

# **Management of the Australian War Memorial's Development Project**

Australian War Memorial

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Canberra ACT

11 April 2024

Dear President  
Dear Mr Speaker

In accordance with the authority contained in the *Auditor-General Act 1997*, I have undertaken an independent performance audit in the Australian War Memorial. The report is titled *Management of the Australian War Memorial's Development Project*. Pursuant to Senate Standing Order 166 relating to the presentation of documents when the Senate is not sitting, I present the report of this audit to the Parliament.

Following its presentation and receipt, the report will be placed on the Australian National Audit Office's website — <http://www.anao.gov.au>.

Yours sincerely



Rona Mellor PSM  
Acting Auditor-General

The Honourable the President of the Senate  
The Honourable the Speaker of the House of Representatives  
Parliament House  
Canberra ACT

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# Audit snapshot

## Auditor-General Report No.21 2023–24

### *Management of the Australian War Memorial's Development Project*



#### Why did we do this audit?

- ▶ The Australian War Memorial (the Memorial) was allocated \$498.7 million in 2018 to deliver the Development Project. A further \$50 million was allocated in 2022 and \$8.8 million unspent from the business case funding was redirected to the project.
- ▶ This audit provides assurance to Parliament on the delivery of a nationally significant project, including procurement, contract management and project management.



#### Key facts

- ▶ As at October 2023, there were 221 contracts for project management, design, engineering, construction and specialist advice for the Development Project.
- ▶ The Memorial remains open to the public throughout construction (completing quarter 4 2025) and gallery development (completing quarter 4 2027), with the project due for final completion in June 2028.



#### What did we find?

- ▶ Management of the Development Project has been largely effective.
- ▶ Procurement policies, governance and project management arrangements were largely effective.
- ▶ Procurement activities were largely conducted in compliance with the Commonwealth Procurement Rules through open and competitive processes.
- ▶ Contract management was largely effective.
- ▶ There were deficiencies in record keeping, management of conflicts of interest, documenting value for money assessments and in the quality of advice to the minister.



#### What did we recommend?

- ▶ The Auditor-General made five recommendations to the Memorial to improve policies, record keeping, probity, conflicts of interest and contract management.
- ▶ There was one recommendation to the Department of Finance (Finance) to update guidance on AusTender reporting.
- ▶ The Memorial and Finance agreed to the recommendations.

13

tenderers responded to the 2021 Request for Expression of Interest for the first three Main Works Packages.

\$454.6m

(GST inclusive) value of contracts for the Development Project as at October 2023.

73%

of initial contracts (prior to variations) reported on AusTender within required 42 days.

# Summary and recommendations

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## Background

1. The Australian War Memorial (the Memorial) is a corporate Commonwealth entity (CCE) established by the *Australian Memorial Act 1980* (the Memorial Act). Its purpose is 'to commemorate the sacrifice of those Australians who have died in war or on operational service and those who have served our nation in times of conflict.'
2. In November 2018, the Australian government announced funding of \$498.7 million for the Development Project to 2028; 'to display more of their collection and proudly tell the stories from recent years in Afghanistan, Iraq, the Solomon Islands and East Timor.'<sup>1</sup> A further \$50 million was allocated in March 2022 for a total of \$548.7 million (GST exclusive).
3. Under the *Public Governance, Performance and Accountability Act 2013* (PGPA Act), an entity's accountable authority has a duty to promote the proper (efficient, effective, economical and ethical) use and management of public resources. The Memorial is a CCE prescribed under section 30 of the Public Governance, Performance and Accountability Rule 2014 to follow the Commonwealth Procurement Rules (CPRs). The CPRs govern how entities buy goods and services and are designed to ensure the achievement of value for money.

## Rationale for undertaking the audit

4. The Memorial is a nationally significant cultural institution which manages assets valued at \$1.5 billion. The funding of \$548.7 million for the Development Project represents a significant increase in the Memorial's project management and procurement activity.
5. This audit provides assurance to the Parliament about the effectiveness of the Memorial's procurement and project management arrangements. This includes whether the Memorial complied with CPRs and established effective governance and contract management arrangements to deliver the project.

## Audit objective and criteria

6. The audit objective was to assess whether the Australian War Memorial is effectively managing the development project.
7. To form a conclusion against the objective, the following high-level criteria were adopted.
  - Has the Australian War Memorial (the Memorial) established effective procurement and project management frameworks?
  - Were procurement activities conducted in accordance with Commonwealth Procurement Rules?
  - Has the Memorial established effective contract management arrangements to support project delivery?

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1 Media release, *Telling the stories of our service men and women*, 1 November 2018, available from <https://www.awm.gov.au/media/press-releases/telling-the-stories> [accessed 18 November 2022].

## Conclusion

8. The Memorial's management of the Development Project was largely effective. Shortcomings in the management of probity risks would have been improved with full implementation of internal policies and procedures.

9. Procurement policies, governance and project management arrangements were largely effective. The Director's Instructions are not supported by a delegation from the Council as the accountable authority. Procurement policies were revised in 2020, after the award of funding to the Development Project in 2018, to ensure alignment with the Commonwealth Procurement Rules and *Public Governance, Performance and Accountability Act 2013*. Additional governance structures and project management arrangements were established appropriate and proportionate to the project scale and risk, with a focus on safety, risk management and cost control. Record keeping practices did not follow approved processes.

10. Procurement activities were largely conducted in compliance with the CPRs. Higher value procurements were conducted through open and competitive processes and assessments were appropriately documented in tender evaluation reports. Value for money assessments were not adequately documented for the variation in price between tender responses and executed contracts or for lower value procurements. Management of ethical and probity risks was partly effective. Engagement with the external probity advisor was insufficient for the scale and risk of the procurements. Conflicts of interest were not adequately documented and declared or known conflicts were not adequately managed. Incumbency risks related to the procurement for ongoing project management services were not adequately managed and steps were taken to avoid seeking ministerial approval for the entering into contracts on two occasions. Minister's briefs were insufficiently detailed to support the minister to meet their obligations under section 71 of the *Public Governance, Performance and Accountability Act 2013*.

11. Largely effective contract management arrangements have been established. The Development Project contracts include clearly documented requirements. There are appropriate systems to monitor contractor performance and performance has been managed largely effectively to achieve value for money and deliver the Development Project objectives. The documentation of assessment of value for money considerations for contract variations was insufficient. Ministerial briefs lacked sufficient detail of value for money assessments. In one instance, the signed contract variation exceeded the value approved by the Minister for Veterans' Affairs and the value of the variation was incorrectly stated in the subsequent ministerial brief.

## Supporting findings

### **Has the Memorial established effective procurement, governance, and project management arrangements?**

12. Largely fit-for-purpose procurement policies were developed which align with the Commonwealth Procurement Rules (CPRs) and the *Public Governance, Performance and Accountability Act 2013* (PGPA Act). These policies include template forms and clear guidance on the responsibilities of officials when conducting a procurement. The Director's Instructions were not supported by a delegation of authority from the Council. (See paragraphs 2.2 to 2.17)

13. Specific governance arrangements were established to manage the budget, deliverables and the increased risk associated with the scale and complexity of the Development Project. Governance arrangements have clearly defined organisational structure and reporting responsibilities which support the Council and Director maintaining appropriate oversight. A suite of project-specific policies was developed to support procurement, contract management and project delivery, which are reviewed annually. Record keeping practices did not follow approved processes. The Development Project has not been subject to a Gateway Review under the Australian Government Assurance Reviews Framework. (See paragraphs 2.18 to 2.46)

### **Were procurement activities conducted in accordance with Commonwealth Procurement Rules?**

14. Open tenders and multiple quotes from panel arrangements for tenders were used to maximise competition for higher value procurements. Evaluation criteria for each procurement stage were not published at the beginning of multistage procurements. Lower value procurements were not adequately documented. Seventy-three per cent of contracts were reported on AusTender within the required 42 days. Incumbency risks were not appropriately managed for the project management services procurement. (See paragraphs 3.3 to 3.25)

15. Activity specific conflict of interest declarations were not obtained for all delegates, members of evaluation committees and advisors involved in procurements. Key personnel did not declare their prior employment with tenderers. Management plans were not consistently developed for declared or known conflicts. Engagement with probity advisors was insufficient for the scale and risk of the procurements. (See paragraphs 3.26 to 3.51)

16. Tender evaluation reports for 13 of 18 procurements reviewed appropriately documented and demonstrated how value for money was assessed. Value for money assessments were largely not undertaken where the negotiated final contract price varied the price approved in the tender evaluation report. (See paragraphs 3.52 to 3.63)

17. Tender evaluation reports for high value procurements set out the assessment process and demonstrated how value for money was considered and risks were assessed. Subsequent documentation of the outcome of contract negotiations or rationale for the award of contract with a different value than previously approved was insufficient. Ministerial approval was obtained to enter into contracts over \$1 million. Advice to the minister was insufficiently detailed to support the minister in carrying out their duties, including those under section 71 of the PGPA Act. In two instances contracts were split to not exceed the \$1 million threshold for ministerial approval. (See paragraphs 3.64 to 3.76)

### **Has the Memorial established effective contract management arrangements to support project delivery?**

18. Development Project contracts include clearly documented requirements for delivery. Construction contracts for Main Works Packages include detailed design drawings of works to be delivered to specified timeframes and quality to an agreed lump sum. The Memorial implemented peer reviews, monthly site visits and a suite of reporting requirements to monitor contractor performance. (See paragraphs 4.3 to 4.16)

19. Contract management processes at the whole of project level are largely aligned to the better practice principles of the Contract Management Guide. The Memorial tracks construction progress against set timelines and maintains oversight of completion dates. Cost control and risk management arrangements have been implemented. (See paragraphs 4.17 to 4.35)

20. Policies and procedures for contract variations are documented, however, records of contract variations are not consistently supported by value for money assessments. Ministerial briefs lack transparency, accuracy and the rationale for statements about value for money assessments. One contract variation was executed for an amount higher than that approved by the minister and the ministerial brief relating to a subsequent variation contained the incorrect value of the executed variation. (See paragraphs 4.36 to 4.60)

## Recommendations

21. This report makes five recommendations to the Australian War Memorial relating to updating policies, management of conflicts of interest, record keeping and contract management. The report makes one recommendation to the Department of Finance to update procurement guidance on AusTender reporting.

**Recommendation no. 1** The Australian War Memorial strengthen controls by issuing Accountable Authority Instructions (AAIs) consistent with RMG206 Model AAIs for corporate Commonwealth entities and ensuring that it documents any of its powers that have been delegated to the Director.

**Paragraph 2.6**

**Australian War Memorial response:** *Agreed.*

**Recommendation no. 2** The Australian War Memorial update its records management policies to ensure that electronic record keeping systems are defined and approved, and implement quality assurance controls to ensure records are maintained in accordance with its policy and the requirements of the *Archives Act 1983*.

**Paragraph 2.37**

**Australian War Memorial response:** *Agreed.*

**Recommendation no. 3** The Australian War Memorial strengthens the ethical conduct of its procurement activity consistent with its obligations under the *Public Governance, Performance and Accountability Act 2013* and Commonwealth Procurement Rules:

**Paragraph 3.50**

- (a) Ensuring all officials, contractors and advisors involved in procurement activities, in any capacity, complete activity specific conflict of interest declarations, on the basis of 'if in doubt, declare the interest'; and
- (b) Actively engaging probity advice to assist with the management of ethical and probity risks for higher value and/or higher risk procurements.

**Australian War Memorial response:** *Agreed.*

**Recommendation no. 4**  
**Paragraph 3.76**

The Australian War Memorial ensure that appropriate records are created and maintained that clearly document how value for money has been considered and will be achieved, including:

- a) in decision briefs to delegates, including for subsequent approval where contracts are to be executed for more than the approved tendered price;
- b) in briefs to the Minister for Veterans' Affairs seeking approval to enter into contracts;
- c) for limited tenders and procurements under the Commonwealth Procurement Rules thresholds; and
- d) for contract variations.

**Australian War Memorial response:** *Agreed.*

**Recommendation no. 5**  
**Paragraph 4.21**

The Australian War Memorial revise its whole of project Construction Management Plan to ensure it adequately captures requirements of the Memorial's procurement policy and alignment with the better practice principles of the Australian Government Contract Management Guide. This should include consideration of implementing individual contract management plans for higher value procurements to manage contractor specific risks and compliance with legislative and policy requirements.

**Australian War Memorial response:** *Agreed.*

**Recommendation no. 6**  
**Paragraph 4.52**

The Department of Finance should further strengthen Commonwealth Procurement Rules by updating Resource Management Guide 423 *Procurement and Reporting Obligations* to require entities to report all contracts and amendments where the total contract value is above the relevant threshold.

**Department of Finance response:** *Agreed in principle.*

## Summary of entity response

22. The proposed audit report was provided to the Memorial and an extract of the proposed report was provided to the Department of Finance (Finance). The Memorial's summary response is reproduced below, no summary response was provided by the Finance. The full responses from both entities are at Appendix 1. Improvements observed by the ANAO during the course of this audit are listed in Appendix 2.

### Australian War Memorial

As the Report itself highlights the Memorial's Development Project is a project of national significance. The Report also notes project delivery has faced the unique challenge of keeping the Memorial open as the centre of national commemoration and that it has had to adapt to the simultaneous impacts of COVID-19 and record high construction inflation.

The Memorial therefore welcomes the primary findings of the Report that it has established 'largely effective' frameworks for project management, procurement and contract management within that context.

The Memorial accepts the five recommendations made within the Report identified in areas of record keeping, probity management and corporate policy. As noted in *Appendix 2 Improvements observed by the ANAO* the Memorial has addressed many of these issues already and is working to close out final recommendations.

The Memorial believes the Report will provide Government with assurance that, through clearly documented strategic planning, innovative solutions and constant improvement, is it successfully managing the continued challenges facing any major project at this time in order to deliver high quality outcomes for veterans, their families and all Australians.

## Key messages from this audit for all Australian Government entities

23. Below is a summary of key messages, including instances of good practice, which have been identified in this audit and may be relevant for the operations of other Australian Government entities.

### **Governance and risk management**

- When undertaking projects or activities of increased scale or complexity, accountable authorities should implement fit-for-purpose governance and project management arrangements to effectively manage the project deliverables, including internal and external expertise, probity advice and enhanced monitoring and reporting.

### **Procurement**

- To ensure the integrity of procurement processes, all staff, contractors and external advisors, involved at any stage of the process, should complete activity specific conflict of interest declarations. Declarations should be made on the basis of, if in doubt, declare. All declared interests require a risk assessment and management plan approved by a delegate. Probity advice should actively be sought and acted upon throughout the process.

### **Records management**

- Accountable authorities should regularly seek assurance that records management policies are current, consistent with the requirements of the *Archives Act 1983* and Commonwealth Procurement Rules, and that those policies are being adhered to.

## **Audit findings**

# 1. Background

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## Introduction

1.1 The Australian War Memorial (the Memorial) opened in 1941 and is a corporate Commonwealth entity established by the *Australian Memorial Act 1980* (the Memorial Act). The Memorial Act defines the Memorial's purpose 'to commemorate the sacrifice of those Australians who have died in war or on operational service and those who have served our nation in times of conflict'. The Memorial Act sets out the functions and powers of the Memorial, including its ministerial oversight, and the roles and functions of the Memorial Council and the Memorial Director.

1.2 The Memorial's Council (the Council) is the Accountable Authority responsible for the conduct and control of the affairs of the Memorial. Council members are appointed by the Governor-General and include, ex-officio, the heads of Army, Navy and Air Force. The day-to-day operation of the Memorial is administered by the Director, who is appointed by the Governor-General for a term of up to seven years.<sup>2</sup>

## The Memorial's Development Project

1.3 The Development Project includes a new southern entrance and parade ground at the front of the existing main building, an extension to the CEW Bean Building, a new Anzac Hall and glazed link at the rear of the main building, refurbishment of the main building, gallery fit outs and works in the public realm. These were separated into different packages including:

- Early and Enabling Works;
- Main Works Package 1 (MWP1) New Southern Entrance;
- Main Works Package 2 (MWP2) CEW Bean Building and Central Energy Plant;
- Main Works Package 3 (MWP3) Anzac Hall and Glazed Link;
- Main Works Package 4 (MWP4) Main Memorial Building Refurbishment;
- Gallery fit outs; and
- Public realm works (landscaping).

1.4 The Memorial published plans, renders and video of the Development Project on its website.<sup>3</sup> Appendix 6 includes a selection of Development Project images.

1.5 The requirement for additional gallery space was identified in the 2016 Functional Efficiency Review of the Australian War Memorial. The Memorial's 2020 evidence to the Parliamentary Standing Committee on Public Works (Public Works Committee) identified four issues that the project would address:<sup>4</sup>

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2 The *Australian Memorial Act 1980* sets out the responsibilities of Council (Part III) and the Director (Part IV).

3 Australian War Memorial, *Our Continuing Story* and *Our Plans*, available from <https://www.awm.gov.au/ourcontinuingstory> [accessed 16 May 2023].

4 Australian War Memorial, Statement of Evidence to the Parliamentary Standing Committee on Public Works, Submission 1, February 2020, available from [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Public\\_Works/Completed\\_Inquiries\\_of\\_the\\_46th\\_Parliament/AustralianWarMemorial](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Public_Works/Completed_Inquiries_of_the_46th_Parliament/AustralianWarMemorial) [accessed 18 November 2022].

- spatial constraints that prevent (i) the telling of the stories of recent conflicts and operations at a level of detail consistent with earlier conflicts, and (ii) the Memorial properly recognising the service of those who served in recent conflicts and operations;
- the lack of capacity to include large technology objects such as planes, helicopters and armoured vehicles within galleries, as these objects are critical to telling the stories of recent conflicts and operations;
- circulation challenges caused by the numbers of visitors being well in excess of what the building was designed for, and which has now been in excess of one million per year for the last five years; and
- the lack of compliance with the Federal *Disability Discrimination Act 1992* to ensure the facility is accessible for all Australians, regardless of physical capacity.

1.6 The Memorial also advised the Public Works Committee that a key objective for the Development Project was to remain open to the public during the construction phase.

## Funding for the Development Project

1.7 The Memorial's Development Project was subject to Australian Government funding approval under the Two Stage Capital Works Approval Process:

- First stage: develop Initial Business Case (IBC) including Whole-of-Life Costs (WoLC) estimate to a 50 per cent confidence interval to support a New Policy Proposal (NPP) seeking government approval to proceed to second stage, including funding for a Detailed Business Case (DBC).
- Second stage: develop Detailed Business Case (DBC) including WoLC estimate to 80 per cent confidence interval and NPP seeking project approval.<sup>5</sup>

1.8 The government allocated \$5 million to the Memorial in the 9 May 2017 budget for an IBC, with the Memorial awarding the contract for the IBC to GHD Pty Ltd to a value of \$216,260.55. Following delivery of the IBC in October 2017, a further \$11.4 million was allocated in the Mid-Year Economic and Fiscal Outlook (MYEFO) 2017–18 for the DBC. GHD Pty Ltd was contracted to develop the DBC by 21 December 2018.<sup>6</sup>

1.9 On 17 October 2018, the Australian Government approved \$498.7 million (GST exclusive) capital expenditure for the Development Project. This approval was based on a 'Project Status Update report September 2018' that calculated funding costs to a 75 per cent confidence interval and did not include WoLC.

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5 Department of Finance, *Two Stage Capital Works Approval Process Flowchart*, available from <https://www.finance.gov.au/government/property-and-construction/commonwealth-property-management-framework/capital-works>, [accessed 10 August 2023]. This was republished on 15 January 2024 at <https://www.finance.gov.au/government/managing-commonwealth-resources/commonwealth-property-management-framework-rmg-500/capital-works-and-public-works> [accessed 9 February 2024].

P50 and P80 refer to a confidence level regarding the probability of the cost not being exceeded. That is, P80 is a cost that will not be exceeded 80 per cent of the time. Refer to Department of Finance, *Defining P50 and P80 Manual*, available from <https://www.finance.gov.au/government/managing-commonwealth-resources/commonwealth-property-management-framework-rmg-500/defining-p50-and-p80> [accessed 9 February 2024].

6 Detailed Business Case AusTender contract reference CN3482050, contract value \$8,299,610 (GST inclusive). The Initial Business Case contract was not reported on AusTender.

1.10 The Development Project was announced by the Prime Minister on 1 November 2018.<sup>7</sup>

1.11 The DBC was finalised on 21 December 2018, after the decision was made and announced, with a proposed budget that matched the approved amount (\$498.7 million GST exclusive), calculated to an 80 per cent confidence interval. The DBC included additional information on delivery approach, governance, risk and WoLC. The Memorial advised the ANAO that the DBC was hand delivered to the Department of Veterans' Affairs on 21 December 2018.

1.12 The Australian Government response to the Parliamentary Standing Committee on Public Works Report 1/2021 advised Parliament that<sup>8</sup>:

The resulting DBC was closely examined by the Department of Veterans' Affairs, Department of Finance and Cabinet before being approved for funding in November 2018.

1.13 There was no evidence that the DBC was considered by government.

1.14 On 23 August 2018, the Minister for Finance agreed that \$7 million unspent from the IBC and DBC could be redirected to the Development Project budget. The unspent funds redirected to the project were \$8,813,029.

1.15 On 13 January 2021 the Memorial commenced a multistage tender process for the first three Main Works Packages (MWP); MWP1 Southern Entrance, MWP2 CEW Bean Building and MWP3 Anzac Hall and Glazed Link. The Memorial identified from mid-2021 a high risk for potential price escalation, which was realised from 2 November 2021 following receipt of tender responses for MWP2.

1.16 The Memorial advised the ANAO that the Director verbally briefed the Minister for Veterans' Affairs on the price escalation in January 2022. There was no evidence of a written brief or minutes of that meeting.

1.17 On 11 March 2022, the Council met out of session to consider a project budget update:

Based on market responses to these tenders there is an estimated funding shortfall of \$65-70m across all construction and Gallery fit out works due to COVID 10 [sic], supply chain disruptions and materiel and labour availability.

1.18 The Council agreed on 11 March 2022 to seek an additional \$50 million from the Australian Government. By this time, the Tender Evaluation Report for MWP2 was signed by the delegate (23 January 2022), the Treasurer had written to the Prime Minister seeking agreement to an additional \$50 million (24 February 2022) and the Prime Minister signed a letter approving the additional \$50 million (4 March 2022). On 4 July 2022, the Director confirmed in a media statement the additional funding of \$50 million was allocated by the Australian Government in March 2022.<sup>9</sup>

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7 Media release, *Telling the stories of our service men and women*, 1 November 2018, available from <https://www.awm.gov.au/media/press-releases/telling-the-stories> [accessed 18 November 2022].

8 *Australian Government response to the Parliamentary Standing Committee on Public Works Report 1/2021*, tabled 1 May 2023, page 5, available from [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Public\\_Works/Completed\\_Inquiries\\_of\\_the\\_46th\\_Parliament/AustralianWarMemorial/Additional\\_Documents?docType=Government%20Response](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Public_Works/Completed_Inquiries_of_the_46th_Parliament/AustralianWarMemorial/Additional_Documents?docType=Government%20Response) [accessed 28 September 2023].

9 Australian War Memorial, *Media statement: Memorial Development Project funding update*, 4 July 2022, available from <https://www.awm.gov.au/media/on-the-record/development-funding> [accessed 10 August 2023].

1.19 In October 2022, the Memorial submitted a Project Budget Update to the Parliamentary Standing Committee on Public Works, setting out a rationale for the additional funding.<sup>10</sup>

1.20 During the Development Project, the Memorial has elected to complete additional works funded by Memorial cash reserves. These include the geothermal heat exchange (Case Study 1) and business as usual maintenance items completed alongside development works, such as security and ICT infrastructure. As of July 2023, the total program budget is \$582,782,260 (GST exclusive). This is in addition to the IBC and DBC Detailed Business Case expenditure totalling \$7.6 million.

1.21 Table 4.4 in Chapter 4 shows the budget breakdown and changes to 31 October 2023.

### Timeline for the Development Project

1.22 The 2018 DBC established a timeline for the completion of the Development Project by February 2028. In July 2019, the Memorial created baseline milestones using updated information from architectural concept designs and gallery plans. Table 1.1 shows the changes in the key milestones over time as reported in the Memorial's Project Delays Summary.

**Table 1.1: Development Project key milestones**

Milestone	Baseline at July 2019	Revised October 2020	Revised January 2023
Enabling works begin	2019	Commenced Quarter 4 (Q4) 2019	Complete
New Anzac Hall works commence (Main Works Package 3 (MWP3))	2020	Q1 2021	Commenced Q3 2021
New Southern Entrance works begin (MWP1)	2021	Q2 2021	Commenced Q3 2021
CEW Bean Building and Research Centre works begin (MWP2)	2021	Q3 2021	Commenced Q3 2021
New Southern Entrance external works (parade ground) complete (MWP1)	2022	Q2 2024	Q2 2024
New Southern Entrance & Main Building Lower (central circulation) opens to public (MWP1)	2022	Q4 2024	Q1 2025
CEW Bean Building and Research Centre complete (MWP2)	2023	Q2 2024	Q4 2024
Anzac Hall and Glazed Link Base Build complete (MWP3)	2023	Q2 2024	Q4 2024
Anzac Hall Galleries open	2024	Q4 2024	Q4 2025
Main Building refurbishment begins <sup>a</sup>	2024	Q3 2021	Commenced Q4 2021
Main Building refurbishment works complete (MWP4) <sup>a</sup>	2027	Q2 2024	Q3 2025 <sup>a</sup>

10 Australian War Memorial, *Development Project October 2022 Project Budget Update*, available from [www.apw.gov.au/Parliamentary\\_Business/Committees/Joint/Public\\_Works/Completed\\_Inquiries\\_of\\_the\\_46th\\_Parliament/AustralianWarMemorial/Additional\\_Documents?docType=Correspondence](http://www.apw.gov.au/Parliamentary_Business/Committees/Joint/Public_Works/Completed_Inquiries_of_the_46th_Parliament/AustralianWarMemorial/Additional_Documents?docType=Correspondence) [accessed 28 September 2023].

Milestone	Baseline at July 2019	Revised October 2020	Revised January 2023
Main Building Galleries installation complete	2027	Q4 2027	Q4 2027
Public Realm works complete	2027	Q4 2027	Q4 2027
Project completion	30 June 2028	30 June 2028	30 June 2028

Note: Milestone dates are calendar year. Project timelines adjustments are discussed further from paragraphs 4.23.

Note a: Refurbishment of lower Main Building brought forward to deliver concurrent with MWP1. MWP4 completion date is to be confirmed through final contract negotiations occurring quarter 1 2024.

Source: Memorial documentation.

## Procurement and contract management activities

1.23 The Memorial is a prescribed corporate Commonwealth entity (CCE) under section 30 of the Public Governance, Performance and Accountability Rule 2014, and is subject to the Commonwealth Procurement Rules (CPRs). The Memorial<sup>11</sup>:

**must** comply with the ‘rules for all procurements’ listed in Division 1 and the ‘additional rules’ listed in Division 2 when the expected value of the *procurement* is at or above the relevant *procurement threshold*

1.24 The procurement thresholds for prescribed CCEs are \$400,000 for non-construction procurements or \$7.5 million for construction services. Additionally, under subsection 35(b) of the *Australian War Memorial Act 1980*, the Memorial must obtain the approval of the Minister for Veterans’ Affairs before entering into a contract under which the Memorial is to pay or receive more than \$1 million.<sup>12</sup>

1.25 Managing procurements effectively requires attention across the procurement lifecycle: commencing in the procurement phase with effective planning, tender evaluation and contract negotiation, and progressing to active management of contractors’ performance and compliance in the contract management phase.

## Rationale for undertaking the audit

1.26 The Memorial is a nationally significant cultural institution which manages assets valued at \$1.5 billion. The funding of \$548.7 million for the Development Project represents a significant increase in the Memorial’s project management and procurement activity.

1.27 This audit provides assurance to the Parliament about the effectiveness of the Memorial’s procurement and project management arrangements. This includes whether the Memorial complied with Commonwealth Procurement Rules and established effective governance and contract management arrangements to deliver the Development Project.

11 Department of Finance, *Commonwealth Procurement Rules*, Finance, 13 June 2023, available from <https://www.finance.gov.au/government/procurement/commonwealth-procurement-rules> [accessed 23 June 2023]. The ANAO assessed the Memorial procurement against the Commonwealth Procurement Rules in effect at the time, including those dated 20 April 2019, 14 December 2020 and 1 July 2022.

12 The amount of \$1,000,000 is prescribed in Section 6A of the *Australian War Memorial Regulations 1983*, 14 August 2007, for the purposes of subsection 35(b) of the *Australian War Memorial Act (1980)*.

## Audit approach

### Audit objective, criteria and scope

1.28 The audit objective was to assess whether the Australian War Memorial is effectively managing the development project.

1.29 To form a conclusion against the objective, the following high-level criteria were adopted.

- Has the Australian War Memorial established effective procurement and project management frameworks?
- Were procurement activities conducted in accordance with Commonwealth Procurement Rules?
- Has the Memorial established effective contract management arrangements to support project delivery?

### Audit methodology

1.30 The audit involved:

- examining Memorial documentation, including policy documents, minutes of meetings, procurement records and contract management records;
- reviewing AusTender data;
- meetings with Memorial officials and contracted personnel involved in the Development Project;
- conducting site visits of construction for the first three Main Works Packages: Southern Entrance, CEW Bean Building, and Anzac Hall and Glazed Link;
- meeting with the Memorial's contracted probity advisor; and
- reviewing five citizen contributions received for this audit.

1.31 The audit was conducted in accordance with ANAO Auditing Standards at a cost to the ANAO of approximately \$609,000.

1.32 The team members for this audit were Jason Millward, Shelley Yin, James Carrington, Rory Tredinnick, Angelo Dimitropoulos and Alexandra Collins.

## 2. Has the Memorial established effective procurement, governance, and project management arrangements?

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### Areas examined

This chapter examines whether the Australian War Memorial (the Memorial) has established effective procurement policies, governance, and project management arrangements.

### Conclusion

Procurement policies, governance and project management arrangements were largely effective. The Director's Instructions are not supported by a delegation from the Council as the accountable authority.

Procurement policies were revised in 2020, after the award of funding to the Development Project in 2018, to ensure alignment with the Commonwealth Procurement Rules and *Public Governance, Performance and Accountability Act 2013*.

Additional governance structures and project management arrangements were established appropriate and proportionate to the project scale and risk, with a focus on safety, risk management and cost control. Record keeping practices did not follow approved processes.

### Areas for improvement

The ANAO made two recommendations for the Memorial to issue Accountable Authority Instructions and update record keeping policies. There were two opportunities for improvement for the Memorial relating to improving policy documents and distributing minutes of the Interdepartmental Advisory Committee. There was one opportunity for improvement made for the Department of Finance to extend the scope of Resource Management Guide 106 Australian Government Assurance Reviews to include corporate Commonwealth entities.

2.1 This chapter examines whether the Australian War Memorial (the Memorial) has established effective procurement policies, governance, and project management arrangements to support management of the Development Project.<sup>13</sup> Policies may include procurement instructions, policies and guidance and be supported by governance, oversight, and probity arrangements. A sound framework helps ensure that: procurements are undertaken effectively, ethically and in compliance with relevant rules and legislation; entities properly use and manage public resources; and procurements achieve their objectives and value for money outcomes.

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13 The Development Project includes the Early and Enabling Works, Main Works Packages 1–4, the Public Realm and Gallery works. See chapter 1, paragraph 1.3 for further detail.

## Has the Memorial developed a fit-for-purpose procurement framework?

Largely fit-for-purpose procurement policies were developed which align with the Commonwealth Procurement Rules (CPRs) and the *Public Governance, Performance and Accountability Act 2013* (PGPA Act). These policies include template forms and clear guidance on the responsibilities of officials when conducting a procurement. The Director's Instructions were not supported by a delegation of authority from the Council.

### Memorial procurement policies and guidance

2.2 The Memorial is a corporate Commonwealth entity (CCE), subject to the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) and prescribed by section 30 of the Public Governance, Performance and Accountability Rules 2014 (PGPA Rules) to comply with the Commonwealth Procurement Rules (CPRs).<sup>14</sup>

2.3 Section 20A of the PGPA Act states:

The accountable authority of a Commonwealth entity may, by written instrument, give instructions to an official of the entity about any matter relating to the finance law.

2.4 The Department of Finance (Finance) provides further guidance in its Resource Management Guide (RMG) 206 on Accountable Authority Instructions (AAIs).<sup>15</sup> This guidance includes model AAI templates covering procurement, risk management and disclosure of interests.<sup>16</sup>

2.5 The accountable authority for the Memorial is the Council and the Director is the Chief Executive Officer who 'subject to and in accordance with the general directions of the Council, manage[s] the affairs of the Memorial'.<sup>17</sup> The Director has issued Director's Instructions covering financial and administrative management of the Memorial, including delegations. The Council has not made Accountable Authority Instructions. There was no evidence that the Council had delegated authority to the Director to issue instructions.

14 Commonwealth Procurement Rules 2019, paragraph 2.2.

15 Accountable Authority Instructions (AAIs) are written instruments that may be issued by an entity's accountable authority under section 20A of the *Public Governance, Performance and Accountability Act 2013* to instruct officials on matters relating to the finance law. They assist accountable authorities in meeting their general duties under the PGPA Act and establishing appropriate internal controls for their entity.

16 Department of Finance, *Model accountable authority instructions (AAIs) Corporate Commonwealth entities*, Finance, November 2021, available from <https://www.finance.gov.au/government/managing-commonwealth-resources/managing-risk-internal-accountability/risk-internal-controls/accountable-authority-instructions-aais-rmg-206> [accessed 18 October 2023].

17 Section 9 of the *Australian War Memorial Act 1980* outlines the establishment of the Council as the accountable authority. Section 20 outlines the terms and appointment of the Director. Section 19 sets out that the Council can 'delegate all or any of its powers under this Act (except this power of delegation) to a member of the Council, to the Director or to a member of the staff of the Memorial'.

## Recommendation no. 1

2.6 The Australian War Memorial strengthen controls by issuing Accountable Authority Instructions (AAIs) consistent with RMG206 Model AAIs for corporate Commonwealth entities and ensuring that it documents any of its powers that have been delegated to the Director.

**Australian War Memorial's response:** *Agreed.*

2.7 *The Council of the Australian War Memorial delegated the authority to make and approve AAIs to the Director of the Australian War Memorial, consistent with RMG206, at Meeting 184 (March 2024).*

2.8 Paragraph 8.2 of the CPRs states:

Relevant entities must establish processes to identify, analyse, allocate and treat risk when conducting a procurement. The effort directed to risk assessment and management should be commensurate with the scale, scope and risk of the procurement. Relevant entities should consider risks and their potential impact when making decisions relating to value for money assessments, approvals of proposals to spend relevant money and the terms of the contract.

2.9 Policies, procedures and guidance materials have been established regarding procurement, which align with the PGPA Act and CPRs.

2.10 The Memorial's 2016 Procurement Manual was replaced in June 2020 by new policies informed by a 2019 internal audit. The internal audit noted the existing policy was largely consistent with the CPRs, but could be improved by updated guidance on conflict of interest and use of AusTender. The procurement policies introduced in 2020 and updated in 2022 include

- Procurement Framework — outlines procurement policies and relevant legislation applicable to Memorial procurements.
- Procurement Guidance — provides detailed guidance on procurement processes, including requirements of the CPRs and the best practice principles of the Australian Contract Management Guide.

2.11 The Memorial's Probity Guidelines issued in September 2019 and updated in 2022 include guidance for managing conflict of interest, including:

- requirement to complete a deed of confidentiality and declaration of conflict of interest 'prior to any involvement in the RFT process';
- declaring any existing business or personal relationships with tenderers or potential tenderers; and
- specific steps to ensure incumbent suppliers do not obtain an unfair advantage.

2.12 The procurement and probity policies set out how probity advice can support ethical procurement but did not specify if or when this was required. The Memorial's Procurement Guidance stated, 'Consideration, particularly for high value procurements, should be given as to whether appointing a legal or probity adviser is necessary.' Probity plans are mentioned once in this document, with no direction of when they must be developed.

2.13 The procurement approach for the Development Project is set out in the Contracting Strategy and Procurement Schedule (Project Strategy). The Project Strategy was approved in 2019

by the Executive Project Director (EPD) and updated in March 2023. This included specific references to probity arrangements, including the engagement of a dedicated probity advisor for major design and construction works and ‘individual probity plans where necessary’. The Memorial’s oversight and assurance could be improved with Memorial Development Committee approval of the Project Strategy and other key governance documents.

2.14 The Memorial developed procurement templates that are ‘not mandatory but is strongly recommended to ensure that minimum documentation and policy requirements are met’. Table 2.1 sets out the ANAO assessment of these templates and where these were used for the Development Project.

**Table 2.1: The Memorial’s procurement templates**

Memorial template	ANAO assessment	Used for the Development Project
Approval to Proceed (procurement plan)	Incorporates CPR requirements for estimate of procurement value, risk assessment, procurement method and how value for money assessed <sup>a</sup>	Since November 2023
Request for Tender	Consistent with CPRs	Yes (see paragraph 3.64)
Tender Evaluation Plan	Consistent with CPRs	Yes (see paragraph 3.64)
Tender Evaluation Report	Consistent with CPRs	Yes (see paragraph 3.64)
Deed of Confidentiality and Conflict of Interest Declaration	Consistent with CPRs activity specific, includes version for employees and contracted personnel	Yes, for tender evaluation committee members Since October 2023 for delegate and other tender advisors
Contract Management Plan	Consistent with CPRs and contract management guide	No (see paragraph 4.17)
Probity Plan	Consistent with CPRs	No (see paragraph 3.27)

Note a: Commonwealth Procurement Rules.<sup>18</sup>

Source: ANAO assessment of Memorial documentation.

2.15 The Memorial has a centralised procurement team that supports staff with all stages of the procurement process. The Memorial’s policies, guidance and procurement templates were aligned with the CPRs and available to staff on the Memorial intranet.

2.16 The Project Strategy is a key document that articulates how all procurement and contract activities for the Development Project are managed at the whole of project level to meet core

18 Paragraph 9.2 of the CPRs prescribe that the expected value of a procurement must be estimated before a decision on the procurement method is made. The expected value is the maximum value (including GST) of the proposed contract, including options, extensions, renewals or other mechanisms that may be executed over the life of the contract.

Paragraph 8.2 of the CPRs prescribe that relevant entities must establish processes to identify, analyse, allocate and treat risk when conducting a procurement. The effort directed to risk assessment and management should be commensurate with the scale, scope and risk of the procurement. Relevant entities should consider risks and their potential impact when making decisions relating to value for money assessments, approvals of proposals to spend relevant money and the terms of the contract.

objectives of quality, built outcomes and timeliness. The Integrated Management Team (IMT) was established in May 2019 to implement the Project Strategy.

#### Opportunity for improvement

2.17 The Memorial could improve the clarity of its frameworks and policy documents by specifying mandatory documentation requirements which 'must' be adhered to rather than 'should' be used.

### Does the Memorial have effective governance and project management arrangements?

Specific governance arrangements were established to manage the budget, deliverables and the increased risk associated with the scale and complexity of the Development Project. Governance arrangements have clearly defined organisational structure and reporting responsibilities which support the Council and Director maintaining appropriate oversight. A suite of project-specific policies was developed to support procurement, contract management and project delivery, which are reviewed annually. Record keeping practices did not follow approved processes. The Development Project was not subject to a Gateway Review under the Australian Government Assurance Reviews Framework.

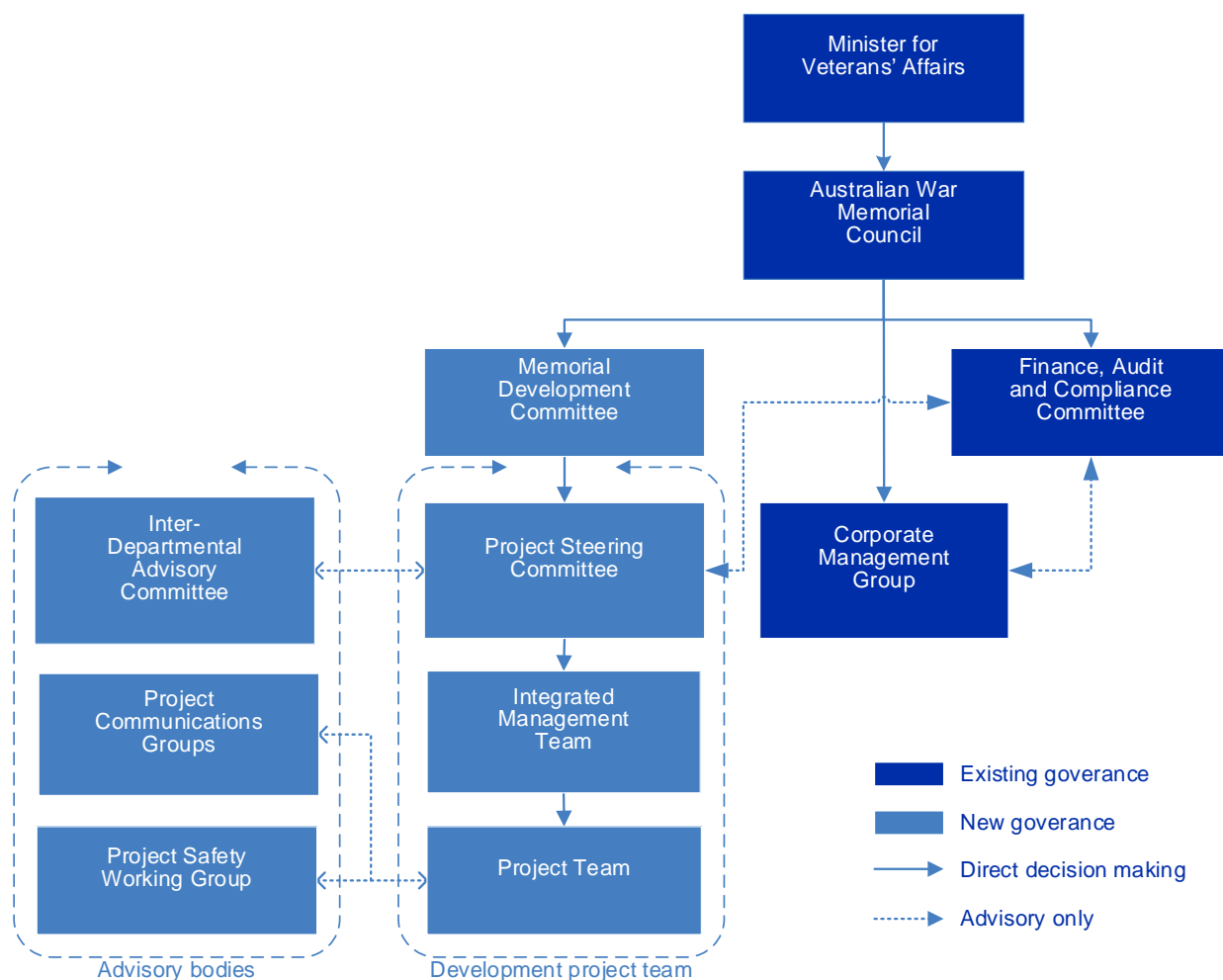
#### Governance arrangements

2.18 The initial appropriation of \$498.7 million<sup>19</sup> for the Development Project represented a significant increase in the Memorial's usual construction-related procurement activity. The Council established new governance structures for the Development Project and integrated these with the existing governance functions of the Memorial. The arrangements were informed by the proposed governance and delivery approach outlined in the 2018 Detailed Business Case (DBC). Figure 2.1 summarises the governance structure.

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19 \$498.7 million was allocated in November 2018 with a further \$50 million allocated in March 2022.

**Figure 2.1: Memorial governance structure**



Note: The new governance arrangements were implemented from early 2019.

Source: ANAO analysis of Memorial's governance arrangements for the Development Project.

2.19 The Memorial Director is the designated Senior Responsible Officer for the Development Project and reports to Council.

2.20 The 2018 DBC proposed the establishment of an Executive Project Director (EPD), 'responsible for delivering the overall project objectives, including the day-to-day management of time, cost and quality risks.'

2.21 The Memorial established the position of the EPD as proposed and the occupant of the role is the decision maker for all operational decisions and provides weekly updates to the Director on Development Project progress.

2.22 The key governance mechanisms for the Development Project are summarised in Table 2.2. There is clear delineation of roles and responsibilities.

**Table 2.2: Governance of the Memorial's Development Project**

Forum	Purpose	Planned meeting frequency
Council	The Accountable Authority, responsible for the overall conduct and control of the affairs of the Memorial in accordance with the <i>Australian War Memorial Act 1980</i> .	Quarterly, or as often as determined by the Chair
Finance, Audit and Compliance Committee (FACC)	A committee of the Council per section 45 of the PGPA Act <sup>a</sup> that provides independent advice and assurance on the Memorial's financial and performance reporting, systems of risk oversight and management, and internal control systems. Includes one independent external member.	Quarterly
Memorial Development Committee (MDC)	A committee of the Council that provides assurance and advice on the Development Project's governance, program of works, management control, risk and value for money. Includes members of the Council, two external advisors, independent audit member (from FACC) and a former Council Chair.	Quarterly
Project Steering Committee (PSC)	Provides oversight and endorsement of decisions by the EPD, in the delivery of all aspects of the Development Project. Membership is the Memorial Director (chair), the three Assistant Directors, and the EPD.	Quarterly; more frequent during early or critical stages of the project
Corporate Management Group (CMG)	Responsible for strategic oversight and day-to-day operations of the Memorial, including the Development Project's impacts on business-as-usual operations.	Weekly
Inter-Departmental Advisory Committee (IDAC)	Established to review project progress, risk and compliance with government policy. Includes Memorial Director and members from the departments of Prime Minister and Cabinet, Finance, Treasury, Veterans' Affairs, Defence and the National Capital Authority.	Quarterly
Project Communications Group(s)	Established to maintain communications between Integrated Management Team and the Memorial's other business areas. Group was split in June 2021 into separate groups for Precinct (construction) and Gallery Development (fitout and collection installation).	Every two months
Integrated Management Team (IMT)	Established to provide integration between the governance and operational areas involved in the Development Project. The IMT includes both Memorial staff and management and technical consultants.	Weekly

Note a: Section 45 of PGPA Act sets out the requirement for a Commonwealth entity to have an audit committee.

Source: ANAO analysis of governance arrangements.

2.23 The Council maintains oversight of the Development Project through quarterly reports on risk, project progress and budget management from the Memorial Development Committee (MDC) and the Director, both of which are standing agenda items for Council meetings. Minutes of key meetings reflect consideration of advice provided by supporting committees, except that consideration of IDAC advice by Council, MDC or FACC was not recorded.

### Opportunity for improvement

2.24 To enhance the transparency of the governance arrangements for the Development Project, the Memorial could provide the Inter-Departmental Advisory Committee (IDAC) minutes to the Memorial Development Committee (MDC) and Finance, Audit and Compliance Committee (FACC). Any actions or decisions arising out of the consideration of the IDAC could then be reported to the Council via the committee's usual reporting processes.

2.25 The Memorial's governance structures were appropriate to manage risk and support delivery of the Development Project. There was sufficient engagement by the Council and representation of senior executive and operational staff across relevant groups to provide oversight and inform strategic direction of the project.

2.26 In addition to the 2019 internal audit of procurement policies (paragraph 2.10), a 2020 internal audit reviewed the Memorial's management of work health and safety (WHS) governance for the Development Project. This audit found WHS governance arrangements were appropriate. As at January 2024, there were no other internal audits completed for the Development Project. The Memorial's oversight and assurance could be improved with additional internal audits.

### *Memorial Development Committee*

2.27 The Memorial Development Committee (MDC) was established in August 2019 to 'provide independent assurance and advice to Council on matters relating to the Memorial's Development Project.' The MDC operates as a committee of Council with membership drawn from Council, two external advisors (initially two construction experts and, from 2023, one construction and one design expert), an external audit advisor (the independent member from the Finance, Audit and Compliance Committee), and a former Council chair as a further advisor. MDC meets quarterly ahead of the Council's meetings and reports on progress, risk, safety, and budget.

### *Project Steering Committee*

2.28 The Project Steering Committee (PSC) provides oversight of key areas of the Development Project, including progress, quality, safety, and cost. Case Study 1 below provides an example of how the decision to include the Geothermal Heat Exchange (GHX) was considered by the PSC, MDC and the Council.<sup>20</sup>

### Case Study 1. Decision making for inclusion of Geothermal Heat Exchange

At the 15 June 2022 Memorial Development Committee (MDC) meeting, management highlighted 'the need to re-examine the previously discarded option of geothermal energy' due to expected future higher gas costs. MDC considered the full proposal for \$10 million for complete de-gasification of the Central Energy Plant and other options to partially degasify the site and prepare for full geothermal use in future.

MDC agreed for management to develop options for a \$10 million scope reduction on the Development Project to potentially fund the Geothermal Heat Exchange (GHX) within the existing funding allocation from the Australian government.

<sup>20</sup> The Geothermal Heat Exchange (GHX) is the addition of closed loop underground geothermal technology for heating and cooling. The GHX was added to the works of the Development Project in September 2022 to reduce the Memorial's energy costs and greenhouse gases.

The report for the 22 July 2022 PSC meeting highlighted the possible inclusion of GHX in design as a new risk that had the potential to impact time and budget of the Development Project.

At the 18 August 2022 meeting, MDC recommended to Council not to proceed with the proposed GHX technology as no additional funding had been secured and proceeding would likely lead to reduction in project scope.

The MDC's recommendation was considered at the 19 August 2022 Council meeting. Council decided to proceed with the installation of GHX technology on the basis of long-term environmental and economic benefits.

The Minister for Veteran's Affairs announced on 29 September 2022 that 'the Geothermal Heat Exchange (GHX) will be funded within the War Memorial's existing development package'.<sup>21</sup>

### *Integrated management team*

2.29 The Memorial established an Integrated Management Team (IMT) with internal and external expertise, to manage operational delivery of the Development Project, including project management, procurement, and contract management. The IMT is led by the EPD and includes 42 Memorial staff and nine consultants (six from TSA Management and three labour hire). Each of the Main Works Packages (MWP), discussed in paragraph 1.3, have a dedicated project manager within the IMT. The Memorial maintains a responsibility matrix that provides clear roles and responsibilities for all members of the IMT.

2.30 The EPD maintains oversight over all elements of the project through reporting from the Director for Procurement and Design, Director for Gallery Development, and the Construction Operations Manager.

2.31 The IMT members are involved in 25 committees or working group meetings related to the Development Project. Weekly meetings occur within the IMT and between the IMT and other business areas across the Memorial to share information and coordinate activities. Key IMT meetings are summarised in Table 2.3.

**Table 2.3: Key integrated management team (IMT) operational meetings**

Meeting name	Purpose	Planned frequency
IMT Team Meetings	Team updates	Weekly
3 Week Look Ahead (Operational Impacts)	IMT and AWM Operational teams to coordinate activities	Weekly
Notices of Disruption/Logistics Meeting	IMT and head contractor meeting for logistic coordination	Weekly
Project Management Group	IMT management meeting	Weekly

21 Joint media release Minister for Climate Change and Energy, and Minister for Veterans' Affairs, *Australian War Memorial 'leads Australia' with geothermal*, 29 September 2022, available from <https://minister.dva.gov.au/news-and-media/minister/australian-war-memorial-leads-australia-geothermal> [accessed 18 November 2022].

Has the Memorial established effective procurement, governance, and project management arrangements?

Meeting name	Purpose	Planned frequency
Head Contractor Project Control Group (PCG <sup>a</sup> )	Coordination of medium–long term objectives between IMT and AWM operational areas	Monthly
Gallery Development PCG <sup>a</sup>	Coordination between IMT and AWM operational areas	Monthly
Project Coordination Groups <sup>b</sup> MWP1, 2, 3 and 4	IMT and MWP head contractor	Monthly
Cost Control Meetings <sup>c</sup>	Review of financial progress	Every six weeks

Note a: In July 2021 the Project Communications Group (PCG) split into Precinct (construction) and Gallery Development groups.

Note b: There are four MWP Project Coordination Groups, one for each of the four Main Works Packages.

Note c: Cost control meetings occur once every six weeks for every main works package and for gallery design.

Source: ANAO analysis.

## Record keeping

2.32 Paragraphs 7.2 to 7.5 of the CPRs state:

7.2 Officials must maintain for each procurement a level of documentation commensurate with the scale, scope and risk of the procurement.

7.3 Documentation should provide accurate and concise information on: a. the requirement for the procurement; b. the process that was followed; c. how value for money was considered and achieved; d. relevant approvals; and e. relevant decisions and the basis of those decisions.

7.4 Relevant entities must have access to evidence of agreements with suppliers [...].

7.5 Documentation must be retained in accordance with the *Archives Act 1983*.

2.33 The Memorial's Director's Instructions 8.02 Records Management and Public Access Policy requires all records produced by the Memorial to be stored within a central record keeping system. This policy was last updated in October 2012. Administrative records are to be 'listed and managed' via Tower Records Information Management System (TRIM). Financial management information is to be stored within the Memorial Integrated Business Information System (MIBIS).

2.34 The ANAO observed the Memorial using SharePoint, TechOne, and Aconex<sup>22</sup> to manage and store Development Project records. SharePoint is listed as the approved system for administrative records in a draft information management policy prepared in 2022. The draft policy has not been finalised nor approved and the Memorial was unable to provide evidence of an authority for the implementation and use of SharePoint as a central record keeping system. There were no registered files created for the Development Project. The Memorial's six-monthly published file lists in accordance with Senate Order 12 do not include records of files created for the Development Project.<sup>23</sup>

22 Aconex is a construction industry project management software package used by the Memorial to communicate with head contractors. The Memorial's use of Aconex is described in Chapter 4.

23 Under the Senate Procedural orders of continuing effect, No. 12 'Indexed lists of departmental and agency files', agencies must table an indexed list of relevant files every six months and publish it on their website. On 21 March 2024, the Memorial advised the ANAO that the Development Project SharePoint records will be created as registered files at the completion of the project.

2.35 The Memorial's procurement policies require records of all approval requests, approvals and documentation relating to decisions to be stored in SharePoint, including decisions for not following mandatory procurement policy obligations. The Memorial SharePoint Naming Convention Guidelines dated April 2012 provides advice on consistent naming practices to be used for record keeping.

2.36 The ANAO identified deficiencies with the Memorial's record keeping practices in Chapter 3 and Chapter 4 (see paragraphs 3.65, 3.66, 3.67 and 4.55).

## Recommendation no. 2

2.37 The Australian War Memorial update its records management policies to ensure electronic recordkeeping systems are defined and approved, and implement quality assurance controls to ensure records are maintained in accordance with its policy and the requirements of the *Archives Act 1983*.

**Australian War Memorial response:** *Agreed.*

2.38 *The Memorial commenced the review and update of its Records Management policies in Q4 2023; it expects a revised policy to be agreed and implementation to commence not later than end Q2 2024.*

## Project management frameworks

2.39 The Memorial is managing contracts that form part of the Development Project collectively at a whole of project level. This approach is consistent with the delivery partner arrangements recommended in the Detailed Business Case and detailed in the Governance Handbook and in the Contracting Strategy and Procurement Schedule. The Memorial has engaged head contractors (under lump sum delivery contracts) for each of the MWP. The Memorial maintains responsibility for overall risk, design, and integration between the MWPs.

2.40 The Memorial established a suite of project management plans which detail the Memorial's approach to contract management for the Development Project. These include a Cost Management Plan, Risk Management Plan and Construction Management Plan. The plans provide guidance to staff to support delivery of the Development Project. Project management plans are reviewed annually, with appropriate version control arrangements in place.

### *Contract management plans*

2.41 The Memorial's corporate procurement team created a Contract Management Plan template in 2020. The procurement policy advises that the template should be used for all high value contracts. This template requires the contract manager to complete sections covering main contract details (supplier, deliverables, cost), performance measures, reporting requirements and to complete a risk assessment. The template also includes sections to record contract variations and contract reviews.

2.42 The Memorial developed a Construction Management Plan in July 2021 for the Development Project which has been revised five times, with the latest version dated 4 May 2023. This plan 'outline[s] the process for transition from design and procurement to ... ongoing delivery requirements'. The plan includes arrangements for engagement of head contractors for the MWPs,

including interface between each MWP, scope and frequency of contractor meetings, communication protocols via Aconex, site diaries, safety, quality assurance, and program management, planning and logistics. The Memorial advised the Construction Management Plan is used instead of individual contract management plans, consistent with the program level approach taken for the management and delivery of the Development Project. The Memorial's management of contracts is discussed further in Chapter 4.

### *Risk management*

2.43 The Memorial's Director's Instructions 8.9, Risk Management Framework, require a full risk assessment for projects with a budget over \$5 million. The Memorial developed a Risk Management Plan which sets out a risk management framework specific to the Development Project, including scope, governance, process, culture, tools and reporting. The Memorial strengthened the Development Project risk management processes in May 2022 with the introduction of a consolidated risk register, which is reviewed and updated quarterly. The risk register assigns ownership of significant risks to PSC and high risk to MDC. Both committees review project risk as standing agenda items. MDC reports to Council include a standing item on risk.

### *Australian Government assurance reviews*

2.44 The Australian Government Assurance Reviews Framework, which includes Implementation Readiness Assessments (IRA) and Gateway Reviews (Gateway Review), applies to high-risk projects undertaken by non-corporate Commonwealth entities (NCEs) valued at \$30 million or more<sup>24</sup>:

Assurance reviews do not replace an entity's responsibility and accountability for implementation and delivery of a program/project. Assurance Reviews are designed to strengthen assurance practices and to build capability associated with the delivery and implementation of government programs/projects and services.

2.45 Decisions to implement assurance reviews are made by the Australian Government during budget funding approvals processes. As the Memorial is a corporate Commonwealth entity (CCE), there was no requirement for consideration of applying an IRA or Gateway Review.

### **Opportunity for improvement**

2.46 The Department of Finance could amend the scope of Resource Management Guide 106 Australian Government Assurance Reviews, to include corporate Commonwealth entities (CCEs) undertaking high risk projects valued at more than \$30 million, particularly where such projects are of greater cost and complexity than business-as-usual activities.

24 Department of Finance, *Guidance on the Assurance Reviews Process (RMG 106)*, Finance, available from <https://www.finance.gov.au/publications/resource-management-guides/guidance-assurance-reviews-process-rmg-106> [accessed 5 December 2023].

### 3. Were procurement activities conducted in accordance with Commonwealth Procurement Rules?

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#### Areas examined

This chapter examines whether the Australian War Memorial (the Memorial) has conducted procurements in accordance with the Commonwealth Procurement Rules (CPRs).

#### Conclusion

Procurement activities were largely conducted in compliance with the CPRs. Higher value procurements were conducted through open and competitive processes and assessments were appropriately documented in tender evaluation reports. Value for money assessments were not adequately documented for the variation in price between tender responses and executed contracts or for lower value procurements.

Management of ethical and probity risks was partly effective. Engagement with the external probity advisor was insufficient for the scale and risk of the procurements. Conflicts of interest were not adequately documented and declared or known conflicts were not adequately managed. Incumbency risks related to the procurement for ongoing project management services were not adequately managed and steps were taken to avoid seeking ministerial approval for the entering into contracts on two occasions.

Minister's briefs were insufficiently detailed to support the minister to meet their obligations under section 71 of the *Public Governance, Performance and Accountability Act 2013*.

#### Areas for improvement

The ANAO made two recommendations to the Memorial aimed at strengthening the ethical conduct of procurements and processes for assuring appropriate records are maintained of value for money assessments.

3.1 The Australian Government's procurement framework is set out in the Commonwealth Procurement Rules (CPRs). Achieving value for money is the core rule of the CPRs.<sup>25</sup> Entities can demonstrate the achievement of value for money by:

- (a) conducting competitive procurement activities that treat all tenderers equitably and manage risks related to incumbent service providers;
- (b) assessing financial and non-financial costs and benefits;
- (c) documenting the methodology and outcomes of the evaluation of tender responses; and
- (d) providing written advice to decision makers that supports an assessment of the proper use of public money consistent with the requirements of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act).<sup>26</sup>

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<sup>25</sup> Commonwealth Procurement Rules, paragraph 3.2.

<sup>26</sup> Commonwealth Procurement Rules, paragraph 4.4.

3.2 The CPRs also require entities ‘maintain for each procurement a level of documentation commensurate with the scale, scope and risk of the procurement’ and ‘be retained in accordance with the *Archives Act 1983*’.<sup>27</sup>

## Were procurement activities conducted in an open and competitive manner?

Open tenders and multiple quotes from panel arrangements for tenders were used to maximise competition for higher value procurements. Evaluation criteria for each procurement stage was not published at the beginning of multistage procurements. Lower value procurements were not adequately documented. Seventy-three per cent of contracts were reported on AusTender within the required 42 days. Incumbency risks were not appropriately managed for the project management services procurement.

### Procurement planning

3.3 Procurement is the process of acquiring goods and services. It begins when a need has been identified and a decision has been made on the procurement requirement. Procurement continues through the processes of risk assessment, seeking and evaluating alternative solutions, and the awarding and reporting of a contract.<sup>28</sup>

3.4 Phases of procurement planning are set out in the Memorial’s procurement guidance documents including defining procurement requirements, estimating costs, approval to proceed prior to approaching the market, evaluation criteria and plans and complaint resolution processes (see Chapter 2 paragraphs, 2.10 to 2.14 and Table 2.1). The Memorial implemented a multistage procurement process for key Development Project contracts, including for the first three Main Works Packages (MWP): Southern Entrance (MWP1); CEW Bean Building (MWP2); and Anzac Hall and Glazed Link (MWP3).

3.5 The Memorial’s planned procurement approach, and the rationale for such, was documented for each category of procurement activities in the Project Contracting Strategy and Procurement Schedule (Project Strategy). The splitting of the project into construction MWP was designed to increase participation of companies of different sizes and improve value for money by expanding the pool of potential suppliers. The Memorial advised that it consulted with eight construction companies to inform the procurement strategy for the MWPs. There was no evidence of a market assessment of potential MWP tenderers or minutes of the pre-tender consultation with construction companies.

3.6 The CPRs require that the procurement approach be determined by the estimated cost of the procurement and the prescribed thresholds.<sup>29</sup> Relevantly for the Memorial, open tender approaches to market must be used for non-construction services valued greater than \$400,000 or for construction services greater than \$7.5 million. The estimated cost also informs an assessment of the risk management and documentation required for size and scale of the procurement.<sup>30</sup>

27 Commonwealth Procurement Rules, paragraphs 7.2 and 7.5.

28 Commonwealth Procurement Rules, paragraph 2.7.

29 Commonwealth Procurement Rules, paragraph 9.2.

30 Commonwealth Procurement Rules, paragraphs 5.2 and 8.2.

3.7 The Memorial's procurement policies state that an Approval to Proceed 'should be sought for medium value and high value procurements' using the Approval to Proceed form before the procurement progresses to the market. This form is a procurement plan that shows a delegate's 'in principle approval' for the procurement and includes an estimation of costs, risk assessment, method of intended procurement and how value for money will be assessed.

3.8 Of the 18 procurements sampled, there were 15 medium and high-value procurements, and of these two procurements had Approval to Proceed forms signed by a delegate before progressing to market.<sup>3132</sup>

3.9 Costs were largely estimated for non-construction procurements in the 2018 Detailed Business Case (DBC). The cost estimates for high value construction procurements from the DBC were further refined by quantity surveyor analysis.

3.10 Procurement planning documentation was not commensurate with the scale, scope and risk of each procurement as required by section 7.2 of the CPRs. The method of procurement had been largely documented in the Project Strategy however, the absence of Approval to Proceed using the template set out in the Memorial's procurement policy, limited the transparency of its procurement planning activities.

3.11 The Memorial advised in November 2023 that it mandated its Approval to Proceed process (see Appendix 2).

## **Method of tender**

3.12 The ANAO identified a population of 207 contracts in June 2023 related to the Development Project, valued at \$443,047,866.54. The ANAO took a targeted sample of 18 procurements (20 contracts) on the basis of materiality, value and risk. This included all six procurements over \$10 million. The sample represents 87 per cent of the project's total contracted value as of June 2023.<sup>3334</sup> See Appendix 3 for a list of procurements, with the value of each contract as reported on AusTender at October 2023.<sup>35</sup> Table 3.1 sets out the method of procurement used for each sampled item:

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31 Details of the ANAO's sampling approach are set out in paragraph 3.12.

32 In December 2023 the Memorial advised that verbal approval had been provided and acknowledged that written approval should have been documented.

33 Some procurements gave rise to multiple contracts. Therefore, while there were 20 contracts included in the targeted sample there were 18 procurement activities.

34 The four contracts under \$400,000 were included as they relate to how the development project is managed and value for money considerations have no lower threshold.

35 In October 2023 the ANAO identified a further 14 contracts related to the development project, taking the number to 221 contracts with a value of \$466,507,941.27, see Appendix 3 for this updated list.

**Table 3.1: Method of tender in sampled procurements (GST inclusive)**

Form of tender	Number of procurement	Contract value as at June 2023
Open tender <sup>a</sup>	12	\$361,269,119.55
Limited tender <sup>b</sup>	6 <sup>e</sup>	\$23,002,134.57
<b>Total<sup>c d</sup></b>	<b>18</b>	<b>\$384,271,254.12</b>

Note a: Open tender is an approach by the entity to the market inviting submissions from anyone interested in participating in the procurement. The approach to the market must be published on AusTender and include relevant request documentation. Potential suppliers must have at least 25 days, from the date and time of publish, to respond.<sup>36</sup>

Note b: Limited tender occurs when an entity directly approaches potential suppliers that they have selected.<sup>37</sup>

Note c: There were 18 procurements in the sample and 20 contracts. One procurement sampled resulted in three contracts added together to represent the value of the sample.

Note d: The total value of the sample includes contract values as reported on AusTender, or the initial value included in contracts where not reported on AusTender.<sup>38</sup>

Note e: Three procurements below the CPR threshold were sole source limited tender, one procurement approached five and another approached two potential suppliers. The single limited tender above the CPR threshold approached three potential suppliers.

Source: ANAO analysis.

3.13 Of the 12 open tender procurements sampled, two were from procurement panels representing six per cent of the value of open tender procurements sampled. For these panel procurements the Memorial approached six panellists for one and 19 panellists for the other procurement, consistent with the CPRs recommendation of approaching more than one panellist.<sup>39</sup>

3.14 Within the sample, one limited tender procurement was carried out above the procurement threshold after an unsuccessful open tender. This was the procurement for the Early Works Package 4, which followed an unsuccessful open tender process.

## Equitable treatment of tenderers

3.15 The CPRs require entities to treat potential suppliers equitably throughout the process based on their 'commercial, legal, technical and financial abilities and not be discriminated against due to their size, degree of foreign affiliation or ownership location or origin of their *goods* and services.'<sup>40</sup>

3.16 The publishing of evaluation criteria in tender documents informs potential suppliers how submissions are to be assessed and supports 'the proper identification, assessment and comparison of submissions on a fair, common and appropriately transparent basis.'<sup>41</sup> For multistage procurements, the CPRs require that criteria to be used at each stage and any limit on the number of respondents to be shortlisted must be included in the initial approach to market.<sup>42</sup>

36 Commonwealth Procurement Rules, paragraphs, 9.8, 7.10 and 10.22

37 Commonwealth Procurement Rules, paragraph 9.9.

38 Contract CN3875035 was reported on AusTender as \$17,272,385.50. This was subsumed into contract CN3928114. The actual value paid under CN3875035 was \$5,378,999.60. The value used in the sample is the one reported on AusTender by the Memorial.

39 Commonwealth Procurement Rules 2020, paragraph 9.14.

40 Commonwealth Procurement Rules 2020, paragraphs 5.1–5.4.

41 Commonwealth Procurement Rules 2020, paragraph 7.12.

42 Commonwealth Procurement Rules 2020, paragraph 7.15.

3.17 Of the 18 procurements sampled by the ANAO, there were five Requests for Expressions Of Interest (REOI) released to the market as the first phase of nine multistage procurements. The five REOIs led to nine Request For Tender (RFT) processes. Table 3.2 sets out the results of the comparison between evaluation criteria released at REOI and RFT stages.

**Table 3.2: Evaluation criteria published in multistage procurements in ANAO sample**

Request for expression of interest	Request for tender	Evaluation criteria for each stage of the procurement released at the first stage
Construction contractor(s) main works packages <sup>a</sup>	Main Works Package 1	▲
	Main Works Package 2	▲
	Main Works Package 3	▲
Engineering design disciplines	Structural Engineering Services	■
	Electrical Engineering Services	■
	Communications and Security Engineering Services	■
Architectural design services	Architectural Design Package 4	■
	Architectural Design Package 1	■
Cost manager and quantity surveyor	Quantity surveying services	■

Key: ◆ Compliant with the requirement in paragraph 7.15 of the CPRs.

▲ Partly compliant with the requirement in paragraph 7.15 of the CPRs.

■ Not compliant with the requirement in paragraph 7.15 of the CPRs.

Note a: There was a second Request for Expression of Interest activity for Main Works Packages 1 and 3 which also did not include evaluation criteria to be used at RFT.

Source: ANAO analysis.

3.18 For MWP1, 2 and 3 there were changes in the evaluation criteria released at the different stages of the procurement process. There were also changes between the first REOI and the second REOI (REOI2) for MWP1 and 3. See Appendix 4 for further information on the publishing of evaluation criteria for the MWP.

3.19 Evaluation criteria for the RFT stage of Architectural Design Services, Engineering Design Disciplines, Cost Manager and Quantity Surveyor services was not published at REOI stage.

### *Incumbency advantage*

3.20 When an incumbent provider competes for new work, it may have (or be perceived to have) certain advantages, such as understanding of an agency's needs, established relationships with agency staff, and knowledge that is not available to other potential suppliers.<sup>43</sup>

43 NSW ICAC, *Dealing with incumbent providers in procurement*, NSW ICAC, 23 November 2021, available from <https://www.icac.nsw.gov.au/prevention/corruption-prevention-publications/latest-corruption-prevention-publications/dealing-with-incumbent-providers-in-procurement> [accessed 13 October 2023].

3.21 For the procurement of project management services, the Memorial did not ensure equitable treatment of other tenderers competing with the incumbent supplier. The incumbent supplier provided advice to the Memorial on the scope of works for the future project management services. Conflict of interest declarations were not recorded. Case Study 2 outlines the history and key issues with this procurement.

#### Case Study 2 Procurement of project management services

The Australian War Memorial (the Memorial) engaged Xact Project Management (Xact) in March 2018 for project management services to assist with the development of the Detailed Business Case (DBC), under an official order for a maximum value of \$319,572.<sup>44</sup> This was later varied in March 2019 to \$999,999, one dollar below the threshold for ministerial approval.<sup>45</sup>

Consistent with the 2018 DBC, the Memorial identified a need for ongoing project management services as the Development Project progressed. Xact's project manager provided detailed advice about the scope of works and potential suppliers for the future contract in October 2018 and January 2019. One Memorial official who received this advice became chair of the evaluation panel.

On 5 February 2019, the Memorial issued a Request For Quotation (RFQ) to six panellists on the Property and Project Management Services Panel, including Xact.<sup>46</sup> The RFQ stated the initial contract would be for three years with options to extend annually, up to nine years (to the end of the project in 2028). The RFQ asked respondents to supply rates based on up to ten hours per day, five days a week. Three panellists responded and were assessed: Xact scoring highest at 12.75, Tenderer 2 second at 11.3 and Tenderer 3 third at 9.6. Xact's response to the RFQ proposed the incumbent project manager for the works. The panel's evaluation of Xact's submission included observations from the existing working relationship:

(iv) The proposed Project Manager has developed a deep understanding of the Memorial and all aspects of the project through current Xact engagements. The Committee observed that the proposed Project Manager has consistently demonstrated a detailed understanding of public sector procurement policies and processes, and commitment to achieving value for money for the Commonwealth.

The delegate and evaluation team did not complete conflict of interest declarations. Each had an undeclared conflict from the working relationship with the incumbent project manager.

The panel's methodology for assessing value for money assumed two days per week for the project manager and three days per week for the assistant project manager over three years. Xact was ranked first for value for money based on this evaluation methodology. The rationale

44 Original project management contract with Xact Project Management AusTender reference CN3496068. Xact Project Management was incorporated into TSA Management in December 2018.

45 The amount of \$1,000,000 is prescribed in section 6A of the Australian War Memorial Regulations 1983, 14 August 2007, for the purposes of subsection 35(b) of the *Australian War Memorial Act 1980*. See paragraphs 3.68 and 1.24 for further discussion of ministerial approval.

The Memorial advised that the contract was extended to account for the timing of the Executive Project Director's hiring.

46 AusTender Standing Offer SON3328191, Department of Homes Affairs Property and Project Management Services Panel, 21 March 2016 to 20 March 2021. Details from <https://www.tenders.gov.au/Panel/List>. Xact Project Management was incorporated into TSA Management in December 2018.

for this methodology was unclear and was not specified in the RFQ. Under this methodology Xact, which compared to other tenderers, had a higher priced project manager and a lower priced assistant project manager, ranked first. If the methodology assumed the project manager worked full time, as outlined in the RFQ, Xact would have ranked third by cost. The evaluation panel noted that Xact's 'proposal delivers the best value for money through its demonstrated capability and deep understanding of the project requirements.' The evaluation assessed that the time lost in bringing in new project management services would undermine potential savings from other suppliers. The evaluation committee recommended Xact be awarded a three year contract term and noted the maximum value of the contract, including a 20 per cent contingency, as \$2.5 million (GST inclusive). The delegate accepted the recommendation on 9 April 2019, to contract Xact based on the estimated price of \$1,142,777 over three years.

The Memorial executed a contract with TSA Management (ACT) trading as Xact Project Consultants on 1 May 2019, during the caretaker period, for \$805,000, below the threshold for ministerial approval. The contract duration was 12 months to 30 April 2020<sup>47</sup> with the option to extend for up to eight years. The contract included the potential to engage four additional personnel, of whom only the assistant project manager was included in the evaluation committee's value for money assessment.

In September 2019, the Memorial advised the Minister that the contract was initially executed for five months 'Due to the government being in caretaker mode at this time' and that 'TSA Management's performance has been excellent and that the Memorial intends to exercise the option to extend this contract.'

The value of this contract has been varied twice: from \$805,000 to \$6,555,000 and then to \$16,865,026. In the 24 June 2021 brief to the Minister for the approval of the second change in value, the Memorial advised:

- Based on TSA Management's excellent performance to date the AWM intends to exercise the option to further vary and extend the contract to engage TSA Management to deliver project management services through the 'delivery phase' of the Project to 30 June 2028.
- The scope of work includes allocation of no less than seven full time resources with expertise and extensive experience in design management, services design management, construction procurement strategy and contract management and project management skills not typically available through Australian Public Service (APS) appointments.

The spending proposal to the Director for the second change in contract value, signed 3 August 2021, included a summary of value for money considerations largely relating to the increase in risks, costs and time in selecting a new project manager at that stage of the Development Project. This was not included in the brief to the Minister.

On 5 August 2021, an internally prepared response to a request for advice from the Director about the procurement stated:

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47 AusTender reference CN3611773. The subsequent September 2019 brief to the Minister for the first value variation reported that the contract was until 31 October 2019.

There was no conflict of interest—TSA/Xact will have had a ‘natural’ advantage having background and corporate knowledge, which is no different than any incumbent supplier would have when tendering for a replacement contract. Subsequent developments in the contractual arrangement will most likely have occurred regardless of who the contract was awarded to.

The Director was further advised in this advice that the Xact project manager ‘stepped aside at the appropriate time, ensuring he had no involvement with the procurement process’. The Director was not informed of the scoping advice provided by the project manager.

### *Tenderer debriefing*

3.22 The Memorial advised it conducted approximately 120 debriefings with successful and unsuccessful tenderers, based on Tender Evaluation Reports (TER) and these were not routinely documented. One tender debrief session, for an unsuccessful MWP2 tenderer, was documented. This company raised a number of probity concerns but did not make a formal complaint. The Memorial considered seeking probity advice on this matter but did not do so. The Memorial had not received any procurement complaints about the Development Project as of December 2023.

3.23 The Memorial used the same evaluation criteria for the procurement for MWP1, 2 and 3. Each package had a different closing date. The Memorial provided a tender debrief to Lendlease for MWP2, before the closing dates for tender submissions for MWP1 and MWP3. The other tenderers for MWPs1 and 3 did not make a submission for MWP2 and therefore were not debriefed at the conclusion of the process for MWP2. This may have afforded Lendlease the opportunity to improve its tender submissions. Lendlease was the successful tenderer for MWP3.

### **AusTender reporting**

3.24 Reporting on AusTender promotes transparency and accountability in Australian government procurements through increasing visibility of planned procurement activities and the contracts awarded.

3.25 Under the CPRs, the Memorial is required to use AusTender to ‘report *contracts* and amendments on *AusTender* within 42 *days* of entering into (or amending) a *contract* if they are valued at or above the *reporting threshold*.’<sup>48</sup> Of the 44 procurements that were required to be reported on AusTender, 32 (73 per cent) were reported within 42 days. AusTender reporting of contract variations is discussed from paragraph 4.49.

## **Were procurement activities conducted ethically, including identifying and managing any conflicts of interest and other probity risks?**

Activity specific conflict of interest declarations were not obtained for all delegates, members of evaluation committees and advisors involved in procurements. Key personnel did not declare their prior employment with tenderers. Management plans were not consistently developed for declared or known conflicts. Engagement with probity advisors was insufficient for the scale and risk of the procurements.

48 Commonwealth Procurement Rules 2020, paragraph 7.18.

## Probity advice

3.26 The Memorial engaged Sparke Helmore as the probity advisor for the Development Project in April 2019 and executed a second contract for probity services in June 2020. The Memorial's probity guidance was published in September 2019. Advice was not sought from the probity advisor on the probity guidance. The total expenditure for both probity contracts between 8 April 2019 and June 2023 was \$95,443.44 (GST inclusive).

3.27 Probity plans were not used. The Memorial advised that it did not use probity plans for 'high risk procurements', rather it engaged a probity advisor to 'support' complex procurement with 'tailored advice'. This contract with Sparke Helmore included the scope of potential probity services that could be provided but did not specify services to be delivered for each procurement. The Memorial sought probity advice in the development of tender documentation, when the Memorial wanted to vary a process and for the conduct of industry tender briefings. Whilst the probity advisor was identified in Tender Evaluation Plans and Tender Evaluation Reports (TER), the extent of involvement was not adequately documented in the TER.

## Conflicts of interests

3.28 The CPRs state that 'officials undertaking procurement must act ethically', which requires 'recognising and dealing with actual, potential and perceived conflicts of interest'. The Department of Finance (Finance) guidance, *Ethics and Probity in Procurement*, states that 'persons involved in the tender process, including contractors such as legal, commercial or probity experts, should make a written declaration of any actual, potential or perceived conflicts of interests prior to taking part in the process', noting examples including<sup>49</sup>:

other employment; prior employment; financial interests in organisations that may be potential suppliers; relationships with people who have interests in these organisations; or relationships between contract managers and incumbent providers where contract managers are on evaluation panels.

3.29 The APS Code of Conduct requires APS employees take reasonable steps to avoid any real or apparent conflict of interest. Where conflicts cannot be avoided, the *Public Service Act 1999* and PGPA Act require that persons must disclose details of any material personal interest.

3.30 The Memorial's Procurement Guidance states that:

A conflict of interest arises where an official, an adviser or a supplier has an affiliation or interest that might prejudice, or be seen to prejudice, their impartiality. Conflicts of interest fall into different categories: actual (or real) conflicts, perceived and potential conflicts.

Conflicts of interest need to be declared by stakeholders during the planning phase of a procurement but they can also emerge later. It's important, however, that any conflicts of interest that are related to a procurement, however tenuously, are disclosed and dealt with as soon as they are identified. Unresolved conflicts of interest can compromise the outcome of a procurement and cause damage to the Memorial's reputation.

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49 Department of Finance, *Ethics and Probity in Procurement*, 17 May 2021, available from <https://www.finance.gov.au/government/procurement/buying-australian-government/ethics-and-probity-procurement> [accessed 5 January 2024].

3.31 The Memorial's Probity Guidelines require completion of a deed of confidentiality and declaration of conflict of interest 'prior to any involvement in the RFT process.'

3.32 An entity's culture is influenced by its leaders and will be determined by the 'tone at the top' set by its leadership.<sup>50</sup> The Memorial's Council members and Senior Executive Service (SES) officers declare interests annually based on AASB Standard 124.<sup>51</sup> The Memorial did not undertake any specific probity planning or review its processes for Council and staff to reflect the increased probity risks arising from the scale and volume of the procurement activities relating to the Development Project.

3.33 The ANAO sampled 18 procurements, some of which were multistage, resulting in 24 procurement stages where activity specific declarations of interest were required.<sup>52</sup> This includes five REOI activities, one 'design jury' and 18 RFT or Request for Quotes (RFQ). Appendix 5 shows where conflicts of interest declarations were made at the sampled procurement stages.

3.34 The second contract with the probity advisor and the contracts for the independent advisors to the Memorial Development Committee (MDC) were below the \$400,000 threshold for the Memorial and could therefore be carried out through limited tender.<sup>53</sup> These procurement processes (three of the 24 procurement stages within ANAO's sample) were not appropriately documented, with value for money and probity considerations, including conflict of interest declarations, not completed.

3.35 Within the remaining sample of 21 procurement stages, none of the delegates made activity specific conflict of interest declarations. The ANAO assessed the Senior Executive Service (SES) annual declarations of interest for the three SES involved as delegates and found no interests that ought to have been declared had the activity specific declarations been completed.

3.36 The delegate for the Poppy's Carpark tender did not complete a conflict of interest declaration before approving the procurement outcome on 14 October 2019, six months after leaving employment with the successful tenderer, Lendlease. That delegate was not an SES officer and so was not required to complete an annual declaration of interests.

3.37 None of the Tender Evaluation Committee (TEC) members made conflicts of interest declarations in six RFTs (including for MWP2) and two REOIs.

3.38 No conflict of interest declarations were made by contracted external advisors and declarations were only made by one internal procurement advisor for the four procurement stages relating to the Architectural Design Packages.

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50 Department of Prime Minister and Cabinet, *Louder than Words: An APS Integrity Action Plan*, available from <https://www.pmc.gov.au/resources/louder-words-aps-integrity-action-plan> [accessed 15 January 2024], p 3.

51 Australian Accounting Standards Board (AASB), *AASB 124 Related Party Disclosures*, July 2015, available from [https://www.aasb.gov.au/admin/file/content105/c9/AASB124\\_07-15.pdf](https://www.aasb.gov.au/admin/file/content105/c9/AASB124_07-15.pdf) [accessed 1 December 2023].

52 The definition of procurement is set out in paragraph 3.4, showing that conflict of interest declarations should have been made throughout the procurement, including different procurement stages.  
A 'procurement stage' refers to a stage of response or tender assessment, including REOI, Design Jury or RFT. For multistage procurements, conflict of interest declarations made at earlier stages have been applied to later stages of that procurement activity. See Appendix 5 for further details.

53 Commonwealth Procurement Rules 2020, paragraphs 9.7b and 9.10.

3.39 The ANAO observed deficiencies in the Memorial's management of conflicts of interest where TEC members had prior employment and working relationships with tenderers (see Appendix 5).<sup>54</sup>

#### *Prior employment with tenderers*

3.40 The ANAO identified that four officials who were members of a tender evaluation committee or a delegate had prior employment relationships with tenderers:

- two did not declare this prior employment (see paragraph 3.41);
- one declared the prior employment, but probity advice was not sought (see paragraph 3.42); and
- one declared prior employment, probity advice was sought just prior to completion of the tender assessment (see paragraph 3.43).

3.41 The TEC chair for all stages of the three MWP procurements in 2021–2022<sup>55</sup> (who was the same officer as delegate for the Poppy's Carpark procurement discussed in paragraph 3.36), and a TEC member for the second REOI and all RFT stages for MWP1, 2 and 3 did not declare their prior working relationship with Lendlease. Lendlease tendered for all three MWPs and was awarded the contract for MWP3. The probity advisor advised the ANAO that they were unaware of the Chair's or TEC member's prior employment with that tenderer.

3.42 A TEC member for a 2019 Electrical Engineering Services procurement declared they had previously worked with a tenderer. There was no documented risk assessment or management plan of the declared conflict nor was advice sought from the probity advisor.

3.43 The TEC Chair for a 2019 Structural Engineering Services procurement declared a potential conflict of interest arising from prior employment before the evaluation of tenders. The declared conflict was referred to the probity advisor on 16 August 2019, after evaluation had commenced. The probity advisor responded on 19 August 2019 with preliminary advice and sought additional information to inform their assessment. No further details were provided to the probity advisor and the Tender Evaluation Report (TER) was signed 20 August 2019. The TEC Chair's LinkedIn profile showed that they were employed with the tenderer for 12 years, until June 2019.

#### *Working relationships with tenderers or advisors*

3.44 A Memorial official made recommendations to the Director of two potential candidates for the role of independent advisors for the Memorial Development Committee. These recommendations were based on the official's knowledge of the candidate's skills and experience. The Director interviewed and approved the appointment of both advisors and the official who recommended them signed their contracts as the delegate. In both cases the advisors had potential conflicts of interest with the Development Project activities arising from previous employment. Advice was sought from the probity advisor in one instance which indicated:

on the basis of the clear statement that there is no financial interest, I think that we can record this issue as requiring 'no further probity management'.

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54 Prior employment relationships are when an official was employed by a tenderer and prior working relationship is when an official used to work with or employ a tenderer.

55 The TEC chair occupied the same position as that held by the delegate for the Poppy's carpark procurement (see paragraph 3.36).

- 3.45 In two other cases working relationships were declared but probity advice was not sought.
- In one instance all six TEC members for Exhibition Design Packages 2 and 5 procurement in 2021 declared that they had prior, or current, working relationships with tenderers. Self-management strategies were proposed by those making declarations and probity advice was not sought. This strategy was not approved by a delegate.
  - In one instance a TEC member at the REOI stage for Architectural Design Package 4 in 2019 declared an ongoing working relationship of over 10 years with a tenderer through previous work at the Memorial, for which the tenderer sought the official to act as referee. The TER did not document who provided the referee comments. Self-management strategies were proposed by those making declarations and probity advice was not sought. This strategy was not approved by a delegate.
- 3.46 Case Study 2 discussed a procurement where prior working relationships were not declared and probity advice was not sought.

*Revised conflict of interest declaration processes*

3.47 On 17 April 2023, the Executive Project Director (EPD) approved strengthened declaration arrangements for IMT members, providing explicit examples of potential or perceived conflict of interests as guidance (See Appendix 2). Declarations are maintained in a new IMT Conflict of Interest Register where risk was assessed and strategies for management proposed. The EPD approved these management strategies, including his own.

3.48 The EPD provided an updated declaration on 18 April 2023 that declared his prior employment with Lendlease. This risk was assessed by a subordinate employee as low risk and a management strategy of being recused from Lendlease related procurements was approved by the EPD. The assessment contained no reference to the ongoing role as delegate for contract management for Lendlease, including approval of contract variations.

3.49 On 3 October 2023, the Memorial implemented further changes to the conflict of interest arrangements for the procurement for MWP4. This required anyone 'who has the potential to influence the outcome of the procurement during preparation, tender and evaluation phases' to sign a confidentiality and conflict of interest declaration. Appendix 2 outlines the Memorial's revised development project probity arrangements.

### Recommendation no. 3

3.50 The Australian War Memorial strengthens the ethical conduct of its procurement activity consistent with its obligations under the *Public Governance, Performance and Accountability Act 2013* and Commonwealth Procurement Rules:

- (a) Ensuring all officials, contractors and advisors involved in procurement activities, in any capacity, complete activity specific conflict of interest declarations, on the basis of 'if in doubt, declare the interest'; and
- (b) Actively engaging probity advice to assist with the management of ethical and probity risks for higher value and/or higher risk procurements.

**Australian War Memorial response:** *Agreed.*

3.51 *3 (a) The Memorial implemented this recommendation via a new Project Probity Management Plan, reviewed and endorsed by an independent probity advisor. This change was supported by revision of the Project's Contract Procurement Strategy to include additional guidance and requirements relating to conflict of interest matters. Evidence of these changes has been provided to the ANAO and is acknowledged in paragraph 4, Appendix 2 of this report.*

*3 (b) The Memorial is making deliberate efforts to more actively engage with probity advice as demonstrated by review of the Project Probity Management Plan by an independent probity advisor.*

### Has the Memorial's procurement activities achieved value for money?

Tender evaluation reports for 13 of 18 procurements reviewed appropriately documented and demonstrated how value for money was assessed. Value for money assessments were largely not undertaken where the negotiated final contract price varied from the price approved in the tender evaluation report.

### Multistage procurement processes

#### *Main Works Packages 1, 2 and 3*

3.52 The multistage procurement process for the first three Main Works Packages (MWP) commenced with a single REOI published on AusTender as an open tender opportunity on 13 January 2021. The REOI sought to shortlist four or five respondents for each of the MWPs that would be invited to proceed to the RFT stage.

3.53 Thirteen tenderers submitted responses to the REOI, each bidding for one, two or all three MWPs. Two tenderers were excluded for non-compliance with the RFT and were not further assessed. The remaining 11 tenderers encompassing 18 bids across the three MWPs proceeded to the assessment stage:

- five bids for MWP1 of which four were found suitable and were shortlisted;
- nine bids for MWP2 of which nine were found suitable and five were shortlisted; and
- four bids for MWP3 of which three were found suitable and were shortlisted.

3.54 Prior to proceeding to the RFT stage, three tenderers withdrew a total of five shortlisted bids. This left two shortlisted tenderers for MWP1, three for MWP2 and two for MWP3. To meet its target number for shortlisting and promote competition, the Memorial:

- Promoted the sixth ranked tenderer for MWP2 to maintain a pool of four tenderers. The Memorial advised the delegate this approach was consistent with the probity advice received. The delegate's brief contained no reference to the outcome of the risk assessment that was recommended by the probity advisor to be conducted prior to making such decision.
- Reopened the REOI process (REOI 2) for MWP 1 and 3 on 28 July 2021 to identify up to three additional tenderers for each MWP.<sup>56</sup>

3.55 The Memorial obtained probity advice prior to seeking delegate approval for both courses of action. The signed and scanned version of the delegate's brief for approval for REOI 2 was not retained. REOI 2 resulted in an increase to the shortlist of respondents invited to participate in the RFT stage<sup>57</sup>; by one to three for MWP1 and by two to four for MWP3.

#### *Architectural design package 1*

3.56 The Memorial also undertook a multistage procurement process for the Architectural Design Packages, with a REOI phase to shortlist three to four respondents for the RFT stage. For Architectural Design Package 1, the Memorial received one REOI response, and that respondent was invited to the RFT stage. The RFT evaluation report dated 23 May 2019 did not contain the results of the TEC's pricing evaluation. The report contained the following rationale for why the proposal represented value for money: a two-stage procurement process; the RFT documents 'included a strong focus on securing value for money responses from the selected tender'; the evaluation committee found the tenderer had 'exceeded the requirements of the RFT'; and that there was scope to agree on a lower price by suggesting less senior personnel. The Memorial engaged in further 'value management' via negotiations after the TER recommendation was made, discussed in paragraph 3.61.

### **Value for money assessments**

3.57 For the RFT stages of the three MWPs, value for money was initially assessed on four evaluation steps: minimum content and format requirements and conditions for participation; technical evaluation; pricing evaluation; and risk assessment.

3.58 The final value for money assessment was undertaken after tenderers were shortlisted based on results of the initial evaluation and the TEC members conducted site walks and interviews with tenderers. For MWP1 and 3, the TEC invited four tenderers, two per procurement, to participate in site walks and interviews. For three of four tenderers the TEC undertook one site walk per tenderer, and it undertook two with a single tenderer. The outcomes of the site walks and interviews were documented in Tender Evaluation Reports (TER).

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56 The signed brief to the Director was incomplete. A draft version included the rationale for the recommended approach and substance of the probity advice and risk assessment.

57 The bids that had already been shortlisted as a result of the first Request for Expression of Interest activity were not required to participate in the reopened process.

3.59 For MWP1 and MWP3, shortlisted tenderers were invited to participate in Offer Definition Improvement Activities (ODIA) to provide them 'with the opportunity to address key risks within their respective tenders as identified by the Committee'.<sup>5859</sup> The committee then adjusted the tenderers' ratings following consideration of their ODIA responses.

3.60 Value for money assessments were documented for the first three MWP procurement processes in the TER. Where the final contract value varied from the tendered price approved by the delegate, there was no documented assessment of the value of money of the new value (discussed from paragraph 3.62).

3.61 Value for money was not adequately documented for five procurements:

- Three procurements under the \$400,000 threshold, had no documentation of a procurement process being undertaken (see paragraph 3.34).
- The value for money assessment methodology for Project Management Services, (see Case Study 2, after paragraph 3.21).
- The Architectural Design Package 4 where the tender evaluation panel report stated the successful tenderer offered excellent value for money based on quality and price, but did not document details of the value for money assessment. Referenced attachments, including the costs consultant report, were not retained.

## **Final contract prices**

3.62 The Memorial entered into preferred tenderer deeds for MWPs 1, 2 and 3 after the tender evaluation process, prior to entering into final contracts. For MWPs 1 and 2, the initial contract price was higher than recommended in the TER which had been approved by the delegate. The initial contract price also exceeded the value recommended in TERs approved by the delegate for four other contracts. A value for money assessment for these changes was not undertaken. Architectural Design Package 1 documented the decision to change the price of the contract after approval in the TER. However, value for money considerations were limited, see paragraph 3.61.

3.63 Ministerial approval to enter into contracts is discussed in paragraphs 1.24 and 3.68 to 3.75. Table 3.3 sets out the tender price recommended in the TER, the initial contract value, and the difference between the two values.

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58 Also referred to as a 'Best And Final Offer' (BAFO) process in other procurements.

59 In the ANAO's sample, one other official Best And Final Offer took place in Early Works Package 4. There was also a post Tender Evaluation Report' amendment to price for Architectural Design Package 1.

**Table 3.3: Price variations between tender evaluation report and initial contract value (GST inclusive prices)**

Procurement <sup>a</sup>	Contractor	Tender evaluation report value (\$)	Initial contract value (\$)	Difference between values (\$)
Main Works Package 1	Kane Constructions Pty Ltd	73,576,203.80	81,111,186.20	7,534,982.40
Main Works Package 2	Hindmarsh Construction Australia Pty Ltd	65,185,551.20	70,786,823.80	5,601,272.60
Main Works Package 3	Lendlease Building Pty Limited	125,339,542.90	123,085,558.20	(2,253,984.70)
Early Works Package 4	Demolition Environmental Civil Contractors Pty Ltd	15,333,982.98	15,996,363.98	662,381.00
Poppy's Carpark	Lendlease Building Pty Limited	9,364,300.00	9,280,810.00	83,490.00
Electrical Engineering Services	N D Y Management	2,190,028.07	2,211,929.07	21,901.00
Structural Engineering Services	TTW (ACT) Pty Ltd	2,127,441.05	2,347,440.94	219,999.89
Quantity Surveying Services	WTP Australia Pty Ltd	1,956,688.00	2,190,430.00	233,742.00
Communications and Security Engineering Services	AECOM Australia Pty Ltd	1,262,820.79	1,195,478.78	(67,342.01)
Architectural Design Package 1	DJAS Architecture Pty Ltd	1,162,755.00	803,880.00	(358,875.00)
Architectural Design Package 4	Scott Carver Pty Ltd	value was not included in TER	2,156,880.00	value was not included in TER
Exhibition Design package 2 and 5	Pico Australia Pty Ltd	5,979,509.24	4,881,127.90	(1,098,381.34)
Project Management Services <sup>b</sup>	TSA Management (Act) Pty Ltd	1,142,777.00	805,000.00 <sup>b</sup>	(337,777.00)
Stone Removal	Puch Construction and Building Pty	723,492.00	807,276.87	83,784.87

Procurement <sup>a</sup>	Contractor	Tender evaluation report value (\$)	Initial contract value (\$)	Difference between values (\$)
Probity Services	Rh Anicich & Aj Deegan & Others T/A Sparke Helmore	127,527.40	127,527.40	0.00

Note a: Procurements included in Table 3.3 are those from the ANAO sample with a documented procurement process.

Note b: The initial contract was for one year, compared to the initial three year contract set out in the Request for Tender documentation (see Case Study 2).

Source: ANAO analysis.

## Was the advice provided to decision makers sufficiently detailed and were decisions appropriately documented?

Tender Evaluation Reports for high value procurements set out the assessment process and demonstrated how value for money was considered and risks were assessed. Subsequent documentation of the outcome of contract negotiations or rationale for the award of contract with a different value than previously approved was insufficient. Ministerial approval was obtained to enter into contracts over \$1 million. Advice to the minister was insufficiently detailed to support the minister in carrying out their duties, including those under section 71 of the PGPA Act. In two instances contracts were split so as to not exceed the \$1 million threshold requiring ministerial approval.

### Tender evaluation reports

3.64 Of the 18 procurements sampled, 15 procurements had a documented procurement process set out in RFT or RFQ, Tender Evaluation Plans (TEP) and Tender Evaluation Reports (TER) using the Memorial's procurement templates. For these 15 procurements the tender evaluation reports reviewed by the ANAO clearly set out the process undertaken for the procurement, including the outcomes of REOI processes where relevant, how the tenderer responses were evaluated, outcomes of assessments of value for money, the recommendation as to the preferred tenderer and, where relevant, specific issues to be resolved during contract negotiations. Documentation of value for money for final contract values is discussed in paragraph 3.62. In one instance neither the procurement advisor or the delegate signed the TER.

3.65 The TER templates required each member of the tender evaluation committee to sign the report confirming that the following would be retained on a 'registered file':

The Committee has checked each of the attachments and confirm that they are correct and that all declarations of conflicts of interest and confidentiality have been completed and filed.

3.66 There were no 'registered files' for the Development Project procurements. Documents relating to the procurements were stored in SharePoint (see paragraph 2.34). There were no records relating to 'all meetings, all telephone calls, deliberations, and discussions that took place' during the evaluation processes, as specified in the TER. Email exchanges indicate that such discussions took place regarding procurement options for MWP1. These discussions were not

documented. The SharePoint 'correspondence folder' for MWP3 was empty. Advisors to the evaluation committees were listed in the TER. Details of advice provided by the legal or probity advisors during the evaluation process was not documented in the TER.

## Delegate decisions

3.67 The Memorial did not maintain appropriate records of delegate decisions for four of the 18 procurements in the sample, including:

- Three undocumented procurements below the \$400,000 threshold.
- One procurement where the delegate did not sign the Tender Evaluation Report.
- With the exception of the TER for the Architectural Design Services Integration Architect procurement (the Integration Architect), there was no documentation of the rationale for the price variations or assessments of value for money for the final contract price.<sup>60</sup>

## Ministerial approval

3.68 Section 35 of the *Australian War Memorial Act 1980* (the Memorial Act) requires the Memorial to obtain the approval of the Minister for Veterans' Affairs before entering into contract under which the Memorial is to pay or receive more than \$1 million.<sup>61</sup> The minister's decisions are subject to section 71 of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act):

(1) A Minister must not approve a proposed expenditure of relevant money unless the Minister is satisfied, after making reasonable inquiries, that the expenditure would be a proper use of relevant money.

(2) If a Minister approves a proposed expenditure of relevant money, the Minister must:

- (a) record the terms of the approval in writing as soon as practicable after giving the approval; and
- (b) comply with any other requirements prescribed by the rules in relation to approvals of proposed expenditure.

3.69 Under subsection 19 (1) of the PGPA Act, the accountable authority of the Memorial has a duty to keep their minister informed and provide the minister with relevant information<sup>62</sup> to assist them in fulfilling their duties, including those under section 71 of the PGPA Act.

3.70 Within the sample of 18 procurements (resulting in 20 contracts) the ANAO assessed the ministerial briefs seeking approval to award the initial contracts for procurements above the \$1,000,000 threshold. Table 3.4 shows the difference in values between the approvals granted to enter into contract negotiations and the approvals to execute the contract. The Memorial sought ministerial approval prior to entering into all 12 contracts listed below.

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60 An addendum to the Integration Architect TER was signed two weeks after the contract was signed. The addendum stated the price decrease was due to a reduction in scope consistent with the recommendation in the TER, it did not contain any explicit assessment of value for money. The Memorial advised that the Director generally received verbal briefings when contract prices differed from those recommended in the TER, including how the new value represented value for money.

61 The amount of \$1,000,000 is prescribed in Section 6A of the Australian War Memorial Regulations 1983, 14 August 2007, for the purposes of section 35(b) of the *Australian War Memorial Act 1980*.

62 *Public Governance, Performance and Accountability Act 2013* (PGPA Act), paragraphs 19(1)(a)–(b).

**Table 3.4: Ministerial approval and contract values for sampled contracts (GST inclusive)**

Contracts	Minister approved maximum value contract price (\$)	Executed contract value (\$)
Main Works Package 1	85,500,000.00 <sup>a</sup>	81,111,186.20
Main Works Package 2	76,800,000.00 <sup>a</sup>	70,786,823.80
Main Works Package 3	132,100,000.00	123,085,558.20
Early Work Package 4	17,600,000.00	15,996,363.98
Poppy's Carpark	10,500,000.00	9,280,810.00
Electrical Engineering Services	8,810,000.00 <sup>b</sup>	2,211,929.07
Structural Engineering Services	3,410,000.00 <sup>b</sup>	2,347,440.94
Communications and Electronic Security	1,550,000.00	1,195,478.78
Quantity Surveying Services	2,000,000.00 <sup>a c</sup>	2,190,430.00
Architectural Package 4	2,000,000.00 <sup>a c</sup>	2,156,880.00
Exhibition Design Package 2 and 5	6,600,000.00	4,881,127.90
Early Plant and Material Agreement	122,000,000.00 <sup>d e</sup>	17,272,385.50

Note a: The brief to the minister did not specify whether the contract values was GST inclusive or exclusive.

Note b: The brief to the minister was an aggregate value for multiple contracts to a single supplier.

Note c: The GST inclusive value for contracts for Quantity Surveying Services and Architectural Package 4 exceeded the contract value approved by the minister.

Note d: This contract was entered in to on 17 May 2022, during the caretaker period, with an election taking place on 21 May 2022. Ministerial approval was given before an election was called.

Note e: The contract for Early Plant and Material Agreement was awarded to successful tenderer of MWP3 and executed 17 May 2022 to secure prices for relevant plant and material prior to the substantive contract for the works within MWP3 being executed.

Source: ANAO analysis.

3.71 Ministerial briefs summarised the procurement process and included a recommendation as to the maximum value of the contract.

- With the exception of one procurement, ministerial briefs did not include detailed information on the value for money assessment, outcomes of contract negotiations or why a maximum contract price greater than the tenderer's submission was appropriate.
- The brief to the minister for the execution of the contract for MWP3 in September 2022 sought approval for \$10,100,000 greater than the maximum value approved for contract negotiations approved in March 2022. The September 2022 brief did not identify that a contract for \$17,272,385.50 had already been entered into with the preferred tenderer to secure early access to plant and materials while the contract negotiations were underway (see Table 3.4 and table note e).

- In one ministerial brief, when multiple contracts were awarded to a single tenderer, aggregate values were included.<sup>63</sup> Memorial's approach of presenting aggregate contract values does not provide the Minister with sufficient advice to enable a value for money assessment to be made.

3.72 The ANAO identified two other contracts from 2018 and 2019, outside of the 20 sampled, where the Memorial took steps that resulted in ministerial approval not being required.

- For the original 2018 contract with Xact Project Consultants (CN3496068), discussed in Case Study 2 (after paragraph 3.21). The Memorial varied this contract in March 2019 to \$999,999.
- The 2018 contracts with Imagination (Australia) Pty Ltd (CN3520828) for the Redevelopment Stakeholder event was drafted to a value of \$1.05 million (GST inclusive). The draft contract was then split into two contracts with the same supplier for \$841,875.43 and \$207,659.10 (GST inclusive) respectively. The two contracts were signed on the same day.

3.73 Five ministerial briefs contained statements indicating that the Memorial's view that the proposed contracts represented value for money was supported by an 'independent quantity surveyor'.

- For MWP1, 2 and 3 the quantity surveyor provided letters analysing the tenderers cost submissions. In two cases these were issued prior to the commencement of contract negotiations and before the minister approved the proposed contract.
  - For MWP1, the letter compares shortlisted tenderer's submission to pre-tender estimates stating they are suitable.
  - For MWP2, the letter stated that the price is 'fair and reasonable'.
  - For MWP3, the minister approved the brief on 23 September 2022. The quantity surveyor letter dated 24 November 2022 states that the nominated tender 'appears to represent value for money'.
- The March 2022 brief to the minister for approval to negotiate contracts up to a maximum value for the first three MWPs covered the Early Plant and Materials Agreement<sup>64</sup> and compared tenderer's submissions without discussing value for money.
- A brief to the Minister for Early Works Package 4 (EWP 4) stated, 'the memorial and the independent quantity surveyor' considered a proposed contract to represent value for money. The brief to the minister requested approval for more than \$5 million greater than the quantity surveyor's pre-tender estimate.

3.74 A draft 23 September 2022 letter from the quantity surveyor was updated to specifically reference 'value for money' on direction from the EPD. The quantity surveyor's analysis relates to price, rather than value for money, which is not solely determined by cost.<sup>65</sup>

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63 This brief to the minister included both Structural and Electrical Engineering Packages, see Table 3.4.

64 The contract for the Early Plant and Materials Agreement is part of the procurement for MWP3, the Minister's signed approval to negotiate in the Memorial's 25 March 2022 provides the relevant approval.

65 Commonwealth Procurement Rules, paragraph 4.5.

3.75 In the absence of a detailed assessment of value for money within the advice to the minister, it is unclear how the Memorial informed the minister in line with its obligations under subsection 19(1) of the PGPA Act or supported the minister to discharge their obligations under section 71 of the PGPA Act. The ANAO also identified deficiencies with documenting value for money considerations for contract variations in Chapter 4 (see paragraph 4.60).

#### **Recommendation no. 4**

3.76 The Australian War Memorial ensure that appropriate records are created and maintained that clearly document how value for money has been considered and will be achieved, including:

- (a) in decision briefs to delegates, including for subsequent approval where contracts are to be executed for more than the approved tendered price;
- (b) in briefs to the Minister for Veterans' Affairs seeking approval to enter into contracts;
- (c) for limited tenders and procurements under the Commonwealth Procurement Rules thresholds; and
- (d) for contract variations.

**Australian War Memorial** response: *Agreed.*

*3.77 4 (a) The Memorial is implementing additional controls to ensure value for money is clearly assessed and documented, including where contract values change or scope is varied, to better inform and record delegate decisions.*

*4 (b) The Memorial will provide additional information relating to value for money in high value contract approval requests to the Minister for Veterans' Affairs within the requirements of the Minister's Office for briefs and submissions.*

*4 (c) The Memorial will review its internal advice relating to value for money assessments and documentation for limited tenders and procurements under CPR thresholds.*

*4 (d) The Memorial implemented a process to assess and record value for money for Project contract variations in 2023, we will continue to improve and apply this process.*

## 4. Has the Memorial established effective contract management arrangements to support project delivery?

### Areas examined

This chapter examines whether the Australian War Memorial (the Memorial) has established effective contract management arrangements to support project delivery.

### Conclusion

Largely effective contract management arrangements have been established. The Development Project contracts include clearly documented requirements. There are appropriate systems to monitor contractor performance and performance has been managed largely effectively to achieve value for money and deliver the Development Project objectives. The documentation of assessment of value for money considerations for contract variations was insufficient. Ministerial briefs lacked sufficient detail of value for money assessments. In one instance, the signed contract variation exceeded the value approved by the Minister for Veterans' Affairs and the value of the variation was incorrectly stated in the subsequent ministerial brief.

### Area for improvement

The ANAO made one recommendation to the Memorial in relation to contract management requirements and one recommendation to the Department of Finance to update procurement guidance for AusTender reporting.

4.1 The Australian Government Contract Management Guide (the Contract Management Guide)<sup>66</sup> provides a best practice framework for the establishment and management of contracts. Commonwealth entities are recommended, but not required, to use the Contract Management Guide. The Contract Management Guide states that 'good contract management is an essential component in achieving value for money' and defines contract management as:

all the activities undertaken by an entity, after the contract has been signed or commenced, to manage the performance of the contract (including any corrective action) and to achieve the agreed outcomes.

4.2 The Contract Management Guide also states:

An entity should not seek or allow a contract variation where it would amount to a significant change to the contract or significantly vary the scope of the contract if it could reasonably be determined that:

- a. other potential suppliers may have responded differently to the amended contract scope in the tendering process which may have produced a different value for money outcome or
- b. the variation may compromise the original procurement's value for money assessment.

66 The ANAO referenced version 1.5 of the Australian Government Contract Management Guide (December 2020) as the basis for assessment of the contract management of the Memorial. The current version is dated July 2023 available from <https://www.finance.gov.au/government/procurement/contract-management-guide> [accessed 22 November 2023].

## Do the Development Project contracts include clear performance requirements, and a means to effectively measure performance against these requirements?

Development Project contracts include clearly documented requirements for delivery. Construction contracts for Main Works Packages include detailed design drawings of works to be delivered to specified timeframes and quality to an agreed lump sum. The Memorial implemented peer reviews, monthly site visits and a suite of reporting requirements to monitor contractor performance.

4.3 The Memorial's Development Project<sup>67</sup> has three distinct phases: design, construction, and gallery development phases. The project design phase was undertaken by architectural contractors, supported by quality surveyors and engineer consultants. The construction phase used three head contractors to deliver Main Works Packages (MWP) 1, 2 and 3 on a 'lump sum construct'<sup>68</sup> basis, according to fully documented designs provided by the Memorial. The main building refurbishment (MWP4) is being contracted on the same basis (see paragraph 4.39). Substantive gallery development phases and public domain landscaping works are planned to commence from 2024 and are outside of scope of the audit.

### Development Project contracts

4.4 The ANAO identified 207 contracts to June 2023 related to the Development Project, starting with the initial business case. The ANAO selected 48 contracts for testing against the Memorial's policies and the best practice principles in the Contract Management Guide (see paragraph 4.5). All 29 contracts with a value over the \$1 million threshold requiring ministerial approval<sup>69</sup> were selected for testing, as well as the 2018 contract for the Detailed Business Case (DBC) project manager<sup>70</sup> valued at \$999,999. A further 18 contracts were randomly selected from the remaining population of contracts. Table 4.1 details the sample of 48 contracts which represents 94 per cent of total contract value as at June 2023.<sup>71</sup>

**Table 4.1: Summary of ANAO sample of Development Project Contracts as at 16 June 2023**

Contract type	Contracts tested		All contracts	
	Number of contracts	Value of contracts (incl. GST) (\$)	Number of contracts	Value of contracts (incl. GST) (\$)
Construction contracts <sup>a</sup>	15	348,205,172	31	352,899,342

67 The Development Project includes the Early and Enabling Works, Main Works Packages 1, 2, 3 and 4, gallery and public realm works. See paragraph 1.3 for further detail.

68 A lump sum contract provides a fixed price for completing a construction project.

69 Section 35 of the *Australian War Memorial Act 1980* requires the Memorial to obtain the approval of the Minister for Veterans' Affairs before entering into a contract under which the Memorial is to pay or receive more than \$1 million.

70 The contract, AusTender reference CN3496068, was awarded to Xact Project Consultants, later bought by TSA Project Management, this contract is also discussed in Case Study 2.

71 Appendix 3 provides details and the value (as at 31 October 2023) for the 207 contracts to June 2023 and the additional 14 contracts entered into between June 2023 and October 2023.

Has the Memorial established effective contract management arrangements to support project delivery?

Contract type	Contracts tested		All contracts	
Design contracts <sup>b</sup>	19	38,543,708	71	44,282,806
Consultant contracts <sup>c</sup>	9	30,337,170	51	36,255,021
Other supporting contracts <sup>d</sup>	5	309,763	54	9,610,698
<b>Total</b>	<b>48</b>	<b>417,395,813</b>	<b>207</b>	<b>443,047,867</b>

Note a: Construction contracts included building, demolition, earth works and speciality services (e.g. asbestos removal).<sup>72</sup>

Note b: Design contracts included architectural building, integration, exhibition and gallery design services, engineering, fabrication works, engineer consulting, and peer reviews.

Note c: Consultant contracts included project management, certification, heritage, legal services and probity.

Note d: Other supporting contracts included IT services, labour hire and maintenance.

Source: ANAO analysis.

### *Performance measures in contracts*

4.5 The Contract Management Guide recommends contracts include performance measures that cover quality, quantity, cost, responsiveness, and customer satisfaction, with these measures being delivered to a 'standard expected of an experienced professional supplier of similar services'.<sup>73</sup> Six project deliverable priorities are set out in Request for Tender (RFT) documentation for MWPs 1, 2 and 3; safety, quality, maximise build outcomes, time, limiting impact on Memorial operations and veteran employment.

4.6 All sampled contracts had performance measures and a means to assess performance. Details of cost, quantities, and quality of the work to be completed were contained in the contracts and included sufficient measures to support contract delivery. Construction and consultancy contracts contain requirements covering attending meetings, working with other contractors providing reports and performing work to an expected standard.

## **Monitoring performance**

### *Peer reviews for design contracts*

4.7 Architectural designs for the MWPs were subject to a peer review process. These occurred at the schematic design milestone, 50 per cent, and 80 per cent detailed design stages to ensure that designs met technical and quality requirements. The 50 per cent peer review was conducted either internally by Memorial staff or by an external peer reviewer, with the 80 per cent peer reviews being conducted externally. The Memorial engaged firms not involved in the design phase to complete 13 of the peer reviews and eight peer reviews were conducted by firms already engaged as design contractors. The peer review process identified and corrected errors before designs were required for the tender process.

4.8 Following concerns raised by reviewers during the 50 per cent and 80 per cent stage peer reviews of the Anzac Hall and Glazed Link design (MWP3), an additional peer review was carried out at the 100 per cent detailed design stage. These reviews showed poor performance in the design and there was a deterioration in the relationship with the contractor. In November 2022, the

72 Contract CN3875035 was reported on AusTender as \$17,272,385.50. This was subsumed into contract CN3928114. The actual value paid under CN3875035 was \$5,378,999.60. The value used in the sample is the one reported on AusTender by the Memorial.

73 Department of Finance, *Australian Government Contract Management Guide*, Finance, December 2020, p 34.

Memorial terminated this design package contract with Cox Architects. The Memorial then contracted DJAS Architecture, the project integration architect, to complete the MWP3 design package.

### *Performance management for Main Works Packages*

4.9 The Memorial's Integrated Management Team (IMT) (see paragraph 2.29) manages the performance of the MWP contracts through processes set out in the Memorial's policy documents.

#### *Site diaries*

4.10 The Memorial's Construction Management Plan requires a site diary to be maintained for each MWP. The site diary provides a day-to-day record of observed site activities, to monitor progress, identify and rectify issues as they develop and validate details contained in monthly progress payment requests from contractors. Site diaries assessed by the ANAO contained details of weather conditions, condition of works, observations of movement of major plant and any safety issues and key personnel onsite. Photos are taken by IMT staff during the site walks to supplement the site diary. The ANAO observed that site diaries were not consistently stored in the project SharePoint file. The Memorial advised that site diaries are stored in staff member's personal SharePoint folders.

#### *Designer site reviews*

4.11 The contracted designers and engineers are to conduct site visits to verify the works being completed to appropriate standards and quality levels during construction. Where designers or engineers identify issues in their site visit report, the MWP contractors must obtain sign off by the designers or engineers prior to completion of specified works.

#### *Monthly progress payment site walks*

4.12 Head contractors for the three MWP contracts submit a monthly progress claim for payment of works to be completed by the end of the calendar month. The Memorial conducts a site walk through to verify the details of the progress claim.

4.13 The Memorial's policy documents require that the contracted Quantity Surveyor attend all progress claim walk throughs for payment claims greater than \$5 million, and at least four times per calendar year. Of 38 progress claims made by MWP contractors to 31 October 2023, eight claims were assessed by the Quantity Surveyor. This is four less than required by the Memorial's policy in terms of frequency. In addition, there was one claim for more than \$5 million during this period and it was not assessed as required.

4.14 The payment claim documentation includes details of the percentage of works completed against the contracted value for each line item.<sup>74</sup> On completion of the site walk, feedback from the Quantity Surveyor is received (if applicable) and the claim is assessed against works completed. When inconsistencies are found by the Memorial, the progress claim is required to be amended to an amount that reflects the assessment of works.<sup>75</sup>

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74 A line item represents one portion of the contracted works, such as, concrete supply, formwork and roofing.

75 Contracts for the four Main Works Packages are lump sum contracts. The contractor will be paid remaining balance of the lump sum on completion regardless of the amounts claimed monthly.

#### Monthly project reports

4.15 Head contractors of the MWP's are required to submit a monthly report to the Memorial. The report is reviewed in monthly meetings between the Memorial and the head contractor. The report includes details on construction works, financial information of progress claims and variations, and details of work health and safety incidents and statistics. The reports also include information on Australian industry participation, veterans and Indigenous employment, and environmental and sustainability reporting.

4.16 The Memorial has established largely appropriate systems to monitor contractor performance. The Memorial's demonstration of the implementation of its contract management processes would be enhanced by retaining site diaries on contract files and implementing controls to ensure record keeping policies are followed (see Recommendation 1, paragraph 2.37).

### Is the Memorial effectively managing contract performance to achieve value for money and deliver on the Development Project objectives?



Contract management processes at the whole of project level are largely aligned to the better practice principles of the Contract Management Guide. The Memorial tracks construction progress against set timelines and maintains oversight of completion dates. Cost control and risk management arrangements have been implemented.

#### Contract management

##### *Alignment with Contract Management Guide*

4.17 Table 4.2 shows ANAO's assessment of the Memorial's contract management processes and how they align with the best practice principles of the Contract Management Guide.

**Table 4.2: Alignment with best practice principles of the Contract Management Guide**

Contract Management Guide	Memorial process	Alignment
Contract management plans 'A contract management plan contains key information about how the contract will be managed over its life to ensure that value for money is achieved.'	The Memorial has taken a project level approach to contract management for the Development Project and has not developed a contract management plan for each contract. Contract management processes are documented within a suite of policy documents (see paragraph 4.18).	
Risk assessment and risk management 'Assess the risks that may affect the performance of your contract and its ability to achieve the desired outcomes.'	Risks are assessed at the program and site level which may limit of specificity with which the risk is identified, assessed and managed (see paragraph 4.19).	

Contract Management Guide	Memorial process	Alignment
Behaving ethically 'All individuals materially involved with the management of a contract make a conflict of interest declaration and update it on a regular basis.'	The Memorial did not have a conflict of interest register in relation to contract management activities until April 2023. Arrangements for managing conflicts prior to this date and the assessment of declared interests following this date are inadequate (see paragraphs 3.47 to 3.49).	●
Confirm contract management roles and responsibilities 'Who is responsible for key contract management activities and that you allocate appropriate resourcing to the contract.'	The Memorial created the IMT with clearly defined and documented roles and responsibilities, (see paragraph 2.29).	●
Clear performance measures 'Performance standards should be specified in your contract.'	The Memorial included detailed deliverables and contractor obligations in contracts (see paragraphs 4.5 and 4.6).	●
Measuring and managing performance 'Performance management involves the actions you take to ensure the goods or services are delivered as required under the contract.'	The Memorial manages performance through meetings, site visits and external review/reporting (see paragraphs 4.9 to 4.16).	●
Managing contract variations 'Document your decision-making process for a contract variation to ensure your position is defensible and the contract still presents value for money.'	The Memorial has a documented process for approving contract variations. Records of decisions, including assessment of value for money, are not consistently kept (see paragraphs 4.36 to 4.60).	●
Performing contract administration tasks 'Contract administration provides accurate recording of contract information and progress.'	Key documents relating to contract management, including site diaries, are not consistently maintained (see paragraph 4.55).	●

Key: ● Fully aligned, ● Largely aligned, ● Partly aligned ● Largely not aligned ○ Not aligned with the Contract Management Guide.

Source: ANAO analysis of Memorial processes.

#### Contract management plans

4.18 The Memorial's Design Management Plan (August 2019) and Construction Management Plan (July 2021) set out contract management processes for design and construction contracts including roles and responsibilities, design reviews, and cost and variation management. Four design contracts and 15 construction contracts were entered into prior to these plans being released. A total of 105 consultancy and other contracts are not covered by these plans.

#### Risk management plans

4.19 The Development Project's risk register contains risks identified around two central themes, risk to ongoing Memorial activities, and risk to the delivery of the project. Project related risks consider potential impact to delivery time and quality, health and safety, costs, and reputation. Risks are linked to activities of the project, for example procurement, construction, and gallery design.

4.20 The Memorial's approach to managing contracts at the whole of project level supports project integration and improved consistency in decision making, risk management, safety, quality and control across the Development Project. The absence of individual contract management plans creates risks for succession planning, management of compliance, conflicts of interest, and identifying, assessing, and managing risks specific to individual contracts or contractors. For example, the ANAO identified that the Memorial held no letters of contractor compliance with the requirements of the *Workplace Gender Equality Act (2012)* (WGEA).<sup>76</sup> In November 2023, the Memorial advised the ANAO that it was addressing this issue and nine of 12 relevant contractors had now provided WGEA letters of compliance.

### Recommendation no. 5

4.21 The Australian War Memorial revise its whole of project Construction Management Plan to ensure it adequately captures requirements of the Memorial's procurement policy and alignment with the better practice principles of the Australian Government Contract Management Guide. This should include consideration of implementing individual contract management plans for higher value procurements to manage contractor specific risks and compliance with legislative and policy requirements.

**Australian War Memorial response:** *Agreed.*

4.22 *The Memorial is revising its Construction Management Plan, and associated Project Management Plans, to ensure improved alignment with the Australian Government Contract Management Guide. This commenced in January 2024 with the review and update of the project team's 'Roles and Responsibilities Matrix' to clearly identify ownership of contract management compliance responsibilities. Evidence of this initial change has been provided to ANAO and is acknowledged in paragraph 4, Appendix 2 of this report.*

#### Monitoring project timelines

4.23 In July 2019, the Memorial created a timeline for the Development Project using information from architectural concept designs and gallery plans. In March 2020 the timeline was converted into a Gantt chart which mapped start and finish dates for key tasks within the design, procurement and construction activities for each MWP and gallery development (a total of 643 tasks). Longer than expected timeframes for approvals relating to the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act)<sup>77</sup> and from the Joint Parliamentary Committee on Public Works led to a project timeline revision in October 2020.

4.24 The October 2020 timeline maintained the overall project completion date of 30 June 2028 as delays largely impacted construction activities, with gallery design less affected. Some gallery

76 The *Workplace Gender Equality Act (2012)* defines a relevant employer as either: standalone organisations with 100 or more employees, or a corporate structure with 100 or more employees in total across all entities. For more information see [www.wgea.gov.au/reporting-guide/ge/eligibility](http://www.wgea.gov.au/reporting-guide/ge/eligibility) [accessed 2 August 2023].

77 Under the EPBC Act approval is required from the Australian Government environment minister for any proposed action—including projects, developments, activities, or alteration of these things—likely to have a significant impact on a matter protected by the EPBC Act. For further information see *EPBC Act—Environment Assessment Process*, Department of Sustainability, Environment, Water, Population and Communities, 2010, available from <https://www.dceew.gov.au/environment/epbc/publications/factsheet-environment-assessment-process> [accessed 19 February 2023].

opening dates were moved, for example, the Anzac Hall gallery opening was moved from 2024 to early-2025. Further disruptions occurred in 2021 due to COVID-19 lockdowns and

latent conditions in Early Works Packages including hazardous material funds (asbestos, lead paint, mould) and significantly more and harder rock than anticipated by geotechnical studies.

4.25 A third revision was completed in January 2023 with updated Gantt charts from March 2023 showing adjusted construction completion dates for the first three MWPs, as shown in Table 4.3. Gallery opening dates were also extended until late 2025 for Anzac Hall, with gallery refurbishment in the main building and project completion dates not changing. The details of the revised baseline dates and rationale for the changes are contained in the Project Delays Summary Report dated February 2023. In November 2023 the timeline was updated a fourth time. In addition to the Gantt charts updated for each re-baselining of the timeline for the Development Project, the IMT also maintains a hard copy version of the Gantt chart which is annotated on a monthly basis to show progress against targets.

**Table 4.3: Changes in construction completion dates (commissioning date)**

Main works package	March 2020 planned commission date	November 2023 planned practical completion date
MWP1 Southern Entrance	10 March 2023	18 December 2024
MWP2 Bean Building and Research Centre	17 February 2023	20 December 2024
MWP3 Anzac Hall and Glazed Link	27 February 2023	18 August 2025

Source: ANAO analysis.

4.26 The Memorial's contracts with MWP contractors requires each to submit weekly a 'three week look ahead' program of works based on the construction program approved under the contract. The 'three week look ahead' is required to include information on:

- the daily activities of site labour and subcontractors;
- assessment of risk of the design or site conditions within the look ahead period; and
- proposed interruption to the public or Memorial's access to the site.

4.27 The Memorial advised that it was not able to consistently obtain sufficiently detailed reports in a timely fashion, due to the dynamic nature of the work undertaken. The Memorial advised that it commenced a weekly logistics meeting to supplement the information obtained through the reports and co-ordinate activities across MWP sites.

4.28 During the Memorial's monthly Head Contractor Project Control Group (PCG)<sup>78</sup> meetings, progress of construction is discussed with each head contractor, in addition to work, health and safety matters and possible delays. Any change to the timeline is submitted by the head contractor to the Memorial for consideration.

## Cost control processes

4.29 The Memorial's Cost Management Plan sets out the framework for cost control of the Development Project. This document set out processes for budget transfers, finance reporting,

<sup>78</sup> The name of this group was incorrectly referenced in the Construction Management Plan as the Head Contractor Project *Communications* Group until the Memorial corrected it following receipt of the draft final audit report under section 19 of the *Auditor-General Act 1997*.

commitment approval and value of money assessments for contract variations. The Memorial's Escalation and Contingency Management Plan outlines the allocation and management of the contingency funds within the project's overall budget.

4.30 Cost control meetings occur every six weeks for each of the three MWP to evaluate budget needs and reallocate funds, as required through a budget transfer.<sup>79</sup> A budget transfer register is maintained which includes details of the reason for transfer, the value, the relevant contracts, and relevant approval. As at 21 February 2024, the Memorial reported a total of 105 budget transfers. The Memorial maintains a whole of project finance report to track overall budget, transfers between works packages and injections of funds from appropriations.

4.31 As of 18 October 2023, \$39 million (6.7 per cent of total budget) has been allocated to 'escalation and contingency' reserves across all projects. Budget movements and use of contingency funds are reported through the Memorial Development Committee (MDC) to Council.

4.32 The original budget of \$513,499,186 (GST exclusive) includes the November 2018 announced appropriation of \$498.7 million and Early Works Re-Development Overheads (Table 4.4) carried over from the Detailed Business Case (DBC) budget, and funds from the Memorial's own cash reserves. Budget movements from the original appropriation to the current budget of \$582.87 million (GST exclusive) are shown in Table 4.4. The December 2018 DBC included costings for Whole of Life Costs (WoLC). The DBC was delivered after the original decision and has not been considered by government (see paragraphs 1.7 to 1.14). The Memorial has not been appropriated funding for WoLC, such as additional maintenance, utilities and staffing costs.

4.33 The increased project cost is largely due to higher MWP contract values than that projected in the 2018 Detailed Business Case (see paragraphs 1.15 to 1.19).<sup>80</sup> The Memorial obtained financial analysis from quantity surveyors to validate the increased costs reflected in the tender responses in 2021. In January 2022, these additional costs were projected to be \$67 million. The Australian Government allocated an additional \$50 million to the project in March 2022.

4.34 The Memorial made additional capital contributions to fund works not included in the 2018 DBC. This includes the Geothermal Heat Exchange (Case Study 1), security and ICT infrastructure.

4.35 The Memorial informed Parliament in October 2022 that it was on track to complete the construction works within the current budget and final delivery timeframe.<sup>81</sup> The Memorial informed Parliament on 25 October 2023 that:

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79 The reallocation of funds from one cost centre to another is referred to by the Memorial as a budget transfer. A budget transfer is the amount of monies reserved for redevelopment from one project line to another or an injection of funds approved by Government.

80 The Memorial advised the high cost growth was driven by factors including the COVID-19 pandemic, government stimulus of the construction sector and impacts on raw materials and transport during 2020–21.

81 Australian War Memorial, *Development Project October 2022 Project Budget Update*, provided to the Parliamentary Standing Committee on Public Works in October 2022, available from [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Public\\_Works/Completed\\_Inquiries\\_of\\_the\\_46th\\_Parliament/AustralianWarMemorial/Additional\\_Documents?docType=Correspondence](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Public_Works/Completed_Inquiries_of_the_46th_Parliament/AustralianWarMemorial/Additional_Documents?docType=Correspondence) [accessed 28 September 2023].

The Development project overall is progressing on schedule. We are looking forward to our first major milestone of using the new Parade Ground on Anzac Day next year [25 April 2024].<sup>82</sup>

**Table 4.4: Budget movements over project life (GST exclusive) as at October 2023**

Project	Original budget (\$)	Total transfers <sup>a</sup> (\$)	Current budget (\$)	Overall movement
Early works — redevelopment overheads	14,813,029	500,000	15,313,029	↑
Redevelopment Central Resources <sup>b</sup>	Nil	69,511,916	69,511,916	↑
Preliminary work	17,967,072	(738,521)	17,228,551	↓
CEW Bean and Research Centre	59,289,938	34,557,562	93,847,500	↑
Anzac Hall and Glazed Link Base Build	112,996,080	27,078,014	140,074,094	↑
Anzac Hall and Glazed Link Fitout	71,149,688	1,915,788	73,065,476	↑
New Southern Entry Base Build	55,260,958	37,859,176	93,120,134	↑
Southern Entrance and Main Building Fitout	52,841,988	(39,229,248)	13,612,740	↓
Infrastructure and Landscaping	47,045,857	(27,552,132)	19,493,725	↓
Main Memorial Base Build	82,134,576	(34,619,480)	47,515,096	↓
<b>Total</b>	<b>513,499,186</b>	<b>69,283,074</b>	<b>582,782,260</b>	<b>↑</b>

Note a: The total transfers amount consists of the \$50 million March 2022 Estimates Variation spread across projects: Redevelopment Central Resources (\$1.5 million), CEW Bean and Research Centre (\$1.5 million), Anzac Hall and Glazed Link Base Build (\$24.4 million), New Southern Entry Base Build (\$15.6 million) and the Main Memorial Base Build (\$7 million). The remaining \$19.2 million are capital injections from the Memorial.

Note b: Redevelopment Central Resources is primarily made up of miscellaneous costs that cannot be attributed to the other items and includes budgets for the Memorial base build, gallery fit-out, project management resources and capitalised employee salaries etc.

Source: ANAO analysis.

82 Opening statement by the Director of the Australian War Memorial to 2023–24 Supplementary budget estimates, Foreign Affairs, Defence and Trade Legislation Committee, 25 October 2023, available from [https://www.aph.gov.au/Parliamentary\\_Business/Senate\\_estimates/fadt/2023-24\\_Supplementary\\_budget\\_estimates/Defence](https://www.aph.gov.au/Parliamentary_Business/Senate_estimates/fadt/2023-24_Supplementary_budget_estimates/Defence) [accessed 3 December 2023].

## Have contract variations been approved and documented in compliance with the relevant contract management plan and governance framework?

Policies and procedures for contract variations are documented, however, records of contract variations are not consistently supported by value for money assessments. Ministerial briefs lack transparency, accuracy and the rationale for statements about value for money assessments. One contract variation was executed for an amount higher than that approved by the minister and the ministerial brief relating to a subsequent variation contained the incorrect value of the executed variation.

### Management of contract variations

4.36 From the 207 contracts related to the Development Project, as at 30 June 2023, 353 contract variations had occurred. The ANAO assessed a representative sample of 63 variations to test compliance with the Memorial's policy documents and the requirements for the Commonwealth Procurement Rules.

4.37 The ANAO found that 10 out of the 63 variations (16 per cent) increased the value of the contract by 20 per cent or more. The largest single variation increased the value of the TSA Project Management contract by 714 per cent, from \$805,000 to \$6,555,000 in October 2019. This contract was further increased in February 2022 to \$16,865,026 (see Case Study 2, after paragraph 3.21).

4.38 Other examples of significant variations to value or scope of contract include:

- In June 2020, a variation was made to the Poppy's Carpark contract with Lendlease to include Early Works Package One. The variation increased the value of the contract by \$4.77 million, a 49 per cent increase.
- In November 2022, the Memorial added a Geothermal Ground Heat Exchange to MWP2 which increased the value of the contract by \$4.82 million, a 7.5 per cent increase. The need for the additional work to complete the Geothermal Ground Heat Exchange was approved by Council (see Case Study 1, after paragraph 2.28).
- In May 2023, the MWP3 contract with Lendlease was varied to include 'secondary building works' to support the completion date for the galleries. The value of these works is estimated to be \$6.84 million, a 5.9 per cent increase.
- 35 variations to two contracts with TTW (ACT) Pty Ltd for civil and structural engineering services, increasing the value of all these contracts by \$2.08 million, a 71.5 per cent increase.
- 43 variations across five contracts with NDY Management Pty Ltd for mechanical, electrical and hydraulic engineering services, fire protection system and environmental sustainability, increasing the total value of all these contracts by \$1.74 million, a 23.8 per cent increase.

### *Main Works Package 4 main building refurbishment*

4.39 The 2022 Request for Expression of Interest (REOI) for MWPs 1, 2 and 3 specified that successful tenders may be offered additional works, including MWP4 main building refurbishment.

4.40 In February 2023, the Memorial developed an MWP4 procurement strategy, splitting the works into north and south components. The strategy was developed based on consideration of five alternatives, all based on the following assumptions:

MWP4 South – will be negotiated with Kane based on the efficiencies of Kane currently having possession of the site, would be able to do the work concurrently reducing delivery time, and have the benefit of the economies of scale for management resources;

MWP4 North – will either be negotiated with Kane (to consolidate all MWP4 works as a single engagement removing the requirement for South/North split and terminology) or competitively procured between Kane and Hindmarsh and/or Lendlease.

4.41 The decision to negotiate MWP4 south with Kane Constructions (Kane, head contractor for MWP1 which adjoins MWP4 south), was based on an assessment of possession of the site, contractor interfaces, quality, memorial ongoing operations, timeframe, pre-construction investigation and value for money. The value of money assessment in the procurement strategy stated:

There is definitely value for money improvements in preliminaries and potential trade costs in undertaking works concurrently, compromised to some extent by the risk of Kane taking advantage of the sole select position.

4.42 The Memorial established an evaluation committee of three members of the IMT to assess the proposed MWP4 south variation with Kane. The Memorial rejected Kane's initial response to the request for variation (10 March 2023) and Kane's subsequent revised offer (considered by the evaluation team a 'Best and Final Offer' (BAFO)) (31 March 2023) on the basis that they did not demonstrate value for money. In April 2023, the evaluation committee recommended to the delegate that the variation with Kane not proceed as the BAFO has been assessed as 'not representing value for money'. This was due to technical risks, 'value for money offered by Kane is poor' and 'Kane's current poor performance and focus on variations will likely reduce value for money below what Kane has offered in the BAFO'. The evaluation committee also recommended the consolidation of MWP4 north and south into a single package to be procured through a request for tender (RFT) process. The delegate directed the evaluation committee to develop a cost benefit analysis for engaging Kane for MWP4 south compared with procuring a consolidated MWP4 north and south through a new RFT. The evaluation report stated that:

Concurrent with the cost benefit analysis undertaken by the Committee, Kane provided a second revised offer which further reduced the supervision overlay considerably.

4.43 On 24 May 2023, the delegate approved the MWP4 south procurement evaluation report, which stated:

Taking into account a wider range of considerations and implications of engaging Kane for MWP4 South or consolidating MWP4 into a single package. The outcome was that it was advantageous to engage Kane for MWP4.

4.44 The Minister for Veterans' Affairs (the minister) approved the contract negotiations for a variation to Kane's contract to include MWP4 south activities on 28 June 2023. The variation to include MWP4 south was not finalised as at 19 March 2024.

4.45 For MWP4 north, the Memorial commenced a limited procurement process on 13 September 2023 with Kane and Lendlease (head contractor for MWP3, which adjoins MWP4

north). On 8 November 2023, the delegate approved the Tender Evaluation Report recommendation of Kane Constructions as the preferred tenderer. The minister approved an increase in contract value for Kane Construction for MWP4 north.<sup>83</sup> This variation was not finalised as at 19 March 2024.

### *Ministerial approvals for variations*

4.46 Approval from the minister is required before entering contract under which the Memorial is to pay or receive more than \$1 million.<sup>84</sup> When a variation exceeds the current approved value, new approval must be obtained.

4.47 When requesting ministerial approvals, the Memorial frequently requested higher amounts than the value of the variation proposed to reduce the number of approvals that may need to be sought from the Minister should additional variations be required in the future. See Table 3.4 for examples of ministerial approvals with maximum contract values. Where a ministerial brief covered more than one contract with the same supplier, the Memorial aggregated the value of contracts by company, rather than each individual contract. For example, in September 2019 ministerial approval was sought for eight engineering contracts with three companies, with values provided by company not contract. The use of aggregate contract values limits the Memorial ability to support the minister in fulfilling their duty to satisfy themselves that each contract, and variation, over the ministerial threshold represents value for money.

4.48 For the first TSA Management contract variation, ministerial approval was sought 'to the maximum value of \$6.0 million (GST Inclusive)' and the Memorial advised the minister that the initial contract duration had been for five months.<sup>85</sup> The minister approved this variation on 4 September 2019. On 3 October 2019 the Memorial identified an error in the value of the variation contained in the brief. The Memorial did not seek further ministerial approval and the contract was varied to \$6,555,000 (GST inclusive) on 1 November 2019. On 15 June 2021, the Memorial sought ministerial approval for a further contract increase to \$18.875 million, incorrectly advising the minister that the current contract value was \$6 million.

### *Reporting of variations on AusTender*

4.49 Of 41 contracts reported by the Memorial on AusTender, the ANAO identified a total of 246 variations. Twenty-eight variations had been reported on AusTender, of which 24 have been reported within the required 42 day reporting threshold. The Memorial did not report variations to the contracts for the MWPs on AusTender.

4.50 The Memorial was not required to report on AusTender the awarding of the contract for Early Works 2 Services Relocation and Ancillary Works, valued at \$5,927,317.30 (GST inclusive), as it was below the \$7.5 million threshold for construction services. The Memorial did not report this contract after it was varied above the threshold to \$8,074,000 (GST inclusive), based on advice sought from the Department of Finance (Finance). The advice stated that 'the threshold is only

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83 Next to the minister's signature on the brief is the date '24/1/23'. The date recorded under the heading 'Received in MO' at the top of the brief is 12 December 2023. Only the first page of the signed brief was retained.

84 The amount of \$1,000,000 is prescribed in Section 6A of the Australian War Memorial Regulations 1983, 14 August 2007, for the purposes of section 35(b) of the *Australian War Memorial Act 1980*.

85 The initial contract with TSA Management was for 12 months. The procurement for this contract (AusTender reference CN3611773) was discussed in Case Study 2.

reportable where the original value of the contract is at \$7.5m or above, or where the amendment value is at \$7.5m or above'. This advice referred to the following statement in Resource Management Guide 423 (RMG 423) Procurement Publishing and Reporting Obligations: 'Relevant entities are not required to report amendments that are valued under the relevant reporting threshold'.<sup>86</sup>

4.51 The guidance on reporting contract variations only when a single variation is greater than the relevant threshold, in this case \$7.5 million, limits the transparency of Australian Government procurement activities and the intent of paragraph 7.18 of the CPRs which states:

Relevant entities must report contracts and amendments on AusTender within 42 days of entering into (or amending) a contract if they are valued at or above the reporting threshold.

### Recommendation no. 6

4.52 The Department of Finance strengthen the Commonwealth Procurement Rules by updating Resource Management Guide 423 *Procurement and Reporting Obligations* to require entities to report all contracts and amendments where the total contract value is above the relevant threshold.

**Department of Finance response:** *Agreed in principle.*

4.53 *The Department of Finance (Finance) agrees with the ANAO recommendation that contracts which are below the relevant reporting threshold and subsequently amended such that their value is at or above the relevant reporting threshold should be reported on AusTender. To give effect to this recommendation, Finance will update Resource Management Guide 423 Procurement and Reporting Obligations (RMG 423) to clarify this requirement. Implementing this clarification will enhance the transparency of information published on AusTender and will meet the intent of the Recommendation.*

4.54 *Finance notes that the impact of the ANAO's recommendation that reporting **all** contract variations on AusTender (once the contract value is over the reporting threshold), would have a significant administrative impact on Commonwealth entities. Under existing reporting requirements, contract amendments of less than \$10,000 do not require an update to the published contract value on AusTender until the aggregate value of all unreported amendments is \$10,000 or greater. In updating RMG 423, Finance will clarify that the \$10,000 aggregate reporting value will remain.*

### Record keeping practices

4.55 The Memorial uses Aconex as the designated project management collaboration system for electronic communication and file transfer with contractors, included updated design plans. For example, variation requests are submitted to the Memorial from contractors via Aconex.<sup>87</sup> Once the variation is approved by the delegate, the contract variation is executed by the Memorial and the contractor. Aconex is referenced in contracts as where 'All Project communications and

<sup>86</sup> Department of Finance, *Resource Management Guide No. 423, Procurement Publishing and Reporting Obligations*, May 2020, available from <https://www.finance.gov.au/publications/resource-management-guides/procurement-publishing-and-reporting-obligations-rmg-423> [accessed 9 January 2024].

<sup>87</sup> Aconex is a construction industry project management software package used by the Memorial to communicate with head contractors.

document control will be managed'. The Memorial will receive a digital Aconex archive on completion of the defects and liability period (estimated April 2028). Aconex is not an official electronic digital records management system (EDRMS) for the Memorial (see paragraph 2.34). The Memorial's documentation manual requires key documents, including emails and design drawings, to also be saved in SharePoint folders. The ANAO observed that these records were not consistently saved in an approved system at the time of creation, including approvals for contract variations and relevant supporting documentation.

4.56 In Chapter 2, the ANAO recommended that the Memorial establish controls ensure record keeping policies are being followed (see paragraph 2.37). This includes ensuring key correspondence and documents from Aconex are stored on contract files.

### **Value for money assessment for contract variations**

4.57 The Memorial's Cost Management Plan was updated in December 2022 to specify that a value for money assessment is required for contract variations. A variation approval template was developed that includes assessments of risk and value for money. The value for money assessment includes consideration of safety, value and competition.

4.58 Of the sample of 63 variations tested by the ANAO from April 2018 to June 2023, 57 required a value for money assessment as the contract value increased. Three variations used the variation template introduced in December 2022 and 16 had other forms of evidence of value for money considerations. The Memorial advised that the remaining 38 (60 per cent) variations had 'no specific value for money document'. Of the 11 sampled variations undertaken after the December 2022 update to the Contract Management Plan, six had a value for money assessment.

4.59 The ANAO identified examples of value for money for variations being assessed largely on the incumbency of the contractor, which did not sufficiently demonstrate value for money.

- 'Value for money was assessed in the original engagement of Built Pty Limited, who were engaged on their capability, experience and competitive pricing. With the inclusion of additional services, the Memorial have continued to work closely with the Supplier to ensure that the services are being provided on a Value for Money (VFM) basis'.
- 'Variation of the contract provides efficiencies due to Lendlease already being established on site'.
- 'Based on the original competitive tender process and TTW's performance to date, that the contract extension represents value for money'.
- '360 Degree Fire has already been engaged to complete similar works onsite. As such they are in the best position to complete investigative and subsequent demolition & make good works as they have the greatest familiarity with the area and system to date'.

4.60 Value for money assessments for contract variations have not been consistently undertaken. Assessments that were completed did not always demonstrate how value for money would be achieved. The ANAO recommended in Chapter 3 (see paragraph 3.76) that the Memorial

ensure that it documents how value for money has been considered and achieved in procurement and contract variations.

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A handwritten signature in black ink, appearing to read 'Rona Mellor'. The signature is fluid and cursive, with a large loop at the start of the first name.

Rona Mellor PSM  
Acting Auditor-General

Canberra ACT  
11 April 2024

# Appendices

## Appendix 1 Entity responses



15 March 2024  
RPTS-62-8498

Ms. Rona Mellor PSM  
Acting Auditor-General  
Office of the Auditor-General  
Australian National Audit Office  
GPO Box 707  
Canberra ACT 2601

Dear Auditor-General

### **Proposed Report – Management of the Australian War Memorial's Development Project**

Thank you for your letter of 20 February 2024 and the opportunity to provide a response to the Australian National Audit Office (ANAO) *Proposed Report – Management of the Australian War Memorial's Development Project* (the Report).

The Australian War Memorial (the Memorial) welcomes the ANAO's audit as a timely opportunity, at the halfway point of the Development Project (the Project), to assess, identify and review both what it has done well and where it can improve its management of the Project.

As the Report itself highlights the Memorial's Development Project is one of national significance, one that will ensure we have the necessary space to tell our nation's continuing service stories as they commemorate and understand Australia's experience of war and operations for generations to come.

Since commencing in 2019 the Project has faced unprecedented and unforeseeable external challenges such as COVID-19 and record high construction sector inflation – whilst simultaneously needing to be conducted in a manner that allows the Memorial to welcome more than 1 million Australians through our doors each year to remember those who have served.

The Memorial therefore welcomes the primary finding of the Report that it has established 'largely effective' frameworks for project management, procurement and contract management within that uniquely challenging context.

Within those overall positive findings the Memorial acknowledges the areas, particularly in process and documentation, where the Report finds improvements could be made to increase public confidence in procurement, records of decisions and address potential perceptions of conflict of interest.

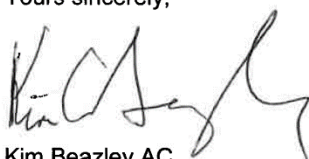
GPO Box 345  
Canberra ACT 2601  
tel: (02) 2643 4211  
web: [www.awm.gov.au](http://www.awm.gov.au)

The Memorial agrees to implement the five recommendations made within the Report on these matters. Indeed, as noted in *Appendix 2 Improvements observed by the ANAO*, the Memorial has addressed many of these findings already and we are now working to close out the final recommendations.

The Memorial believes the primary findings of the Report will appropriately provide Government with assurance that, through clearly documented strategic planning, innovative solutions and constant improvement, it is successfully managing the continued challenges facing any major project at this time in order to deliver world class outcomes for veterans, their families and all Australians.

Thank you for your consideration of this matter.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Kim Beazley', with a stylized flourish at the end.

Kim Beazley AC  
Chairman, Council of the Australian War Memorial



**Australian Government**  
**Department of Finance**

**Jenny Wilkinson PSM**  
**Secretary**

Our Ref: EC24-000242

Ms Rona Mellor PSM  
Acting Auditor-General  
Australian National Audit Office  
GPO Box 707  
CANBERRA ACT 2601

Dear Ms Mellor *Rona*

Thank you for your letter dated 20 February 2024 regarding the Australian National Audit Office's (ANAO's) section 19 audit report on the *Management of the Australian War Memorial's Development Project* and for the opportunity to comment.

The Department of Finance (Finance) agrees in principle to recommendation 6 of the report and notes the opportunity for improvement. Please find below Finance's response for inclusion in the final report.

*Recommendation no. 6*

***Agreed in principle***

*The Department of Finance (Finance) agrees with the ANAO recommendation that contracts which are below the relevant reporting threshold and subsequently amended such that their value is at or above the relevant reporting threshold should be reported on AusTender. To give effect to this recommendation, Finance will update Resource Management Guide 423 Procurement and Reporting Obligations (RMG 423) to clarify this requirement. Implementing this clarification will enhance the transparency of information published on AusTender and will meet the intent of the Recommendation.*

*Finance notes that the impact of the ANAO's recommendation that reporting **all** contract variations on AusTender (once the contract value is over the reporting threshold), would have a significant administrative impact on Commonwealth entities. Under existing reporting requirements, contract amendments of less than \$10,000 do not require an update to the published contract value on AusTender until the aggregate value of all unreported amendments is \$10,000 or greater. In updating RMG 423, Finance will clarify that the \$10,000 aggregate reporting value will remain.*

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*Opportunity for improvement – Paragraph 2.46*

***Noted.***

*Finance notes that any amendment to the Australian Government's Assurance Reviews Policy is a matter for consideration by Government. Finance will brief the Government on the ANAO's findings.*

Yours sincerely



Jenny Wilkinson  
Secretary

20 March 2024

## Appendix 2 Improvements observed by the ANAO

1. The existence of independent external audit, and the accompanying potential for scrutiny improves performance. Improvements in administrative and management practices usually occur: in anticipation of ANAO audit activity; during an audit engagement; as interim findings are made; and/or after the audit has been completed and formal findings are communicated.
2. The Joint Committee of Public Accounts and Audit (JCPAA) has encouraged the ANAO to consider ways in which the ANAO could capture and describe some of these impacts. The ANAO's Corporate Plan states that the ANAO's annual performance statements will provide a narrative that will consider, amongst other matters, analysis of key improvements made by entities during a performance audit process based on information included in tabled performance audit reports.
3. Performance audits involve close engagement between the ANAO and the audited entity as well as other stakeholders involved in the program or activity being audited. Throughout the audit engagement, the ANAO outlines to the entity the preliminary audit findings, conclusions and potential audit recommendations. This ensures that final recommendations are appropriately targeted and encourages entities to take early remedial action on any identified matters during the course of an audit. Remedial actions entities may take during the audit include:
  - strengthening governance arrangements;
  - introducing or revising policies, strategies, guidelines or administrative processes; and
  - initiating reviews or investigations.
4. In this context, the below actions were observed by the ANAO during the course of the audit. It is not clear whether these actions and/or the timing of these actions were planned in response to proposed or actual audit activity. The ANAO has not sought to obtain assurance over the source of these actions or whether they have been appropriately implemented.
  - On 17 April 2023, the Australian War Memorial (the Memorial) implemented changes to conflict of interest declaration arrangements requiring all Development Project personnel to sign a confidentiality and conflict of interest declaration, with guidance on matters for disclosure including:
    - Employment within past 5 years with construction, design or project management companies;
    - Familial relationship(s) with senior executive(s) of a major supplier that may profit from involvement in the Project;
    - Familial relationships with government decision makers (Minister, Departmental Secretary);
    - Holding of shares or other financial interest in an entity that may profit from involvement in the Project;
    - Membership of a board, council or other oversight body for an industry advocacy body, major supplier or a sub-contractor to same.
  - These declarations were placed into a new Integrated Management Team (IMT) Conflict of Interest Register where risk was assessed and strategies for management proposed.

- On 1 August 2023, the Australian War Memorial recommenced publishing Annual Procurement Plans on AusTender, consistent with requirements of paragraph 7.8 of the Commonwealth Procurement Rules.<sup>88</sup>
- On 3 October 2023, the Memorial implemented further changes to the conflict of interest arrangements for the procurement for Main Works Package 4. This required anyone 'who has the potential to influence the outcome of the procurement during preparation, tender and evaluation phases' to sign a confidentiality and conflict of interest declaration.
- On 10 November 2023, the Memorial advised that high value, high risk or complex procurements now required the completion of the procurement team's Approval to Proceed form. This form records delegate approval to approach the market, including estimated value of the procurement and procurement method as required by the Commonwealth Procurement Rules.
- On 29 November 2023, the Project Steering Committee approved a 'Project Probity Management Plan' developed in consultation with the probity advisor. This includes an explanation of probity rules, risks and management strategies for potential probity concerns. It also contains examples of potential risks for personnel to better understand how probity risks may emerge and how to manage them.
- On 30 November 2023, the Memorial advised that it has implemented contract management processes to apply the Workplace Gender Equality Procurement Principles. The Memorial has assessed contractor compliance with the *Workplace Gender Equality Act 2012* and amended contract management procedures to annual obtain contractor compliance letters from the Workplace Gender Equality Agency.<sup>89</sup>
- On 31 January 2024, the Memorial updated the Integrated Management Team responsibilities matrix. This added responsibilities for probity management and contract compliance including insurances, licences, veterans' engagement, Indigenous Procurement Policy and Workplace Gender Equality Procurement Principles.

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88 Commonwealth Procurement Rules 13 June 2023.

89 The Workplace Gender Equality Procurement Principles are a procurement connected policy associated with the *Workplace Gender Equality Act 2012*. Further information see <https://www.wgea.gov.au/what-we-do/compliance-reporting/wgea-procurement-principles> [accessed 30 November 2023].

## Appendix 3 Development Project contracts

1. The ANAO identified 207 contracts valued at \$442,831,605 to June 2023 that were the population used as the basis for sample testing.
2. Between June and 31 October 2023 there were 14 additional contracts. As at 31 October 2023 there are a total of 221 contracts related to the Australian War Memorial's Development Project valued at a \$454,614,555.37 (GST inclusive). This includes contracts entered into since 30 June 2017, including for the Initial Business Case and Detailed Business Case.
3. Table A1 below lists the 59 Development Project related contracts at or above the \$400,000 (GST inclusive) AusTender reporting threshold<sup>90</sup>, valued at \$440,560,981.50 (GST inclusive). The AusTender Contract Notice ID has been included where reported.
4. The remaining 162 contracts, each under the \$400,000 reporting threshold, had a total combined value of \$14,053,573.87 (GST inclusive).

**Table A.1: High value contracts<sup>a</sup>**

Description as provided to AusTender or ANAO	Supplier	AusTender contract notice ID <sup>a</sup>	ANAO assessment of AusTender reporting	Contract value at 31 October 2023 (GST inclusive) (\$)
Main Works Package 3 Contract — A/Hall & Glazed Link	Lendlease Building Pty Ltd	CN3928114	◆	127,027,800.00
Main Works Package 1 Contract — SE and Main Building	Kane Constructions Pty Ltd	CN3919234	◆	83,167,736.75
Main Works Package 2 Contract — Bean and CEP	Hindmarsh Construction Australia Pty Ltd	CN3909828	◆	82,878,024.40
Early Works 4 — Civil Works and Bulk Excavation	Demolition Environmental Civil Contractors Pty Ltd	CN3821148	◆	21,505,000.00
Poppy's Carpark Project	Lendlease Building Pty Ltd	CN3647980	◆	19,990,931.65
Early Plant and Materials Procurement Agreement	Lendlease Building Pty Ltd	CN3875035	◆	17,272,385.50 <sup>b</sup>
Project Management Services	TSA Management (Act) Pty Ltd	CN3611773	■	16,865,026.17
Early Works 2 — Services Relocation & Ancill Works	Kane Constructions Pty Ltd	Not required (see paragraph 4.50)		8,074,000.00

<sup>90</sup> The Australian War Memorial AusTender reporting threshold from section 7.19 of the Commonwealth Procurement Rules is \$400,000 for non-construction services and \$7.5 million for construction services.

Description as provided to AusTender or ANAO	Supplier	AusTender contract notice ID <sup>a</sup>	ANAO assessment of AusTender reporting	Contract value at 31 October 2023 (GST inclusive) (\$)
Development of the 2nd Pass Business Case for the AWM Master Plan	GHD Pty Ltd	CN3482050	◆	7,898,110.00
Exhibition Design Packages 2 and 5	Pico Australia Pty Ltd	CN3768603	◆	6,374,152.84
Architectural Design Package 3 — Anzac Hall & Atrium	Philip Cox & Partners	CN3629812	■	3,973,052.67
Design Package 5 — Bean Bld Ext and Research Centre	Newpolis Pty Ltd	CN3629817	◆	3,717,122.20
Structural Engineering Services	TTW (ACT) Pty Ltd	CN3628378	◆	3,539,054.92
Mechanical Engineering Services (including Vertical Transport)	N D Y Management Pty Ltd	CN3628379	◆	3,173,062.48
Architectural Design Package 4 — Southern Entrance	Scott Carver Pty Ltd	CN3629813	■	3,056,835.38
Quantity surveying services	WTP Australia Pty Ltd	CN3629818	◆	2,548,078.50
Architectural Services — Main Building Refurbishment	Guida Moseley Brown Pty Ltd	CN3663730	◆	2,345,726.35
Electrical Engineering Services	N D Y Management Pty Ltd	CN3628511	◆	2,308,559.00
Asbestos Removal & Stonework	Puch Construction And Building Pty Ltd	CN3761098	■	1,946,657.04
Exhibition Design Packages 1 and 4	X Squared Design Pty Ltd	CN3768602	◆	1,930,710.10
Civil Engineering Services	TTW (ACT) Pty Ltd	CN3628376	◆	1,905,964.50
Architectural Design — Integration Architect	DJAS Architecture Pty Ltd	CN3603530	◆	1,696,495.35
Communications and Security Design Services	AECOM Australia Pty Ltd	CN3628519	◆	1,604,776.80
Hydraulic Engineering Services	N D Y Management Pty Ltd	CN3628512	◆	1,490,986.71

Description as provided to AusTender or ANAO	Supplier	AusTender contract notice ID <sup>a</sup>	ANAO assessment of AusTender reporting	Contract value at 31 October 2023 (GST inclusive) (\$)
Building Certifier and Access Consultant	Philip Chun Bc NSW Pty Ltd	CN3697723	■	1,235,091.10
Early Works 1 — Project Perimeter Hoardings	R & J Building Services Pty Ltd	Not required		1,202,752.32
Early Works 3 — Demolition of Anzac Hall	Demolition Environmental Civil Contractors Pty Ltd	Not required		1,135,020.26
Stone Removal and Storage Contractor	Puch Construction and Building Pty Ltd	Not required		1,124,307.17
Fire Protection Systems Design Services	N D Y Management Pty Ltd	CN3628516	◆	1,117,361.03
Project Manager to assist with Detailed Business Case	Xact Project Consultants Pty Ltd	CN3496068	◆	999,999.00
Environmentally Sustainable Development	N D Y Management Pty Ltd	—	■	973,860.25
Project Management Services	Oakton Contracting & Recruitment Pty Ltd	CN3628573	■	944,900.00
Temporary Personnel Services	Hays Specialist Recruitment (Aust) Pty Ltd	CN3945849	■	900,000.00
Enabling works internal fitout for Aircraft Hall	Built Pty Ltd	Not required		884,317.15
Redevelopment Stakeholder Event	Imagination (Australia) Pty Ltd	CN3520828	◆	852,365.03
Fire Engineering Services	Lucid Consulting Engineers (Act) Pty Ltd	CN3628513	◆	843,678.00
Facade Engineering Consultancy Services	Prism Design Pty Ltd T/A Prism Facades	CN3662147	◆	822,580.00
Cinematography w Animation Overlay LTO Dig Labels etc.	Lightwell Group Pty Ltd	CN3998236	◆	791,890.00
Digital Interactive with Mech/Physical Interface	Grumpy Sailor Creative Pty Ltd	CN3999896	◆	791,032.00

Description as provided to AusTender or ANAO	Supplier	AusTender contract notice ID <sup>a</sup>	ANAO assessment of AusTender reporting	Contract value at 31 October 2023 (GST inclusive) (\$)
Temporary Personnel Services	Hays Specialist Recruitment (Aust) Pty Ltd	Not required		790,560.12
LTO Mount Design and Fabrication — Tilt	Tilt Industrial Design Pty Ltd	CN4002092	◆	785,252.60
Architectural and Principal Design Consultant MWP3	DJAS Architecture Pty Ltd	CN3945679	■	699,600.00
Edge Switches for the Development Project	Data#3 Ltd	CN3943089	■	651,535.17
Development Project Documentary	Wildbear Entertainment Pty Ltd	CN3971986	◆	640,000.00
ICA Stage 2 — Main Works Packages Quality Assurance	A.G. Coombs Advisory Pty Ltd	—	■	635,640.50
Paver Remediation Works	The Trustee For Brema Trust Brema Group Pty Ltd	Not required		629,477.20
Public Realm Design Consultant	Turf Design Studio Pty Ltd	CN3675158	◆	617,498.86
LTO Mount Design and Fabrication	ACT Steelworks Pty Ltd	CN4002155	◆	586,157.00
Linear Video w Animation Overlay, Dig Interactives	Resolution Design Pty Ltd	CN3998238	◆	579,315.00
Public Realm Eastern Pathways	Complex Co Pty Ltd	Not required		553,983.05
Early services investigation and removals — will be subsumed into	Kane Constructions Pty Ltd	Not required		550,000.00
Main Building Soft Demolition Services	Built Pty Ltd	Not required		547,737.98
Connections to new CEP substation	Icon Distribution Investments Ltd & Jemena Networks Act P/L	Not required		536,692.31
Exhibition construction and fitout of Aircraft Hall	Built Pty Ltd	Not required		501,743.39
Temporary art storage	Castledex Pty Ltd	—	■	485,678.60

Description as provided to AusTender or ANAO	Supplier	AusTender contract notice ID <sup>a</sup>	ANAO assessment of AusTender reporting	Contract value at 31 October 2023 (GST inclusive) (\$)
Main Works Package 3 — Anzac Hall and Glazed Link Preferred Tenderer Deed	Lendlease Building Pty Ltd	CN3870125	◆	471,001.30
ICON infrastructure — Bean Building	Department Of Finance	Not required		442,802.27
Campbell High School Carpark Construction	Complex Co Pty Ltd	Not required		440,289.43
Temporary Personnel Services	Hays Specialist Recruitment (Aust) Pty Ltd	Not required		400,000.00
<b>Subtotal<sup>d</sup>: 59 high value contracts (above \$400,000 Commonwealth Procurement Rules (CPR) reporting threshold)</b>				<b>440,560,981.50</b>
<b>Subtotal: 162 lower value contracts (under \$400,000 CPR reporting threshold)</b>				<b>14,053,573.87</b>
<b>Total all contracts<sup>d</sup></b>				<b>454,614,555.37</b>

Key: ■ indicates contract either not reported within required 42 days (where there is an AusTender contract notice ID) or was not reported (where AusTender contract notice ID field is blank) and should have been reported as being above with the Commonwealth Procurement Rules \$400,000 threshold or \$7.5 million threshold for construction services.

◆ indicates reported on AusTender within 42 days.

Note: Includes data reported to 31 October 2023.

Note a: AusTender contract ID where reported or ANAO assessment of whether should have been reported.

Note b: \$11,893,385.90 of the value of the contract for the Early Plant and Materials Procurement Agreement was paid and the remaining \$6,460,216.50 was subsumed into the Main Works Package 3 contract (CN3928114).

Note c: Contract originally with Xact Project Consultants Pty Ltd until that company purchased by TSA Management.

Note d: Totals exclude \$11,893,385.90 from CN3875035 that was subsumed CN3928114.

Source: ANAO analysis of AusTender and Australian War Memorial data.

## Appendix 4 Changes to evaluation criteria

1. The Memorial undertook a two stage procurement process for the MWP, commencing with an open a Request for Expression of Interest (REOI1) to selected preferred tenderers for a Request for Tender (RFT) process. The Memorial subsequently undertook a second REOI process (REOI 2) for MWP 1 and 3 to increase the number of potential tenders for the RFT phase.
2. The Memorial was required to publish the RFT criteria at each REOI and RFT stage. The tables below set out what the RFT criteria were at different stages of the process.

**Table A.2: Non-weighted evaluation criteria for RFT at different procurement stages**

Non-weighted criteria	RFT criteria in REOI 1	RFT criteria in REOI 2	RFT criteria used
Respondent declaration	–	✓	✓
Respondent details	✓	✓	✓
Respondent viability	✓	✓	Changed to financial viability
Conflict of interest	✓	✓	✓
Works package nomination	✓	✓	–
Financial offering	✓	✓	–
Financial viability	–	–	✓
Insurances	–	–	✓
Relevant licences	–	–	✓
Confidential information	–	–	✓
Compliance with draft contract	–	–	✓
Compliance with preferred tenderer deed	–	–	✓
Environmental sustainability	–	–	✓

Key: ✓ means that this evaluation criteria was published at that stage of procurement.

Source: ANAO analysis.

**Table A.3: Weighted evaluation criteria for RFT at different procurement stages**

Weighted and financial criteria <sup>a</sup>	RFT criteria in REOI 1	RFT criteria in REOI 2	RFT criteria used
Project team and subcontractors	✓	✓	✓ (25%) <sup>b</sup>
Methodology and program	✓	✓	✓ (45%)
Detailed safety approach and risk assessment	✓	✓	✓ (10%)

Weighted and financial criteria <sup>a</sup>	RFT criteria in REOI 1	RFT criteria in REOI 2	RFT criteria used
Veterans engagement	✓	✓	✓ (10%)
Compliance with preferred tenderer deed and draft contract	✓	✓	–
Quality approach	–	–	✓ (10%)
Financial offering	–	–	✓ (not weighted)

Key: ✓ means that this evaluation criteria was published at that stage of procurement.

Note a: Weighting of 'weighted criteria' for RFT were not published at REOI.

Note b: The percentages show the weightings of criteria as published and used during the RFT.

Source: ANAO analysis.

3. The weightings of RFT criteria were released at RFT, not at either REOI 1 or 2.

4. Changes to evaluation criteria was released through AusTender to tenderers in the same manner throughout stages of procurement and at the same time for each tenderer. This satisfied CPR paragraph 10.14, regarding modification of evaluation criteria for procurement over the relevant threshold.

## Appendix 5 Conflict of interest declarations

**Table A.4: Activity specific conflict of interest declarations made across different stages of sampled procurement activities**

Procurement	Delegate	Advisor	TEC <sup>a</sup> chair	TEC members								
Main Works Package REOI <sup>b</sup>	✗ ▲	✗	✗ ■	✗	✓	-	-	-	-	-	-	-
REOI 2 for Main Works Packages 1 and 3	✗ ▲	✗	✓ ■ <sup>c</sup>	✗	✓ ■ <sup>c</sup>	-	-	-	-	-	-	-
Main Works Package 1 RFT <sup>d</sup>	✗ ▲	✗	✓ ■	✗	✓ ■	-	-	-	-	-	-	-
Main Works Package 2 RFT	✗ ▲	✗	✗ ■	✗	✗ ■	-	-	-	-	-	-	-
Main Works Package 3 RFT	✗ ▲	✗	✓ ■	✗	✓ ■	-	-	-	-	-	-	-
Early Works 4 Civil and Excavation	✗ ▲	✗	✗	✗	✗	-	-	-	-	-	-	-
Poppy's Carpark	✗ ■	✗	✓	✗ ■	✗	✗	-	-	-	-	-	-
Project Management Services	✗ ▲	✗	✗ ◆	✗ ◆	✗ ◆	-	-	-	-	-	-	-

Procurement	Delegate	Advisor	TEC <sup>a</sup> chair	TEC members								
Cost manager and quantity surveyor REOI	✗ ▲	✗	✗	✗	✗	-	-	-	-	-	-	-
Quantity surveying services RFT	✗	✗	✓	✓	✓	-	-	-	-	-	-	-
Engineering REOI	✗ ▲	✗	✗	✗	✗	-	-	-	-	-	-	-
Structural Engineering Services RFT	✗	✗	✓ ●	✓	✓ <sub>e</sub>	-	-	-	-	-	-	-
Electrical engineering services RFT	✗	✗	✓ <sub>e</sub>	✓	✓ ● <sub>e</sub>	-	-	-	-	-	-	-
Communications and security design services Engineering RFT	✗	✗	✓ <sub>e</sub>	✓	✓	-	-	-	-	-	-	-
Architectural REOI	✗ ▲	✓ <sub>f</sub>	✗	✓	✓	✓	✓	✓	✓	✓ ●	✓	✗
Architectural design package 1 RFT	✗	✓ <sub>f</sub>	✗	✗	✓	-	-	-	-	-	-	-
Architectural Design Package 4 Design Jury <sup>g</sup>	✗	✓ <sub>f</sub>	✗	✗	✗	✓	✓	-	-	-	-	-

Procurement	Delegate	Advisor	TEC <sup>a</sup> chair	TEC members								
Architectural Design Package 4 RFT	✗	✓ <sub>f</sub>	✗	✗	✗	-	-	-	-	-	-	-
Exhibition Design Packages 2 and 5	✗	✗	✓	✓	✓	✓	✓	✓	-	-	-	-
Stone removal and storage contractor	✗	✗	✗	✗	✗	-	-	-	-	-	-	-
Probity services 1 <sup>st</sup> contract	✗ ▲	✗	✗	✗	✗	-	-	-	-	-	-	-
Probity services 2 <sup>nd</sup> contract	→	→	→	→	→	-	-	-	-	-	-	-
Independent Advisor to the Memorial Development Committee	→	→	→	→	→	-	-	-	-	-	-	-
Independent Advisor to the Memorial Development Committee	→	→	→	→	→	-	-	-	-	-	-	-

Key:

- represents a Memorial employee/contractor who previously worked for company who submitted a REOI or RFT response, where the prior employment was not declared as real or apparent conflict of interest during the procurement activity.
- represents a Memorial employee/contractor with a declared but unmanaged conflict of interest.
- ▲ represents a Memorial Senior Executive Officer who did not have any conflicts to declare based on their annual declaration of interests.
- ◆ represents a Memorial employee/contractor with a current working relationship with a tenderer that was not declared as a real or apparent conflict of interest (see Case Study 2).

✖ represents a conflict of interest declaration not made before the assessment of tender submissions took place.

✓ represents a conflict of interest declaration made before the assessment of tender submissions took place.

→ represents those contracts awarded without a procurement process and therefore no conflict of interest declarations made.

Note a: Tender Evaluation Committee (TEC). Most procurements had a TEC chair and two other TC members.

Note b: Request for Expression of Interest (REOI).

Note c: A general declaration regarding procurement activities for the main works packages was made during the second Request for Expression of Interest which related to MWP 1 and 3, prior employment conflict not declared.

Note d: Request for tender (RFT).

Note e: Conflict of interest not declared at REOI stage of this procurement.

Note f: A declaration of interest was made by a procurement advisor during the REOI for Architectural design packages, covering later stages of procurement for the Architectural Design Packages. Other advisors did not make conflict of interest declarations.

Note g: Architectural Design Package 4 had multiple stages of assessment including REOI and RFT. The RFT evaluation was a two stage process with an initial consideration by a design jury who made a recommendation and then a technical assessment. This means that there were three committees one at REOI and two during RFT (Design Jury and Tender Evaluation Committee).

Source: ANAO analysis.

## Appendix 6 Development Project images

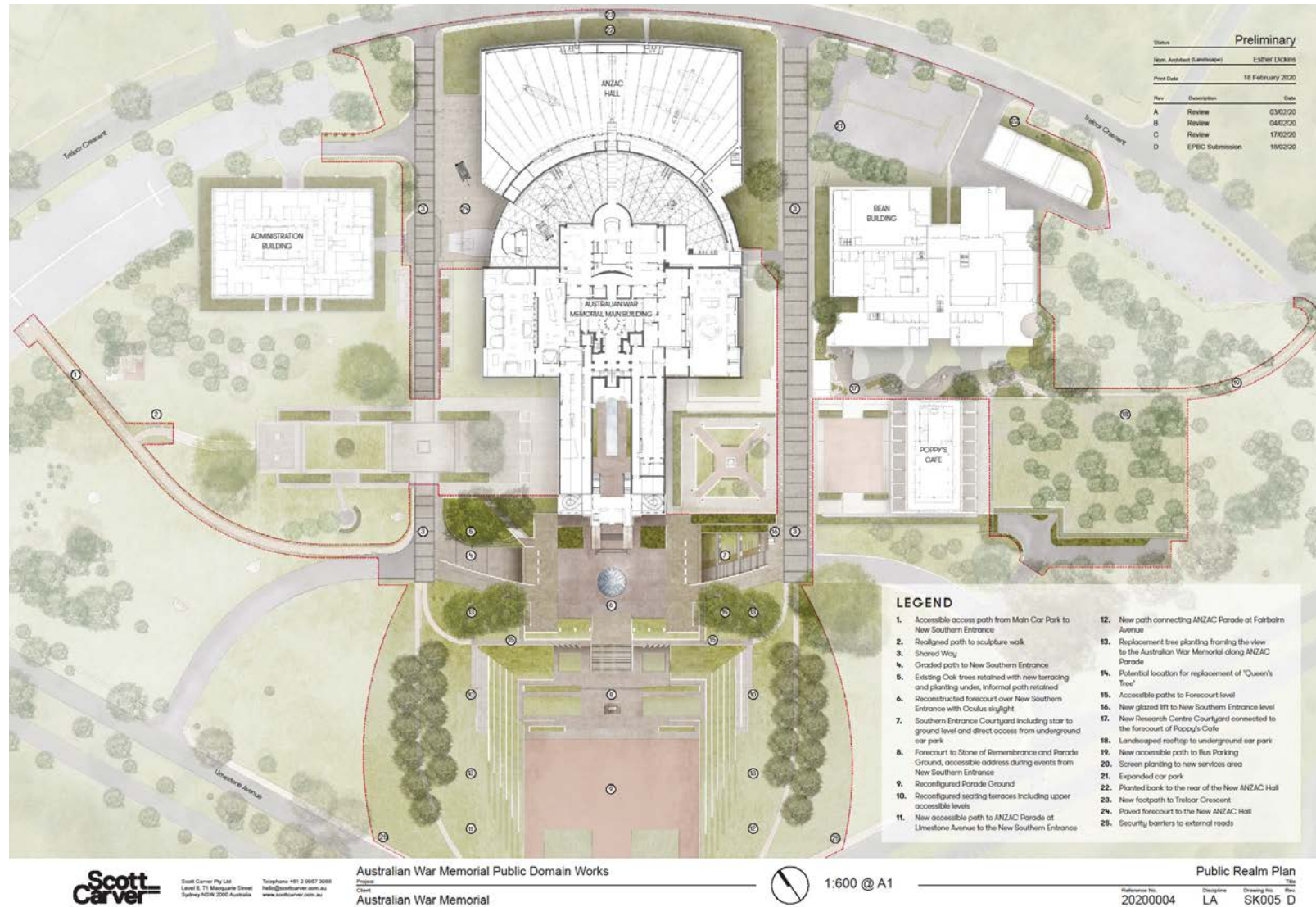
1. The Australian War Memorial provided the ANAO with the following images of the Development Project.

**Figure A.1: Development Project render of design viewed from above Anzac Avenue**



Source: Australian War Memorial.

Figure A.2: Development Project precinct public realm plan view



Source: Scott Carver Architecture.

**Figure A.3: Aerial view of the Development Project 24 June 2023**



Source: SKYview aerial photos.

**Figure A.4: Aerial view of the Development Project 26 November 2023**



Source: SKYview aerial photos.

**Figure A.5    Aerial view of the Development Project 25 February 2024**



Source: SKYview aerial photos.