken an improper advantage of their position within the Portfolio or agency, or taken improper advantage of information obtained because of their employment.

The potential for or the perception of conflict captures a wide range of roles, from those working directly on programs and packages for the sale or development of land to those providing support or governance who may become aware of information as part of their work role. Staff in land release and development areas are exposed to information which could be perceived to advantage them in the event that they or their families purchase land or property. Judgement needs to be exercised in determining when to disclose a potential, perceived or actual conflict of interest.

Improper Advantage

An improper advantage can be obtained because of information or knowledge gained through employment, either specifically or inadvertently, especially where that information is not available to the public. An improper advantage includes such actions as a staff member using a discretionary power for their benefit or for the benefit of their immediate family, or influencing others to exercise a discretionary power for their benefit or the benefit of their immediate family, or influencing other decisions for their benefit or the benefit of their immediate family (such as the order of priority for blocks of land).

Further information on conflict of interest and improper advantage can be found on the Directorate's People and Capability intranet site at <http://inepsdd/Pages/People-Capability.aspx>

Staff Responsibilities

All those covered by this Procedure are personally responsible for their compliance with this Procedure and the associated *Purchase of Land by Portfolio Staff, Contractor and Public Sector Members Policy*. In addition, supervisors and managers across the Portfolio are responsible for their compliance and are also responsible to promote and ensure compliance of other staff members.

This does not mean that those covered by this Procedure cannot buy land from the land suppliers covered by this Procedure. However, if they or their immediate family intend to buy land under those circumstances, they must comply with the actions set out in these Procedures to ensure that:

- no unfair or improper advantage is obtained;
- any potential conflict of interest is disclosed and properly dealt with;
- the integrity of the sales processes is protected;
- the reputation of the ACT Government and the Portfolio is maintained; and
- staff members, contractors and public sector members are protected.

Staff Actions

All those covered by this Procedure who intend to buy land or whose immediate family intends to buy land from the land suppliers covered by this Procedure are required to submit a *Conflict of Interest – Purchase of Land* form to their manager before an application to purchase the land is submitted.

The declaration is submitted to the staff member's or contractor's manager in the first instance, who provides comments and then forwards the form to the relevant Senior Executive or CEO. The Senior Executive will decide and record what, if any, action is to be taken to manage a conflict of interest

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before providing a copy of the declaration to the People and Capability team for registering on the Conflict of Interest Register.

Statutory office holders must notify the conflict of interest in accordance with their applicable Charter, terms of reference or engagement arrangements.

The Conflict of Interest Declaration - Purchase of Land form is available on the Directorate's People and Capability intranet site at <http://inepsdd/Pages/People-Capability.aspx>. It captures information on:

- the land they are intending to buy, or the program or the land and house package they wish to participate in;
- the nature and extent of their involvement in the development or sale of the land, or in the establishment or operation of the program or land and house package;
- whether they or a member of their immediate family intend to occupy a dwelling to be constructed on the land;
- details of any real, perceived or potential conflict of interest they have, or may have, in purchasing the land or participating in the program or package, and
- confirmation that neither they nor any immediate family member will receive any special treatment or other improper advantage over anyone else who wishes to buy land or participate in the program or package.

Management Actions

The manager and Senior Executive or CEO must consider the Conflict of Interest Declaration as soon as they receive it, and a management strategy is to be determined and agreed as soon as practicable following the identification of a conflict of interest.

The manager will review and make comments on the declaration form before forwarding it to the relevant Senior Executive or CEO who will consider the notification, and may ask for additional information. The Senior Executive or CEO may, in considering the matter and depending on the circumstances, take any of the following steps:

- Remove the staff member, contractor or public sector member from a decision making process, or from involvement in the development and sale of certain land, or from involvement in a particular program or package, in order to avoid a conflict of interest.
- Request the staff member, contractor or public sector member to divest themselves of some personal or financial interest.
- Inform others as appropriate of the conflict or perceived conflict of interest and the action taken.
- Record the notification and the actions taken.
- Forward the notification to the Director, People and Capability for registration in the Conflict of Interest Register.

Records Management

The declaration form and the record of action taken are to be forwarded to the Director People and Capability for registration in the Conflict of Interest Register. They are to be forwarded to the People and Capability via an email to EPSDD.HR@act.gov.au

Staff from other agencies are required to provide the Declaration and record of action to their agency for registration on that agency's Conflict of Interest Register, with a copy provided to the Directorate.

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Any other paperwork relating to the declaration, investigation or decision making is to be handled and stored in accordance with the *Territory Records Act 2002* and Environment, Planning and Sustainable Development Records Management policy.

Evaluation

Outcome Measures	Method	Responsibility
Staff aware of policy and the need to avoid conflicts of interest	Policy to be presented at team, Branch or Section meetings, to be included in Induction training and packages	All managers. Induction and Training: Director People and Capability
Staff Awareness	Reminders of the policy to be provided in DG's weekly email to coincide with each major sales event.	Director, Urban Projects, Sales and Marketing, Suburban Land Agency
Compliance	Annual audit of Suburban Land Suburban Land, City Renewal City Renewal purchasers to check for breaches	Risk and Audit team

Related Documents

- *Public Sector Management ACT 1994*
- *Territory Records Act 2002*
- *City Renewal Authority and Suburban Land Agency Act 2017*
- Purchase of Land by Environmental, Planning and Sustainable Development Portfolio Staff Policy
- Administrative and Related Classifications Enterprise Agreement 2013-2017
- Environment, Planning and Sustainable Development Conflict of Interest Factsheet
- Environment, Planning and Sustainable Development Declaration of Conflict of Interest – Purchase of Land Form

Version history

The following table details the published date and amendment details for this document:

Version	Date	Amendment details
2008/1	13 November 2008	First publication of Purchase of Land by Land Development Suburban Staff Policy. Author: GM Legal and Compliance. Approval LDA CEO
2.0	12 May 2010	Second publication of Purchase of Land by Land Development Suburban Staff Policy. Author: Business Support Manager. Approval LDA Executive
1.0	March 2018	Document reviewed and rebadged as Environment, Planning and Sustainable Development Portfolio policy. Author: Governance, Compliance and Legal

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