

Senate Finance and Public Administration Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

**Portfolio: Prime Minister and Cabinet
Agency: Australian National Audit Office**

Consideration of Budget Estimates: Thursday, 29 May 2003

Senator:

Senator Brandis

Hansard Page:

F&PA 468

Question

PM69

Senator Brandis suggested that the ANAO consider having the freehold of Centenary House valued.

Answer:

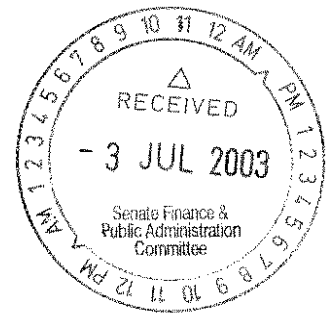
On the basis of the legal advice received that a valuation would be of academic interest only to the ANAO, the ANAO does not consider it appropriate to incur the cost of a valuation of Centenary House at this time.

A copy of the legal advice is attached for the information of the Committee.



OLIVER WINDER
Deputy Auditor-General

MALLESONS STEPHEN JAQUES



By email

17 June 2003

Mr Russell Coleman
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Copy to

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Dear Russell and Arthur

ANAO Lease from John Curtin House Pty Limited (Lease) - Centenary House (Property) Further Advice

Thank you for meeting with me on Wednesday 11 June 2003.

1 Your Question

You have asked us advise on:

- (a) The nature of the registered mortgage on the title for Centenary House (**Mortgage**) and the impact that the Mortgage may have on the Lease; and
- (b) The advantages (if any) of obtaining a valuation of the Property at this time.

2 Our Advice

The terms of our advice are provided in the enclosed Advice Schedule.

3 Summary

We advise that:

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- (a) whilst the Mortgage predates the commencement of the Lease by approximately 18 months, the only public document (which is a standard mortgage document) available for inspection in relation to the Mortgage does not overtly link the terms of the Mortgage and the terms of the Lease;
- (b) the moneys secured by the Mortgage may (or are likely to) be one of many costs that the lessor would have taken into account when setting the initial rent for the Lease;
- (c) a valuation of the Property is ordinarily obtained by a prospective purchaser when assessing the likely purchase price of a property;
- (d) if the ANAO were to obtain a valuation of the Property at this point in time, the valuation would take into account the respective values of the land, structures on the land and income generated from the Property. As a result, the valuation of the Property would probably be increased due to the rent currently payable under the Lease which far exceeds the market;
- (e) as the rent structure under the Lease is not tied to the valuation of the Property, and as the ANAO is not intending to purchase the Property, the valuation would be of academic interest only to the ANAO.

Please call me should you have any questions or wish to discuss any aspect of this advice.

Yours sincerely

[Sgd] Mallesons Stephen Jaques

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ADVICE SCHEDULE

1 THE MORTGAGE

- 1.1 A search of the title for Centenary House discloses a mortgage between the lessor as mortgagor and Macquarie Bank Limited dated 23 April 1992 (**Mortgage**). The Mortgage predates the Lease by approximately 18 months.
- 1.2 The Mortgage is in a standard form, and contains no commercial terms relating to the loan. A copy of the Mortgage is attached.
- 1.3 The Mortgage refers to other documentation which evidences the loan between the parties. No other documents (in particular, the loan agreement which might be expected to contain the commercial details of the loan) are available for public inspection.
- 1.4 A statutory declaration by Robert Hogg which is annexed to the registered document notes that the Mortgage was required by the lessor to enable it to repay money borrowed for the purpose of acquiring the property and to enable it to comply with the building and development provisions of the crown lease.
- 1.5 A search of the title for the Land at the time the Lease was entered into would have revealed that a mortgage between the parties existed, however it would not have provided the ANAO with any evidence of a link at that time between the Mortgage and the Lease.
- 1.6 The utility to the ANAO of the Mortgage is limited because:
 - (a) there is no evidence that there is a direct link between the repayments under the Mortgage and the rent payable under the Lease; and
 - (b) the moneys secured by the Mortgage represent only one of various costs to the lessor which would have been taken into account when setting the initial rent under the Lease. There is no indication in the Mortgage that the moneys it secures would have been the major cost to the lessor when it set the initial rent for the Lease. There is therefore no evidence to link the repayment obligations under the Mortgage to the annual increases in rent of 9% under the Lease.
- 1.7 A copy of the Mortgage was not obtained before we gave our earlier advice in January 2001 on the basis that it is not unusual (indeed, it is invariably the case) that properties of this nature are mortgaged. The fact that there is a prior registered mortgage on the title also does not affect the validity of the Lease.

If there were a direct link between the repayments under the Mortgage and the rent levels under the Lease, this information would not have been available to the ANAO at the time the Lease was executed, without the lessor's consent. It would be unlikely in the extreme that the lessor would have given that consent, had it been sought.

- 1.8 In summary:
 - (a) the Mortgage predates the Lease by approximately 18 months;
 - (b) the only document available to the public relating to the Mortgage is a standard document which does not disclose any of the commercial terms of the transactions secured by the Mortgage; and

- (c) on this basis the ANAO (and indeed any other member of the public with the exception of the lessor) is unable to establish any connection between the moneys secured by the Mortgage and the terms of the Lease.

2 PROPERTY VALUATION

- 2.1 We understand that a question has been raised as to whether the ANAO should obtain a valuation of the Property as at June 2003.

As discussed with you, a valuation of the Property is ordinarily obtained when a party wishes to make an offer to purchase the Property. A valuation would assist the potential purchaser to set the parameters of a purchase price for the Property.

- 2.2 If the ANAO were to obtain a valuation of the property as at June 2003, the results would ordinarily establish the value of:

- (a) the land on which the structure is built; and
- (b) the structure on the land; and
- (c) the income generated by the lease(s) granted over the Property.

Given that the rent amount currently payable by the ANAO is likely to be much higher than the market rent for the Property, it is probable that the overall valuation would be higher than would otherwise be the case if the rent payable under the Lease were set at the current market rent.

- 2.3 Such a valuation would be of academic interest only to the ANAO. The rent structure in the Lease is not linked to the value of the Property as a whole, and we understand that the ANAO has no desire to purchase the Property.