

**INQUIRY INTO THE CENTENARY HOUSE LEASE**

Before the Hon David Hunt AO QC

Held at Level 5,  
55 Market Street, Sydney

On Friday, 29 October 2004 at 10am  
(Day 36)

1 THE COMMISSIONER: I want to get two exhibits in before  
2 we start so that the numbering will keep as we have  
3 anticipated. The first is a letter from Mr Ian McPhee,  
4 the Deputy Secretary of the Department of Finance and  
5 administration, dated 15 October and addressed to the  
6 solicitor for the inquiry. That will become confidential  
7 exhibit 100. The further document headed attachment B  
8 will become confidential exhibit 101.

9  
10 **EXHIBIT #100 CONFIDENTIAL LETTER FROM MR IAN McPHEE, THE**  
11 **DEPUTY SECRETARY OF THE DEPARTMENT OF FINANCE AND**  
12 **ADMINISTRATION, DATED 15/10/2004 ADDRESSED TO THE**  
13 **SOLICITOR FOR THE INQUIRY, BARCODED EXH.100.0001**

14  
15 **EXHIBIT #101 CONFIDENTIAL FURTHER DOCUMENT HEADED**  
16 **"ATTACHMENT B" BARCODED EXH.101.0001**

17  
18 THE COMMISSIONER: Access to those documents will be  
19 granted to each of John Curtin House Limited and Bovis  
20 Lend Lease Pty Limited upon a written undertaking being  
21 given on behalf of that company by a responsible officer  
22 that they will not be disclosed by it to persons other  
23 than its counsel, solicitor and company representatives  
24 taking part in the Inquiry without my leave. Such leave  
25 will be granted only after the Commonwealth has been given  
26 the opportunity to express its views. Those two documents  
27 were subject to the public interest immunity claims.

28  
29 MR FOSTER: I call Mr McCann, if the Commission pleases.

30  
31 **<NOEL EDWARD MCCANN, sworn: [10.02am]**

32  
33 **<EXAMINATION BY MR FOSTER:**

34  
35 MR FOSTER: Q. Is your full name Noel Edward McCann?  
36 A. It is.

37  
38 Q. Do you live at 39 Boobialla Street, O'Connor, in the  
39 Australian Capital Territory?  
40 A. Yes, I do.

41  
42 Q. Are you a property adviser?  
43 A. Yes.

44  
45 Q. We will come back to that in a minute. Have you been  
46 good enough to sign two witness statements, I think one is  
47 dated 28 October, 2004, and I think the other is also

1 dated 28 October; is that right?  
2 A. 27 October is my statement. It doesn't have the  
3 letterhead of the Inquiry, and the Inquiry letterhead  
4 statement, which was supplementary, was dated 28 October.

5  
6 THE COMMISSIONER: We had better mark them.

7  
8 MR FOSTER: I am going to do that.

9  
10 Q. I just want to ask you this: are the matters of fact  
11 that are dealt with in there, to the best of your  
12 recollection, true?

13 A. Yes.

14  
15 Q. Are the opinions and views that you have expressed in  
16 those statements views that you hold?

17 A. Yes.

18  
19 MR FOSTER: I tender the statements, Commissioner.  
20 Perhaps they should be marked separately. I think in the  
21 one case there are exhibits to the statement, which is the  
22 one dated 27 October, and I tender those exhibits as part  
23 of the tender of that statement, and I also tender as part  
24 of the tender of the other statement all of the documents  
25 referred to therein.

26  
27 **EXHIBIT #102 STATEMENT OF NOEL McCANN DATED 27/10/2004,**  
28 **BARCODED WITS.036.0001 AND DOCUMENTS REFERRED TO IN**  
29 **STATEMENT**

30  
31 **EXHIBIT #103 STATEMENT OF NOEL McCANN, BARCODED**  
32 **WITS.037.0001, DATED 28/10/2004 AND DOCUMENTS REFERRED TO**  
33 **IN STATEMENT**

34  
35 THE WITNESS: Could I just have a moment, I'm just  
36 checking the pages.

37  
38 MR FOSTER: Yes, certainly.

39  
40 THE WITNESS: I'm sorry to delay the Commission, I  
41 initial every page, but obviously on the one that doesn't  
42 have the inquiry page, I didn't initial page 23, which I'm  
43 now about to do.

44  
45 MR FOSTER: Right.

46  
47 Q. May I ask you this: have you got a copy of each of

1 those statements, plus the folders with the exhibits for  
2 the one that has exhibits, and the documents referred to  
3 for the one that doesn't?  
4 A. I do, and I have a forest of paper.  
5  
6 Q. You just spent a couple of minutes carefully checking  
7 those statements, did you not?  
8 A. Flicking through the pages.  
9  
10 Q. And you indicated that signing every page was  
11 something you hadn't done on one of them; is that right?  
12 A. I missed page 23, is my recall of what I just said.  
13  
14 Q. The signing of every page of documents you send out  
15 is a habit you have in business too, isn't it?  
16 A. Yes.  
17  
18 Q. That reflects a very careful attitude to everything  
19 you do, doesn't it?  
20 A. Careful or cautious, yes.  
21  
22 Q. It is often hard to comment on yourself, but you are  
23 a very meticulous person, aren't you?  
24 A. I try to be.  
25  
26 Q. When you do things you do them to the best of your  
27 ability, having regard to the task which you are  
28 undertaking?  
29 A. That's my will.  
30  
31 Q. Would you have in hand, please, the statement which  
32 is the factual statement, and I'm not sure, Commissioner,  
33 now, which exhibit number they have.  
34  
35 THE COMMISSIONER: The one which is a response to  
36 Mr Egan's is exhibit 102. The one dated today is 103.  
37  
38 THE WITNESS: I am sorry, I didn't hear that.  
39  
40 THE COMMISSIONER: The earlier statement is exhibit 102.  
41 The statement dated today is exhibit 103.  
42  
43 THE WITNESS: Thank you.  
44  
45 MR FOSTER: Q. Could you have exhibit 103 to hand,  
46 which is the one dealing with the fax and the documents  
47 referred to in it.

1 A. Yes.  
2  
3 Q. You see in paragraph 4 of that statement you refer to  
4 a note of a meeting that you apparently had with Mr Hogg  
5 on 22 June 1990?  
6 A. Yes.  
7  
8 Q. Do you have any recollection of speaking with him  
9 prior to that date about the prospect of the ALP or John  
10 Curtin House Limited undertaking a new development in the  
11 Barton area?  
12 A. Yes, and I believe point 3, above point 4, actually  
13 says that.  
14  
15 Q. Do you recall how many times you spoke with him about  
16 that matter before 22 June?  
17 A. No, I'm sorry, I don't.  
18  
19 Q. Do you recall beyond what you have written in  
20 paragraph 3 what the substance of any of those discussions  
21 was?  
22 A. I believe I recall some, yes.  
23  
24 Q. Can you tell us what you can remember?  
25 A. I think Mr Hogg was wishing to investigate if in fact  
26 a new building could be secured for John Curtin House as  
27 an investment and as a potential new headquarters for the  
28 federal ALP.  
29  
30 Q. Were matters of that kind discussed with you on more  
31 than one occasion between, say, the beginning of 1990 and  
32 June 1990?  
33 A. Without any clarity of the number of times, yes,  
34 there were a number of times where it was discussed.  
35  
36 Q. At that time did you have a business relationship  
37 with John Curtin House Limited?  
38 A. Yes.  
39  
40 Q. What was that relationship?  
41 A. As indicated in paragraph 2, I, since about 1979,  
42 provided property advice on rental determinations, on  
43 buying and selling a property in Canberra. Most of the -  
44 I don't believe I did any advising outside of Canberra at  
45 that time.  
46  
47 Q. Was your work for the ALP in that 11-year period or

1 so fairly described as advice work?  
2 A. Yes, in terms of the buying and selling it would be  
3 advice work, and in terms of the rental reviews at John  
4 Curtin House, 22 Brisbane Avenue, Barton, partial advice  
5 and partial acting on that advice in negotiation with the  
6 tenant.  
7  
8 Q. By the way, are we correct in assuming that John  
9 Curtin House Limited was built before 1979 or was it  
10 built --  
11 A. No, John Curtin House is a building. John Curtin  
12 House Limited is the holding company, as I understand it.  
13  
14 Q. Sorry, yes.  
15 A. John Curtin House, 22 Brisbane Avenue, Barton, to the  
16 best of my knowledge, was built about 1974, 1975.  
17  
18 Q. So your involvement with it came a little after its  
19 construction; is that right?  
20 A. Yes. About 1979 is my best memory.  
21  
22 Q. How many rent reviews did you conduct on behalf of  
23 the company in respect of that building between 1979 and  
24 1990?  
25 A. Probably one because they were either - I don't  
26 recall exactly, but I could refer to some notes in terms  
27 of the rental schedules. It was either a two- or  
28 three-year review. My best memory is it was a three-year  
29 review of rent.  
30  
31 Q. Who was the tenant?  
32 A. The Department of Primary Industry.  
33  
34 Q. How many tenants were there in the building John  
35 Curtin House throughout that period '79 to '90?  
36 A. I need to back up and clarify. You are right, there  
37 were more than one tenant. There were three tenants in  
38 the building at that time. There was the Department of  
39 Primary Industry on the upper levels - all the upper  
40 levels - and on the ground floor, the Commonwealth Bank  
41 and I can't remember what name Qantas was using at the  
42 time, but it was either Australian Airlines or TAA, or  
43 whatever.  
44  
45 Q. Were they the only tenants in the building in that  
46 11-year period that I referred to?  
47 A. The ALP was on the top floor.

1  
2 Q. Did you deal with each of those tenants in respect of  
3 lease negotiations on behalf of the company John Curtin  
4 House Limited?  
5 A. I believe I did - other than the ALP.  
6  
7 Q. Of course. You'd be talking to yourself, then,  
8 wouldn't you?  
9 A. Not to me, personally, myself, no.  
10  
11 Q. Is it right to suggest to you that you both  
12 negotiated the leases of the premises you have just  
13 referred to, to the tenants you have just referred to, as  
14 well as conducted one rent review in respect of one of  
15 those tenancies in the period '79 to '90?  
16 A. Yes, and I - I think I might have misinterpreted - I  
17 thought you said 1980, but did you say 1980 - between 1979  
18 and 1990.  
19  
20 Q. I did.  
21 A. I apologise, then, I gave you the wrong answer,  
22 because even at three years there would have been three or  
23 four rent reviews of the Commonwealth tenancy, the  
24 Department of Primary Industry, and there would have been  
25 rent reviews, three or four, of the Commonwealth Bank and  
26 Australian Airlines, or Qantas, what is now known as  
27 Qantas.  
28  
29 Q. So we had something like nine, 10 or 11 rent reviews  
30 in that 10- or 11-year period; is that right?  
31 A. Yes.  
32  
33 Q. Now, in respect of the original lease negotiations,  
34 is it right to put to you that you both advised John  
35 Curtin House Limited as to what they should try to achieve  
36 in the leases and acted on their behalf in negotiating the  
37 terms of those leases?  
38 A. Could I clarify, are you asking me at the beginning  
39 of John Curtin House at 22 Brisbane Avenue?  
40  
41 Q. I thought you had told us that you were involved in  
42 lease negotiations as well as rent reviews?  
43 A. Yes, but --  
44  
45 Q. And I am asking --  
46 A. But not at the initial. I thought we clarified  
47 earlier that I came after the building was - came into the

1 scene after the building was finished and leased up.  
2  
3 Q. Yes. But I must say I thought you had said, and I am  
4 quite happy for you to correct it if I have misunderstood  
5 it, that, nonetheless, you had been involved in some lease  
6 negotiations as distinct from rent reviews?  
7 A. But you asked me for John Curtin House Limited for  
8 the period up to 1990.  
9  
10 Q. Yes.  
11 A. And that's not - their property holdings during that  
12 period were not restricted in Canberra, to John Curtin  
13 House. They had another property for a time in the 80s  
14 and I was involved in leasing up some of that property.  
15  
16 Q. Were you involved in leasing up any part of the  
17 22 Brisbane Avenue property?  
18 A. Before 1990?  
19  
20 Q. Yes.  
21 A. I don't believe so.  
22  
23 Q. All right. In respect of lease negotiations you  
24 conducted for the other property, did you both give advice  
25 to the company and act as its agent in negotiating the  
26 lease terms?  
27 A. Certainly in terms of the first part of your  
28 proposition, yes. I never considered myself an agent,  
29 because I'm not an agent, in terms of real estate agent,  
30 but I acted in dealing with commercial property.  
31  
32 Q. I am quite happy to clear the word "agent" out of it  
33 if it offends you. You regard yourself as a valuer and a  
34 property consultant-cum-adviser, don't you?  
35 A. Loosely I call it a "land economist".  
36  
37 Q. You don't regard yourself as a run-of-the-mill  
38 common-or-garden real estate agent?  
39 A. Well, I'm not, because I don't hold a licence and I  
40 have never attempted to hold one.  
41  
42 Q. When I used the word "agent" a little while ago, I  
43 simply meant that you were acting for the company in the  
44 negotiations, representing the company?  
45 A. I was certainly representing the company, yes.  
46  
47 Q. All right. And when you acted on rent reviews, did

1 you also give advice to the company and represent the  
2 company at any rent review determinations?  
3 A. The language is a bit difficult. Valuers talk about  
4 determination when the valuers or the parties can't agree  
5 and therefore somebody is appointed to determine the rent,  
6 but in terms of negotiating the rent at the review, I  
7 represented the company.  
8  
9 Q. Right. That kind of activity was part of your  
10 ordinary business activities in the period '79 to '90,  
11 wasn't it?  
12 A. Yes.  
13  
14 Q. Had you had any involvement with Lend Lease as a  
15 group or any of the individual companies, as either an  
16 adviser or representative, prior to 1990?  
17 A. I don't recall exactly when I started giving some  
18 advice to Lend Lease on property matters in Canberra.  
19 Lend Lease personnel were known to me. I believe - I  
20 probably did give them advice from time to time on various  
21 projects, but I don't recall the time and I certainly  
22 haven't, before your question, thought about it for the  
23 purposes of this hearing.  
24  
25 Q. Before the meeting of 22 June 1990 that you had with  
26 Mr Hogg, had you had any discussions at all, yourself, or  
27 been present at any meetings or discussions with others,  
28 with representatives of the Department of Environment and  
29 Land Planning or other ACT government representatives,  
30 concerning the potential acquisition of a site for John  
31 Curtin House Limited in Barton?  
32 A. I don't believe so, but could I have a look at that  
33 document, because --  
34  
35 Q. The 22 June document?  
36 A. Yes.  
37  
38 Q. Certainly. For the transcript, it is  
39 ALP.004.0063-ALP.004.0064.  
40 A. Having the convenience of putting the statement  
41 together yesterday and reading these documents, my memory  
42 was that Mr Hogg reported in that document at 1(a) that he  
43 basically had started discussions with DELP and therefore  
44 that was reported at the meeting and news to me.  
45  
46 Q. It was news to you, was it?  
47 A. Yes, at the time.

1  
2 Q. Did you know whether or not Lend Lease had any  
3 involvement with or on behalf of Mr Hogg or the ALP or  
4 John Curtin House Limited in any of those discussions with  
5 DELP?  
6 A. No, I've got no knowledge of that.  
7  
8 Q. Would you go to a document which is referred to in  
9 paragraph 7 of the facts statement as the draft letter to  
10 be sent to DELP under cover of your letter of 3 August  
11 1990, and for the transcript, that is ALP.004.0044. Do  
12 you have that, Mr McCann? It is not a very good  
13 photocopy, but I think it is legible enough.  
14 A. 43 appears to be a letter - it is very faint on  
15 McCann & Associate's letterhead, of 3 August 1990.  
16  
17 Q. Yes. I am asking you about the enclosure, which is  
18 the draft, and that's 0044. It is on the screen, so you  
19 can line it up with the hard copy.  
20 A. Thank you.  
21  
22 Q. Do you have that now?  
23 A. Yes, I do.  
24  
25 Q. Ultimately you recall you did send this letter in  
26 this form, didn't you?  
27 A. Sorry?  
28  
29 Q. Ultimately you did send this letter in this form to  
30 DELP, didn't you?  
31 A. Yes, I believe so.  
32  
33 Q. You see there you have said in the letter:  
34  
35 *I refer to our face-to-face meeting during*  
36 *June 1990 and subsequent instructions from*  
37 *my client, Mr Bob Hogg, Secretary of the*  
38 *Australian Labor Party.*  
39  
40 Do you see that?  
41 A. Yes.  
42  
43 Q. Do you recall meeting with DELP representatives in  
44 June 1990?  
45 A. No, I don't recall, but I obviously did, otherwise I  
46 wouldn't have referred to a face-to-face discussion.  
47

1 Q. Do you have any recollection of who might have been  
2 present at such a meeting, for example, whether Lend Lease  
3 personnel were there?  
4 A. I don't believe - it was some time later that Lend  
5 Lease started to get involved, to my knowledge, but I have  
6 got no clarity of who was there. I met Peter Guild a  
7 number of times on my own so I - and other times I met  
8 with he and Mr Townsend with others, representing either  
9 Lend Lease or maybe even people from John Curtin House  
10 Limited.  
11  
12 Q. Do you see this particular letter refers to a site at  
13 section 15 Barton; do you see that?  
14 A. Yes.  
15  
16 Q. Where is that in relation to Section 22, if you can  
17 recall?  
18 A. I think it is the same. It is not unusual for the  
19 ACT government to change the sections of - in description,  
20 prior to titles being issued or subsequent. And I believe  
21 it was - I don't believe I ever looked at another site  
22 other than the site opposite the Press Club, is what I'm  
23 trying to confirm. And it doesn't surprise me that the  
24 block and section - sorry, the section number changed and  
25 the block number probably changed too.  
26  
27 Q. But you are quite clear in your recollection that  
28 there was only ever one site that was being considered, as  
29 far as you understood it, for this new development?  
30 A. That's so.  
31  
32 Q. Could you go to the document which I will have  
33 brought up on the screen - I don't know if it is referred  
34 to in your statement or not - it is CH94.012.0362.  
35 A. It isn't my on my screen.  
36  
37 Q. It will come on in a minute.  
38 A. I am sorry, I thought you said it was.  
39  
40 Q. Do you see that's apparently a report to the finance  
41 committee of the ALP dated 6 September 1990?  
42 A. I assume so, from the heading, "Supplementary Report  
43 - Finance". I assume it is the finance committee. I  
44 don't know.  
45  
46 Q. Did you know that Mr Hogg was seeking to pass through  
47 the appropriate decision-making bodying of the ALP a

1 general approval to proceed with this particular  
2 development at this time?

3 A. I believe he told me he had processes to go through.  
4 I don't believe he actually went through the processes  
5 that he needed to go through with me.  
6

7 Q. All right. But you understood that he had some to go  
8 through, and that there was something happening in about  
9 September 1990 directed to that end?

10 A. Yes.  
11

12 Q. Is it fair to say that between June and September  
13 1990 you were in frequent and regular contact with Mr Hogg  
14 about this development?

15 A. Regular. I don't know about frequent.  
16

17 Q. Were you kept informed in August and September 1990  
18 of what had been discussed at meetings between Lend Lease  
19 personnel and DELP officers held in that time period,  
20 August, September 1990, concerning this proposed  
21 development?

22 A. I can't be precise about the time frame and the  
23 sequencing of things. As I explained to you when we met  
24 back in July, I haven't got access to my diaries and I  
25 can't confirm the sequence from my brain, and I,  
26 unfortunately, don't have the diaries to look at to go  
27 through to either refresh or inform me again what I might  
28 have forgotten. So, the sequence is very difficult for me  
29 to agree to, but I accept the correspondence that's  
30 flowing has a suggestion of things happening in that time  
31 frame. But I can't recall from my memory.  
32

33 Q. All right. Do you also accept that you have a  
34 recollection that in the period throughout 1990 and into  
35 1991 Lend Lease personnel were quite intimately involved  
36 in the dealings with the DELP concerning this project?

37 A. During the process of getting the Crown lease or  
38 negotiating the Crown lease, the Lend Lease Group was  
39 actively involved because there were some major civil  
40 engineering works needed - the diversion of a creek and so  
41 on - and so I would have known that they were either  
42 having meetings that I attended or they would have been  
43 having meetings without my attendance about these issues.  
44

45 Q. Yes, but you are not meaning to suggest by that that  
46 they confined their interest in the dealings with the DELP  
47 to civil engineering matters?

1 A. Well, that's the only reason I took them along to  
2 meetings, and that I was charged with the concept of  
3 putting together the development rights and negotiating  
4 the development rights for the covenants of the Crown  
5 lease, the planning issues, making sure the planning  
6 issues were right, and negotiating the final purchase or  
7 initial land rent arrangements for the lease. So I took  
8 them along because I needed advice about what it was going  
9 to cost for these off-site works and what were the  
10 off-site works to be.

11  
12 Q. When you referred to the lease a moment ago, you  
13 meant the land lease, did you not?

14 A. Yes, the vernacular is Crown lease, but it is a lease  
15 of land, you are right.

16  
17 Q. You were the representative of John Curtin House  
18 Limited, dealing with the procurement of that lease on  
19 satisfactory terms to that company insofar as all matters  
20 relevant to that were concerned, weren't you?

21 A. I believe so. I wasn't the intelligence of  
22 everything that needed to happen, and that's why I needed  
23 support from Lend Lease about the civil engineering  
24 issues.

25  
26 Q. And, of course, from time to time, you needed  
27 instructions from your client in relation to matters that  
28 might arise as well, didn't you?

29 A. Yes, in terms of how I could - talking about how - or  
30 getting the strategy for proceeding and confirming that  
31 and reinforcing that, yes.

32  
33 Q. And the principle external party that you dealt with  
34 concerning that function was the DELP, wasn't it?

35 A. They are the government - the government agency  
36 tasked with leasing land, so they were the people, but we  
37 also had discussions with the National Capital Authority,  
38 who were the planners, dealing with this part of Canberra.

39  
40 Q. When you went to meetings with either DELP people or  
41 the National Capital Planning Authority people, you went  
42 along well prepared to discuss the matters that you wished  
43 to have dealt with at that meeting, didn't you?

44 A. That was the intention.

45  
46 Q. And that is your general approach to business  
47 affairs, isn't it?

1 A. Well, none of us have got time to waste.  
2  
3 Q. And included within being prepared was a clear  
4 understanding of what it was your client, John Curtin  
5 House Limited, wanted in the Crown lease?  
6 A. I believe so.  
7  
8 Q. And the formulation of what that client might want  
9 was a combination of their own consideration of the matter  
10 and advice from you, wasn't it?  
11 A. Yes. I'm not sure --  
12  
13 Q. For example, so that we are clear that we are talking  
14 about the same thing, the terms of the lease purpose  
15 clause, for example, was a matter upon which you gave  
16 advice and had discussions with John Curtin House Limited  
17 officers before you discussed how it should be formulated  
18 with DELP, wasn't it?  
19 A. I believe so.  
20  
21 Q. That was quite a critical matter, as far as you saw  
22 it, in relation to the formulation of the terms of the  
23 Crown lease, wasn't it?  
24 A. Yes.  
25  
26 Q. Because it might affect what use could be made of the  
27 building when constructed.  
28 A. Yes.  
29  
30 Q. In this period where you were involved in achieving  
31 your client's aims in respect of the Crown lease, it was a  
32 process whereby you gave advice, had discussions with the  
33 client, they gave consideration and made decisions, gave  
34 instructions to you, and then you had your discussions  
35 with the government authorities; true?  
36 A. Yes.  
37  
38 Q. You were, in that process, acting both as an adviser  
39 and a representative of the client, weren't you?  
40 A. Yes, I probably even would go further to say that  
41 John Curtin House was relying on me to provide the maximum  
42 flexibility in how the land lease could come together, as  
43 you term it.  
44  
45 Q. Because insofar as the land lease was concerned, and  
46 that client was concerned, you understood you were well  
47 placed to be the driver, if I can put it that way, in

1           actioning appropriate terms for the Crown lease?  
2           A.    Yes.  
3  
4           Q.    You regarded yourself as the best qualified person in  
5           the group, if I can put it that way, to achieve those  
6           ends?  
7           A.    Yes.  
8  
9           Q.    And negotiating on behalf of clients was something  
10          that you did frequently at that time, wasn't it?  
11          A.    Negotiating what?  
12  
13          Q.    Anything to do with property transactions?  
14          A.    Yes, and in particular Crown leases.  
15  
16          Q.    Yes.  And understanding how particular provisions  
17          might affect the value or the lettability of buildings,  
18          for example, was something you regarded yourself as being  
19          well qualified to express views about?  
20          A.    Valuers' bread and butter.  
21  
22          Q.    And, indeed, someone such as yourself, who is acting  
23          as an adviser - it is an adviser's bread and butter, too,  
24          isn't it?  
25          A.    Yes.  
26  
27          Q.    You proceeded along the path of dealing with the DELP  
28          quite actively from early 1991 right up, really, until  
29          this Crown lease was signed, didn't you?  
30          A.    I would have said 1990, from June 1990.  
31  
32          Q.    Would you accept that your involvement was not that  
33          great until early 1991?  
34          A.    I don't know what you mean.  
35  
36          Q.    Well, that the extent to which you involved yourself  
37          in dealings with the DELP and your client on the matter of  
38          the Crown lease increased quite significantly from early  
39          1991 onwards?  
40          A.    Yes, I would agree with that.  
41  
42          Q.    I think this lease was ultimately signed in April  
43          1992, wasn't it, or May?  I can't recall.  
44          A.    I can't guess, but I can look at a document.  
45  
46          Q.    Could you?  I have just forgotten what the date was.  
47          A.    You quickly showed me a document before the

1 Commission started. That may have a date. That was a  
2 1994 date.  
3  
4 Q. That was the pay-out material.  
5 A. I would imagine that it would have been around March  
6 or April; more likely April.  
7  
8 Q. 1992?  
9 A. 1992.  
10  
11 Q. Yes.  
12 A. But I - unless you can take me to a document --  
13  
14 Q. I will do it now. I might as well, while we are  
15 here. It is 9 April 1992, if you just accept that from  
16 me?  
17 A. I accept that.  
18  
19 Q. And you know, I think, that the lease to the  
20 Commonwealth in respect of the ANAO tenancy was signed on  
21 8 April 1992 and held in escrow until the 23rd, I think?  
22 A. I accept what you are putting to me.  
23  
24 Q. It was critical, I think, was it not, Mr McCann, that  
25 the Crown lease be secured before any commitment to  
26 construct the building or lease it to the Commonwealth  
27 would be undertaken?  
28 A. It needed to be integrated.  
29  
30 Q. Yes. And it was critical to make sure that the land  
31 was secured before one entered into any other commitments?  
32 A. Yes.  
33  
34 Q. Could I take you to the document which is referred to  
35 in paragraph 11 of your statement?  
36 A. Which statement?  
37  
38 Q. The facts statement.  
39 A. Exhibit 103?  
40  
41 Q. Yes. It is the fax of 7 January 1991. We have been  
42 unable to find the enclosure to that, but you can see that  
43 Mr McEwan is sending you a copy of a letter that  
44 apparently Lend Lease sent to the National Capital  
45 Planning Authority?  
46 A. Yes.  
47

1 Q. Does that remind you that they were dealing with that  
2 body at that time in relation to the Crown lease?

3 A. No.

4

5 Q. Do you have any recollection as to what that letter  
6 was about?

7 A. No, but - not in exact terms, but it could have  
8 ranged across, probably, two major issues.

9

10 Q. Which were?

11 A. Lend Lease were tasked with a design and construct  
12 arrangement of John Curtin - sorry, I will retract that -  
13 Centenary House, and, therefore, they and I attended the  
14 National Capital Authority as the works approval authority  
15 for building on the land. It could equally have dealt  
16 with the civil engineering works around the site and  
17 associated with the site.

18

19 I think it would be useful if I said now that this  
20 was just a paddock, grass paddock from Brisbane Avenue to  
21 State Circle to Canberra Avenue, other than for the church  
22 up in one corner at Canberra Avenue, and National Circuit,  
23 at the time. So it was all very early days about civil  
24 engineering and reticulation of services and so on, so it  
25 could have been about any of those issues, and I have got  
26 to say again that, in the sequence of things, I can't  
27 remember the date of what this might be.

28

29 Q. Would you accept that throughout your dealings with  
30 DELP and the National Capital Planning Authority right up  
31 until the end of 1991, Lend Lease personnel continued to  
32 have involvement in those dealings for one reason or  
33 another?

34 A. Yes.

35

36 Q. And that, as between you and them, you would often  
37 inform each other what had been going on at meetings that  
38 had been attended by one but not the other, or in  
39 correspondence that was being passed between the parties?

40 A. Yes. I would say frequent conversations with  
41 Richard McKeon.

42

43 Q. Yes. You and he were working together in the  
44 interests of John Curtin House Limited to get this Crown  
45 lease secured and to get it secured in a form that was  
46 acceptable and useful to John Curtin House Limited?

47 A. Yes.

1  
2 Q. In respect of the Crown lease, you would accept,  
3 would you not, that your role was one of advice and acting  
4 as the company's representative?  
5 A. I believe that I answered that question earlier with  
6 a "yes".  
7  
8 Q. That involved, in that process, your taking positions  
9 on behalf of your client with the DELP in order to advance  
10 the interests of your client?  
11 A. I don't know what that question means.  
12  
13 Q. Well, don't you?  
14 A. No. I am asking you to clarify what you are asking  
15 me.  
16  
17 Q. All right. When you dealt with the DELP in respect  
18 of the Crown lease your sole end in view was to do the  
19 best for your client, John Curtin House Limited, was it  
20 not?  
21 A. Yes.  
22  
23 Q. You weren't acting in the public interest or in the  
24 interests of the moths on the site or anything like that?  
25 A. Certainly not the moths. I don't know what the  
26 question is about, but I was acting on behalf of John  
27 Curtin House.  
28  
29 Q. There is nothing sinister in it, I am just trying to  
30 clarify precisely --  
31 A. I wasn't acting for DELP in the negotiations, is the  
32 way I could answer it.  
33  
34 Q. No, and you were doing the best for your client in  
35 those negotiations?  
36 A. Yes, I believe I was.  
37  
38 Q. And that was your task, as you understood it?  
39 A. Yes.  
40  
41 Q. Would you look, please, at paragraph 16 of  
42 exhibit 103 and the document that is referred to in that  
43 paragraph. This relates to a meeting of 20 February 1991.  
44 I will just let you find it, first, before I ask you  
45 anything about it. For the transcript, those documents  
46 are LEND.009.0207 and LEND.013.0318. Do you actually  
47 remember this meeting as we speak, Mr McCann?

1 A. The 0318 relates to a meeting headed "ALP  
2 Headquarters Section 22 Barton"; is that the document?

3  
4 Q. Yes. It appears to be a draft agenda sent by  
5 Mr McKeon to you, relating to that proposed meeting?

6 A. In specific terms, I don't remember the meeting, but  
7 I remember I had a number of meetings and this document is  
8 an aid to my memory.

9  
10 Q. Is it fair to say that you would accept that at  
11 around this time the issues listed on that agenda were  
12 those which were of interest and concern to you in  
13 meetings with DELP?

14 A. Yes. This was a meeting of DELP and the National  
15 Capital Planning Authority.

16  
17 Q. Yes.

18 A. In hindsight, it may well have been the first time we  
19 were able to get them together, but I can't recall that  
20 with clarity. But, clearly, Lindsay Nielsen was the chief  
21 executive of the National Capital Authority and Malcolm  
22 Smith was, I believe at the time, the chief planner. So  
23 it was an attempt to try and bring together the issues for  
24 a joint discussion about the resolutions that could be at  
25 hand.

26  
27 Q. Mr McKeon is there?

28 A. Yes.

29  
30 Q. And Mr Service, representing the ACTU, is to be  
31 there?

32 A. Yes, and Mr Swayn.

33  
34 Q. And Mr Swayn, the likely architect?

35 A. Well, he was the - he was the Canberra representative  
36 of Daryl Jackson, who was the lead architect, if I can put  
37 it that way, at the request of John Curtin House Limited.  
38 Daryl Jackson was the appointed architect.

39  
40 Q. Do you remember what things were done by way of  
41 meetings, discussions or planning before that meeting of  
42 20 February to make sure that those who were representing  
43 the proposed developers put forward their best foot?

44 A. Not with clarity, but we would have gone to the  
45 meeting trying to resolve the boundaries of the site and  
46 how flexible they might be. We would have been trying to  
47 work out the real extent of the scope of works for the

1 associated works there, the offsite works that were  
2 required for the creek diversion and the construction of  
3 Darling Walk, and there were some trees on the site, and  
4 how we might be able to deal with those.

5  
6 So we were looking at the car parking policy. The  
7 agenda there was that we would have been sorting through  
8 all the issues that were there, and I'm not sure what,  
9 other than us being prepared to - and having an idea of  
10 what we might be on about at the time, we weren't fixed in  
11 our ideas; we were trying to source what their ideas were  
12 and how we could try and, if there were impediments, how  
13 we might be able to find solutions.

14  
15 Q. Did you meet with Mr McKeon before the meeting of  
16 20 February and work out how you would approach that  
17 meeting in conjunction with him?

18 A. I don't recall, but I would imagine so. And I - and  
19 I would have - at that meeting there would have been most  
20 likely James Service and Alastair Swayn and maybe even  
21 Daryl Jackson.

22  
23 Q. And that would accord with your recollection, because  
24 you would have expected that you would not go to a meeting  
25 such as that with the persons shown to be coming in  
26 attendance without sorting out beforehand with McKeon, at  
27 least, and perhaps the others, Service and Swayn, exactly  
28 what it was that you were trying to get out of the meeting  
29 and what approach you would take to the issues you  
30 expected to be discussed at the meeting?

31 A. I think that would be a reasonable assumption.

32  
33 Q. And that's the way you approached all of the meetings  
34 to do with this whole project throughout, isn't it?

35 A. I would have thought we were prepared for most  
36 meetings, yes.

37  
38 Q. At times you were prepared in advance in order to  
39 execute a strategy, also thought about and prepared and  
40 conceived in advance of meetings, designed to produce the  
41 results you wanted?

42 A. I accept that assumption.

43  
44 Q. Could we go to the minutes of Project Control Group  
45 meeting number 2 held on 11 March, which are in an  
46 approved form contained within the package for 10 April,  
47 Mr McCann?

1 A. Sorry, you lost me. I was looking at papers trying  
2 to find - you said Project Control Group meeting number 2,  
3 which is point 21 of exhibit 103?  
4

5 Q. It is actually referred to in 24. It is  
6 ALP.010.0091-94. What I was putting to you was, and I  
7 don't think there is any argument about it between us,  
8 that they were minutes approved at the next meeting, which  
9 was held on 10 April. I just want to take you to the  
10 minutes. You have got to look at the package, if you have  
11 it there, circulated for 10 April?  
12 A. Could I just clarify which pages I am to be looking  
13 at?  
14

15 Q. Yes. ALP.010.0091-0094. I will have them brought up  
16 on the screen for you.  
17 A. I believe I have them - not on the screen, but in the  
18 hard copy.  
19

20 Q. All right. That's fine.  
21 A. Minutes of the Project Control Group meeting number 2  
22 held 11 March 1991.  
23

24 Q. Yes. And you were there?  
25 A. Yes. I am aided in my memory by the minutes, or  
26 listed as an attendee.  
27

28 Q. Could we go to the third page of the minutes, which  
29 is folio ALP.010.0093?  
30 A. Yes.  
31

32 Q. There is a report about the land. Do you see that?  
33 A. Yes.  
34

35 Q. Just to remind you, on the prior page and the one  
36 before that there is a report about dealings with the DELP  
37 and the NCPA?  
38 A. Yes.  
39

40 Q. There are some matters dealt with in design, and then  
41 section 9, on folio 0094, this is noted:  
42

43 *P Morris reported on a meeting with APG on*  
44 *5/3/91 and confirmed positive attitude of*  
45 *APG towards this project and Government*  
46 *Tenancy.*  
47

1            *Meetings to be held on 19 March to:*  
2            *- confirm package to be presented to APG*  
3            *- present preliminary package to APG.*  
4

5            Do you have any recollection now what it was Mrs Morris  
6            said on that occasion?

7            A.    No. I would rely on what the minutes say, that she  
8            had a meeting with APG and was positive about their - the  
9            opportunity of this proposal for their use.

10  
11           Q.    There is no doubt, is there, having regard to your  
12           evidence, that until you met with Mr Jeffress in November  
13           1991 you did not have any discussion with anyone from the  
14           APG or the AVO concerning the proposed lease of the  
15           premises in the building to the Commonwealth?

16           A.    I believe the only meeting that I had, that was  
17           around the issues, was with the Audit Office and APG in, I  
18           believe --

19  
20           Q.    5 June?

21           A.    That was somewhere in June, but that was more a  
22           presentation to Audit Office than about the project,  
23           rather than, "This is the lease terms and conditions that  
24           we would be looking for".

25  
26           Q.    Right. And you accept that there was no occasion  
27           before you met with Mr Jeffress on or about 12 November  
28           1991 where you had any discussion with or were present at  
29           any discussion with APG or AVO personnel concerning the  
30           commercial deal to be done in respect of the proposed  
31           lease of the premises?

32           A.    No.

33  
34           Q.    You agree with me, don't you?

35           A.    Yes. Sorry.

36  
37           Q.    That's all right.

38           A.    I will say no, I didn't do it. Yes, I agree with you  
39           that I didn't do it.

40  
41           Q.    I know. Sorry, sometimes it doesn't read properly,  
42           that's all.

43           A.    Okay.

44  
45           Q.    May we take it that insofar as you found out about  
46           matters that were discussed as between Mrs Morris and  
47           Mr Collins, or Mrs Morris and others and Mr Collins, you

1           relied upon reports coming from her; is that right?  
2           A.    I believe so, and the only input I would have had  
3           with it was, I think, from memory, again with the aid of  
4           yesterday working up this document in response to your  
5           draft, I think there was something in June where James  
6           Service and I put together some parameters that we sent to  
7           Penny Morris, but that - they - that was the way it was  
8           dealt with. I was outside the square, if I can put it in  
9           that term.  
10  
11          Q.    Yes. You were outside the square until you met with  
12          Mr Jeffress?  
13          A.    On the lease of negotiating rents and so on, yes.  
14  
15          Q.    That's the square I'm talking about - you understand  
16          that?  
17          A.    Yes. That's why I tried to put a confinement around  
18          it.  
19  
20          Q.    You are just being careful, aren't you?  
21          A.    Just helps me --  
22  
23          Q.    Not a criticism.  
24          A.    Just helps me.  
25  
26          Q.    It is often a positive quality. Was that placing of  
27          you outside the square a deliberate and conscious decision  
28          by your client and you?  
29          A.    In hindsight, yes.  
30  
31          Q.    Was it part of a strategy?  
32          A.    Oh, I think Lend Lease Developments - as I understand  
33          it, Penny Morris was Lend Lease Developments as against  
34          Civil & Civic, the building contractor, owned by Lend  
35          Lease. Both of them were tasked with - by John Curtin  
36          House to try and advance the opportunity of securing a  
37          Commonwealth tenant.  
38  
39          Q.    But you would agree that in the period from, say, the  
40          beginning of 1991 throughout 1991 you were also well  
41          placed to have the carriage of discussions concerning the  
42          securing of the Commonwealth tenant in the building?  
43          A.    Yes.  
44  
45          Q.    But the decision was made that Mrs Morris should have  
46          the carriage of that square, if I can call it that?  
47          A.    Yes.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47

Q. And that position changed in about November when you were brought in to deal with Mr Jeffress, didn't it?

A. Yes.

Q. I think you may have answered this, and forgive me if I have already asked you, but up until that time - that is, November 1991 - you were reliant upon Mrs Morris and/or other Lend Lease personnel, as the source of information as to what had occurred in relation to discussions about the proposed lease of the premises, were you not?

A. Yes.

Q. And some of the information that you obtained about what had been going on came to you at Project Control Group meetings, did it not?

A. Yes.

Q. And some came by being given documents from time to time?

A. I would say so.

Q. Did you have discussions with Mrs Morris about what she had been doing vis-a-vis Mr Collins outside Project Control Group meetings, either in meetings or on the telephone?

A. I can't rule it out, but it wasn't frequent. I said earlier that there was a frequent flow of information between Richard McKeon and I, because, in effect, Richard McKeon was the project manager of the design and construct, and because he was in the same organisation, however separated Lend Lease entities were at the time, he had obviously discussions with Penny Morris that I didn't have, and he relayed information to me.

Q. Did you, in the period from January 1991 until November 1991, make it your business to ensure that, as far as you could, you were kept abreast of the discussions that the Lend Lease people were having with the APG concerning the proposed lease of the premises?

A. I believe I did.

Q. That was, after all, was it not, a matter of interest to you?

A. Significant interest.

1 Q. You regarded it as part of the subject matter of your  
2 advisory role to John Curtin House Limited to run your eye  
3 over or advise them in relation to whatever deal was  
4 ultimately struck, didn't you?  
5 A. Yes.  
6  
7 Q. You expected they would seek advice from you about  
8 that?  
9 A. John Curtin House --  
10  
11 Q. Yes.  
12 A. -- Limited?  
13  
14 Q. Yes.  
15 A. Yes.  
16  
17 Q. And you regarded yourself as retained by them to  
18 advise in relation to that matter, didn't you?  
19 A. Yes.  
20  
21 Q. There is no doubt about that, is there?  
22 A. Not in my mind.  
23  
24 Q. Could I take you to a document which is a letter from  
25 Civil & Civic to you of 21 March 1991. It is  
26 ALP.004.0137. I'm not sure if that is in your hard copy  
27 bundle or not, Mr McCann, but it is on the screen now.  
28 A. Could I confirm the number to you?  
29  
30 Q. I will read it to you.  
31  
32 THE COMMISSIONER: It is on the screen.  
33  
34 THE WITNESS: Thank you.  
35  
36 MR FOSTER: Q. You accept, don't you, that you had a  
37 meeting with Lend Lease personnel on 12 March 1991?  
38 A. Sorry, I have read the document. Could you repeat  
39 the question?  
40  
41 Q. You accept, don't you, that you had a meeting with  
42 Lend Lease personnel on 12 March 1991?  
43 A. Yes, I do.  
44  
45 Q. That's one day after the PCG meeting number 2, isn't  
46 it?  
47 A. I flicked over from there, but I accept that.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47

Q. And it was to action something that had been raised at that meeting, wasn't it?

A. It would have, yes.

Q. It was quite important, as you understood it, at that time, for everyone to know who was responsible for what, wasn't it?

A. Yes.

Q. Is that what this meeting was directed to?

A. I don't remember in great detail, but the guidance from this letter would suggest that.

Q. One of the matters that you also believed you were retained by John Curtin House Limited to deal with on its behalf was to vet and advise them in relation to the proposed management and building contracts that Civil & Civic and Lend Lease would be putting forward, isn't it?

A. In principle, yes.

Q. Because someone, on behalf of that company, with appropriate expertise, needed to run their eye over that in the interests of John Curtin House Limited, didn't they?

A. Yes. But the legal - the legal bits would have been done by the lawyers, not by me.

Q. Oh, yes, but the commercial bits were your bag, weren't they?

A. I believe so.

Q. Yes. And you understood that you were retained to give commercial advice about those proposed agreements when they came forward?

A. Yes, and I took advice from a quantity surveyor about various issues, dealing with this - dealing with outcomes that would have come with this letter.

Q. And the fact you consulted quantity surveyors in that regard is a demonstration of your own expertise in knowing where to go in terms of outside advice that might be required to assist the client within your own bailiwick, if I can call it that?

A. Yes.

Q. Now, I'm not suggesting by all of this that Mr Hogg

1 was unsophisticated, because, to your appreciation, he was  
2 not, was he?  
3 A. I never found him unsophisticated.  
4  
5 Q. No. But he wasn't as experienced in matters of  
6 investment and utilisation as you were, was he?  
7 A. No, it wasn't his job.  
8  
9 Q. No. You understood that he was leaning on and  
10 relying on you very much in relation to this proposed  
11 development across all relevant aspects of it in the  
12 interests of John Curtin House Limited?  
13 A. I believed so.  
14  
15 Q. That was a very substantial role on behalf of that  
16 company, wasn't it?  
17 A. For this project, yes.  
18  
19 Q. Could I take you to the minutes of the PCG meeting  
20 number 3, which are at ALP.010.0140 through to 0143 and,  
21 for your help, Mr McCann, they are part of the package for  
22 PCG meeting number 4, designated for 8 May 1991. They are  
23 up on the screen, you can look at them in either place, as  
24 you wish.  
25 A. Yes.  
26  
27 Q. Section 4 in those minutes deals with the dealings  
28 with DELP and other relevant authorities, does it not?  
29 A. Section 4?  
30  
31 Q. Yes, of the minutes?  
32 A. Yes.  
33  
34 Q. Then section 9, which commences on folio 0142, deals  
35 with the tenancy situation?  
36 A. Yes.  
37  
38 Q. It says:  
39  
40 *Meeting to be arranged through APG (in week*  
41 *commencing 15/4/91) to review Audit tenancy*  
42 *requirements.*  
43  
44 And Mr McKeon is designated as the person to execute that?  
45 A. That's what the minutes indicate.  
46  
47 Q. And then 9.2 refers to a package for presentation to

1 Audit APG, does it not?  
2 A. Yes.  
3  
4 Q. And that has a number of people to execute it,  
5 including you?  
6 A. Yes.  
7  
8 Q. Then:  
9  
10 *Presentation to PCG to be arranged for mid*  
11 *May.*  
12  
13 And that's everybody?  
14 A. Yes.  
15  
16 Q. You accept, I suppose, that those minutes accurately  
17 record what the decisions were at that meeting of  
18 10 April?  
19 A. Yes.  
20  
21 Q. Do you have any recollection as to whether or not, on  
22 that occasion - that is, on 10 April, at the PCG meeting  
23 number 3 - Mrs Morris made a report about what had  
24 occurred at the meeting she had had with Mr Collins on  
25 19 March 1991?  
26 A. No.  
27  
28 Q. You can't recall?  
29 A. No.  
30  
31 Q. Could I take you back to the package for 10 April  
32 1991 and ask you to look at folio ALP.010.0105?  
33 A. Could I have the number again - I am sorry, it has  
34 just come up, I think.  
35  
36 Q. Yes. If you are looking for the hard copy, it is  
37 part of the package for 10 April 1991?  
38 A. Yes.  
39  
40 Q. You have no doubt that you received this package,  
41 either at or just before the meeting of 10 April, do you?  
42 A. I have no reason to disbelieve it.  
43  
44 Q. This report is relatively detailed - that is, the one  
45 concerning the tenancy in the package - isn't it?  
46 A. Could you ask the question again, please?  
47

1 Q. Yes, the report concerning tenancy, section 9.0,  
2 listed on ALP.010.0105 is relatively detailed, isn't it?  
3 A. It is detailed, yes.  
4  
5 Q. Do you recall whether or not Mrs Morris spoke to that  
6 report or simply circulated it as part of this package?  
7 A. I don't recall her speaking, because earlier I said I  
8 don't recall the sequencing of things, but I would be  
9 surprised if she didn't speak to it.  
10  
11 Q. Yes, because she would have wanted everyone in the  
12 PCG to know where she was at as at 10 April, wouldn't she?  
13 A. Yes.  
14  
15 Q. Especially you?  
16 A. I don't know about especially me, but everybody, yes.  
17  
18 Q. This is a report about her discussions on 19 March  
19 with Mr Collins, it appears, is it not?  
20 A. Well, that's an inference. It doesn't say that. It  
21 says "APG", but - I accept your assumption that it is  
22 Mr Collins.  
23  
24 Q. Did you make that assumption at the time, that it was  
25 Mr Collins?  
26 A. I'm - I apologise, but I wouldn't have made an  
27 assumption at the time; I would have known. But I have no  
28 clarity about that, and that's unfortunate.  
29  
30 Q. All right.  
31 A. But that's it.  
32  
33 Q. All right. There are a couple of things I want to  
34 ask you about it. It appears, clearly, doesn't it, that  
35 if you didn't know beforehand, you knew by 10 April that  
36 Audit was the proposed tenant?  
37 A. Yes.  
38  
39 Q. Did you know that before 10 April?  
40 A. I can't tell you with clarity. For a while we didn't  
41 know it was Audit, and then we did know.  
42  
43 Q. Did you find out about it around about February or  
44 March of 1991?  
45 A. I think we might have found out earlier, because we  
46 were trying to resolve the design of the building and the  
47 shape of the building, because we wanted to resolve the

1 tenancy fitout needs rather than, "Here is the building,  
2 make it fit". Very similar to this; this is not a  
3 specialised building, this court has been made to fit in  
4 an office building, as against being in a properly  
5 designed building, and that's what we were trying to do.  
6

7 Q. You were trying to accommodate the particular tenant  
8 as best you could?

9 A. Not "best you could"; try and give them the best  
10 outcome, so they had the most efficient working space and  
11 the best environment for their staff.  
12

13 Q. Yes, but you would not compromise the value of the  
14 building or its future lettable area to other tenants by  
15 giving them something that was outside normality or  
16 utility for your own tenants, would you?

17 A. No, I accept that.  
18

19 Q. The next point is that someone has told her that the  
20 Audit Office needed net lettable area of 5,800 square  
21 metres; do you see that?

22 A. Yes. I think "is required" is, in hindsight, a  
23 stretch, because it was moving around a fair bit.  
24 Probably at the time that was thought to be the space  
25 required.  
26

27 Q. Then the next item is:

28  
29 *A 15 year lease would be considered if*  
30 *there were advantages for the Commonwealth.*  
31

32 Do you see that?

33 A. Yes. I do.  
34

35 Q. Did you know that Mrs Morris was seeking a 15-year  
36 lease as at March or before March of 1991?

37 A. I believe very early in the piece we were trying to  
38 secure a 15-year lease.  
39

40 Q. That desire was driven by what the group, including  
41 your client, yourself and Lend Lease, thought would be the  
42 best way of securing finance; would you agree?

43 A. It might have been more driven by me, in terms of  
44 although we ended up with an option - the Commonwealth was  
45 very - very used to taking 10-year leases or longer, but  
46 getting longer by optioning, and what we were trying to do  
47 was to get the longest term possible, and there were, sort

1 of, concepts - and I can't give you the examples inside  
2 and out of Canberra of longer-term leases at the time, 20  
3 years or more, or arrangements with the Commonwealth, and  
4 we were trying to make it a better property deal by having  
5 a longer-term lease, and that was probably more driven by  
6 me than other people in the group.

7  
8 Q. Does that mean that, in your opinion at that time, it  
9 was more in the interests of John Curtin House Limited to  
10 secure 15 years rather than 10 as the initial term of the  
11 lease?

12 A. Any property owner, if you are dealing with the  
13 Commonwealth.

14  
15 Q. But your view about the desirability of a 15-year  
16 term was actuated by your view that it was in the best  
17 interests of John Curtin House Limited to get 15 years or  
18 more?

19 A. Yes.

20  
21 Q. What you were attempting to do in considering that  
22 particular aspect was do the best for that company on that  
23 point?

24 A. Yes.

25  
26 Q. And the desire to have 15 years was something that  
27 was articulated within the developer's group quite early,  
28 wasn't it?

29 A. I don't know so much in the group, but probably more  
30 with Bob Hogg and I, and that flowed into the group.

31  
32 Q. Well, you made it pretty clear, didn't you, to  
33 Mrs Morris, when she was to meet with these APG people and  
34 discuss this development, that she should be gunning for  
35 or aiming for a 15-year term?

36 A. Yes, I might have even said a minimum of 15 years.

37  
38 Q. I think you might have, yes. And you would have told  
39 her that very early, because you wouldn't want her going  
40 and saying something less at one point and then seeking to  
41 get something more later, would you?

42 A. Yes, it's always easier to come down than go up.

43  
44 Q. Of course. That's what negotiators do, isn't it?

45 A. Yes.

46  
47 Q. Sometimes you are pleasantly surprised, you don't

1 have to come down as far as you thought you might have to,  
2 aren't you?  
3 A. That's the market at play.  
4  
5 Q. The next point is that \$320 per square metre was  
6 considered appropriate current rent. Do you see that?  
7 A. Yes.  
8  
9 Q. That's a gross rent?  
10 A. Yes.  
11  
12 Q. That conveyed to you, did it not, that she had had  
13 some discussion with Mr Collins in which, at the level of  
14 principle, it had been accepted that \$320 gross was a  
15 reasonable rent at that time?  
16 A. Oh, I think Mr Collins might have responded to  
17 discussions that I might have had with the group and Bob  
18 Hogg about what I thought the rent might be in January  
19 1991.  
20  
21 Q. So, is this the case, that it was you who struck that  
22 figure and it was put to Mr Collins to see what his  
23 reaction was, as you understood it?  
24 A. I believe I was involved in that, yes, very early in  
25 the piece.  
26  
27 Q. Were you the one that came up with the figure and got  
28 it to Mrs Morris so that she could put it to Mr Collins?  
29 A. That's what I'm putting to you.  
30  
31 Q. Yes. And it was a figure which you came up with  
32 having regard to the best interests of John Curtin House  
33 Limited, wasn't it?  
34 A. I believe it was the market rent at the time for the  
35 quality of building we were trying to achieve.  
36  
37 Q. But you knew she was going to be negotiating that  
38 rent, didn't you?  
39 A. Yes.  
40  
41 Q. And you would not have given her a figure which you  
42 considered to be in the middle or at the low end of what  
43 the market was, would you?  
44 A. I believe it was more than \$320 that we were talking  
45 about at the time as a - you know, somewhere in the early  
46 \$320 a square metre was what I felt the market was.  
47

1 Q. Wouldn't it be fair to say, Mr McCann, that if you  
2 were sending off Mrs Morris on behalf of John Curtin House  
3 Limited to negotiate the rent figure, that you would have  
4 got her to start with a figure which was as high as you  
5 could, in your own mind, and perhaps in expectation of the  
6 other party's mind, put forward?

7 A. The Commonwealth is not the same sort of tenant that  
8 you negotiate with like a private sector tenant, if I  
9 could put that as plainly as I can. They are very much  
10 aware of their market, being the major user, so we would -  
11 I don't believe I would have suggested a rent higher than  
12 \$325 a square metre, but it all needed to hinge on the  
13 quality of the building and the outcome of the building  
14 design as to where that sat in the market at the time.  
15

16 Q. But was there a decision made in which you were  
17 involved very early in the piece that Mrs Morris should  
18 get out on to the table to Mr Collins that the view of the  
19 developer and owner as to the market rent that they would  
20 want to seek to get in relation to this building as at  
21 early 1991 was \$320 per square metre gross?

22 A. Yes.  
23

24 Q. That was a strategic decision made in which you were  
25 intimately involved, wasn't it?

26 A. I believe so.  
27

28 Q. It was only common sense, if you wanted to get the  
29 best rents you could, to get the biggest figure you could  
30 out as early as possible, wasn't it?

31 A. I don't know where you are trying to lead me with the  
32 second part of that assertion, but the real issue is if  
33 you don't get the rent out early, then - and your  
34 expectation of the rent of where you see this building  
35 sitting in the marketplace, then you might go a long way  
36 down the track spending a lot of money and the tenant will  
37 say, "That's not what I've got in my mind; that's not my  
38 exception", and, therefore, everybody has wasted their  
39 time.  
40

41 Q. Yes, and also, if you don't get it out early, you may  
42 not get a good feel when you need it as to where the other  
43 party is sitting on the matter of rent, might you?

44 A. Yes, I accept that, but we all know the market.  
45 That's what I'm getting at. We all know the market.  
46

47 Q. You say that?

1 A. Yes, I do say that.  
2  
3 Q. You are a very experienced negotiator, aren't you?  
4 A. I don't know what "very" means, but for a number of  
5 years I have been involved in negotiating rents with  
6 private and government tenants.  
7  
8 Q. It is part of your bread and butter work, isn't it?  
9 A. Yes.  
10  
11 Q. And you are good at it?  
12 A. I wouldn't agree or deny that. I believe I'm - I do  
13 my best in the - and the best way of doing that is having  
14 the evidence to support what you say.  
15  
16 Q. If you need it?  
17 A. No, I do need it all the time. Otherwise you are  
18 shooting in the dark.  
19  
20 Q. It depends who you are dealing with?  
21 A. No, it doesn't matter who you are dealing with.  
22  
23 Q. And then this is said:  
24  
25 *A rent structure with set 3 year escalation*  
26 *factors and review to market in the 4th*  
27 *year was desired.*  
28  
29 Do you see that?  
30 A. Yes, that was some of the early --  
31  
32 Q. I beg your pardon?  
33 A. Yes, that was some of the early work.  
34  
35 Q. And is that something that you also had a role in  
36 conceiving as a matter which you were trying to achieve  
37 for your client out of these discussions with the APG?  
38 A. I believe so.  
39  
40 Q. You thought at that time, did you, that is, around  
41 March and perhaps a little bit before, that a rent review  
42 mechanism such as that was about as good as you could  
43 expect to get from the Commonwealth?  
44 A. No, it was about what we were looking at at the time,  
45 in terms of where most of the Commonwealth tenancy  
46 arrangements were going, but not all.  
47

1 Q. But you were trying to do the absolute best you could  
2 achieve for John Curtin House Limited, weren't you?  
3 A. Yes.  
4  
5 Q. Isn't that particular aspect of the matter a  
6 reflection of what you thought was the best, even perhaps  
7 better than the best, that you could achieve from the  
8 Commonwealth in respect of this building at that time?  
9 A. No, it was more that - putting aside the rent issue,  
10 because we have been through that, but in terms of the  
11 rent review mechanism --  
12  
13 Q. That's what I'm asking you about.  
14 A. -- it was fairly stock-standard at the time, starting  
15 to come into the market.  
16  
17 Q. And review to market in the fourth year doesn't  
18 mention any ratchet clauses, does it?  
19 A. No, it doesn't.  
20  
21 Q. Had you discussed the need for a ratchet clause at  
22 all with Mrs Morris before 19 March?  
23 A. No, it was an assumption.  
24  
25 Q. An assumption she would try to get one?  
26 A. No, that it was readily available.  
27  
28 Q. And a ratchet clause, in that sense, was a clause  
29 which expressed the review as the passing rent or the  
30 market, whichever is the greater?  
31 A. That's so.  
32  
33 Q. Not a ratchet clause of the kind which is in the  
34 Centenary House lease, which expresses it as the passing  
35 rent plus 9 per cent or the market, whichever is greater?  
36 A. That's so.  
37  
38 Q. And the latter clause, the one in this particular  
39 lease, is a very unusual clause in your experience, isn't  
40 it?  
41 A. No.  
42  
43 Q. You have never seen one like it, have you?  
44 A. There are not many signed by the Commonwealth.  
45  
46 Q. You have never seen one like it, have you?  
47 A. Well, I believe there is documents in evidence and

1 there were a lot of changes going on in the mechanisms  
2 that the Commonwealth were entering into to try and  
3 control their rental growth.  
4  
5 Q. Well, I will invite you to point to one, if you can,  
6 that is, one that mirrors the substance of the Centenary  
7 House lease ratchet clause, which had been entered into at  
8 any time before the end of April 1992.  
9 A. No, I can say --  
10  
11 Q. I invite you to do that if you wish?  
12 A. I don't have one to show you before April.  
13  
14 Q. That's fine. I am suggesting to you that you won't  
15 be able to find one, but if you can, that's fine, we will  
16 have a look at it. Now, that particular type of ratchet  
17 clause has not been adverted to in this account of what  
18 had occurred in the meeting between Mrs Morris and  
19 Mr Collins on 19 March, does it?  
20 A. No, it doesn't.  
21  
22 Q. That's because it had not been discussed at that  
23 point, had it?  
24 A. I wasn't at the meeting, so I don't know, but I don't  
25 believe it would have been.  
26  
27 Q. It had not been discussed internally to the  
28 developer's group, as far as you were aware, prior to  
29 March 1991, had it?  
30 A. That's so.  
31  
32 Q. There is then the matter of fitout. Did you advise  
33 John Curtin House Limited that it would be a good idea for  
34 the landlord/developer to agree to provide the fitout for  
35 Audit?  
36 A. I don't believe I did.  
37  
38 Q. Was that a matter which Lend Lease were interested in  
39 because it provided more work for them in connection with  
40 the project?  
41 A. Sorry, could I step back one bit?  
42  
43 Q. Yes.  
44 A. Could I define the question?  
45  
46 Q. Yes.  
47 A. Are you saying, was I advising John Curtin House

1 Limited that we should integrate the tenant's fitout,  
2 forgetting about who paid for it, with the construction  
3 work, or are you asking me about the funding of it,  
4 because that indicates that question is about funding.

5

6 Q. Both. Both.

7 A. Right. The first thing, I believed that their fitout  
8 should have been integrated, because that brings savings  
9 to the tenant, because you are not undoing things to then  
10 turn round and do all the extra over things that are  
11 required by tenants, so there is economics in that, and,  
12 therefore, that is a benefit to the tenant.

13

14 The second issue, I don't believe I recommended at  
15 any stage that John Curtin House should fund, other than  
16 through the \$400,000 incentive mechanism, any more than  
17 that towards the Audit Office capital cost of fitout.

18

19 Q. It would appear that somebody had conveyed to  
20 Mrs Morris that the Audit Office had \$1.7m available for  
21 fitout?

22 A. That's what it appears, and I accept that as - at  
23 face value.

24

25 Q. And then the last item is:

26

27 *APG would precommit to the lease.*

28

29 Do you see that?

30 A. Yes.

31

32 Q. Now, that was a matter that you regarded as  
33 essential, wasn't it?

34 A. Yes.

35

36 Q. And you made sure Mrs Morris understood that right  
37 from the start, didn't you?

38 A. Yes.

39

40 Q. Because you did not wish to see your client, John  
41 Curtin House Limited, build a building without having  
42 secured a tenant in advance?

43 A. That's so, and it was very normal at the time. It  
44 still is.

45

46 Q. And the reason is that if you didn't precommit you  
47 may find yourself limited to your building?

1 A. You may, or you might have a longer leasing up  
2 period, have greater risk, all those sorts of issues come  
3 to play. And you mightn't have a design that absolutely  
4 fits and you would end up like this room here.

5  
6 MR FOSTER: Is that a convenient time?

7  
8 THE COMMISSIONER: Yes, 15 minutes.

9  
10 **SHORT ADJOURNMENT**

11  
12 MR FOSTER: Q. Could I take you to the PCG meeting  
13 number 4 package, which is ALP.010.0135-0170. I  
14 particularly want to take you to folio 0145?

15 A. Yes, I have that open.

16  
17 Q. Did you make a report at this meeting, which was  
18 8 May 1991, in relation to the matters listed there under  
19 section 4.1?

20 A. Although this is an agenda, I believe I did.

21  
22 Q. Would go further forward in that package to agenda  
23 item number 9, ALP.010.0149.

24 A. Yes.

25  
26 Q. Is this a report that was made by Mrs Morris to this  
27 meeting?

28 A. I believe it would have been. Penny Morris didn't  
29 attend every meeting, but she would have been invited.  
30 These aren't, as I understand it, minutes; that's an  
31 agenda.

32  
33 Q. It is.

34 A. And if Penny Morris wasn't at the meeting,  
35 Richard McKeon would have presented the document, but I  
36 have no reason to believe Penny Morris wasn't at this  
37 meeting. I have no knowledge, from my memory, sorry. My  
38 memory doesn't tell me exactly that she was or wasn't at  
39 this meeting.

40  
41 Q. Could I have brought up on the screen CH94.001.0066?  
42 The next page is 0067. Before that is brought up, could I  
43 just ask you this: you have had a chance to look at that  
44 document in the last few days, haven't you?

45 A. Yes. What date is that?

46  
47 Q. It doesn't have a date on it, in typescript. There

1 is some handwriting on the top:

2

3 *For consideration of PCG 8 May '91.*

4

5 Then it says:

6

7 *Noel/James back on 17th + including on*  
8 *fitout structure.*

9

10 Something like that. I want to suggest to you that that  
11 is the paper that was presented to the PCG meeting number  
12 4 on 8 May 1991 by Mrs Morris. Do you agree or can't you  
13 help us?

14 A. I can accept your assumption, because I don't know  
15 either way.

16

17 Q. I beg your pardon?

18 A. I don't know either way, because I don't recognise  
19 the handwriting.

20

21 Q. No. But do you remember there was an occasion in May  
22 of 1991, at a PCG meeting, where Mrs Morris put forward a  
23 document that was either this document or something very  
24 close to it?

25 A. I apologise, I cannot remember the date, but I am not  
26 disputing that it wouldn't have been done in the time  
27 frames that we are talking about.

28

29 Q. All right. Could I just ask you to have a look at  
30 that document in this respect: you see it says under  
31 "Assumptions":

32

33 *Lease term P.A. 10 years + 2 x 5 years, or*  
34 *15 years.*

35

36 Do you see that? That's at the very top?

37 A. I am sorry, I am actually down in the dot points.  
38 Yes. The first dot point, at the top of the page, "On the  
39 assumption".

40

41 Q. Yes. Then the next one is:

42

43 *Market rent in Barton for new offices as at*  
44 *1/1/91 \$320 per sqm gross.*

45

46 A. Yes.

47

1 Q. And then two other assumptions are made; do you see  
2 that?  
3 A. Yes.  
4  
5 Q. As you understood this document, may I suggest, those  
6 assumptions reflected the then expectations as to what  
7 might be achieved in respect of the building and the lease  
8 as at that date?  
9 A. In terms of the - a 10- or a 15-year lease, or in  
10 terms of \$320 a metre, or --  
11  
12 Q. All of them.  
13 A. I'm confused about the percentages under the date  
14 lines.  
15  
16 Q. Yes, I haven't asked you about those yet.  
17 A. No, you asked me about all of them.  
18  
19 Q. All of the assumptions, Mr McCann?  
20 A. Oh, right. Sorry. Could you ask me the question  
21 again, then, seeing as I misunderstood you?  
22  
23 Q. Yes. As you understood this document, may I suggest,  
24 those assumptions - that is, the four dot points under the  
25 heading "Assumptions" - reflected the then expectations in  
26 the developer's camp as to what might be achieved in  
27 respect of the building and the lease as at May 1991?  
28 A. I accept that.  
29  
30 Q. The next matter is under the heading "Rent  
31 Commencement". There are comments and scenarios there,  
32 aren't there?  
33 A. Yes, there are. There are three scenarios.  
34  
35 Q. Three scenarios reflecting different views as to what  
36 percentage increases might be achieved in effect between  
37 the 1 January date and the date when the building was  
38 complete?  
39 A. Yes.  
40  
41 Q. And the top line seems to reflect a 15 per cent  
42 increment; the second one a 12 and the third a 10?  
43 A. Sorry, could you go over that again?  
44  
45 Q. The top line appears to reflect a scenario based upon  
46 a 15 per cent per annum increment in the rent from  
47 1 January 1991?

1 A. To 1 January 1992 and then 1 January 1993?  
2  
3 Q. I said "15 per cent per annum".  
4 A. But it doesn't assume 15 per cent for 19 - to  
5 15 March 1993.  
6  
7 Q. Doesn't it?  
8 A. No, it doesn't.  
9  
10 Q. Isn't that close enough to 15 per cent per annum?  
11 A. Over the three-year period?  
12  
13 Q. No, for the period from 1 January 1993 to 15 March  
14 1993 is about two and a half months, isn't it?  
15 A. I am sorry, yes.  
16  
17 Q. Well, isn't that about 15 per cent per annum?  
18 A. Yes.  
19  
20 Q. So, it appears that the scenarios are reflecting  
21 different outcomes, depending on whether one takes a  
22 15 per cent per annum increment factor, or 12 or 10?  
23 A. It does.  
24  
25 Q. And it seems that that was put forward to show a  
26 reader of the document what the rent might look like as at  
27 the date of commencement of the lease?  
28 A. Yes.  
29  
30 Q. And then there are inducements listed. Do you have  
31 any recollection of a document such as this being  
32 discussed?  
33 A. All the issues - I don't dispute that it was  
34 discussed, because all the issues that are listed there,  
35 including the rent structure and the possible inducements,  
36 were discussed at various times - not every meeting, but  
37 regularly.  
38  
39 Q. The last dot point under "Possible Inducements":  
40  
41 *Possible \$50,000 "agency commission" to*  
42 *APG.*  
43  
44 Do you see that?  
45 A. Yes, I do.  
46  
47 Q. Do you remember that topic being raised at a meeting

1 of the PCG in May 1991?  
2 A. Not specifically in terms - sorry, I will withdraw  
3 that. In terms of the actual date, I do not recall the  
4 first time it was mentioned or the last time it was  
5 mentioned, but I do recall it being part of the discussion  
6 at or around about the time, so I can't dispute it. But I  
7 can't recall the exact date.  
8  
9 Q. Do you say it was discussed more than once?  
10 A. I believe it would have been.  
11  
12 Q. Do you have any recollection as to when it was first  
13 discussed?  
14 A. I believe I just finished saying "no".  
15  
16 Q. Would you accept that it might well have been  
17 discussed at the meeting of May 1991?  
18 A. I don't dispute it.  
19  
20 Q. You can't dispute it; is that the point?  
21 A. Yes.  
22  
23 Q. Do you have any recollection at all as to what the  
24 substance of what was said about it by Mrs Morris and  
25 anyone else at any of these meetings was?  
26 A. My best recollection is that it was the landlord, as  
27 an inducement, paying - instead of the Audit Office paying  
28 APG, that it be part of the package of the developer  
29 paying on behalf of the Audit Office, the fee that may or  
30 may not have been \$50,000 that APG would have charged the  
31 Audit Office for doing the work they were doing for the  
32 Audit Office. That's my best memory of it.  
33  
34 Q. Was that memory of it coming from something that was  
35 said at a meeting?  
36 A. I believe it was discussed as to why we might want to  
37 have inducements, how we might want to structure the  
38 inducements, how you might do some fitout, how the  
39 integrated fitout would work, how we might pay for some  
40 architectural fees to get a better quality outcome in the  
41 fitout - all those sort of things were being discussed,  
42 not all the time, but in a broad parameter of trying to  
43 think of ways to secure the best property outcome.  
44  
45 Q. Why did you think you needed to offer inducements to  
46 the Commonwealth in respect of this proposal?  
47 A. Commonwealth were starting, in Canberra, to think

1 about - or ask for inducements for rentals for new  
2 premises. It wasn't a long-term practice of theirs. It  
3 has become a bigger practice in the last five years than  
4 what it was at the time. It was just a concept going and  
5 it was significant in other capital cities, so I think it  
6 was just starting to become part of the lease negotiations  
7 with the Commonwealth at the time.

8  
9 Q. And it was part of the Canberra market in 1991 that  
10 landlords would offer inducements, wasn't it?

11 A. It certainly wasn't a significant part of the market,  
12 no.

13  
14 Q. Inducements were being offered by landlords in 1991,  
15 weren't they?

16 A. They were.

17  
18 Q. And they took the form of rent-free periods, for  
19 example?

20 A. I - I can't dispute they might have been rent-free  
21 periods, but most, to my knowledge, was a contribution to  
22 fitout.

23  
24 Q. Yes. Someone came up with the idea that there could  
25 be a \$50,000 payment made to the APG, didn't they?

26 A. Yes.

27  
28 Q. Who was that, within the developer group?

29 A. Most likely Penny Morris.

30  
31 Q. At the time that matter was first raised, whenever  
32 that was, did you have some understanding that the APG was  
33 then being required to operate commercially?

34 A. Yes.

35  
36 Q. And that it was charging, as you understood it, fees  
37 to its Commonwealth Government and departmental clients?

38 A. That's what I understood.

39  
40 Q. Where did you get that understanding?

41 A. Public knowledge.

42  
43 Q. Did you have any particular knowledge of what fee, if  
44 any, would have been charged by the APG to the Audit  
45 Office in respect of this matter had the transaction gone  
46 ahead?

47 A. No.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47

Q. Did you have any idea whether \$50,000 was an appropriate sum to offer as an agency commission to the APG in the fashion that you have outlined it?

A. I don't really understand the question.

Q. Well, if you didn't know how much the fee was, did you know whether or not \$50,000 was more than the fee, less than the fee, half the fee, a tenth of the fee? Did you have any idea what the relationship between \$50,000 and the actual fee that might be charged for this transaction was?

A. I believe I've already said that I didn't know what the fee arrangement was between the Audit Office - and I don't know what the basis of the \$50,000 was, other than the fact it was discussed and recorded.

Q. Was it agreed to in terms of the developer group saying, "Yes, it should be offered"?

A. To the best of my recollection, yes.

Q. And as far as you know, was it offered?

A. Yes.

Q. And was there a report back by Mrs Morris as to what had occurred when she offered the \$50,000?

A. I would have to rely on any documents that came back as to - I'm sure we got a report back about it, but I can't recall whether it was warmly embraced or taken with caution - "We'll think about it". I don't know. I can't remember.

Q. Or rejected?

A. Or rejected.

Q. Then the next item on this document is "Rent Structure". Then there is a reference to pre-fixed escalation to apply at 15 March 1994, 1995, 1996; do you see that?

A. Right, yes. Second-last line.

Q. Yes. And that is a reflection of the type of structure that had been recorded as having been discussed between Mrs Morris and Mr Collins on 19 March, isn't it?

A. I can only assume that, I don't know.

Q. Well, I took you to it --

1 A. I don't know from this document and I can't remember  
2 from my mind - from my brain, sorry.

3  
4 Q. I took you to it earlier.

5 A. Okay. Well, I accept that.

6  
7 Q. What is said over the page is:

8  
9 *At 15/3/97, rent is reviewed to market and*  
10 *subsequent three year escalators also*  
11 *established, and which would have regard to*  
12 *the accuracy (compared to actual market*  
13 *rents) for the previous three years*  
14 *escalators.*

15  
16 Do you see that?

17 A. Yes.

18  
19 Q. That is saying, isn't it, that there would be a  
20 market review which would adjust the rent either up or  
21 down in order to reflect the market?

22 A. You say "down", I say the assumption was there was a  
23 ratchet that wouldn't go down, but other than that  
24 particular issue, I would agree.

25  
26 Q. Well, would you not accept to a reader of this,  
27 looking at it now, at least, that if you were to have  
28 regard to the accuracy compared to actual market rents for  
29 the previous three-year escalators when you did your  
30 market review, it contemplated the possibility that the  
31 rent might go down?

32 A. No. My memory was that we had an exemption that if  
33 the rents had been rising during the time, that the  
34 forward escalators would be higher than the last  
35 escalators, but there was always an assumption that the  
36 rent was never going to go down at the review, because  
37 that was the general Commonwealth lease at the time.

38  
39 Q. Then:

40  
41 *Structure repetitive for balance of lease,*  
42 *i.e. rent review to market each 4th year...*

43  
44 And so on. Do those paragraphs reflect what you  
45 understood was the desired outcome for the developer as  
46 about May 1991?

47 A. It is certainly what James Service and I had

1 discussed, from the best of my memory, and, therefore, our  
2 clients were happy moving along the way this was evolving.

3  
4 Q. Then the next heading is "Lease Terms and Conditions"  
5 and there is attached, apparently, the MLC Woden lease and  
6 some comments are made about it. Do you recall getting a  
7 copy of that lease at around about May 1991?

8 A. Yes, about that time.

9  
10 Q. Was that a lease with which you had some familiarity  
11 before that time?

12 A. I can't answer the question. I don't think so. I  
13 think it was a new lease, from memory, but I'm sure it is  
14 somewhere in the documents.

15  
16 Q. But as at May, would you accept, it was the MLC Woden  
17 lease that was being used as the base lease for the terms  
18 and conditions and, indeed, the rent review structure,  
19 that was then under contemplation for this lease?

20 A. In terms of the mechanism, yes.

21  
22 Q. Could I take you forward to 24 May, to ALP.010.0149?

23 A. Would you give me guidance as to what the document  
24 is? Oh, yes, memorandum.

25  
26 Q. It is on the screen, but it is referred to in your  
27 paragraph 40 of exhibit 103.

28 A. I have a different number on my document. That's  
29 probably why I am confused.

30  
31 Q. I see.

32 A. I have got a LEND.002.0348 --

33  
34 Q. That may be. It is the same document.

35 A. Thank you. Yes.

36  
37 Q. You received that on or about 24 May, did you not?

38 A. I accept that.

39  
40 Q. And it was a preliminary communication to you and  
41 others about the upcoming Audit presentation, wasn't it?

42 A. Yes.

43  
44 Q. Mr Nicholson said, in the course of briefing you and  
45 others about that, in the third-last paragraph:

46  
47 *APG do not want the business side of the*

1                    *lease to be presented at this stage.*

2

3                    Do you see that?

4                    A.    Yes, I do.

5

6                    Q.    Had you had any discussion with anyone from

7                    Lend Lease as to what was behind that statement?

8                    A.    No.

9

10                   Q.    Did you inquire as to why it was that the APG did not  
11                   want the business side of the lease to be presented at  
12                   that meeting?

13                   A.    Most likely.

14

15                   Q.    Do you recall what you were told?

16                   A.    My best recollection is that this was about - a  
17                   presentation about the building and its suitability to the  
18                   tenant, and the Audit Office didn't want to be involved in  
19                   commercial arrangements because they were relying on APG.

20

21                   Q.    Who told you that?

22                   A.    Most likely Richard McKeon.

23

24                   Q.    Could I take you to paragraph 42 of exhibit 103 which  
25                   deals with your letter of 30 May 1991, which is  
26                   CH94.004.0014-0018.

27                   A.    Headed "Development Feasibility" on McCann &  
28                   Associates letterhead?

29

30                   Q.    Yes.

31                   A.    Yes.

32

33                   Q.    In paragraph 42 you refer to the \$250,000 which is --

34                   A.    Sorry, you are talking about paragraph 42 where?

35

36                   Q.    Of exhibit 103 - that is, your statement.

37                   A.    Yes.

38

39                   Q.    It is on the screen. The letting-up cost figure of  
40                   \$250,000 is the matter that you deal with in paragraph 42,  
41                   isn't it?

42                   A.    I believe so.

43

44                   Q.    You say:

45

46                   *I regarded \$250,000 to be a reasonable*  
47                   *contingent sum for the commercial letting*

1           up costs for this building and an  
2           appropriate figure to include for the  
3           purposes of the feasibility assessment. It  
4           was to my view an average letting up cost  
5           that a landlord would expect to expend in  
6           order to secure a tenant for a commercial  
7           office building at this time. In  
8           estimating the amount of \$250,000, I do not  
9           believe that I had regard to whether APG  
10          was to be paid an agency commission of  
11          \$50,000.

12  
13          Do you see that?

14          A.    Yes.

15  
16          Q.    First of all, what was it that you had in mind was to  
17          be covered by the concept of letting-up costs when you  
18          prepared that feasibility?

19          A.    Normal agency commission that one would allow for in  
20          a new commercial office project, that the landlord would  
21          pay.

22  
23          Q.    You mean an agency commission to the landlord's agent  
24          to secure a tenant?

25          A.    That's it.

26  
27          Q.    But there was no prospect of that being required in  
28          this case, was there?

29          A.    No.

30  
31          Q.    So what was it for?

32          A.    The feasibility was about - not specific on the Audit  
33          Office; it was specific on the building and I was looking  
34          at what are the normal charges that one would have. This  
35          was very early in the piece, so I was allowing what I  
36          thought was a normal allowance - no more, no less.

37  
38          Q.    But this is 30 May 1991, isn't it?

39          A.    Yes.

40  
41          Q.    At that point the Audit Office is well and truly  
42          identified as the prospective tenant, isn't it?

43          A.    Yes, but not secure.

44  
45          Q.    No. But, to your appreciation at that time, most  
46          likely to take up the space?

47          A.    Yes.

1  
2 Q. And if the Audit Office took up the space would there  
3 be a need for any of that \$250,000 to be spent?  
4 A. Some of it might have been and none of it might have  
5 been, but it was an allowance; it was just the fact - we  
6 didn't have a real estate actually working in the group.  
7 It certainly wasn't my fee.  
8  
9 Q. You only got \$50,000, didn't you?  
10 A. Yes, but that was on a time basis over a long time.  
11  
12 Q. Yes.  
13 A. The issue is that I was looking at, in some ways,  
14 some of the issues in here as generic to indicate what the  
15 feasibility of the project was. And I believed it was  
16 reasonable to put it in there. There was no covert  
17 reason. It was straight up-front, "This is what I think  
18 you might have to pay depending on how this all goes".  
19  
20 Q. Well, did you think that out of that \$250,000 there  
21 might need to be paid some money by way of incentive to  
22 the Commonwealth to take up the deal?  
23 A. No, I - otherwise I would have described it as  
24 incentive.  
25  
26 Q. Was it a provision in your feasibility, out of which  
27 moneys could be paid by way of incentive to the  
28 Commonwealth to take up this deal?  
29 A. I just answered that question, and I said no, I would  
30 have described it as such, unless you are trying - unless  
31 you are asking me, because, earlier, under a previous  
32 document we had under "Incentives", the \$50,000 APG,  
33 that's a different issue, but other incentives, no,  
34 otherwise I would have described it as an incentive.  
35  
36 Q. You just said that in an earlier document you had the  
37 \$50,000 mentioned. That's not right, is it?  
38 A. Sorry?  
39  
40 Q. There was no reference to the \$50,000 agency  
41 commission to the APG in any earlier version of this  
42 document, was there?  
43 A. Of this feasibility document?  
44  
45 Q. Yes.  
46 A. No.  
47

1 Q. It came in a later version, didn't it?

2 A. Yes.

3

4 THE COMMISSIONER: Q. Didn't you describe it as an  
5 indirect incentive when you were giving evidence before  
6 Commissioner Morling?

7 A. Yes. It was an incentive at the tenant, not at the  
8 tenant's representative.

9

10 MR FOSTER: Q. Could I take you forward to the third  
11 page of the feasibility, which will be folio 0016, I  
12 think. You have adopted a rental for the purpose of the  
13 market value assessment there of \$360 per square metre per  
14 annum, haven't you?

15 A. I have.

16

17 Q. As a gross?

18 A. Yes.

19

20 Q. That is explained in your letter to Mr Hogg, isn't  
21 it?

22 A. Could I have some guidance as to where I could go to?

23

24 Q. Well, I will just read it to you. If you want, I  
25 will show it to you, but it is page 2 of the letter of  
26 30 May. You say:

27

28 *I confirm that the rental adopted in my*  
29 *report at \$360 per square metre per annum*  
30 *for the office space is on the basis of*  
31 *current rental value of \$315 per square*  
32 *metre per annum, factored at 10% per annum*  
33 *for 18 months, the term adopted for*  
34 *construction and completion of the*  
35 *building.*

36

37 A. I accept what you put to me.

38

39 Q. You were using \$315 in that feasibility, weren't you?

40 A. Yes.

41

42 Q. And it is right, isn't it, that the \$320 that was put  
43 out there was as high as you thought you could reasonably  
44 even ask for in any negotiation with the government?

45 A. I thought I answered that earlier in the day.

46

47 Q. Well, could you answer it again?

1 A. And what I said, I thought, was \$320 to \$325 a metre  
2 was the range. The feasibility adopted a lower figure.  
3  
4 Q. You adopted the capitalisation method for that  
5 particular assessment that appears on page 3, didn't you?  
6 A. 0016 still?  
7  
8 Q. Yes, sir.  
9 A. Yes.  
10  
11 Q. Would you explain to us how that method works,  
12 briefly, please?  
13 A. The capitalisation method? It takes into account  
14 expectation of rents into the future and the market  
15 expectations at the time of what that was about, and it is  
16 a return on capital invested, which is the purchase price.  
17  
18 Q. But it has certain integral features, doesn't it?  
19 The first one is that you postulate a rent going forward  
20 for the purposes of the capitalisation calculation, don't  
21 you?  
22 A. Sorry, I'm not quite with you.  
23  
24 Q. Well, looking at your calculation, what you have done  
25 there is to come up with a figure of \$2.151m-odd as the  
26 net rent potential of the building?  
27 A. Yes.  
28  
29 Q. And what I mean by postulating the rent is that you  
30 have calculated a gross rent and arrived at a net rent by  
31 the process set out on that page?  
32 A. Yes.  
33  
34 Q. Then you have capitalised that net rent potential  
35 using the figure of 8.5 per cent, haven't you?  
36 A. Yes.  
37  
38 Q. What is the mathematics of that? How does it work?  
39 A. How do you get \$25m-odd out of \$2m by using an  
40 8.5 per cent capitalisation rate?  
41  
42 Q. Yes.  
43 A. Well, this is not a freehold property, but it is  
44 close to a freehold property.  
45  
46 Q. We can accept that.  
47 A. One normally, in a freehold property, accepts in

1 perpetuity as 100 years, and the valuation profession does  
2 that, as does the investment community, an 8.5 per cent  
3 capitalisation rate, divided in - 8.5 divided into 100, I  
4 believe, out of my brain, to be about 12 times years  
5 purchase, or multiplier, of the net rent, and that would  
6 appear to take \$2.151-odd to \$25m.

7

8 Q. The mathematics is that you divide the potential rent  
9 figure by 8.5 per cent, don't you?

10 A. Yes. You can do that, too.

11

12 Q. How does one arrive at the figure, a percentage  
13 figure, by which you are going to capitalise that rental  
14 stream?

15 A. Why would I --

16

17 Q. Using that method?

18 A. Why would I use 8.5 per cent as against any other  
19 number?

20

21 Q. Yes.

22 A. Right. I think the simplest way I could explain it  
23 is that it is a market-analysed yield. The market,  
24 depending on the quality of the property and the location  
25 of the property and the profile of the tenant and the  
26 profile of the rent being paid in the property, would be  
27 analysed in a unit of value, which is the yield.

28

29 You would make inquiries of the purchaser about their  
30 expectation of rental growth going forward; their internal  
31 rate of return that they might use as a hurdle for their  
32 investment; their expectation of what a discount factor  
33 might be - did they undertake a discounted cash flow in  
34 assessing that, and most institutions that buy these sort  
35 of properties do. The simplistic unit of value is the  
36 simple yield of purchase price and net rent.

37

38 Q. The DCF method of looking at these things is an  
39 entirely different method from the capitalisation method,  
40 isn't it?

41 A. Yes.

42

43 Q. The 8.5 per cent, is it fair to express it in this  
44 way: if an investor was looking for a return on its money  
45 at the rate of 8.5 per cent per annum and was achieving a  
46 net rent of \$2.151m or so, that investor would pay \$25.3m  
47 for the building?

1 A. Yes.  
2  
3 Q. So that it reflects, in effect, the capital sum the  
4 investor is prepared to lay out for the income stream?  
5 A. Yes.  
6  
7 Q. In that sense, the factor chosen, the percentage  
8 rate, reflects the investor's view of the market.  
9 A. Yes.  
10  
11 Q. The higher the percentage, the softer the market?  
12 A. Or some other factor that's increasing the risk.  
13  
14 Q. What you did on this particular feasibility was to,  
15 on the basis explained in your letter, offer an opinion as  
16 to what this building might be worth when completed, on  
17 the basis of the alternative yields set out on that page?  
18 A. Yes. That was a simplified version. You don't seem  
19 to agree with me that the simple yield is one unit - is a  
20 unit of value at the end that's used by the market by  
21 valuers interpreting the market, but to get to it the  
22 investment community uses discounted cash flow, internal  
23 rate of return hurdles and the whole thing, before they  
24 then come to a cap rate.  
25  
26 Q. Yes.  
27 A. And they might express that and look at their  
28 portfolio of investments against cities, they might look  
29 at their portfolio investment property as to government  
30 bonds - in other words, money in the bank and no capital  
31 growth - or as against buying shares and their expectation  
32 of share value growth and returns and so on.  
33  
34 Q. They look at an entire range of economic factors  
35 influencing investments?  
36 A. Yes, and - so the simple yield is not just a valuer's  
37 setting of the market, because the valuer doesn't set the  
38 market. The valuer is there to interpret what the  
39 investment community is taking into account, and  
40 encapsulating it in a simple unit of value that he then -  
41 that he or she then applies.  
42  
43 Q. But the simple unit of value you are talking about  
44 is the valuer's judgment as to what cap rate to use?  
45 A. Yes, having regard to what the market has looked at,  
46 in terms of going forward.  
47

1 Q. His judgment, in relation to that, having regard to  
2 whatever he looks at, including the matters you have  
3 raised?

4 A. Yes.

5

6 Q. And, indeed, the other critical part of it is his  
7 judgment as to what the maintainable rental stream going  
8 forward, assessed notionally at in perpetuity, might be?

9 A. Yes.

10

11 Q. And, while we are on it, valuers of commercial  
12 properties which are to be rented commonly use the  
13 capitalisation method as the primary method of value,  
14 don't they?

15 A. Not in the current market, no.

16

17 Q. In 1990, 1991, and coming forward to the end of the  
18 1990s, that's what they did?

19 A. No, I don't believe so. I believe there was a  
20 radical change in the valuation techniques as a result of  
21 the Sydney market falling over in 1973 and a look forward  
22 of what are the ingredients the market needed to change,  
23 and, you know, fortunate or unfortunate, I'm old enough to  
24 have lived through that as a working valuer, and I believe  
25 that the profession looked to other methods, as the  
26 institutions did, for their investment portfolio risk  
27 analysis going forward.

28

29 Q. But the discounted cash flow valuation method of real  
30 estate was generally regarded as an alternative, or  
31 cross-check, for the capitalisation method, in the years  
32 leading up to 1992 and beyond up to 1994, at least, wasn't  
33 it?

34 A. You are putting to me what the valuer is doing. I'm  
35 putting to you what the purchaser is doing, and the valuer  
36 should be interpreting what the purchaser purchases, as a  
37 range in a community, to set the market. The valuer  
38 doesn't set the market. And the valuer is using a simple  
39 yield. Sure, we all look at discounted cash flows, sure,  
40 but we get the knowledge of the discount rates, the  
41 internal rates of returns and that, by investigation with  
42 the purchasers, and I do not believe that by the mid 80s  
43 that the majority of - by the early and 80s, that the  
44 investment community wasn't looking at sophisticated cash  
45 flow techniques to try and understand better their  
46 portfolio risk and their property purchase risk.

47

1 Q. But you are telling me about, aren't you, what  
2 investors were doing, as you understood it, and how they  
3 approached investments, rather than answering the question  
4 I asked you, which was about the approach valuers took in  
5 the period?  
6 A. I accept that.  
7  
8 Q. Could I take you to paragraph 48 of your statement,  
9 exhibit 103?  
10 A. Yes.  
11  
12 Q. What research had you done before 1 July on the  
13 long-term rental growth trends in Canberra?  
14 A. Definitionally, "long-term" meaning 15 years, or  
15 "long-term" meaning since the 80s.  
16  
17 Q. I'm just picking up your words. I want to know what  
18 you say you did that's covered by that sentence in the  
19 third sentence of paragraph 48.  
20 A. As a matter of course, in the 1980s we were --  
21  
22 Q. Would you answer my question?  
23 A. Sorry?  
24  
25 Q. Would you answer my question, please?  
26 A. I believe I'm trying to answer your question. As a  
27 matter of course, my office and me, on not a day-to-day  
28 basis, were - had records of rental growth and were  
29 applying - recording those, and, therefore, at the time  
30 and early in the piece of this development, in early '91  
31 or early - we would have had documentation that I would  
32 have gone back to as the base documentation to start  
33 exploring further as to what the rental growths might have  
34 been, to clarify them.  
35  
36 All I am saying is we had base documents already, and  
37 then I would have specifically looked at issues about  
38 Centenary House. That's all I was trying to explain  
39 better.  
40  
41 Q. Would you agree you did not create any document  
42 reflecting the work you had done prior to 1 July 1991?  
43 A. Specifically for Centenary House, yes.  
44  
45 Q. And that the most you may have done was to have a  
46 think about it and a talk with Mr Service?  
47 A. No. I think you are trying to say that I have no

1 knowledge of it and I had no evidence, and I'm trying to  
2 say I had the evidence and we did more work prior to me  
3 meeting with Mr Service.  
4

5 Q. Let me put very clearly what I'm putting to you. You  
6 say you had material available in the office of historical  
7 movements in rents in Canberra up to, let's say, the end  
8 of June 1991, don't you?

9 A. Yes, from around about the early '80s is what I put  
10 to you.  
11

12 Q. Yes. And you are telling the Commissioner that you  
13 had a look at that material before 1 July 1991, are you?

14 A. Yes.  
15

16 Q. Do you agree that if you had a look at that material  
17 you did not make any specific note of what you got from it  
18 for the purposes of looking at the Centenary House  
19 situation, before 1 July 1991?

20 A. Well, I believe we looked at documents earlier that  
21 showed rental growths and expectations, and I believe that  
22 the input into those were from the data I had available to  
23 me.  
24

25 Q. You, I suggest, had not given any indication to  
26 Mrs Morris, before 1 July or thereabouts, of what rate of  
27 escalation for any framework of lease your client would be  
28 looking for from the Commonwealth?

29 A. I agree with that formally, and I - on a formal  
30 basis. I'm not agreeing with it, that there wasn't a lot  
31 of chat.  
32

33 Q. A lot of chat between whom?

34 A. James Service and I and Bob Hogg and I about where  
35 the market had been and where it was going. I concede  
36 that there was no work done until after June - wouldn't  
37 have been done after June, going back to the early 1970s  
38 or the mid 1970s. I concede that. But I do not concede  
39 that there wasn't discussions regarding the rental  
40 performance of office accommodation in Canberra during the  
41 1980s and I was advising the capital property trust about  
42 it at the time.  
43

44 Q. You did not have in mind, as at 1 July 1991, giving  
45 advice to your client or to Mrs Morris in connection with  
46 your client as to what fixed rate of escalation ought to  
47 be sought going forward in respect of this lease for a

1 period of 15 years on an annual basis, did you?  
2 A. No. And I --  
3  
4 Q. Because that wasn't in the ring, then, was it?  
5 A. No, and I conceded that, by saying I hadn't been back  
6 for the early 80s. I said I didn't do that until after  
7 this date.  
8  
9 Q. What I'm suggesting to you is this: at the most, all  
10 you did before that letter of 1 July 1991 was to think  
11 about and have a look at some of your own records and  
12 discuss with Mr Service historical rental movements up to  
13 that point.  
14 A. I thought that's what I said I did.  
15  
16 Q. Would you have a look at the letter of 3 July, which  
17 is CH94.001.0069?  
18 A. Could I just confirm the number? It is ALP, did you  
19 say?  
20  
21 Q. It is a different number, perhaps, but it is the  
22 letter of 1 July, from Mr Service to Mrs Morris.  
23 A. Right, because my 169 is actually a page - an item 10  
24 on an agenda, I'm sorry.  
25  
26 Q. It is on the screen, Mr McCann. I am sure you have  
27 seen it before?  
28 A. Yes, I have.  
29  
30 Q. Did you look at and approve that letter in these  
31 terms before it went out?  
32 A. I believe so.  
33  
34 Q. It was the result of a discussion you had had with  
35 Mr Service, wasn't it?  
36 A. I believe so.  
37  
38 Q. It was produced because Mrs Morris had been asking  
39 for greater definition in the commercial parameters being  
40 sought by the joint venturers at that time in respect of  
41 the tenancy, wasn't it?  
42 A. Most likely.  
43  
44 Q. You and Mr Service decided you would put out an  
45 indication of those parameters by taking a view which was  
46 higher than you expected in commercial terms the  
47 Commonwealth would ever agree to, didn't you?

1 A. I don't think you can draw that conclusion directly,  
2 no.  
3  
4 Q. It is, in effect, an ambit claim that you have put  
5 forward for her to go and talk to them about, isn't it?  
6 A. Certainly the 12 per cent is the upper part of the  
7 range, on item 3. \$330 is consistent, at the 30th of  
8 June, with all the earlier numbers, and the rental  
9 escalators at 11 per cent are consistent with what we had  
10 been talking about earlier. So the 12 per cent is the one  
11 that's marginally on the high side, I agree.  
12  
13 Q. You say that with a smile. It is outside what you  
14 would reasonably have thought they would have agreed to?  
15 A. It is the upper part of the range. I'm agreeing.  
16  
17 Q. And this, of course, reflects, does it not, an  
18 appreciation on the part of you and Mr Service that the  
19 structure at that point was still mirroring the structure  
20 that had been in play for some time and discussed at PCG  
21 meetings concerning rent review?  
22 A. That's so.  
23  
24 Q. This letter was a matter which was discussed with  
25 Mr Hogg by you, wasn't it?  
26 A. I believe so.  
27  
28 Q. You would never have let that letter go out without  
29 Mr Hogg's approval, would you?  
30 A. No.  
31  
32 Q. It is clear, isn't it, at this point, that your  
33 client was content with a structure in respect of rent  
34 review that is reflected in paragraph 6?  
35 A. Yes.  
36  
37 Q. And nobody at that point was saying that there should  
38 be a fixed annual escalator for 15 years, were they?  
39 A. I don't believe so. That came later.  
40  
41 Q. It came later in July, didn't it?  
42 A. Probably more like August, but probably July, you  
43 know. I'm not quite sure the exact timing of it, but  
44 certainly later than the - than this document.  
45  
46 Q. And when did the ACTU pull out of this venture, to  
47 your recollection?

1 A. I don't know that the term is "pull out".  
2  
3 Q. Well, cease to want to be in it?  
4 A. I don't even think that's the term. I think my best  
5 recollection is that Bob Hogg thought that John Curtin  
6 House Limited could do it on their own if in fact they  
7 were agreeable --  
8  
9 Q. I see.  
10 A. -- the ACTU was agreeable.  
11  
12 Q. I see. He thought they could do it on their own and  
13 he wanted to do it on his own if it would work; is that  
14 right?  
15 A. Yes, because there was some arrangement on John  
16 Curtin House, 22 Brisbane Avenue, about a second tranche  
17 in the sale of the interest down to the ACTU in terms of -  
18 I'm not in - I need to just pause. I don't know what the  
19 money was being used for. My understanding was it was to  
20 be used for this project.  
21  
22 Q. Well, you mentioned in the course of that answer the  
23 selling down of some equity in the company John Curtin  
24 House Limited to the ACTU, didn't you?  
25 A. No, the property. The property. John Curtin House,  
26 22 Brisbane Avenue. Would it be easier if I just referred  
27 to the property as 22 Brisbane Avenue, as against John  
28 Curtin House Limited?  
29  
30 Q. Let's not pause to argue whether it was equity in the  
31 company or the property. The fact was --  
32 A. No, it was the property.  
33  
34 Q. -- John Curtin House Limited was selling down the  
35 interest - whatever it was - in order to raise money to  
36 pass on to the ALP to cover their 1990 election debt,  
37 wasn't it?  
38 A. I'm not aware of that, I have to tell you. I'm just  
39 not aware of that.  
40  
41 Q. Really?  
42 A. Yes. Really. The only secretary that's ever talked  
43 to me about requiring money after the election was Bob  
44 McMullan when we sold the property as a result. That's  
45 the only secretary that's ever talked to me about  
46 requiring funds.  
47

1 Q. You knew, up until the time that the ACTU, if I can  
2 use the neutral term, became no longer involved in the  
3 project, that Mr Hogg had taken a view that John Curtin  
4 House Limited could not do the new building on its own?  
5 A. Well, I think Bob told me originally why the ACTU was  
6 involved was he felt it was something they could do  
7 together and he probably needed the support. I can't  
8 remember the exact language, but I - I have got to tell  
9 you, I'm not involved in the finances of John Curtin House  
10 Limited and I have never been involved.  
11  
12 Q. When did you first meet Mr McFadden?  
13 A. For this project or in life?  
14  
15 Q. Well, first of all in life.  
16 A. I don't mean to be cheeky.  
17  
18 Q. Well, you are being a bit, but that's --  
19 A. I apologise.  
20  
21 Q. In life.  
22 A. In life, late 70s.  
23  
24 Q. Was he someone well-known to you by 1990?  
25 A. Yes.  
26  
27 Q. He became involved quite directly in this project in  
28 about July, didn't he?  
29 A. I accept what you are putting to me. I can't put a  
30 date on it.  
31  
32 Q. Yes. Could I take you to the document which is  
33 LEND.015.0323-0335. You may not have it. It will come up  
34 on the screen. This is a document on Lend Lease  
35 letterhead prepared, I will ask you to assume, by  
36 Mr McFadden, and discussed with Mr Hogg in July 1991.  
37 Have you seen it before?  
38 A. Is this the only page?  
39  
40 Q. No. You may ask the operator, when you have finished  
41 the first page, to scroll forward.  
42 A. I am sorry, I didn't realise I had control of the  
43 documentation. Could I have the next page, please?  
44 That's it?  
45  
46 Q. The next page.  
47 A. I think it must be only two pages.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47

Q. There is a third one --

THE COMMISSIONER: There are only two on the document that has come up on the screen.

MR FOSTER: That's because the third page is 0335, I am sorry. For some reason it wasn't coded sequentially.

Q. Have you seen it before?

A. I can't be certain, but I would accept that I probably did.

Q. You see, you would accept, wouldn't you, that from about July 1991 at least, Mr McFadden, to your knowledge, was doing financial modelling as to what sort of financing structure and rental structure might be put together in order to secure finance for this project?

A. I accept that.

Q. And you were kept well informed of what it was he was doing in that regard, weren't you?

A. Most likely, but I can't - I never got involved in the issues about the funding arrangements. That was with Bob direct.

Q. Of course. But you knew it was going on, didn't you?

A. Oh, I knew it was going on, but I - what I'm putting to you, I don't believe I was asked to comment on any proposal going to any institution about anything other than the value of the property and that was going through, and this document looks at the parameters we were looking at in terms of rent and rental growth during the construction period and it looked like an earlier completion date, March '93. That sort of blew out a bit.

Q. Yes, because things started a bit later, in reality?

A. Yes, in reality.

Q. But you knew from about early August 1991, and through August and September 1991, that Mr McFadden, with Mr Hogg's permission and blessing, was approaching financiers with a view to securing finance for this transaction?

A. Yes. I don't know that he was approaching them directly. I can't answer that. But I do believe he was working with Bob in that, and I thought Bob was doing

1 that.

2

3 Q. If you go back to the page which is LEND.015.0324, do  
4 you see under the heading "Financing Options", there is,  
5 in the first dot point, the proposition that there should  
6 be negotiated a fixed rental growth agreement with the  
7 government on the terms set out; do you see that?

8 A. Yes.

9

10 Q. It was the fact, as you understood it, from about  
11 early to mid-July 1991, that Mr McFadden had formed the  
12 view that it was an important part of making this proposal  
13 attractive to financiers that there be secured from the  
14 Commonwealth a fixed annual escalation and that it should  
15 be of the order of 9 per cent in respect of the rent,  
16 didn't you?

17 A. Yes, and he spoke to me about the AUSLIG lease,  
18 because it was - it commenced in June 1991, and how he was  
19 able to negotiate that at a 9 per cent escalator over the  
20 period of the lease.

21

22 Q. Right --

23 A. And the 15 - and the 10-year lease, and so on.

24

25 Q. So he told you about Lend Lease's experience at  
26 AUSLIG, did he?

27 A. At where?

28

29 Q. AUSLIG.

30 A. AUSLIG, yes.

31

32 Q. And it was he who said, "Look, I got 9 per cent over  
33 on that deal; I think it can be achieved here"?

34 A. Yes.

35

36 Q. And he said, "I'm going to put 9 per cent in my  
37 modelling on that basis"?

38 A. Most likely.

39

40 Q. It is correct, is it not, that, to your  
41 understanding, from that day forward it was the desire of  
42 your client, John Curtin House Limited, to secure a deal  
43 with the Commonwealth that involved fixed escalations for  
44 15 years at 9 per cent?

45 A. Yes, and in fact I supported it and recommended it.

46

47 Q. Yes, but I want to just get very clear that it was

1 from about the middle of July, as a result of  
2 Mr McFadden's view of life, that that aim was articulated  
3 and pursued; do you agree?

4 A. Yes. Yes. I am agreeing. I didn't think I had  
5 challenged anything you put to me.  
6

7 Q. And you had not at that point, I suggest, done any  
8 directed market research at all as to whether or not,  
9 going forward, having regard to the market at the time,  
10 that sort of arrangement was within the market as you  
11 understood it?

12 A. And I think I said that earlier - that I hadn't done  
13 that work until either July or August, about going back to  
14 1975 and 1973 - I don't think I mentioned 1973, but I  
15 thought that that's already in evidence, that I didn't  
16 commence that work, and I wanted to do that to confirm or  
17 deny whether this 9 per cent was supportable for a 15-year  
18 term.  
19

20 Q. What you did, I suggest, subsequent to coming to  
21 understand Mr McFadden's views and why he held them, and  
22 what it was he was including in his modelling, was to set  
23 about to look at information and statistics that you could  
24 lay your hands on that would justify in any negotiations  
25 that would be undertaken a structure of 9 per cent per  
26 annum going forward for 15 years?

27 A. I agree.  
28

29 Q. It was a justification exercise that you then set  
30 about undertaking, wasn't it?

31 A. Well, I wanted to be satisfied, if I was going to go  
32 and talk to anybody, that I had the evidence to indicate  
33 that what I was putting was reasonable. I didn't want to  
34 go and just talk about a number with no basis for it.  
35

36 Q. No, but the one thing that is very clear, is it not,  
37 is that the 9 per cent and the 15 years was not struck by  
38 reference to what the market told you was then happening,  
39 but was rather struck by reference to Mr McFadden's views  
40 of what could be achieved?

41 A. Well, clearly what the AUSLIG lease showed was that  
42 the Commonwealth was prepared to enter into a 10-year  
43 lease with a 9 per cent escalator, and what I was  
44 interested to do was to - because I already knew I had  
45 information for 10 years, nearly 10 years, because I had  
46 about 82 on evidence already, and I wanted to see if, in  
47 fact - because I had no intuition about what the 15-year

1 escalator was, so I went back and did the research to be  
2 satisfied that there was evidence to prove that better  
3 than 9 per cent or 9 per cent was readily supported for  
4 15 years, as well as the AUSLIG lease that had just been  
5 done.

6

7 Q. You never mentioned the AUSLIG lease to Mr Jeffress,  
8 did you?

9 A. Sorry?

10

11 Q. You never mentioned the AUSLIG lease to Mr Jeffress,  
12 did you?

13 A. I did - it is not in my schedule, but I believe we  
14 talked about it.

15

16 Q. Are you sure?

17 A. Yes. There is this evidence in the documents that  
18 you sent to me that I got it in around about August 1991.

19

20 Q. There is no doubt about that, is there?

21 A. No, there is not any doubt in my mind now as to the  
22 date I got it.

23

24 Q. If it was a significant justification or support for  
25 your view, you would have included it in the documentation  
26 you prepared specifically for discussion with Mr Jeffress,  
27 would you not?

28 A. I believe the documentation I gave to Mr Jeffress was  
29 about the history of growth, about a 15-year escalator,  
30 not about something that had basically only been finalised  
31 a couple of months beforehand for the going forward  
32 period.

33

34 Q. What you did in order to justify what your client was  
35 wanting was to go back and look at historical rent  
36 increases in respect of certain parts of Canberra and in  
37 respect of certain buildings in Canberra, taking a 15-year  
38 period back from 1990 or 1991, in order to see whether,  
39 looking at those figures alone, history would support the  
40 position your client wanted to take; isn't that right?

41 A. Well, I believe I did the work, so I was satisfied  
42 that I could go forward with it, and I believed that John  
43 McFadden was indicating to Bob Hogg that this was a  
44 do-able deal. He didn't produce any evidence in these  
45 documents as to where it came from, other than saying, "I  
46 did a 10-year lease on the AUSLIG deal", to the best of my  
47 knowledge, so I went and did the research so that I could

1 go to Bob Hogg and say, "I believe this is a do-able  
2 deal", and therefore I built his expectation that it would  
3 be a minimum of 9 per cent.  
4

5 Q. And the answer to my question is "yes", isn't it?

6 A. I believe I answered it "yes". I thought you put to  
7 me that I did - what the client wanted was 9 per cent over  
8 15 years. I didn't answer that "yes". What I put back to  
9 you was that I believe I built that expectation after, or  
10 confirmed that expectation that Bob Hogg probably  
11 developed, after this document.  
12

13 Q. You confirmed, didn't you, by reference to history  
14 only, as you saw it and selected it, that you could go to  
15 a meeting with the Commonwealth with a straight face and  
16 say, "9 per cent is supportable having regard to the last  
17 15 years"?

18 A. Yes.  
19

20 Q. Yes. And there was no market as at 1991 or 1990  
21 against which you could say with a straight face, either  
22 as a negotiator or as a valuer, that persons, including  
23 the Commonwealth, had entered into leases for 15 years  
24 with annual escalations at 9 per cent, was there?

25 A. No, I could only rely on the AUSLIG arrangement that  
26 was finalised in June.  
27

28 Q. And insofar as the Centenary House lease had 15 years  
29 with that rate of annual escalation, that was not a  
30 transaction that had any basis in market transactions, to  
31 your knowledge, up to that point, was it?

32 A. That's so.  
33

34 Q. And the task that you undertook, from July onwards,  
35 and ultimately when you met with Mr Jeffress, was, as a  
36 negotiator on behalf of John Curtin House Limited, to  
37 persuade Mr Jeffress that what your client wanted and had  
38 determined to have by reference to its financial modelling  
39 was supportable by reference to the history?

40 A. Well, I didn't talk about what my client wanted with  
41 Mr Jeffress. I talked about, "Here is the evidence. This  
42 is what I believe; what do you think?" I did talk to him  
43 about the AUSLIG lease, because it was there for me. That  
44 gave me the guidance of a long-term escalator, recently  
45 negotiated.  
46

47 All right, I concede it was 10 years, not 15, and

1 that, but I believe at Bruce, and it is an inferior  
2 location, expected to have lower rent growth I would have  
3 thought, at the time, going forward, than Barton -  
4 particularly the Centenary House lease location - I  
5 believe that the evidence that I then went and did, or  
6 research, added to my view that there was strong  
7 opportunity of the rental growth going forward to be  
8 better than 9 per cent per annum over the 15 years.

9

10 Q. When you met with Mr Jeffress you were there as the  
11 representative of John Curtin House Limited to advocate  
12 and persuade and negotiate whoever you met to the point of  
13 view that you thought your client wanted, which was  
14 15 years, at fixed rate, 9 per cent, weren't you?

15 A. The only disagreement I am putting to you is I  
16 believe I built that expectation, that it could be  
17 achieved, on the evidence, to the client, and that's where  
18 the client got it from.

19

20 Q. That's not right, is it?

21 A. I believe we had a discussion earlier that Mr Hogg  
22 doesn't know about these things that you put to me and - I  
23 believe it is right. I believe I built that expectation.  
24 I was unsure when John McFadden gave the 9 per cent over  
25 15 years. I wanted to confirm in my own mind that there  
26 was evidence that I could use to support that, and I built  
27 the expectation on top of this first opportunity.

28

29 Q. But he initiated the expectation, didn't he?

30 A. Oh, I accept that.

31

32 Q. All you did was run around trying to support it for  
33 the purpose of negotiating with the Commonwealth on behalf  
34 of your client; isn't that right?

35 A. Well, that's your view of it. I don't agree that I  
36 ran around trying to support it. I went away to try and  
37 see if there was evidence to support it, and I believed  
38 there was evidence to support it from the research I did.  
39 That's the only disagreement we are having, I believe.

40

41 Q. All right. And no part of what you did, in  
42 connection with your discussions with Mr Jeffress, or at  
43 those discussions, involved any exercise of valuation in a  
44 professional sense, but was rather nothing more nor less  
45 than you acting on behalf of your client to secure the  
46 deal they wanted as a negotiator?

47 A. I believe that I used my valuation skills in terms of

1 doing the research and applied those in the negotiation.  
2  
3 Q. But it was a negotiation, not a valuation?  
4 A. Yes, it was a negotiation. I concede that.  
5  
6 Q. In which you were there to do the best for John  
7 Curtin House Limited?  
8 A. I concede that.  
9  
10 Q. Charged with a desire to get 9 per cent year by year  
11 for 15 years?  
12 A. I believe I had the evidence to achieve it.  
13  
14 Q. But the reason you were there was to get that result,  
15 wasn't it?  
16 A. What result? The best result for my client, or the  
17 result that I believed I could achieve from the market  
18 research that I did as a valuer?  
19  
20 Q. At least 9 per cent per annum for 15 years fixed?  
21 A. That was a view that I felt I could achieve and the  
22 evidence was there to support it, yes.  
23  
24 Q. You set about trying to do that by asking for more  
25 than 9 per cent, didn't you?  
26 A. Yes, because I believe the evidence showed that it  
27 was more than 9 per cent.  
28  
29 Q. But you knew at all times that 9 per cent would do,  
30 didn't you?  
31 A. I don't believe that that's the position I was taking  
32 as my benchmark, that I wouldn't come under 9 per cent, if  
33 that's what you are putting to me.  
34  
35 Q. No, I'm not. I said 9 per cent would do.  
36 A. I have no knowledge of what you mean "it would do".  
37  
38 Q. 9 per cent was very acceptable to your client?  
39 A. The client - I believed it would be the minimum we  
40 would get.  
41  
42 Q. 9 per cent, to your understanding, was very  
43 acceptable to your client?  
44 A. On the basis I told them, yes.  
45  
46 Q. And you were there to negotiate better than that if  
47 you could?

1 A. I believed I had an opportunity to on the evidence.

2

3 Q. And that's what you were trying to do?

4 A. That's what I was trying to do.

5

6 Q. And it may have been that less than 9 per cent would  
7 have been acceptable if you had to go down?

8 A. I don't know.

9

10 Q. No, because you never had to get that far, did you?

11 A. No.

12

13 MR FOSTER: Is that a convenient time?

14

15 THE COMMISSIONER: Yes.

16

17 **LUNCHEON ADJOURNMENT**

18

19

20

21

22

23

24

25

26

27

28

29

30

31

32

33

34

35

36

37

38

39

40

41

42

43

44

45

46

47

1           **UPON RESUMPTION:**

2  
3           MR FOSTER:    Q.    Mr McCann, could I take you to  
4           paragraph 51 of your statement, exhibit 103.

5           A.    Yes.

6  
7           Q.    You say there:

8  
9                    *I had also started to compile research on*  
10                   *the long term rental growth rates in the*  
11                   *Canberra property market.*

12  
13           It seems to be at a time after 10 July, but before  
14           September, that you are saying that. Do you see that?

15           A.    Because it's after point 50, or because I refer to a  
16           day?

17  
18           Q.    I'll ask you. When was it that you were directing  
19           that sentence to, in terms of time?

20           A.    I believe it was - the definition of long-term is, in  
21           my view, pre-early 80s. I believe I didn't - before lunch  
22           I actually said I didn't start that until after July, but  
23           what I thought I said was that I had the evidence from the  
24           early 80s forward, and I had that when I was working up  
25           with James Service and earlier, about the \$320, and gross,  
26           and so on, I believe I had that available to me then.  
27           Probably - well, I have had it available since the early  
28           80s, but, in particular, for this job, in terms of putting  
29           together schedules, that didn't happen until after this  
30           date. I thought that's what I said before lunch.

31  
32           Q.    What was it you intended to cover in terms of  
33           paragraph 51, in terms of research?

34           A.    I think it was in answer to the question that was put  
35           by you in the draft as to what I was doing during this  
36           time. I haven't got the draft with me.

37  
38           Q.    You haven't got the draft with you, is that what you  
39           said?

40           A.    Yes. The numbers might be different, but around  
41           about - there might be seven or eight points, because the  
42           first seven or eight points had already been covered in  
43           the first statement, exhibit 102.

44  
45           Q.    Let me show you the draft, paragraphs 52 to 54. Have  
46           a look at that and tell me whether there is any mention of  
47           doing research, or any suggestion that I was asking you to

1 direct yourself to research, after 10 July but before the  
2 next matter referred to in the middle of July.

3 A. No. There's not about research, but I thought at 53  
4 you were asking me about my role. You said my - to this  
5 point in time my principal role. You had started there.  
6 My - I think that 51, in exhibit 103, I thought started  
7 with the DELP issues and then continued into what other  
8 things I'd been doing, but I concede that maybe I was just  
9 responding to, say, "What was Noell doing at this time",  
10 rather than just "confine yourself to DELP".  
11

12 Q. You were not, were you, endeavouring to convey, in  
13 paragraphs 48 and 51 of exhibit 103, that you had in fact  
14 embarked upon a process of consideration of what might be  
15 regarded as within market parameters for long-term  
16 escalation rates on a year-by-year basis for the purposes  
17 of this lease, were you?

18 A. No, and I think that's what I said before lunch - not  
19 the 15-year issue, but I had freely available to me,  
20 because we kept them as a matter of course, the  
21 information. I don't think --  
22

23 Q. Could I have that draft back, please. Would you have  
24 a look at your paragraph 58 in exhibit 103. Do you see  
25 the last sentence?

26 A. Yes.  
27

28 Q. You would agree, would you not, that those models, as  
29 they developed through that period, were being constructed  
30 upon the basis that the year-by-year escalator would be  
31 9 per cent over 15 years?

32 A. I believe that I knew that, yes.  
33

34 Q. Have a look at paragraph 60, which seems to be  
35 directed, would you agree, to a time around about  
36 22 August?

37 A. Yes.  
38

39 Q. What work did you do at around that time that fits  
40 within the description set out in that paragraph?

41 A. I think it accelerated the work back to 1973 and '75,  
42 because I believe the low - there's no attachment to that  
43 cover sheet. I believe it was the AUSLIG lease that  
44 Richard McKeon had forwarded to me.  
45

46 Q. What cover sheet are you talking about?

47 A. In 59, and 60 goes on from that, I thought.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47

Q. 59 is LEND.009.0137, isn't it. Could that be brought up on to the screen, please. Is it your evidence that your best recollection is that what it was that was faxed with that document was the AUSLIG lease?

A. That's the best of my memory and that's what I think it was about.

Q. To your understanding and recollection, was the proposition that this transaction should be based upon the AUSLIG lease introduced into discussions amongst the developer group by Mr McFadden?

A. Yes, and I believe I said that earlier.

Q. As a strategic decision, as you understood it, Mrs Morris was told to put to Mr Collins at their next meeting that the transaction should be based upon the AUSLIG lease, wasn't she?

A. Most likely.

Q. With a view to getting Mr Collins to a position where he might think that it was appropriate to look at these fixed annual escalators?

A. That was the purpose, yes.

Q. On 4 September, you attended the project review meeting, did you not?

A. I was likely to.

Q. I beg your pardon?

A. I was likely to. I haven't got the document in front of me. I think I need to change files.

Q. It's referred to in an minute, which is CH94.004.0112. This is styled "Project Review Meeting", rather than "Project Control Group Meeting", isn't it?

A. Yes.

Q. What was the difference between the two?

A. I have no idea.

Q. Do you see on folio CH94.004.0113 there appears to have been a report from Mrs Morris about her meeting with Mr Collins on 30 August?

A. Yes.

Q. Do you recall that she made a report about that

1 meeting, on or about 4 September 1991?  
2 A. I don't recall it with clarity, but I accept that she  
3 would have.

4  
5 Q. Would you agree that at around about that time, it  
6 was considered important by the developer group that  
7 Mrs Morris secure agreement from Mr Collins to a mechanism  
8 for annual escalations?

9 A. Yes.

10  
11 Q. And she was sent out just to do that?

12 A. Yes.

13  
14 Q. This is a report back to suggest, is it not, that she  
15 had achieved that, at least at the level of principle?

16 A. As a matter of principle, it's shown there in the  
17 minutes.

18  
19 Q. Over the page, CH94.004.0114, in the second dot  
20 point, there's a reference to this:

21  
22 *The following factors need to be prepared*  
23 *to support the proposal:*  
24 *- outgoings in Barton*  
25 *- historical rent escalation in Canberra.*

26  
27 Do you see that?

28 A. Yes.

29  
30 Q. That's when you started to go back and look at the  
31 historical position, isn't it?

32 A. I thought I actually did it beforehand, but certainly  
33 I didn't report then that I'd already done it.

34  
35 Q. There's no indication in the documents, as far as you  
36 can tell, that you did it before early September?

37 A. That's what the document indicates, but I'm saying  
38 that I thought I started before then, going back pre '82.

39  
40 Q. But you would accept that you might be wrong in that  
41 recollection?

42 A. I do accept that.

43  
44 Q. And what I am suggesting to you is that it was in the  
45 context of Mrs Morris reporting that she had gotten  
46 Mr Collins to the point of agreeing in principle to having  
47 an annual escalator that you were then sent off to justify

1 a figure which would be acceptable to your client, being a  
2 figure of 9 per cent or greater?  
3 A. Yes.  
4  
5 Q. That was the task you undertook, wasn't it?  
6 A. Yes.  
7  
8 Q. This letter of intent that is referred to in those  
9 minutes was subsequently sent to you, wasn't it?  
10 A. From whom?  
11  
12 Q. Mr Collins.  
13 A. It was addressed to me, yes.  
14  
15 Q. And faxed to Mrs Morris, wasn't it?  
16 A. I think it arrived at a PCG meeting. That's the best  
17 of my memory.  
18  
19 Q. If I can go to it, without dwelling on the terms of  
20 it too much. If we could go to page 3 of the letter,  
21 CH94.001.0085.  
22 A. I think I have got a different number, but I have got  
23 a document - in fact, I have got a different number in my  
24 document.  
25  
26 Q. All right.  
27 A. But I have this letter that's shown on the screen  
28 now.  
29  
30 Q. You have got page 3, have you, of the letter?  
31 A. Yes.  
32  
33 Q. You read this letter when it came to Mrs Morris,  
34 didn't you?  
35 A. Yes.  
36  
37 Q. And you saw that Mr Collins was apparently prepared  
38 to put his name to a structure that included annual  
39 escalations over 15 years, didn't you?  
40 A. Yes.  
41  
42 Q. You also saw that he had put the material next to the  
43 note - that is, that it was to be determined by the valuer  
44 and not to exceed 9.75 per cent, and to be based on rates  
45 of escalation already applied to similar Commonwealth  
46 leases in the ACT.  
47 A. Yes.

1  
2 Q. That last expression could only be a reference to the  
3 AUSLIG lease, couldn't it?  
4 A. To my knowledge, yes.  
5  
6 Q. And anybody who was dealing with this transaction on  
7 either side, Mrs Morris or Mr Collins, by that date would  
8 have known that, wouldn't they?  
9 A. I would believe so.  
10  
11 Q. So this letter is really saying to you, as someone  
12 who knew what was going on, that the range for negotiation  
13 was between 9 and 9.75 per cent, wasn't it?  
14 A. I don't think it shows 9 per cent on it. It shows up  
15 to 9.75.  
16  
17 Q. Yes, but you knew, didn't you, by this date, that the  
18 AUSLIG rate was 9 per cent?  
19 A. Yes.  
20  
21 Q. And you were going to use that, if you had to,  
22 weren't you?  
23 A. Yes.  
24  
25 Q. And isn't this suggesting that the rate was going to  
26 be between 9 and 9.75?  
27 A. By inference, yes.  
28  
29 Q. Well, a bit more than that by a knowledgeable reader,  
30 wouldn't you agree?  
31 A. I knew it was 9 per cent, yes, so therefore it showed  
32 that range.  
33  
34 Q. When you received this letter, were you rather  
35 pleased on behalf of your client, about where the matter  
36 then stood?  
37 A. It was progressing quite well, yes.  
38  
39 Q. Well, it was shaping up as a fantastic deal for your  
40 client, wasn't it?  
41 A. It was - I don't know that I'd say a fantastic deal,  
42 but it was showing that it was moving forward where we  
43 wanted it to be by that stage.  
44  
45 Q. You had looked at and been privy to the financial  
46 modelling that had been done by Mr McFadden up to this  
47 point, hadn't you?

1 A. In terms of the document you took me to earlier?  
2  
3 Q. No, in terms of all of the documents he was producing  
4 in July, August and September?  
5 A. I don't know if I was all - I certainly had some.  
6  
7 Q. Those models were designed to, amongst other things,  
8 produce a cash surplus year by year to John Curtin House  
9 Limited which would then be repatriated to the ALP,  
10 weren't they?  
11 A. I'm sorry, I don't believe I ever saw any of the  
12 drop-out figures. I only saw the modelling about what  
13 would happen with the rent and the ability of it to  
14 service a mortgage. I don't believe I ever saw any of the  
15 modelling in terms of what was particular to the finances  
16 of John Curtin House Limited.  
17  
18 Q. You knew that one of the things Mr Hogg wanted out of  
19 this whole thing was a cash surplus to come to the Labor  
20 Party, didn't you?  
21 A. I don't believe so.  
22  
23 Q. You don't think you knew that?  
24 A. No, I thought - my understanding was that he wanted  
25 a - the building to fund itself.  
26  
27 Q. By which you mean to pay for itself through the rent?  
28 A. Yes, like most developers do.  
29  
30 Q. Entirely, over 15 years?  
31 A. I wasn't aware until the day of the settlement, in  
32 April, that there was 100 per cent debt. I wasn't  
33 informed of that until then.  
34  
35 Q. Well, did you have an appreciation at this time -  
36 that is, mid-September 1991 - that this transaction, if  
37 struck at 9 per cent, over 15 years, in accordance with  
38 the modelling Mr McFadden was doing, would throw up cash  
39 surpluses which would be ever increasing during that  
40 period to the corporation, John Curtin House Limited?  
41 A. Most likely that at some stage in the future it would  
42 generate cash more than the mortgage requirement. I  
43 probably was aware of that.  
44  
45 Q. Mr McFadden wasn't doing his modelling in anybody's  
46 interest other than John Curtin and perhaps Lend Lease,  
47 was he?

1 A. Well, I believe he was doing it in John Curtin House  
2 Limited's interest, and I think I said earlier that he was  
3 dealing with Bob Hogg, not me, about those things.  
4

5 Q. But you must have known, I suggest, that if you could  
6 get whoever it was you were going to deal with on behalf  
7 of the Commonwealth to agree to a year-by-year escalator  
8 of 9 per cent for 15 years, your client would be  
9 cock-a-hoop?

10 A. Should be pleased, yes. It was a good profile of a  
11 tenant, and certainly your cash flow.  
12

13 Q. But cash flow at a level which would throw up a  
14 surplus, I suggest, to your knowledge?

15 A. Yeah. I was expecting a future surplus.  
16

17 Q. Yes. On any view of it, as you understood it, the  
18 push on behalf of John Curtin House Limited to get the  
19 long-term, 15-year lease with a 9 per cent escalator, was  
20 driven by the financial modelling that Mr McFadden had  
21 done which had thrown up a very favourable transaction  
22 from the company's point of view, if struck on those  
23 terms?

24 A. Well, sorry, I can't agree that I was aware of the  
25 exact details of the financials at any stage during this,  
26 but my own perception was that this lease would bring  
27 certainty to the process and there would be, in the  
28 future, surplus funds available for either reinvestment or  
29 other allocation. I'm not privy to the allocation and  
30 source and application of funds in John Curtin House  
31 Limited, and never was.  
32

33 Q. When you saw this letter in September - that is, the  
34 letter of intent - you also would have noticed, I suggest,  
35 that the commencement rent was something that was to be  
36 escalated by a figure yet to be agreed from the \$280 per  
37 square metre net as at 1 January 1991, would you agree?

38 A. I believe so. I'm just trying to find the exact  
39 location.  
40

41 Q. If you look at --

42 A. I think it says at "Opening Rent" - my page in the  
43 file here is chopped off. Perhaps if I could go back to  
44 page 2 of this document, please.  
45

46 Q. Certainly. It's 0084.

47 A. Yes, under the margin heading of "Opening Rent", it

1 goes on to talk about escalation at a level per annum  
2 compound at the commencement of the Commonwealth lease.

3

4 Q. Had you been party to the decision on behalf of the  
5 developer group to seek to get an arrangement which used a  
6 starting rent as at 1 January 1991 and then escalated it  
7 forward to the date of completion?

8 A. I believe I was.

9

10 Q. Did you consider that approaching the matter in that  
11 way was an approach which was favourable to John Curtin  
12 House Limited?

13 A. I thought it was favourable to both parties, because  
14 they are two mechanisms - one, you either agree the  
15 commencement rent at the beginning, or you agree the  
16 escalator.

17

18 Q. Had you ever seen a precommitment lease where at the  
19 time it was being negotiated the starting rent,  
20 anticipated to be at least 18 months forward, was being  
21 fixed by reference to a market rent so-called nine months  
22 before?

23 A. Not in detail, no.

24

25 Q. Well, at all?

26 A. Well, I am not across all the detail of all the  
27 leases that were done in the 80s, but my understanding was  
28 that they all assumed a rent at the estimated completion  
29 date that was higher than the date they were negotiated,  
30 or they adopted an escalator to the completion date.

31

32 Q. Why didn't you approach the negotiations - and I say  
33 "you", Mrs Morris on behalf of your client - on the basis  
34 that the market rent, at least as at the date this  
35 document, the precommitment lease, was signed, would be  
36 the starting point or reference point - or, alternatively,  
37 that you contracted to start the lease with a rent that  
38 was market rent at the date of completion of the building?

39 A. I think it's just a matter of practice that the  
40 Commonwealth wasn't doing that in Canberra during the 80s  
41 and early 90s. It's not doing it now, either. But the  
42 issue is that there are two mechanisms used by the  
43 Commonwealth. You either agree beforehand what the  
44 starting rent is and forecast it forward to the estimated  
45 completion date, or there's a rental escalator agreed.

46

47 Q. That's what I was asking. Have you ever seen a

1 precommitment lease which escalated a rent, fixed by  
2 reference to a period at least nine months before the  
3 negotiations were concluded, but over a year before the  
4 document was signed?

5 A. I can't recall one.

6  
7 Q. Was 1 January struck as the starting point for  
8 determining the starting rent in this case because you and  
9 others thought that was more likely to throw up a larger  
10 starting rent than might have been thrown up by any other  
11 normal mechanism?

12 A. I don't believe that was the purpose. I think the  
13 purpose was it would take the argument out of what the  
14 rent was at the time we were trying to finalise the  
15 arrangement.

16  
17 Q. But you could have done that in April 1992, couldn't  
18 you?

19 A. More likely in November 1991, but clearly there was  
20 agreement about the rent in January 1991. Certainly I  
21 don't - to answer the question directly, you are talking  
22 about in terms of the January 1991 arrangement. I don't  
23 recall any detail of other commitment leases that have  
24 done that. But certainly I am confident that I recall  
25 that at some stage during the process of putting a project  
26 together a rent is either agreed to have an escalator  
27 going forward to the completion date, and that's always  
28 before the document is due for signing, because there are  
29 plenty of other things that need to be sorted out in the  
30 process.

31  
32 Q. Wasn't this the position, that having secured  
33 Mr Collins' agreement in principle at what was a high  
34 assessment of the market, I suggest, as at 1 January 1991,  
35 your group decided that they would stick with that  
36 position and use the mechanism of escalating that rent  
37 forward because it would throw up a larger starting rent  
38 for your client than might otherwise be achieved?

39 A. I don't believe that was the reason.

40  
41 Q. You see, the question of escalating that forward  
42 didn't seem to arise in discussions, as far as they are  
43 recorded in the documents, anyway, until July, at least,  
44 of 1991, did it?

45 A. Yes.

46  
47 Q. You're agreeing with me?

1 A. Yes, I'm agreeing.  
2  
3 Q. What seems to have happened, would you agree, is that  
4 after the July meeting that Mrs Morris had, added to by  
5 the 30 August meeting, she had managed to get Mr Collins  
6 into the position where he had agreed on everything,  
7 including the structure, except for the two escalators?  
8 A. Are you asking me to agree to that? Yes.  
9  
10 Q. Then you were wheeled in, if I may put it without  
11 being offensive, to do what could best be achieved for  
12 your client in respect of those two matters in order to  
13 complete the deal?  
14 A. No offence taken, but, yes.  
15  
16 Q. And you went off after September and put together  
17 your schedules which you then went to the meeting with  
18 Mr Jeffress with on 12 November?  
19 A. Well, I do believe that I was doing work prior to  
20 '82 - before that date. But on the document, it appears  
21 the work I did prior to 1982 was subsequent to September.  
22  
23 Q. Your approach to what was agreeing to occur with  
24 Mr Jeffress at your first meeting was to put in front of  
25 him what you considered to be statistical historical  
26 support for the proposition that over a lengthy period of  
27 time, 15 years or more, going backwards from 1990 or 1991,  
28 there had been, on an average basis, increases in rents in  
29 Canberra for commercial office space exceeding 9 per cent?  
30 A. Yes.  
31  
32 Q. That was your purpose, wasn't it?  
33 A. That was the basis of why I was suggesting it should  
34 be more than 9 per cent going forward, yes.  
35  
36 Q. Of course. But without being unkind, what you did  
37 simply, I suggest, look at the past, go to the meeting and  
38 lay it on the table to Mr Jeffress and say, "What we are  
39 asking for here is supported by history"?  
40 A. That's right.  
41  
42 Q. There was no valuation exercise then being undertaken  
43 by you in any way, shape or form, was there?  
44 A. During the meeting?  
45  
46 Q. Yes.  
47 A. No.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47

Q. Or at all, I suggest, at that time?

A. I believe I was using my valuation skills in the analysis of the rents.

Q. Yes, but you were an advocate and representative for your client in the two discussions you had with Mr Jeffress, weren't you?

A. I'm not disputing that in the meeting. You have asked me at any time, and I thought that I used my valuation skills to get the information and the basis of what I was advocating.

Q. Of course. It's part of your bag of skills, if I can put it that way, for you to be able to pull out information like that which would be useful and, as you saw it, persuasive in the meeting that you knew you were going to have?

A. Yes.

Q. And that's what you did?

A. Yes.

Q. In the interests of your client?

A. Yes.

Q. Representing their interests on these two critical matters?

A. Yes.

Q. And knowing that, by the time you went to that meeting, Mrs Morris had managed to get Mr Collins to the point where he was prepared to agree to all of the commercial matters that your client had wanted, including a structure with these escalators, and that all that would remain was to agree on those?

A. Yes.

Q. The process by which agreement was reached was not a valuation exercise, but a negotiation, wasn't it?

A. Like most rental agreements.

Q. Yes. As you saw what Mr Jeffress was doing, he seemed to be approaching the matter the same way?

A. Like me, in two parts, he went away, checked the information, came back, offered additional information that appeared to confirm the information that I'd

1 collected and analysed. So using his valuer's skills and  
2 then, like most valuers, when we are negotiating rents,  
3 talked around the range that we were within.  
4  
5 Q. But he came up with the extraordinary proposition  
6 that he wouldn't go any higher than the very figure that  
7 you were prepared to accept but hadn't revealed, didn't  
8 he?  
9 A. I don't understand that question.  
10  
11 Q. Nine per cent?  
12 A. He wasn't prepared to go any higher than 9 per cent?  
13  
14 Q. Yes.  
15 A. Yes, that's his position.  
16  
17 Q. And he'd been educated to that position, hadn't he,  
18 as you understood it.  
19  
20 MR SACKAR: I object to that.  
21  
22 THE COMMISSIONER: What's the problem?  
23  
24 MR SACKAR: Well, "Educated"; what does that mean? And  
25 by whom? I mean --  
26  
27 THE COMMISSIONER: That's the next question.  
28  
29 MR SACKAR: But it's asking him to express --  
30  
31 THE COMMISSIONER: If you are worried about the word  
32 "educated", he can say he'd been persuaded.  
33  
34 MR SACKAR: I object to the same --  
35  
36 THE COMMISSIONER: The next question can be "by whom".  
37  
38 MR SACKAR: But --  
39  
40 THE COMMISSIONER: I allow it.  
41  
42 MR SACKAR: Late in the afternoon I suppose it is  
43 pointless.  
44  
45 THE COMMISSIONER: I don't find it late in the afternoon  
46 at all, Mr Sackar.  
47

1 MR SACKAR: I will make the objection clear, if I haven't  
2 done so already. I thought he was being asked to  
3 characterise a process between Mr Jeffress and another  
4 person.

5  
6 THE COMMISSIONER: That's why I have suggested he use a  
7 different word instead of educated.

8  
9 MR SACKAR: It might be helpful to establish if he  
10 watched the process or whether he is now asked to  
11 speculate about what might have happened. That's the  
12 problem.

13  
14 THE COMMISSIONER: All right. Use a better term.

15  
16 MR FOSTER: I will ask another question.

17  
18 Q. What you didn't do, I suggest, for the purposes of  
19 negotiating these escalators, was to solemnly consider, as  
20 if you were doing a valuation exercise, what all the  
21 prospects for the market were in a professional and  
22 valuation sense, and then come along with that in mind,  
23 but, rather, knowing that your client wanted at least  
24 9 per cent, and something of the order of 11 or so on the  
25 precommitment escalator, you set about pulling out  
26 information that would support an attempt by you to  
27 advocate those positions to Mr Jeffress?

28 A. I'm not offended by you telling me that I didn't do  
29 my work properly.

30  
31 Q. That's not what I'm putting.

32 A. The issue is that during the discussion - and I  
33 realise it's not in documentation - we talked about the  
34 profile of the office market, we talked about some of the  
35 things that I responded to about what was the expectation  
36 of the demand for new office space by the Commonwealth,  
37 and how the market might move forward over the period.

38  
39 There were major issues of structural change coming  
40 in the Commonwealth portfolio, because of its age, and I  
41 believe we did talk about those issues as being overall  
42 market influences going forward.

43  
44 Q. But whatever you said at that meeting, it was  
45 designed to persuade him to a point of view to accept as  
46 much above 9 per cent for the long-term escalator and as  
47 much above 10 for the short-term escalator as you could

1 achieve?  
2 A. True.  
3  
4 Q. I'm not suggesting by that, by the way, that there's  
5 anything wrong with that, Mr McCann, but that's what was  
6 happening, wasn't it?  
7 A. I was a negotiation.  
8  
9 Q. Of course.  
10 A. I conceded that.  
11  
12 Q. And an advocacy position?  
13  
14 MR SACKAR: I object to that.  
15  
16 MR FOSTER: Q. A position whereby you were trying to  
17 persuade Mr Jeffress to accept your point of view.  
18 A. Yes, and I think it would be reasonable to say that  
19 Mr Jeffress went away and took that on board and went and  
20 did his own assessment of what it was all about.  
21  
22 Q. What he did was he came back with some other figures  
23 about historical rents?  
24 A. Well, I don't know what he did in toto while he was  
25 away, but the arrangement was, after the first meeting, he  
26 would go away and let us know when he was able to come  
27 back, and we could have another meeting about how he would  
28 respond to what I was putting to him.  
29  
30 Q. But what he came back with was to annotate on a  
31 spreadsheet he'd created from your documents a few  
32 buildings and their historical rents, didn't he?  
33 A. Yes.  
34  
35 Q. That's all he did?  
36 A. I don't know what he did in between.  
37  
38 Q. That's all that he revealed to you that he'd done?  
39 A. Yes.  
40  
41 Q. When we look at what you had done, all of the  
42 material relates to tabulation of historical information,  
43 doesn't it?  
44 A. I believe so.  
45  
46 Q. And both of you were simply discussing merely, or  
47 totally, or exclusively, from the vantage point of

1 history, what sort of level of escalation could be  
2 acceptable in this transaction, given the parameters that  
3 had already been agreed? You are nodding?  
4 A. I'm just trying to work through the issue. I'm sorry  
5 if I moved my head. The concept that you are putting to  
6 me, so I clearly understand it, is that he had parameters;  
7 I believe he only had a top of 9.75 for the long-term,  
8 9.75 per cent. He had nothing in the document about the  
9 short-term, and he didn't know what the base document was  
10 other than my first meeting saying that the AUSLIG lease  
11 must set the base at 9 per cent.  
12  
13 Q. You say you said that to him at the first meeting, do  
14 you?  
15 A. I do say that.  
16  
17 Q. Are you sure about that?  
18 A. Well, I'm as sure as I can be.  
19  
20 Q. All right. Have a look at paragraphs 85 through to  
21 89 of exhibit 103?  
22 A. Yes, I have had a look at those.  
23  
24 Q. That's your account of the first meeting, isn't it?  
25 A. Yeah, and I didn't put that in.  
26  
27 Q. You didn't put what in?  
28 A. My recollection of dealing with the AUSLIG lease. It  
29 was there. I had it in August.  
30  
31 Q. When you carefully gave your account of what occurred  
32 in November at the first meeting with Mr Jeffress, you  
33 gave your best recollection, didn't you?  
34 A. Yes.  
35  
36 Q. It's not mentioned there, is it?  
37 A. No, it's not mentioned there.  
38  
39 Q. And it's not mentioned on your schedules you prepared  
40 either, is it?  
41 A. No, I did not put it on the schedule.  
42  
43 Q. That's because you didn't regard that as a precedent  
44 for anything, did you?  
45 A. Well, I did regard it as a precedent.  
46  
47 Q. It was a special deal, as you understood it, between

1 Lend Lease and the Commonwealth?  
2 A. Why did I understand that?  
3  
4 Q. Well, why didn't you mention it, I suggest, to  
5 Mr Jeffress? Why didn't you put it on your schedules?  
6 A. Well, I believe I did. I apologise to the Commission  
7 for not including it under the pressure of putting this  
8 huge amount of paper together in the last 10 days, and  
9 that, but I can - I believe, and I'm under oath, that I  
10 raised this because it was evidence of what the  
11 Commonwealth had done, as evidence of going forward, and  
12 set the minimum.  
13  
14 Q. Why was Mr McFadden and Mr McKeon at this meeting  
15 with Mr Jeffress, as you understood it?  
16 A. I'm not sure why Mr McKeon was there, other than he  
17 was the project manager in terms of the design and  
18 construct, and we talked - we were to talk about the  
19 quality of the building, and so on, and that's why I  
20 imagine he was there. Mr McFadden was there dealing with  
21 the concept of the rental escalators and the evidence of  
22 him having negotiated the AUSLIG lease.  
23  
24 Q. He was there, wasn't he, to make sure that whatever  
25 happened there was consistent with and fitted with his  
26 modelling?  
27 A. I don't know. I can't agree with that.  
28  
29 Q. Did you have a discussion with him prior to  
30 12 November as to his coming to the meeting and why it  
31 would be he would come?  
32 A. I believe I would have had a meeting - a discussion  
33 with him, because we went through my research on the  
34 15-year rental escalators, and I think it was my wish that  
35 he was there because of the AUSLIG negotiations, but I  
36 didn't write to him about that, to my knowledge, anyway.  
37  
38 Q. You then, after the meeting on the second occasion,  
39 rang Mr Hogg and recommended what you have got in  
40 paragraph 96, you say; is that right?  
41 A. That's the best of my memory.  
42  
43 Q. But Mr Hogg would have been ecstatic if he'd been  
44 told you had gotten the 9 per cent over 15 years, wouldn't  
45 he?  
46 A. I think I'd suggested to Mr Hogg that we might do  
47 better than 9 per cent, so I don't think he was ecstatic

1 at that. But I think he was prepared to agree that market  
2 rent reviews would be the opportunity of catch-up.  
3  
4 Q. Do you say as at the time you completed that second  
5 meeting that you did not think that this transaction was  
6 very much in favour of John Curtin House Limited, given  
7 the state of the market at the time?  
8 A. I think it was a good lease deal to both parties at  
9 the time.  
10  
11 Q. Is that a serious answer?  
12 A. That's a serious answer.  
13  
14 Q. Isn't this the position, that you thought the  
15 Commonwealth was big enough and ugly enough to look after  
16 itself, and you would go and do the best you could, and  
17 when you had finished with Mr Jeffress you had achieved a  
18 deal which was very much one-sided in favour of your  
19 client, as you perceived it?  
20 A. Well, I don't think it was one-sided, otherwise I  
21 just lied in what I answered, in that --  
22  
23 Q. Well, could you answer my question, nonetheless.  
24 A. Could you repeat the question?  
25  
26 Q. Isn't this the position, that you thought the  
27 Commonwealth was big enough and ugly enough to look after  
28 itself, and you would go and do the best you could, and  
29 when you had finished with Mr Jeffress, you had achieved a  
30 deal which was very much one-sided in favour of your  
31 client as you perceived it?  
32 A. The last bit I don't agree with, that it was  
33 one-sided. The middle bit about I was acting to get the  
34 best deal for my client, I agree with. Could you please  
35 restate the first part of the question?  
36  
37 Q. That you felt that if in the transaction negotiations  
38 the Commonwealth was bested, in the sense that the outcome  
39 was more favourable to your client than to it, that was  
40 fair enough because, it was more than capable of looking  
41 after itself?  
42 A. That's not what you put to me. You described  
43 something else.  
44  
45 Q. Well, could you answer that one?  
46 A. The Commonwealth are well informed of the market and  
47 I expected them to be well informed.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47

Q. Is that your answer?

A. That's my answer, yes. What part haven't I answered?

Q. I'm sorry?

A. I must have missed something in the question if you are suggesting I have not fully answered the question.

Q. Mr McCann, did the not think, when this deal was agreed at the level of principle in late November, early December 1991, that it was a deal which was heavily weighted in favour of your client?

A. No, I did not, and I didn't think it was any different to the AUSLIG lease.

Q. Did you not think, I suggest, that you and the others, Mrs Morris and the other Lend Lease personnel who had dealt with the matter, had achieved a great deal of success on behalf of your client in putting together this transaction on these terms?

A. I believe that we had success.

Q. Success in not just putting it together, but because the terms were favourable and weighted in favour of your client as you understood it?

A. At the time, no, I did not.

Q. Did you and Mr McKeon and Mr McFadden sit down and have a meeting before you met with Mr Jeffress and work out a strategy or plan as to how you would negotiate with him when you met with him for the first occasion?

A. Most likely.

Q. I just want to ask you about one aspect of this following your second meeting. Is it your recollection that after that meeting you telephoned Mr Hogg, got his instructions, and then telephoned Mr Jeffress to advise him that your client was prepared to accept what had been discussed and agreed with him?

A. That's the best of my recollection. I can't find any correspondence in the McCann files.

Q. No. Do you know whether or not Lend Lease personnel also met with Mr Collins in order to secure final agreement on those terms around about 27 November?

A. No, I don't know.

1 Q. Did you know that Mr Jeffress was going to provide a  
2 report to the APG recording the outcome of the discussions  
3 and his views in relation to the matters he was asked to  
4 deal with?  
5 A. I believe that I would have expected him to give APG  
6 a report, yes.  
7  
8 Q. Did you know that it was the practice of the APG to  
9 get valuations done to support purchases and lease  
10 transactions?  
11 A. Yes, and advice.  
12  
13 Q. Did you have an expectation that in this case  
14 Mr Jeffress would be performing such a task?  
15 A. I would have assumed he carried out that task before  
16 he came to the meeting, that he - that's how he formed his  
17 view about what he was prepared to negotiate in a very  
18 similar way to doing a rent negotiation with somebody of  
19 an existing tenancy.  
20  
21 Q. Your expectation would have been, insofar as what he  
22 did subsequently to the meeting, would be that he simply  
23 reported the outcome, maybe sought instructions and that  
24 was the end of the matter?  
25 A. Well, I don't know about the end of the matter.  
26 These things --  
27  
28 Q. As far as he was concerned?  
29 A. -- tend to have a life. Yeah, I would have  
30 expected - sorry, I would have thought it was normal  
31 practice that he would have supplied a report. Initially  
32 he would have rung APG and told them what the outcome of  
33 the meeting was, and I would have expected him to have  
34 either a meeting or exchange correspondence with APG  
35 before he went to the meeting, but I don't know what the  
36 files show.  
37  
38 Q. Can I take you to the letter of 18 December 1991,  
39 which was referred to in your paragraph 100. It is  
40 ALP.006.0090.  
41 A. Could I wait for it to come up? I'm afraid you went  
42 too quickly for me to pick up the number.  
43  
44 Q. It's the one referred to in paragraph 100 and it is  
45 on the screen now as well, Mr McCann.  
46 A. Yes.  
47

1 Q. That's a letter you wrote to Mr Hogg around about  
2 18 December 1991, isn't it?  
3 A. I believe so.  
4  
5 Q. And it was a letter he asked you to write because he  
6 was having difficulty with Westpac in terms of getting  
7 approval for finance, wasn't he?  
8 A. Yes, he gave me a copy of the letter from Westpac to  
9 respond to.  
10  
11 Q. He wanted you, as the property adviser-cum-consultant  
12 to John Curtin House Limited, to assure the bank that this  
13 transaction was both proper and commercially satisfactory?  
14 A. I thought it was in regard to whether, once the lease  
15 was signed, it was enforceable.  
16  
17 Q. Would you have a look at the seventh line of the  
18 first paragraph, the sentence beginning "In accordance  
19 with your instructions"?  
20 A. Yes.  
21  
22 Q. That's untrue, isn't it, that statement?  
23 A. In terms of the Australian Property Group, yes.  
24  
25 Q. Just out and out false, isn't it?  
26 A. Sorry?  
27  
28 Q. It is out and out false, isn't it?  
29 A. I don't know why I put it in there.  
30  
31 Q. Well, you put it in there to make sure that the  
32 person who got the letter, ultimately Westpac, knew that  
33 you were speaking with authority - that is, that you'd  
34 been involved and you knew what had gone on, didn't you?  
35 A. Maybe I meant to put the Australian Valuation Office,  
36 because that was the commercial negotiation that I had.  
37  
38 Q. I suggest to you it's not a mistake, Mr McCann. What  
39 do you say?  
40 A. Well, I am telling you I'm not used to writing lies.  
41  
42 Q. Do you say it's a mistake, do you?  
43 A. Well, I obviously didn't attend all the APG meetings.  
44 I did attend all the AVO meetings.  
45  
46 Q. You couldn't describe the AVO meetings as meetings  
47 where the tenant arrangements for the proposed new

1 building were being worked up, could you?  
2 A. I concede that. I don't know what it's there for. I  
3 didn't intentionally mean to mislead anybody, or meant to  
4 mislead anybody. There was no purpose in it.

5  
6 Q. I suggest there was, and that was that you were  
7 wishing to convey to Westpac, through Mr Hogg, that you  
8 were a person who was closely familiar with the way in  
9 which the deal had been struck because you'd been at all  
10 the meetings?

11 A. I concede that's the way it looks.

12  
13 Q. There is no other way it looks, is there?

14 A. I concede it.

15  
16 Q. Then on the next page you say in the second  
17 paragraph:

18  
19 *I would also now like to make a comment on*  
20 *the last sentence of paragraph 3 of*  
21 *Mr Auty's letter, wherein he refers to*  
22 *underlying asset as having been*  
23 *specifically designed for a particular*  
24 *tenant. In practical terms, the proposed*  
25 *building is only a typical dedicated office*  
26 *building. This specific design component*  
27 *is the separation of the ALP Ground Floor*  
28 *tenancy from the National Audit Office*  
29 *Ground Floor entry, so that security is*  
30 *assured to the Audit Office. There are no*  
31 *specialised built form nor mechanical*  
32 *equipment in the building. There is a*  
33 *separation of the air-conditioning plant,*  
34 *so that the ALP is again separate from the*  
35 *Audit Office.*

36  
37 *In summary, the proposal is a typical*  
38 *office building of a good quality*  
39 *specification, the majority of which, ie in*  
40 *excess of 90% of the lettable area, is to*  
41 *be prereleased, prior to construction, to*  
42 *the Australian Government, for a minimum of*  
43 *15 years...*

44  
45 And so on. Do you see that?

46 A. Yes.

47

1 Q. That is a fair statement about the so-called  
2 proposition that this is in some way purpose-built, isn't  
3 it?

4 A. Well, other than the fact that it was modern in terms  
5 of moving all the service issues away from the floors, and  
6 what I have said in earlier evidence about reflecting the  
7 fitout. We actually started a trend in fitout with this  
8 building in terms of the import offices and the - because  
9 of the floorplate designs.

10

11 Q. Look, Mr McCann, we are just playing with words here,  
12 aren't we? This is a building that could be let to any  
13 commercial tenant or government, couldn't it?

14 A. Yes.

15

16 Q. The reason the area of fitout is separate is because  
17 that's the way they want it, isn't it?

18 A. No - sorry, they always wanted to be separate in  
19 terms of having their own area, but originally they  
20 started on the upper floor and we moved them to the ground  
21 floor, and that provided all the separation and the  
22 security that the Audit Office wanted.

23

24 Q. In the end, this building is neither increased in  
25 value by reason of the fitout and layout, nor decreased in  
26 value; it is simply a typical office building, isn't it?

27 A. In its format, I believe it has some issues that were  
28 leading at the time, and are well-adopted now. In terms  
29 of being good commercial space, it's good commercial  
30 space.

31

32 Q. When you try to advocate, as you do in your statement  
33 exhibit 102 and as you did to Mr Morling, that in some way  
34 this is a purpose-built building, that is really an  
35 exaggeration, isn't it?

36 A. No, I don't think it's an exaggeration. We responded  
37 to their fitout requirements, but that doesn't mean to say  
38 it didn't have the flexibility for other uses, as a  
39 typical office building.

40

41 THE COMMISSIONER: Q. What do you understand the  
42 expression "purpose-built" to mean?

43 A. Two parts: one, it could be a highly specialised  
44 building like a court building; the second part is the  
45 tenant has particular requirements for co-location of  
46 business units and therefore the floorplates are so  
47 designed to respond to that. In this particular building

1 we ended up with an L-shaped building, but I was very keen  
2 at all times to make sure that it was flexible for ongoing  
3 use. So in terms of responding to the tenant fitout  
4 requirements, that's what it did, from where we started  
5 with bigger floorplates, where there wouldn't have been  
6 flexibility for longer-term use.

7

8 Q. The ordinary understanding of the expression  
9 "purpose-built" means, does it not, that the building will  
10 not be as suitable for some other tenant as it is for the  
11 tenant for whom it was built?

12 A. Yes, that could be an interpretation.

13

14 Q. That is the usual interpretation, is it not?

15 A. Yes.

16

17 Q. You told us earlier today the way in which it was  
18 fitted out did not reduce its value in any way?

19 A. Did not reduce its value in the final shape and  
20 format?

21

22 Q. Yes.

23 A. That's right.

24

25 MR FOSTER: Q. And did not increase it either in any  
26 particular way?

27 A. To the tenant or to the owner?

28

29 Q. To the owner?

30 A. It didn't increase its value to the owner.

31

32 Q. When you entered into those paragraphs in exhibit 102  
33 about how special this building is, and when you told  
34 Mr Morling it was special, you were gilding the lily,  
35 weren't you?

36 A. I believe we were responding to what the tenant  
37 wanted and ended up with a building that suited their  
38 needs.

39

40 Q. You were gilding the lily as an advocate for your  
41 client in order to persuade Mr Morling, and indeed this  
42 Commissioner, of your point of view, weren't you?

43 A. I don't believe so.

44

45 Q. You gave evidence to Mr Morling by way of an  
46 interview, didn't you?

47 A. I don't know if you would call it an interview, but

1 I'll accept that it was an interview.

2

3 Q. It wasn't in open hearing where people like this were  
4 around and you were asked questions about those who might  
5 have been suggesting that what you were saying wasn't  
6 acceptable, was it?

7 A. No, and I understood that what Mr Morling did was  
8 give all the parties the transcript and if they wished me  
9 to be available for questioning, then I was available.

10

11 Q. You had nothing more nor less than a chat with him in  
12 a room with perhaps Mr Glenn present; is that right?

13 A. I don't recall if Mr Glenn was present. I think  
14 there was transcription staff.

15

16 Q. Had you spoken to Mr Glenn privately - that is, with  
17 no-one else present - either on the phone or face to face  
18 in the context of Mr Morling's Inquiry?

19 A. I believe I spoke to him in person and on the phone  
20 about making arrangements to go and see Mr Morling?

21

22 Q. And could I take you to exhibit 15, which is  
23 CH94.004.0160, which was before Mr Morling.

24 A. Is that in the documents I have?

25

26 Q. I think it is, but I'm not sure where. It would be  
27 in your exhibits to the exhibit 102, I think. It's the  
28 letter you wrote on 6 June 1994. It's on the screen.

29 A. Yes, it is now.

30

31 Q. Can you pick that up? Do you see there in that  
32 letter you said:

33

34 *As discussed at our face-to-face meeting...*

35

36 Was that a reference to your meeting with Mr Morling or  
37 Mr Glenn?

38 A. I don't know.

39

40 Q. You see, you address the letter to Mr Morling, but  
41 then you say "Dear Mr Glenn"; do you see that?

42 A. Yes. Yes, I do.

43

44 Q. It's plain enough that you had a face-to-face meeting  
45 with one or other of them before 6 June, isn't it?

46 A. Is 6 June the - yes, I thought I said earlier that I  
47 did have a face-to-face meeting with Mr Glenn about making

1 arrangements.  
2  
3 Q. This letter that's attached is a letter that you  
4 wrote to John Curtin House but with an eye to passing it  
5 on to Mr Morling, isn't it?  
6 A. Could I go to the next exhibit?  
7  
8 Q. Certainly. It is CH94.004.0161.  
9 A. Yes.  
10  
11 Q. Have you got the hard copy yet? It will be in the  
12 first part of the exhibits to your statement folders.  
13 A. Yes.  
14  
15 Q. Could you go to page 3 of the letter, which is folio  
16 CH94.004.0163.  
17 A. Yes.  
18  
19 Q. Do you see that paragraph beginning:  
20  
21 *The rent for office accommodation...*  
22  
23 It's the second paragraph?  
24 A. The second paragraph, yes.  
25  
26 Q. You say in the middle of that paragraph:  
27  
28 *Attached are rental escalator analysis*  
29 *researched from the market for the*  
30 *period '73 to '91. The date of*  
31 *negotiation....*  
32  
33 Et cetera. Do you see that?  
34 A. Yes.  
35  
36 Q. They were the sheets you prepared for Mr Jeffress,  
37 weren't they?  
38 A. Yes, I believe they were.  
39  
40 Q. You go on, in the last paragraph:  
41  
42 *We confirm that the market analysis for '73*  
43 *to '91 was the basis for the adoption of*  
44 *the rental escalators.*  
45  
46 Do you see that?  
47 A. Yes.

1  
2 Q. Do you think that's a truthful statement, given what  
3 had occurred as between you, Mr McFadden and Mrs Morris  
4 leading up to that meeting with Mr Jeffress?  
5 A. By not disclosing the AUSLIG --  
6  
7 Q. Well --  
8 A. -- document?  
9  
10 Q. Well, by not mentioning to Mr Morling that there had  
11 been a deal of financial modelling done around about a  
12 9 per cent escalator, and that Mr McFadden had been the  
13 initiator of that figure, and that you had proceeded  
14 thereafter to seek to support that figure in a negotiation  
15 with Mr Jeffress?  
16 A. Yeah, but I didn't seek to support it until I  
17 actually did the work to see if it was revealed.  
18  
19 Q. Do you think that sentence is a truthful statement?  
20 A. Yes, I do.  
21  
22 Q. I want to suggest to you it is not; what do you say?  
23 A. In what way?  
24  
25 Q. It doesn't reveal the role that Mr McFadden had and  
26 the way in which he'd initiated a 9 per cent?  
27  
28 MR SACKAR: I object to this on the basis that it's a  
29 non sequitur, with respect.  
30  
31 THE COMMISSIONER: Is it?  
32  
33 MR SACKAR: My point is it says the basis for the market  
34 analysis was 1973 to 1991. That's exactly what the  
35 evidence is.  
36  
37 MR FOSTER: No, was the adoption for the basis of the  
38 escalator.  
39  
40 THE COMMISSIONER: He has agreed in evidence that it  
41 flowed from Mr McFadden's --  
42  
43 MR SACKAR: He has not agreed to that.  
44  
45 THE COMMISSIONER: Yes, he has.  
46  
47 MR SACKAR: With great respect, what he said was he

1 discussed the escalator with McFadden. He then went away  
2 to see if the market material would support it. That's  
3 exactly what that says.

4  
5 THE COMMISSIONER: He went to justify what Mr McFadden  
6 said --

7  
8 MR SACKAR: That doesn't matter.

9  
10 THE COMMISSIONER: That is the evidence which he has  
11 given. I know he started off saying something  
12 differently, but before lunch he accepted that it was in  
13 order to justify the figure which Mr McFadden said was  
14 necessary.

15  
16 MR SACKAR: We disagree. We will deal with that in due  
17 course.

18  
19 THE COMMISSIONER: That's a matter we can deal with  
20 later. There is at least a basis in the evidence for the  
21 question that has been put.

22  
23 MR FOSTER: Q. Can you answer the question?  
24 A. Would it be convenient if I could have the question  
25 read back, because I --

26  
27 Q. That's all right. What I'm suggesting to you is that  
28 if you were going to say anything about how these  
29 escalators had been arrived at, you should have mentioned  
30 to Mr Morling the role that Mr McFadden played?

31 A. I don't believe I needed to. If I had done the  
32 research back to 1973/1975, and it had not pointed up over  
33 9 per cent, then I couldn't have gone to the meeting on a  
34 15-year lease at - over 9 per cent. I could have gone  
35 there for a 10-year lease at 9 per cent because AUSLIG set  
36 the minimum, and the evidence from '90 to - sorry, 1980 to  
37 1990 would also have supported that, but I guess what I am  
38 saying is that I went and did the research to confirm or  
39 deny that the 9 per cent was relevant or some other number  
40 was relevant.

41  
42 Q. Did you participate in a meeting in May 1994 with  
43 Mr Gray, Mr Kafcarus, Mr Higgins and Mr Wedgewood, and one  
44 other, as to the way in which your client should approach  
45 the Morling Inquiry?

46 A. Probably.  
47

1 Q. Could there be brought up on to the screen document  
2 MACQ.023.0126. By the way, who is "ACC" shown on that  
3 list, shown as attending that meeting?  
4 A. My immediate response, I don't know.  
5  
6 Q. Is it Mr Cameron from Macquarie Bank?  
7 A. I don't even remember a meeting with Macquarie Bank  
8 at the time.  
9  
10 Q. Was this a get-together with John Curtin House  
11 personnel, yourself, ALP and Macquarie Bank to determine a  
12 strategy to approach the Morling Inquiry?  
13 A. Strategy or an understanding of, first of all, what  
14 the Royal Commission meant and - I think that's the issue,  
15 number one --  
16  
17 Q. Do you remember this meeting?  
18 A. Not in depth, but I recall attending a meeting to  
19 know what I had to do in terms of putting things together.  
20  
21 Q. You attended every public hearing day of the Morling  
22 Inquiry, didn't you --  
23 A. I believe I did.  
24  
25 Q. -- as the representative of John Curtin House  
26 Limited?  
27 A. Yes.  
28  
29 Q. You were well aware that Mr McFadden was not called  
30 at that Inquiry, weren't you?  
31 A. Yes.  
32  
33 Q. Were you involved in any decision that was made by  
34 those who were interested in the matter not to make him  
35 available?  
36 A. No.  
37  
38 Q. Did you know that Mr McFadden would not be made  
39 available?  
40 A. No. Do you mean by somebody that's obstructed him  
41 being available?  
42  
43 Q. I'm asking whether or not you knew that a decision  
44 would be made, absent compulsion, not to produce  
45 Mr McFadden?  
46 A. No.  
47

1 Q. You didn't know that?  
2 A. No.  
3  
4 Q. Have a look at exhibit 23 before Mr Morling. That's  
5 your letter of 11 July. You will find it in the hard copy  
6 near the other document you had. It is CH94.004.0306.  
7 A. Yes.  
8  
9 Q. It goes through, I think, to 0314. This is you  
10 giving an overview but in the interests of your client,  
11 isn't it?  
12 A. Yes.  
13  
14 Q. You are operating here unashamedly as an advocate for  
15 your client?  
16 A. Yes.  
17  
18 Q. Could I take you to page 5 of the document, which is  
19 folio 0310. Do you see the last two paragraphs before the  
20 heading "Rental escalators", the one beginning  
21 "significant rental increases"?  
22 A. Yes.  
23  
24 Q. You say there:  
25  
26 *Towards the end of the 80s and during the*  
27 *early 90s rental escalators were adopted in*  
28 *some instances.*  
29  
30 Do you see that?  
31 A. No, sorry, could I just ask you to take me to it  
32 again?  
33  
34 Q. Yes. The second-last paragraph before the heading  
35 "Rental Escalators", the second sentence of that  
36 paragraph.  
37 A. Yes.  
38  
39 Q. What did you have in mind when you said that?  
40 A. What examples did I have in mind?  
41  
42 Q. Yes.  
43 A. It's probably the AUSLIG lease, being the early 90s.  
44 I'm not sure of other examples. There were --  
45  
46 Q. There is no other you can point to apart from the  
47 AUSLIG lease, is there?

1 A. Well, there's none that I can produce in evidence  
2 here at the moment.  
3  
4 Q. No, and none that you could have produced to  
5 Mr Morling either?  
6 A. I concede that. There would have been the MLC Tower  
7 one. It's a guessing competition at the moment as to  
8 which ones. I believe AEM, Australian Estate Manager, in  
9 the Commonwealth portfolio, had ones, but clearly I had  
10 the leases for the MLC Tower and AUSLIG at the time, but I  
11 am not sure of others.  
12  
13 Q. You then wrote another letter on 11 August, which was  
14 another letter you wrote in the interests of your client  
15 and, in effect, is a submission, isn't it?  
16 A. Sorry, I missed the last bit? Did you say it was  
17 part of my submission?  
18  
19 Q. It is, in effect, a submission on behalf of your  
20 client, isn't it?  
21 A. It's on behalf of my client.  
22  
23 MR SACKAR: I don't want to interrupt, but I take it my  
24 friend is aware of the two leases that were produced  
25 yesterday?  
26  
27 MR FOSTER: Yes.  
28  
29 MR SACKAR: You might, in fairness, put them.  
30  
31 MR FOSTER: I don't think so.  
32  
33 MR SACKAR: You don't want to be fair?  
34  
35 THE WITNESS: Sorry, I'm a bit confused.  
36  
37 THE COMMISSIONER: Don't be disturbed by counsel talking  
38 to each other.  
39  
40 MR SACKAR: I'm saying there were two leases produced  
41 yesterday that would conform with what this description  
42 is. I have invited my learned friend to ask Mr McCann  
43 about them. He refuses. That's a matter, I suppose, that  
44 I will take up.  
45  
46 MR FOSTER: I don't refuse, but the description is  
47 related to Canberra.

1  
2 Q. Isn't it, Mr McCann?  
3  
4 MR SACKAR: Yes, it is. The two leases you got  
5 yesterday, which you might not have had time to look at,  
6 were two leases negotiated by this man in 1992. He can  
7 either be in denial or not.  
8  
9 MR FOSTER: Q. Did you have in mind the Burns Centre or  
10 the football club when you wrote that?  
11 A. The Burns Centre I probably had in mind, because it  
12 was in 1992. I thought you were restricting me to 1991.  
13  
14 Q. Well, I think the sentence is written, isn't it, by  
15 reference to the period before this deal was done? You  
16 understood that when I asked you that, didn't you?  
17 A. Well, I was restricting myself to 1991.  
18  
19 Q. Of course you were. That's what you were intending  
20 to do in the sentence you wrote, wasn't it?  
21 A. Could I have a look at the sentence again?  
22  
23 Q. Certainly. Sorry to have to go back to this.  
24 CH94.004.0310, page 5 of the letter of 11 July 1994.  
25 A. No, it actually says "early 90s".  
26  
27 Q. I know, but you were directing yourself to a  
28 period --  
29 A. I was certainly responding to your question by  
30 limiting myself to 1991.  
31  
32 Q. And that's the way the sentence was written as well,  
33 isn't it?  
34 A. Oh, probably not. Probably yes, probably not.  
35  
36 Q. How do we deal with that?  
37 A. Well, by '94 I had negotiated the leases at the  
38 Burns Club.  
39  
40 Q. All right. Could I take you to the transcript of the  
41 evidence you gave in interview to Mr Morling,  
42 CH94.018.0209. I want to take you to the page which is  
43 0212, page 193 of the transcript.  
44 A. Yes.  
45  
46 Q. You say at line 6 on that page that you had notes of  
47 what you had done at that time available to you in 1994.

1 Do you see that?  
2 A. On line 2?  
3  
4 Q. Line 6.  
5 A. I'm sorry, could I just confirm that we are dealing  
6 with page 193 of the transcript?  
7  
8 Q. Yes.  
9 A. Line 6?  
10  
11 Q. Yes, sir.  
12 A. From the notes I took at the time.  
13  
14 Q. Yes. So you are suggesting to Mr Morling, aren't  
15 you, that you had available to you in 1994, notes which  
16 you had made at the time?  
17 A. Yeah, I agree.  
18  
19 Q. Do you still have those notes?  
20 A. No.  
21  
22 Q. But you had regard to those notes when you gave this  
23 evidence; is that right?  
24 A. I believe so.  
25  
26 Q. Your account of that meeting is fully given on that  
27 page 193, isn't it?  
28 A. Yeah, I believe so.  
29  
30 Q. It doesn't mention any discussion about the AUSLIG  
31 lease, does it?  
32 A. No, it doesn't.  
33  
34 Q. Then over the next page you were asked some questions  
35 about the 10.5 per cent, and so on. Then Mr Morling asked  
36 you this at line 26:  
37  
38 *Q. Do you think that the consequence of*  
39 *applying that formula resulted --*  
40  
41 *that is, the 10.5 per cent --*  
42  
43 *- and with the benefit of hindsight - in*  
44 *the base rental being higher than market*  
45 *rental as at date of practical completion?*  
46  
47 You said:

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47

A. Yes, but not at the time.

Meaning it did in fact do that but you didn't see that coming; is that what you meant?

A. Yeah.

Q. You say:

*We wouldn't have forecast that. The significant difference in the market between 1991 and 1993 was that there had been very limited, if any, new building in Canberra commenced without pre-commitment.*

Do you see that?

A. Yes.

Q. That was the case in 1991 and 1993, wasn't it?

A. That there hadn't been a significant commencement of --

Q. Without precommitment.

A. Yes, I believe so.

Q. So there's not a difference between those two years, is there?

A. I'm sorry, I'm not getting on to your wavelength.

Q. That's all right. You have said at line 34:

*The significant difference in the market between 1991 --*

A. 34?

Q.

*-- and 1993 was that there had been very limited, if any, new building in Canberra commenced without pre-commitment.*

A. Yes.

Q. Did you mean by that that in 1993 that was the case, but in 1991 that had not been the case?

A. No.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47

Q. Okay. What did you mean by that?

A. Could I just have some time to consider - just read that?

Q. Certainly.

A. I think what I was trying to say was that the supply was tight, and the only - compared to where we were in 1994 was that the market was being demand-led through precommitment. Maybe it's badly worded, but it was a verbal response.

Q. The Stanton report is in your bundle, do you have it?

A. Yes.

Q. You received that in about June 1994, didn't you?

A. My copy's got an initial of mine at the top of "3/10/1994, discussed with GK". So I'm assuming that I actually got it around about that time.

Q. "GK" is Mr Kafcarus?

A. Yes.

Q. He's the Labor Party officer, or employee?

A. He was at the time.

Q. You kept a copy of this valuation in your files, didn't you?

A. Yes.

Q. You in fact read it carefully and had a discussion with Mr Kafcarus about it?

A. That's likely. I had a discussion with him, but I don't - I would have read it carefully, yes.

Q. I don't want to spend a lot of time on it, but would you agree that it is a valuation done using a primary method as the capitalisation method with a cross-check to DCF?

A. Yes.

Q. And the calculations Mr Byrne performed in respect to that are conveniently found on MACQ.033.0248?

A. Could I have that on the screen?

Q. It's headed "Capitalisation of Net Income Method", and there are some calculations and a table. That's the

1 calculation he performed using the capitalisation of net  
2 income method, wasn't it?  
3 A. Yes, I have the page.  
4  
5 Q. You have read this before, haven't you?  
6 A. Yes, but not recently.  
7  
8 Q. What this calculation shows is that Mr Byrne was of  
9 the opinion, firstly, that the market rent for the space  
10 in Centenary House as at June 1994 was \$290 per square  
11 metre net?  
12 A. Yes.  
13  
14 Q. And that the rent being paid, which was over that,  
15 was a premium or over-market rent?  
16 A. Yes.  
17  
18 Q. He broke his capitalisation method calculation up  
19 into two components, one based upon the market, which  
20 yielded to him \$26m-odd?  
21 A. Yes.  
22  
23 Q. And one based upon the premium rent which yielded  
24 \$6m-odd?  
25 A. Yes.  
26  
27 Q. And we read that table as indicating his opinion that  
28 without the contract that John Curtin House Limited had  
29 with the Commonwealth, this building would be worth \$26m,  
30 but because it had that contract as at the date it was  
31 worth \$32m?  
32 A. Yes.  
33  
34 Q. Would you agree that the fair market rent per square  
35 metre in June 1994 was \$290 net?  
36 A. I wouldn't argue with it. I haven't done the  
37 assessment to argue with it. But at the time, I found no  
38 fault with what he was doing.  
39  
40 Q. Then he does his DCF, which is a cross-check,  
41 effectively, and he comes up with, I believe, a net  
42 present value of \$32m-odd upon the assumptions he put  
43 forward in that calculation, didn't he?  
44 A. Yes.  
45  
46 Q. It is a figure very close to the one he derived using  
47 the other method?

1 A. Yes.  
2  
3 Q. You would agree also, would you not, that the company  
4 Stanton Hillier did a valuation in June 1993 in a similar  
5 fashion?  
6 A. I don't know, I just don't know.  
7  
8 Q. Would you agree, to your appreciation at the time -  
9 that is, in 1993, September - that the starting rent for  
10 Centenary House was \$60 to \$75 over-market per square  
11 metre?  
12 A. No.  
13  
14 Q. You wouldn't?  
15 A. No.  
16  
17 Q. Would you agree it was over-market?  
18 A. Yes.  
19  
20 Q. By what amount would you say?  
21 A. I think basically at the margin. I'm not sure where  
22 in the documents it would be.  
23  
24 Q. Did you have in your possession the Stanton Hillier  
25 valuation of June 1994 when you communicated with and gave  
26 evidence to Mr Morling?  
27 A. I don't believe so.  
28  
29 Q. Well, you gave evidence to him in an interview in  
30 August - 1 August?  
31 A. That's what I'm saying. My initial up here on my  
32 document says "3/10".  
33  
34 Q. Does it?  
35 A. Yes. This would have come - this wasn't a John  
36 Curtin House Limited instruction, so it must have come  
37 after 30 June.  
38  
39 Q. It's Macquarie Bank?  
40 A. I don't know when it came into the possession of John  
41 Curtin House Limited.  
42  
43 Q. All right. You come to this Commission wearing two  
44 hats, don't you? You give evidence about the facts and  
45 you also put yourself forward as an expert?  
46 A. Yes.  
47

1 Q. The second statement, the other statement,  
2 exhibit 102, was one prepared by you in consultation with  
3 the solicitors and so on of John Curtin House Limited?  
4 A. Yes.  
5  
6 Q. That is put forward as a statement, in effect, of an  
7 expert kind, is it not?  
8 A. I'm sorry, I missed the last couple of words?  
9  
10 Q. Yes, it is put forward, in effect, as a statement of  
11 expert evidence?  
12 A. Yes, that was the intention.  
13  
14 Q. Do you regard yourself as independent, in the sense  
15 in which that is normally understood in the context of  
16 giving expert evidence?  
17 A. In terms of the John Curtin House Limited not  
18 independent?  
19  
20 Q. Not independent?  
21 A. I have got a conflict. I was involved in putting it  
22 together.  
23  
24 Q. You have been involved in justifying it as a  
25 satisfactory deal ever since 1991, haven't you?  
26 A. Well, at least on two occasions.  
27  
28 Q. Yes. You have advocated that position to Mr Morling  
29 and to others, haven't you?  
30 A. No, to Mr Morling and this Inquiry.  
31  
32 Q. Yes. In paragraph 16 you refer to the evidence you  
33 gave, and you describe those letters as reports. They are  
34 really submissions, or arguments, aren't they?  
35 A. Could I just ask you to - I missed something in the  
36 first bit.  
37  
38 Q. That's all right. What you are referring to in  
39 paragraph 16 of exhibit --  
40 A. In 15?  
41  
42 Q. In 16. The letters that I took you to a while ago,  
43 which are set out in 15, you refer to them in 16 as  
44 "reports"; do you see that?  
45 A. Yes.  
46  
47 Q. Would you not agree that they are more aptly

1 described as submissions or arguments that you advance to  
2 him as to why this transaction was perfectly acceptable?  
3 A. It may be my English.  
4  
5 Q. No, there is a difference of substance, isn't there?  
6 A. Well, I believe they were reports on the market.  
7  
8 Q. Yes. In paragraph 17 you set out your view that the  
9 lease terms were within reasonable market parameters; do  
10 you see that?  
11 A. Yes, I do.  
12  
13 Q. There was no market transaction, was there, to your  
14 knowledge, in Canberra or anywhere else, that had a fixed  
15 rate of escalation year by year of 9 per cent over  
16 15 years?  
17 A. I agree.  
18  
19 Q. So it is wrong, is it not, to describe such a  
20 transaction as being within market parameters?  
21 A. No.  
22  
23 Q. Were you trying to suggest that it was not an  
24 unreasonable transaction, when you used that expression in  
25 paragraph 17?  
26 A. Yes, and I believe it was based on the evidence at  
27 the time.  
28  
29 Q. But it isn't based on any market transaction, is it?  
30 A. Not based on another lease of identical building, and  
31 identical commercial terms, I concede.  
32  
33 Q. Nor is the ratchet clause.  
34 A. But I believe the market evidence suggested the  
35 parameter of the rental escalation over the time was  
36 reasonable.  
37  
38 Q. You can't point to any example of a ratchet clause in  
39 these terms, that you were aware of, at the time, or that  
40 you had been aware of subsequently, can you?  
41 A. I don't have a 15-year lease in my mind. I did a  
42 number of 10-year leases with ratchet clauses, meaning it  
43 escalates up, you can't go down.  
44  
45 Q. But you can't point to one like this, can you, that  
46 has --  
47 A. The only difference in this one - the differences in

1 this one are a 15-year lease, and the second difference is  
2 the catch-up provisions at years 6 and 10.

3  
4 Q. But you can't point to any market example, either  
5 existing at the time in Canberra or anywhere else, or  
6 subsequently, in which the clause was expressed in the way  
7 this one was, in the sense that it included within it a  
8 built-in escalator as well as not allowing the rent to go  
9 below that figure.

10 A. Well, the AUSLIG lease was 9 per cent, just fixed.

11  
12 Q. Yes.

13 A. The difference with this one is at years 6 and 10 you  
14 could look at it. There are other examples of the  
15 Tax Office, and other people, that have fixed escalators,  
16 and I would say that means a ratchet; it always goes up,  
17 it never goes down. So - but I agree that these are  
18 different in terms of the market review mechanisms.

19  
20 Q. You can't point to any transaction, I suggest, of  
21 which you were aware, in which the starting rent was fixed  
22 by reference to a date 15 months before the precommitment  
23 agreement was signed and two and a half years before the  
24 lease commenced with an escalation factor applied to it?

25 A. I conceded that earlier.

26  
27 Q. So I want to suggest to you, very bluntly, that  
28 suggesting as you to do in paragraph 17 that this  
29 transaction was within market parameters, is just wrong?

30 A. Well, I don't agree.

31  
32 Q. I'm not asking you whether you thought it was  
33 reasonable. I'm asking you whether it was within market  
34 parameters in the sense that you can point to any market  
35 transaction which had the features I mentioned to you and,  
36 in particular, which had them all in combination?

37 A. I can't point to it, no.

38  
39 Q. In this document you have said that valuers commonly  
40 use history to predict the future, haven't you?

41 A. Yes.

42  
43 Q. That would depend, would it not, on the valuer's  
44 assessment as to whether or not that was an appropriate  
45 thing to do in terms of what it was that the valuer was  
46 undertaking at the time?

47 A. Could you take me a bit further?

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47

Q. Yes. History, I suggest to you, is a factor, but the weight of it and use to which it is to be put would depend upon the valuer's appreciation of the likelihood of history repeating itself, in terms of the factors which directed the events in history?

A. Yes.

Q. That requires an actual assessment to be made, insofar as it can be, in respect of the replication of those factors, doesn't it?

A. Yes. An assumption of no structural change.

Q. I am putting to you it's not an assumption, it's a matter you actually have to turn your mind to?

A. Then you have to make a call.

Q. Yes, of course. You make a call. What I want to put to you is history is but one of the matters you might take into account when trying to look at the future; there are others?

A. Yes, there are others.

Q. You don't mean to suggest by your second statement, exhibit 102, that economic factors generally are to be ignored, do you?

A. I don't think I said that.

Q. No. What you were saying was, in the context of the Canberra market, I suggest, that in 1990 and 1991 the impact of the recession which was being experienced around the country was being felt less in Canberra than in other places?

A. Almost non-impacting, other than for the higher interest rates.

Q. You advocate in this document, I suggest, the proposition that the most significant factor historically, and expected to be going forward from 1990, was supply and demand in terms of rental growth?

A. Yes.

Q. And do you say that that is the only factor that one would take into account if you were trying to make a forecast as to the future looking forward from then?

A. No, it's one of the factors. I don't think I said it was the only factor.

1  
2 Q. It is in your mind, however, a significant one?  
3 A. Yes.  
4  
5 Q. I think you have said that, in effect, in Canberra at  
6 that time, supply was being created by or, in my words,  
7 perhaps, driven by, demand?  
8 A. Yes.  
9  
10 Q. In essence, that's a demand generated by the  
11 Commonwealth Government?  
12 A. Principally.  
13  
14 Q. Your thesis in this document is that historically  
15 there had been sufficient demand, irrespective of the  
16 complexion of the government in power and irrespective of  
17 other economic factors, to support a continued growth in  
18 rents, albeit at different and sometimes wildly different  
19 rates, over a 15-year period going back from 1990?  
20 A. Before 1990?  
21  
22 Q. Yes.  
23 A. Yes.  
24  
25 Q. Your proposition in this document, and indeed when  
26 you were negotiating with Mr Jeffress, was that there was  
27 no reason to think that would not continue?  
28 A. That's right.  
29  
30 Q. Do you mean to suggest there was no reason to think  
31 that would not continue indefinitely?  
32 A. At least for the 15-year period, and probably  
33 indefinitely.  
34  
35 Q. Why do you think the 15-year period, only because  
36 it's the lease term?  
37 A. Because it's the lease, but we were talking about a  
38 15-year lease, and what was the opportunity of a  
39 structural change in Canberra, given the issues that we  
40 would take into account as valuers.  
41  
42 Q. The truth is that the proposition you advance is  
43 really one expressed to be applicable into the foreseeable  
44 future, isn't it?  
45 A. I'd say longer than the foreseeable future, otherwise  
46 we wouldn't get new buildings coming on stream.  
47

1 Q. But your proposition is that, looking forward from  
2 1990 or 1991, it was your appreciation and to your  
3 understanding everybody else in the Canberra real estate  
4 market, that the continued demand by the Commonwealth  
5 Government for office space, going forward at least  
6 15 years, but I suggest indefinitely, would drive the  
7 supply that would come forward and that that factor would  
8 be the principal reason why one would get not only  
9 increases in rent, but at times substantial increases in  
10 rent, during that 15-year period going forward?

11 A. Yes.

12

13 Q. The central support for that, or strut which holds  
14 that whole thesis up, is the proposition that there would  
15 be no change in government policy in relation to the way  
16 in which the public service performed its tasks and the  
17 size of the public service?

18 A. And a further factor of the ageing of the stock.

19

20 Q. But that factor is just something that was revealing  
21 itself a little around about that time and which you used  
22 to support a thesis that Commonwealth would pursue newer  
23 and better buildings, in effect, a flight from the worst  
24 ones?

25 A. Yes.

26

27 Q. But, critical to your proposition is the proposition  
28 that government policy would, in a sense, replicate what  
29 had been, as you describe it, an essential structural  
30 feature of the Canberra market between 1973 and 1990?

31 A. Yes.

32

33 Q. You were aware, as I suggest you know others were,  
34 that the government, even of the ALP complexion from 1989  
35 onwards, was looking to commercialise and outsource tasks  
36 previously done by the public service?

37 A. Yes.

38

39 Q. And that that was a fundamental structural change,  
40 having regard to the way in which things had been done up  
41 to that point?

42 A. But the office jobs were either rotating - would  
43 rotate back in as consultants or rotate to office jobs in  
44 other - still in stock.

45

46 Q. That's assuming that all was being done efficiently  
47 in a way that was acceptable to the private sector, isn't

1 it?

2 A. Well, I think that was the experience.

3

4 Q. Well --

5 A. That was going on, that they were revolving, not  
6 disappearing.

7

8 Q. Would it not have been a fair matter to take into  
9 account, if you were doing a forecast at that time, to  
10 recognise the fact that there was a fair chance that there  
11 would be a structural change in the public service going  
12 forward in a way which might change the drivers of supply  
13 and demand that we've been discussing?

14 A. Without the aid of hindsight you are asking me this?

15

16 Q. I am, actually.

17 A. I don't believe I was alone in saying that over time  
18 the Commonwealth employment take-up would slow and that at  
19 other times it would accelerate, and that the private  
20 sector, over time, would get bigger in Canberra and some  
21 time in the long-term future there might be a structural  
22 change, but I'd been in Canberra since 1974 and those sort  
23 of issues, through the Malcolm Fraser era, and someone  
24 experienced in Canberra, when you go back, you still see  
25 the slow rental growth as against the accelerated rental  
26 growth in time so I felt there wouldn't be the concept of  
27 coming in of a government swiftly reducing the size of the  
28 public service in Canberra.

29

30 Q. Did you not concede that was a real possibility,  
31 knowing what the Keating, Hawke governments had pursued  
32 into the late 80s and early 90s, and knowing what the  
33 Liberal Coalition policies were at that time, Mr McCann?

34 A. No, because we'd lived through the Lynch razor-gang  
35 era. We thought as a community there was a general view  
36 it's not going to get any worse than Lynch. It was during  
37 the period where we went back in history to look at the  
38 rental growths, and, you know, it was the first time in  
39 Canberra that a Commonwealth Government rescinded  
40 contracts after letting them - after Lynch in about May  
41 1980. Leading up to there, there were very rigid  
42 compressions and loss of confidence in the private and the  
43 government sectors, about job security.

44

45 So we had been through that sort of thing. Nobody  
46 had anticipated the concept of a swift, within a couple of  
47 months, payout of a number of thousands of people that

1 occurred after the Howard government came in. So, the  
2 expectation was that there would be a slow, an  
3 acceleration, a slow, an acceleration, in a very similar  
4 way from 1973 to 1990.

5  
6 Q. Don't you think in expressing those views, albeit if  
7 they were your genuine views, that they are somewhat naive  
8 in the extreme and reflect a view of life which may  
9 thought to be common in Canberra and somewhat insular from  
10 reality?

11 A. Of course there will be a range of views, but that's  
12 my view, or was my view at the time.

13  
14 Q. You just, I suggest, want to propound that view in  
15 support of what occurred in this transaction, although  
16 that view had nothing to do with this transaction at the  
17 time?

18 A. Well, I clearly have missed - sorry, not got on to  
19 the wavelength of that question. Could I ask you to read  
20 that again?

21  
22 Q. What I'm suggesting to you is this: at the time what  
23 you did was negotiate for your client the best deal you  
24 could, knowing what they wanted, and justifying what they  
25 wanted by reference to history, and that you didn't sit  
26 there solemnly taking into account your assessments of the  
27 future and what might happen, but, rather, it played no  
28 part in the process that you undertook at the time?

29 A. You're entitled to that view, but my answer is I  
30 believe I did.

31  
32 Q. When you come here and advocate, as I suggest you are  
33 doing, the position that everybody thought utopia would  
34 continue on indefinitely from 1990, that is a view which  
35 you are putting forward in order to support your client's  
36 position?

37 A. No, I'm saying - I'm sorry if I go back over this,  
38 but what I am saying is that what I believe is that most  
39 people in Canberra, including me, were of the view that we  
40 lived through some isolations. We never thought it was  
41 always going to be a boom, but they'll come and they'll  
42 go. The market for office accommodation would accelerate  
43 and pause, as it had done since the early 1970s. One did  
44 not assume, did not anticipate, that there would be  
45 wholesale sackings.

46  
47 Q. But you were simply looking back from 1990 for

1 15 years, because that's the term of the lease you were  
2 involved in?

3 A. Yes, but we were looking forward and saying what  
4 would happen in Canberra - you know, during the 1970s to  
5 the 1990s Canberra doubled in population. It was a bigger  
6 town. There was more things happening around it. Was it  
7 a reasonable expectation over the next 15 years for it to  
8 grow again? Would it double? No. It would not be  
9 anticipated to double. We were probably growing at  
10 1.5 per cent, 1.3 per cent per annum, so we took into  
11 account these sort of things. Sometimes we don't express  
12 them in documents and so on, but the issue is what does  
13 the - what would the commercial structural issues going  
14 forward that would radically change the past performance  
15 of the market be? One would not assume what has actually  
16 happened.

17

18 Q. In your statement which I'm currently asking you  
19 about, you, in effect, talk about persons doing forecasts  
20 and predictions for commercial purposes quite regularly,  
21 don't you?

22 A. Sorry?

23

24 Q. You discuss the question, or process, that people in  
25 business and otherwise do predictions and forecasts for  
26 the purposes of those businesses quite regularly?

27 A. Yes.

28

29 Q. And you cite Mr Babcock's book?

30 A. Yes, it is very sold, and a simple text of looking  
31 into the future.

32

33 Q. You are citing that book and discussing those matters  
34 in the way that you did at a very general level, aren't  
35 you, in terms of the commercial use which is made of  
36 people's judgments about the future?

37 A. Yes.

38

39 Q. And the question for the present case, as you  
40 understand it, perhaps, is this, isn't it: looking  
41 forward from 1990 or 1991, would it be prudent for a party  
42 in the position of the Commonwealth, looking at this  
43 transaction, to actually enter into a contract which bound  
44 it to a state or a view of the market going forward  
45 15 years, knowing what was known at the time?

46 A. The Commonwealth had already done it for 10 years.  
47 The extra five years is not a significant difference.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47

Q. But the fact that somebody does something doesn't always mean that it's prudent or sensible, or even reasonable, does it?

A. Well, the Commonwealth, as I tried to explain in statement, was looking at mechanisms to smooth its rental growth. I concede that other people could have a view that 15 years is a very long time, as against 10 years, as against not having escalators at all, but there was quite obviously, through the Commonwealth agencies, a view of trying to find various mechanisms to smooth the rental growth that was appearing in Canberra and out of Canberra, where they actually were demanding new buildings.

Other people could take a simple view that it shouldn't have been done, but they were a major office user and they were looking to try and find mechanisms that allowed them to achieve an outcome.

Q. All right. Mr McCann, I'm sorry to ask you this, and I will ask through the Commissioner. I'll be about 20 minutes. I would prefer if we could finish it today. Are you able to stay that time?

THE COMMISSIONER: There are a few other problems involved in this. What about you, Mr Sackar?

MR SACKAR: I can stay on today. I can't be here on Monday. I have made other professional commitments on the basis of your directions and Mr Foster's assurance.

MR FOSTER: I will finish by 20 past.

THE COMMISSIONER: I think it is fair enough after a two-hour stint to give the reporters a bit of a break.

MR FOSTER: I will finish at 20 past, or before that. Might I just ask one other question of Mr Sackar while I'm on that. If we do this and finish at 20 past, do you have to be here for the tenders that we want to make that we have notified you of?

MR SACKAR: No, no, as far as tenders are concerned they can be done at the end of the day or in chambers. I don't object them being done in my absence.

THE COMMISSIONER: Have you seen the list?

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47

MR SACKAR: I think so. If we haven't seen it, we can look at it later.

MR FOSTER: I may be able to deal with it quickly.

MR SACKAR: All I'm saying is, subject to looking at the list, we will have no objection to the tenders being done in our absence. I can't imagine it will be a problem.

MR FOSTER: Q. Mr McCann, would you tell us what you understand would have been, in principle, a comparable to Centenary House? In other words, what are the features that you would describe as designating comparability, for the purpose of valuation?

A. Would you go back to the starting question?

Q. Yes, I didn't put it very well. If you were looking to determine what would be a market rent for Centenary House by reference to comparable rents in comparable buildings, can you tell us what features you would be looking for in determining what was a comparable tenancy and comparable building?

MR SACKAR: I don't want to be difficult about it, but is that unlimited as to time? In other words, 2004, 2003, 1991? It may make a difference.

MR FOSTER: Q. It's postulated as at 1990 and 1991 on the basis of what you understood the building would be when it was completed.

A. So what would the rent examples --

Q. What would be the features that you would be looking for that would direct you to a position of accepting that the particular building and particular tenancy was comparable?

A. A building one to five years old; high-performance double-glazed perimeter, sun-shading associated with that; air-conditioning that was modern in terms of its plant. This building has an on-floor handling plant and a VAV system work space, so it adjusts the final delivery of air for temperature, which older buildings do not have. At the time, even the IBM Building did not have the ability to better control the air-conditioning.

Although I understand people might have a different

1 view about this, the Commonwealth standard requires a very  
2 narrow range of temperature variation under schedule 3 of  
3 the leases that were running through in the early 90s,  
4 that were different to previous leases.

5  
6 That the floor spaces were not cluttered, and issues  
7 of location of stairwells and toilet blocks and so on, so  
8 the floorplates were readily able to facilitate for a  
9 government building with government tenants, and I guess  
10 the issues would then flow to the location.

11  
12 Q. In terms of rental comparability, you would be trying  
13 to find rents paid in tenancies of a similar size, would  
14 you?

15 A. Yes.

16  
17 Q. What you have just described would be a perfect  
18 match, would it not?

19 A. Yes, well, that's what you asked me to start with, I  
20 thought.

21  
22 Q. Of course, I'm not criticising you for that. You  
23 rarely find a perfect match in terms of comparability,  
24 don't you?

25 A. That's so. It's similarity rather than direct.

26  
27 Q. Within the concept, there is a grade of  
28 acceptability, isn't there?

29 A. Yes.

30  
31 Q. And at some point the building that you are trying to  
32 look at as a comparable is so far outside, or away from,  
33 the building that you are considering that you reject it  
34 is a comparable?

35 A. Yes, in the valuer's context of comparable, being  
36 similar.

37  
38 Q. Yes, that's what I am asking. Sometimes, for  
39 example, in Canberra, you may find that there are  
40 buildings that meet your relevant test of comparability  
41 which may not be in precisely the same suburb as the one  
42 you have under consideration?

43 A. Yes.

44  
45 Q. For example, you might regard a building in Civic as  
46 comparable to one in Barton for the purposes of making a  
47 rental assessment?

1 A. You may.  
2  
3 Q. You may. You would be unlikely to regard one in  
4 Woden or Tuggeranong, though, as comparable, unless you  
5 had absolutely nothing else, wouldn't you?  
6 A. In terms of rent, yes.  
7  
8 Q. In 1990 and 1991 do we take it that the buildings you  
9 regarded as comparable in a valuation sense were the ones  
10 you listed in the schedules that you went to the meeting  
11 with Mr Jeffress?  
12 A. Yeah, I believe so. They were basically the best  
13 available for the period.  
14  
15 Q. How many office buildings were there in Barton in  
16 1990 and 1991 that were either rented or available to be  
17 rented?  
18 A. Up to 10, some of which were owned by the government,  
19 some which weren't.  
20  
21 Q. I think it's right, isn't it, that between you and  
22 Mr Jeffress, five of them received consideration in your  
23 meetings?  
24 A. Yes.  
25  
26 Q. So that's about half?  
27 A. Yes.  
28  
29 Q. Can you remember which ones were not discussed or  
30 considered in that context by you or Mr Jeffress that were  
31 located in Barton at that time?  
32 A. I think I'd just say they were older buildings.  
33  
34 Q. Right.  
35 A. Pre-1970 buildings even.  
36  
37 Q. Which of the ones that were in the schedules did you  
38 regard at that time as the most comparable to what  
39 Centenary House would be when it was construct?  
40 A. IBM Building, the most similar building, most modern.  
41  
42 Q. That was the most modern, I think, along with  
43 Industry House?  
44 A. Industry House might have been modern, but it wasn't  
45 a good outcome.  
46  
47 Q. So IBM was probably, in your view, the best of the

1 comparables?  
2 A. Yes.  
3  
4 Q. You have taken Mr Egan to task about inserting a  
5 number, I think, for - is it 1991, in your --  
6 A. Yes.  
7  
8 Q. -- schedule.  
9 A. Yes.  
10  
11 Q. You would agree, though, wouldn't you, that your  
12 schedule itself didn't have a number in there for 1991?  
13 A. Yes I agree with that. I think I have now explained  
14 why.  
15  
16 Q. Of course. I'm not criticising you for it, but you  
17 might accept, might you not, that perhaps --  
18 A. I don't know that I took Mr Egan to task. I think I  
19 was correcting his assumption, or his schedule that was  
20 wrong. That's all.  
21  
22 Q. But you understood, didn't you, that all he had done  
23 was take your schedule and made an assumption that because  
24 it was blank there had been no change?  
25 A. Yeah, and I found that difficult, when all the rent  
26 reviews were two-yearly and all of a sudden there was a  
27 three-year run of rents the same. That's the first thing  
28 that triggered my brain when I was looking at the  
29 schedule.  
30  
31 Q. I know. But without sort of taking too long over  
32 this, it was a matter that was really caused by the fact  
33 you hadn't put in the figure?  
34 A. Oh, I don't feel responsible for it.  
35  
36 Q. In any event, that rent review discloses about a  
37 4 per cent increase per annum between 1989 and 1991 in the  
38 IBM Building, doesn't it?  
39 A. Yes.  
40  
41 Q. Which is a lot less than 10.5, isn't it?  
42 A. Yes.  
43  
44 Q. And did you appreciate in 1991, going into 1992, that  
45 the rate of increase in rents through 1991 into 1992 had  
46 slowed down, Mr McCann?  
47 A. I did the rent review on the IBM Building in early

1 1992 and there was certainly a slowing in the market.  
2  
3 Q. So you knew by then, didn't you?  
4 A. I'm sorry, I knew what by then?  
5  
6 Q. That the market had slowed in terms of the rate of  
7 increase in rents?  
8 A. Well, it slowed off the high rent that was achieved  
9 in 1991 for the IBM Building, yes.  
10  
11 Q. I want to suggest to you that you were aware of a  
12 slowing based upon what you knew about the market during  
13 1991 as well?  
14 A. I don't believe I did, but I'm happy for you to take  
15 me to where I should have realised it.  
16  
17 Q. Well, I'm suggesting that you did, rather than  
18 offering to take you anywhere; do you follow?  
19 A. Yeah, but I am saying I don't believe I did.  
20  
21 Q. Could you go to paragraphs 79 and 80 of exhibit 102.  
22 A. Yes.  
23  
24 Q. Your conclusion in 81, insofar as it is expressed,  
25 was that a conclusion you actually turned your mind to in  
26 the context of the negotiation you were having with  
27 Mr Jeffress?  
28 A. Yes.  
29  
30 Q. Is that right?  
31 A. In 81 I talk about the long-term rental growth which  
32 were likely to continue over time. Is that the part that  
33 you are asking me to comment on?  
34  
35 Q. Yes, but I'm directing you to the bits that lead up  
36 to it as well. I'm asking you whether, in truth, you  
37 turned your mind to the matter in that way at the time, or  
38 whether you simply went to the meeting with history  
39 presented in a way to justify what it was your client  
40 wanted?  
41 A. I believe I took into account that Canberra had had a  
42 history of almost being anti-cyclic to the national  
43 economy, and that's probably more changed more recently,  
44 but I don't believe that I foresaw any significant  
45 structural change in how the economy in Canberra was  
46 likely to perform over the 15 years running forward.  
47

1 Q. But you never had to really discuss that with  
2 Mr Jeffress, did you?

3 A. I don't believe we discussed the economy going  
4 forward, no.

5  
6 Q. All you did was justify the position that your client  
7 had taken by reference to history?

8 A. I believe that I would have discussed that. I  
9 wouldn't see any significant indicator that would suggest  
10 that there was going to be a major change, structural  
11 change, as I have put it, going forward.

12  
13 Q. May we take it that you agree with the proposition  
14 that at all times since 1994 the actual rent being paid in  
15 Centenary House was substantially over-market?

16 A. Yes.

17  
18 Q. Your proposition was that that was something the  
19 inevitability of which was not foreseen by you at the  
20 time?

21 A. Yes, I didn't foresee it, neither did the  
22 Commonwealth. The same would apply with AUSLIG.

23  
24 Q. In 1991 and 1992, do you also say that the most  
25 comparable building to Centenary House, as you understood  
26 it would be when constructed, was the IBM Building?

27 A. Yes.

28  
29 Q. What was the next most comparable, to your  
30 appreciation?

31 A. In terms of a more modern building, Industry House  
32 was there, but it also had some issues that weren't good  
33 design issues - low ceilings and the like. In Barton  
34 there weren't many other new buildings. The IBM, to my  
35 knowledge, was the most comparable. By 1992 there was  
36 what's now known as the Boeing Building that was  
37 completed. I would think that the Lionel Murphy building  
38 was completed then or soon after.

39  
40 Q. What about in 1992, the AMA Building?

41 A. Towards the end of 1992 more than the beginning of  
42 1992, is my memory.

43  
44 Q. I accept that. Would you regard that as a comparable  
45 building to the Centenary House, when constructed?

46 A. It is certainly not a good building for the  
47 Commonwealth because of the way it's designed. That's not

1 a problem, because in terms of commercial private sector  
2 tenants, smaller tenants, it works quite well. But in  
3 terms of the floorplates, they aren't big, there is a  
4 central service core, and so on, but the issue is in terms  
5 of the floorplates, and that would be inferior to the way  
6 Centenary House was put together, but it was a  
7 high-performance, glassed surrounds, it's a nice looking  
8 building, it has got reasonable - good quality  
9 air-conditioning plant and so on to allow private sector  
10 tenants. I just feel that in terms of efficiencies for  
11 the floor spaces that the Commonwealth looks for, they  
12 tend to occupy AMA as overflow space, not primary space,  
13 whereas Centenary House is a primary-space building.  
14

15 Q. Accepting all of that, though, and given the limited  
16 number of buildings one can find which can be regarded as  
17 even comparable, would you accept, nonetheless, that in a  
18 valuation sense, if one were doing a valuation for the  
19 purposes of a rental consideration, that Lionel Murphy,  
20 AMA, MTAA, were all buildings that would be taken into  
21 account?

22 A. Certainly in 1994, and --

23  
24 Q. Oh, yes.

25 A. -- you asked me in 1992.

26  
27 Q. I did.

28 A. Some of those buildings that you have just added  
29 weren't there?

30  
31 Q. No.

32 A. AMA wasn't there until probably late 1993, 1994,  
33 early 1995, from memory. So what I am getting at is in  
34 the time frame that we are dealing with. All of those are  
35 designed as private sector buildings, not public sector  
36 buildings.  
37

38 MR FOSTER: Those are the questions I have.

39  
40 THE COMMISSIONER: Yes, Mr Sackar?

41  
42 **<EXAMINATION BY MR SACKAR:**

43  
44 MR SACKAR: Q. Mr McCann, did you, in any respect at  
45 all, intend to mislead Mr Morling in any aspect of your  
46 participation in the Inquiry before him?

47 A. No, and I don't believe I did.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47

Q. There is just one other matter I wanted to check. In paragraph 17 of your statement --

THE COMMISSIONER: The factual or the opinion?

MR SACKAR: 102, which I think is the expert statement.

THE COMMISSIONER: Yes.

MR SACKAR: Q. You were taken, if I may say so, with respect, to paragraph 17.

A. Yes.

Q. Some questions were posed a little indirectly about the way in which your paragraph ends where you say:

*I honestly believed we were within reasonable market parameters at the time.*

Why did you hold that belief?

A. I believed the evidence was there at the time to support it, in terms of the market evidence and the escalators.

MR SACKAR: Thank you.

THE COMMISSIONER: Any further examination?

MR FOSTER: Could I hand up a document which has exhibit numbers on it, which are not apt because of some additional intervention.

THE COMMISSIONER: First of all, have you finished with Mr McCann.

MR FOSTER: Yes.

THE COMMISSIONER: Thank you very much, Mr McCann, you are excused from giving any further evidence.

**<THE WITNESS WITHDREW**

MR SACKAR: Can I indicate that we have no objection to any tender of those. The only item is in the exhibit, if it is to be an exhibit, 117, the penultimate one on page 2. I think we have given Ms Bennett or Mr Foster, in a

1 letter or some form, a small number of documents that we  
2 would seek confidentiality in respect of.

3  
4 THE COMMISSIONER: Can you separate those out into a  
5 separate bundle, perhaps? Then they can be made a  
6 confidential exhibit.

7  
8 MR SACKAR: We will do that between us. Otherwise we  
9 have no objection to you marking them all as exhibits.

10  
11 THE COMMISSIONER: I have gone through that document and  
12 the numbering is now correct. I will ask for this to be  
13 incorporated into the transcript.

14  
15 **EXHIBIT #104 LETTER TO HIGGINS SOLICITORS DATED 22/10/2004**  
16 **ENCLOSING FURTHER DOCUMENTS TO BE TENDERED**

17  
18 **EXHIBIT #105 LETTER TO HIGGINS SOLICITORS DATED 28/10/2004**  
19 **ENCLOSING FURTHER DOCUMENTS TO BE TENDERED**

20  
21 **EXHIBIT #106 SCHEDULE OF LEASES REFERRED TO IN DOCUMENT**  
22 **CH94.012.0030, INCLUDING CENTENARY HOUSE**

23  
24 **EXHIBIT #107 LEASES REFERRED TO IN DOCUMENT CH94.012.0030**  
25 **VOLUME 1**

26  
27 **EXHIBIT #108 LEASES REFERRED TO IN DOCUMENT CH94.012.0030**  
28 **VOLUME 2**

29  
30 **EXHIBIT #109 LEASES REFERRED TO IN DOCUMENT CH94.012.0030**  
31 **VOLUME 3**

32  
33 **EXHIBIT #110 LEASES REFERRED TO IN DOCUMENT CH94.012.0030**  
34 **VOLUME 4**

35  
36 **EXHIBIT #111 TUGGERANONG OFFICE PARK TRANSACTION DOCUMENTS**  
37 **VOLUME 1**

38  
39 **EXHIBIT #112 TUGGERANONG OFFICE PARK TRANSACTION DOCUMENTS**  
40 **VOLUME 2**

41  
42 **EXHIBIT #113 VALUATION DOCUMENTS**

43  
44 **EXHIBIT #114 NOTICE TO PRODUCE AND CERTIFICATIONS**  
45 **(INCLUDING ALL CERTIFICATIONS RECEIVED BY THE INQUIRY TO**  
46 **DATE) VOLUME 1**

1 EXHIBIT #115 NOTICE TO PRODUCE AND CERTIFICATIONS  
2 (INCLUDING ALL CERTIFICATIONS RECEIVED BY THE INQUIRY TO  
3 DATE) VOLUME 2  
4

5 EXHIBIT #116 SUMMONSES TO APPEAR  
6

7 EXHIBIT #117 FOLDER OF JOHN CURTIN HOUSE DOCUMENTS  
8

9 EXHIBIT #118 JOHN McEWAN HOUSE DOCUMENTS  
10

11 EXHIBIT #119 CONFIDENTIAL EXHIBITS EXCLUDED FROM  
12 EXHIBIT 117  
13

14 THE COMMISSIONER: In relation to that particular  
15 document, access will be given to those documents by Bovis  
16 Lend Lease Pty Ltd upon a written undertaking being given  
17 on behalf of that company, by a responsible officer, that  
18 they will not be disclosed by it to persons other than its  
19 counsel, solicitor and company representatives taking part  
20 in the Inquiry without my leave. Such leave will be  
21 granted only after John Curtin House Limited has been  
22 given the opportunity to express its views.  
23

24 MR SACKAR: Thank you.  
25

26 MR FOSTER: I have one other tender to be added to  
27 Mr Egan's exhibit number. It is the two letters of  
28 instructions sent to Mr Egan of the 3rd. I think the  
29 second date might be 19 August 2004, together with the  
30 email chain between the Commission personnel and  
31 Ms Willimott of CBRE. I have been asked also to tender in  
32 that context the four pages that Mr Sackar commenced  
33 reading from when he was cross-examining Mr Egan out of  
34 Mr Babcock's book.  
35

36 THE COMMISSIONER: Is that the lot?  
37

38 MR FOSTER: Yes.  
39

40 THE COMMISSIONER: Have we heard from Mr Beech-Jones as  
41 to whether he wants to make any oral submissions?  
42

43 MR FOSTER: My recollection is we did get a letter from  
44 Freehills saying they did not want to, but I don't think  
45 Mr Beech-Jones has been consulted, because he is away, as  
46 far as I know.  
47

1 THE COMMISSIONER: If his solicitor says so, that will be  
2 sufficient for me. Mr Sackar, do you want to make any  
3 oral submissions?  
4

5 MR SACKAR: No, thank you, we are content to conclude the  
6 matter in writing.  
7

8 THE COMMISSIONER: That concludes the hearing. I'm very  
9 grateful to the parties, the witnesses, and to counsel and  
10 their solicitors for all the assistance that's been given  
11 to us, and the report will be delivered to the  
12 Governor-General hopefully in time, by 26 November. Upon  
13 that note, I will adjourn.  
14

15 **AT 4.25PM THE COMMISSION WAS ADJOURNED SINE DIE**  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47