

The Auditor-General
ANAO Report No. 62 2016–17
Assurance Review

Malabar Headland: 2016 Lease between the Commonwealth of Australia and the New South Wales Rifle Association

Department of Finance

Department of the Environment and Energy

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ISSN 1036–7632 (Print)

ISSN 2203–0352 (Online)

ISBN 978-1-76033-270-9 (Print)

ISBN 978-1-76033-271-6 (Online)

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Canberra ACT
30 June 2017



Dear Mr President and Mr Speaker

The Australian National Audit Office has undertaken an independent assurance review of the Malabar Headland: 2016 lease between the Commonwealth of Australia and the New South Wales Rifle Association, under section 19A(1) of the *Auditor-General Act 1997* (the Act).

An assurance review may be initiated on the basis of information obtained in the course of performing an Auditor-General function or in response to requests from stakeholders, including parliamentarians, parliamentary committees or a resolution agreed to by the Senate.

The review has been conducted in accordance with the Australian Standard on Assurance Engagements (ASAE) 3000 *Assurance Engagements Other than Audits or Reviews of Historical Financial Information*, issued by the Australian Auditing and Assurance Standards Board, which forms part of the ANAO Auditing Standards.

Once relevant inquiries have been concluded by the ANAO, the findings from an individual assurance activity had been handled through the issuing of correspondence, with the relevant correspondence published on the ANAO's website. This is the first independent assurance review report presented to the Parliament under section 25 of the Act.

An assurance review provides a limited level of assurance and the review report includes a description of the assurance engagement circumstances, and a negative form of expression of the conclusion.

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

Yours sincerely

A handwritten signature in black ink, which appears to read 'Grant Hehir', is positioned below the text 'Yours sincerely'.

Grant Hehir
Auditor-General

The Honourable the President of the Senate
The Honourable the Speaker of the House of Representatives
Parliament House
Canberra ACT 2600

AUDITING FOR AUSTRALIA

The Auditor-General is head of the Australian National Audit Office (ANAO). The ANAO assists the Auditor-General to carry out his duties under the *Auditor-General Act 1997* to undertake performance audits, financial statement audits and assurance reviews of Commonwealth public sector bodies and to provide independent reports and advice for the Parliament, the Australian Government and the community. The aim is to improve Commonwealth public sector administration and accountability.

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Assurance review—section 19A of the Auditor-General Act 1997

INDEPENDENT ASSURANCE REPORT

MALABAR HEADLAND: 2016 LEASE BETWEEN THE COMMONWEALTH OF AUSTRALIA AND THE NEW SOUTH WALES RIFLE ASSOCIATION

Conclusion

I have undertaken a limited assurance engagement of the Department of Finance’s management of the lease between the Commonwealth of Australia and the New South Wales Rifle Association over the Malabar Headland. The limited assurance engagement examined whether the management was, in all material respects, in accordance with the Commonwealth Property Management Framework¹, as evaluated against the following criteria (‘the criteria’):

- Has the Department of Finance developed and implemented a strategic property management plan for the Malabar Headland?
- Has the Department of Finance provided advice on value for money considerations to the Minister for Finance for the Malabar Headland lease?
- As part of the decision-making process to lease part of the Malabar Headland to the New South Wales Rifle Association, have the Department of Finance and the Department of the Environment and Energy provided advice on economic, environmental, and social issues and appropriately documented the decision?

Based on the procedures I have performed and the evidence I have obtained, nothing has come to my attention that causes me to believe that the Department of Finance’s management of the Malabar Headland lease was not, in all material respects, in accordance with the Commonwealth Property Management Framework, as evaluated against the criteria.

Basis for Conclusion

I have conducted the engagement in accordance with the ANAO Auditing Standards, which include the relevant Standard on Assurance Engagements ASAE 3000 *Assurance Engagements other than Audits or Reviews of Historical Financial Information* issued by the Auditing and Assurance Standards Board.

I believe that the evidence I have obtained is sufficient and appropriate to provide a basis for my conclusion.

1 The Commonwealth Property Management Framework establishes five principles for the efficient, effective, economical and ethical use of property resources and applies to property leased and owned by Non-corporate Commonwealth Entities. The principles include sound property management planning, value for money, and appropriate accountability measures including the documentation of decision making. Available from <<http://www.finance.gov.au/property/property/property-management-framework/>> [accessed 6 April 2017].

Responsibilities of the Secretary of the Department of Finance

The Secretary of the Department of Finance is responsible for the Department of Finance's management of the Australian Government's domestic non-Defence property portfolio in accordance with the Commonwealth Property Management Framework. This responsibility includes undertaking the review and reform of these assets including divestment. The Malabar Headland site is part of the Australian Government's domestic non-Defence property portfolio managed by the Department of Finance.

The Secretary is also responsible for the Department of Finance providing advice and support to government and officials on the Commonwealth Property Management Framework, and the legislative and policy requirements relating to Commonwealth property.

Independence and Quality Control

I have complied with the independence and other relevant ethical requirements relating to assurance engagements, and applied Auditing Standard ASQC 1 *Quality Control for Firms that Perform Audits and Reviews of Financial Reports and Other Financial Information, and Other Assurance Engagements* in undertaking this assurance engagement.

Responsibilities of the Auditor-General

My responsibility is to express a limited assurance conclusion on whether the Department of Finance's management of the lease between the Commonwealth of Australia and the New South Wales Rifle Association over the Malabar Headland is in accordance, in all material respects, with the Commonwealth Property Management Framework, as evaluated against the criteria. ASAE 3000 requires that I plan and perform my procedures to obtain limited assurance about whether anything has come to my attention that the Department of Finance's management of the Malabar Headland lease is not in accordance, in all material respects, with the Commonwealth Property Management Framework, as evaluated against the criteria.

I have conducted my limited assurance engagement by making such enquiries and performing such procedures I considered reasonable in the circumstances, including examination and assessment of:

- Department of Finance policy guidance on the Commonwealth Property Management Framework;
- Department of Finance planning documents and information relevant to its management of the Malabar Headland; and
- advice provided by the Department of Finance and the Department of the Environment and Energy to their respective portfolio ministers.

Interviews with persons responsible for the planning and management of the site, and for providing advice to the relevant portfolio ministers, were also conducted.

The procedures selected depend on my professional judgement, including identifying areas where there is a risk that the management of the Malabar Headland site is not in accordance with the Commonwealth Property Management Framework.

The procedures performed in a limited assurance engagement vary in nature and timing from, and are less in extent than for, a reasonable assurance engagement and consequently the level of assurance obtained in a limited assurance engagement is substantially lower than the assurance that would have been obtained had a reasonable assurance engagement been performed. Accordingly, I do not express a reasonable assurance opinion on management of the Malabar Headland lease in accordance with the Commonwealth Property Management Framework, as evaluated against the criteria.

Australian National Audit Office

A handwritten signature in black ink, appearing to read 'Grant Hehir'.

Grant Hehir
Auditor-General
Canberra
30 June 2017

Appendix A — Findings in respect of specific aspects of the engagement

1. During the conduct of the limited assurance engagement, the following findings were made with respect of specific aspects of the engagement. These matters were addressed in the context of my assurance engagement as a whole, and in forming my conclusion thereon, and I do not provide a separate conclusion on these matters.

Overview of the Malabar Headland site

2. The Malabar Headland is a former Defence site on a coastal headland approximately 11 kilometres south of the Sydney central business district. It is one of Sydney's last undeveloped headlands and is part of the traditional land of the Bidjigal and Gadigal People and is a significant area for Aboriginal people.

3. The site is approximately 177 hectares and consists of four lots. The Commonwealth has transferred two lots to the state of New South Wales (NSW) for use as national park² and two lots (Lots 301 and 302) remain in Commonwealth ownership. The ANZAC Rifle range is on Lot 301 (87.5 hectares). The site as a whole is listed on the NSW Heritage Register although the vast majority of items of significance, such as World War 2 heritage structures and most coastal vegetation with biodiversity value, are on the land that has been transferred to NSW.

4. The Malabar Headland has been variously used for: shooting (military, police and recreational); legal and illegal waste disposal; and recreational activities such as model aeroplane flying and equestrian activities and facilities. From 1960 to 1988, the Commonwealth also allowed sand mining and later extensive landfill work on Lot 301. As a result, the Malabar Headland now contains significant levels of asbestos in the soils and in buildings, and contamination of decomposing waste from continued settlement.

5. In January 2015, the Minister for the Environment announced that the Malabar Headland would remain in public hands.³ The Australian Government's policy commitment to secure the Malabar Headland in perpetuity as a significant public space was confirmed in correspondence from the Ministers for Finance and the Environment to the NSW Minister for the Environment in March 2015. This correspondence confirmed that: part of the Headland (Lot 202) would be transferred to NSW for use as national park; equestrian activities would return to the Headland once remediation of a suitable area was completed; and the New South Wales Rifle Association (NSWRA) would continue to use the rifle range until a suitable alternative was found and agreed to by the NSWRA with the arrangement to be confirmed through a lease arrangement.

6. Currently only the NSWRA has a lease to occupy the Commonwealth land on Malabar Headland. The 2016 lease between the Commonwealth and the NSWRA is for 25 years, or until a comparable facility is provided elsewhere, with options to extend the lease by a further 25 years.

2 On 2 March 2012, Lot 102 (17.7 hectares), the western section, was transferred, and was officially gazetted by the NSW Government as the Malabar Headland National Park in December 2012. On 19 January 2016, Lot 202 (70 hectares), the south-eastern section of the headland, was transferred, and was officially gazetted by the NSW Government as a national park on 16 February 2016.

3 The Minister for the Environment made the announcement when speaking on radio station 2UE on 22 January 2015.

The new fixed term lease replaces a licence⁴ that required relocation of the NSWRA to a comparable facility as a prerequisite for its surrender of the licence to use the site. The lease allows the NSWRA to use the range on a non-exclusive basis. The commencement rent under the lease was \$26 500 a year subject to 3.5 per cent annual reviews. The cost of the ongoing management of the Malabar Headland site far exceeds the rental income⁵, and there have been criticisms⁶ that the annual rent is below market price.⁷

Commonwealth Property Management Framework

7. The Department of Finance (Finance) is responsible for policies and legislation that form the Commonwealth Property Management Framework.⁸ The Property Management Framework is a component of the Australian Government's resource management framework that underpins the appropriation, expenditure and use of money and resources within the Australian Government.

Has the Department of Finance developed and implemented a strategic property management plan for the Malabar Headland?

8. Under the Property Management Framework, entities are required to have in place a property management plan to support short, medium and long term property objectives.

9. Finance policy guidance⁹ states that a property management plan is an important strategic planning tool, should be reviewed regularly and should address: repairs and maintenance; refurbishments; lease management; health and safety; energy and sustainability management; and facilities management (where relevant).

10. Finance has assessed that the Malabar Headland site has complex and sensitive issues that require management, such as contamination, remediation and environment protection. At the time of the review, Finance had a suite of property management documentation for the Commonwealth holdings on the Malabar Headland site in support of its objective to manage the site within the confines of its contaminated nature, by limiting risk to the Commonwealth through removal of site users. In this context, Finance provided the ANAO with a number of planning documents, including:

4 Under a lease, a tenant has the right to occupy the land until the end of the term and may enforce its rights against third parties. A licence, on the other hand, provides permission to enter and use the property for a stipulated purpose.

5 In October 2014, the Department of Finance advised the Minister for Finance that annual operational costs were around \$1 million.

6 Uma Patel, *New South Wales Rifle Association leasing prime property from Government under market value*, ABC [online] updated 29 December 2016 <http://www.abc.net.au/news/2016-12-29/nsw-rifle-association-getting-cheap-rent-on-prime-coast-property/8151604> [accessed 31 January 2017].

7 A 2016 valuation of Lots 301 and 302 estimated the value at \$1 as the property was not considered saleable given its environmental classification, large volumes of landfill and the lease with the NSWRA. The valuation report concluded that redevelopment of the site would be difficult given the current planning controls and sensitive and political nature of the site.

8 Finance has developed policies and guidance material for each component of the property management process. See <<http://www.finance.gov.au/property/property/property-management-framework/>> [accessed 6 April 2017].

9 Department of Finance, *Resource Management Guide No. 501—Property Management Planning Guidance*, July 2014, Finance [Internet], Canberra, pp. 2–3, available from <<http://www.finance.gov.au/sites/default/files/resource-management-guide-no-501.pdf>> [accessed 6 April 2017].

- draft Asset Management Plan (October 2016);
- ANZAC Rifle Range Management Plan (March 2010);
- Dangerous Goods and Hazardous Materials Assessment (September 2015);
- Environmental Management Plan¹⁰ (December 2015); and
- Vegetation and Bushfire Management Plan (June 2015).

11. The draft Asset Management Plan described strategies and actions to manage the complex and sensitive issues referred to above, including those relating to health, safety and sustainability.¹¹ Finance advised that the draft Asset Management Plan will be finalised once it has completed several works packages it is delivering at the site, including on remediation safety, amenity improvement, asbestos removal and establishing an equestrian facility.

12. Finance was not able to locate the Asset Management Plan that was in place for the period of the licence but did provide the ANAO with a number of Ministerial Briefs and minutes that evidenced the objective of limiting risk to the Commonwealth through removal of site users.

Has the Department of Finance provided advice on value for money considerations to the Minister for Finance for the Malabar Headland lease?

13. The Accountable Authority has a duty to promote the proper use and management of public resources, including owned and leased property by the Commonwealth of Australia, under the *Public Governance, Performance and Accountability Act 2013*. This requires the Accountable Authority to take into account the effect of decisions on public resources.¹² In respect of value for money, the Property Management Framework refers to the *Commonwealth Procurement Rules*¹³, which require consideration of the financial and non-financial costs and benefits associated with procurement.¹⁴ Ordinarily, value for money perspectives involve an assessment of some combination of economy, efficiency and/or effectiveness.¹⁵

10 The Environmental Management Plan referred to 11 sub-plans, including Topography, Geology and Soils, Site Contamination, Waste Management, and Traffic and Access.

11 The draft Asset Management Plan explicitly addressed health, safety, environmental, financial and community expectation risks; creation acquisition and enhancement; operating expenditure; financial management; and monitoring and improvement arrangements.

12 Section 15, Division 2, *Public Governance, Performance and Accountability Act 2013*, available from <<https://www.legislation.gov.au/Details/C2016C00414>> [accessed 5 June 2017].

13 Department of Finance, Resource Management Guide No. 500—Overview of the Commonwealth Property Management Framework, September 2015, Finance [Internet], Canberra, p. 2, available from <<http://www.finance.gov.au/sites/default/files/rmg-500-overview-cpmf.pdf?v=1>> [accessed 5 June 2017].

14 Department of Finance, Commonwealth Procurement Rules, 1 March 2017, available from <<https://www.finance.gov.au/procurement/procurement-policy-and-guidance/commonwealth-procurement-rules/>> [accessed 5 June 2017].

15 The Standard on Assurance Engagements ASAE 3500 (p. 15) defines: economy as ‘the acquisition of the appropriate quality and quantity of resources at the appropriate times and at the lowest cost’; efficiency as ‘the use of resources such that output is optimised for any given set of resource inputs, or input is minimised for any given quantity and quality of output’; and effectiveness as ‘the achievement of the objectives or other intended effects of activities at a program or entity’. Available from <http://www.auasb.gov.au/admin/file/content102/c3/ASAE_3500_31-10-08_Amended.pdf>, [accessed 5 June 2017].

14. According to documentation provided by Finance, it provided written advice¹⁶ to the Minister for Finance (the Minister) on the proposed 2016 Malabar Headland lease on three occasions: in June and November 2015, and February 2016.¹⁷ In June and November 2015 Finance advised the Minister on proposed changes to terms and conditions that would achieve the policy objective of greater public access namely, duration of the lease agreement, limiting the number of shooting days, and access to other groups.

15. In February 2017, Finance took on notice questions from Senator McAllister¹⁸ relating to: the steps Finance took to ensure that the lease with the NSWRA was good value for money for the taxpayer; and Finance's methodology for determining the 3.5 per cent indexation rate. Finance's response¹⁹ was that the 2016 lease:

- limits the number of shooting days per week to allow community access to the Malabar Headland National Park;
- will automatically increase the rent by 3.5 per cent each year while the licence formula did not automatically result in an increase in annual rent; and
- the 3.5 per cent indexation rate is comparable to other leases between the Department of Finance and tenant organisations and is in excess of the current Australian Government 15 year bond rate.

16. Finance further advised the ANAO in May 2017 that the lease represented greater value for money than the previous licence arrangement because the term of the lease was finite rather than perpetual.

17. Finance only provided limited written advice to the Minister (in June 2015) on the proposed annual lease rental amount—that it would be consistent with the annual rent payable under the previous 1999 licence. Finance did not provide written advice to the Minister on the value for money considerations of the proposed 3.5 per cent indexation rate, or those arising from the finite lease.

Arrangements for considering and increasing rents

18. Under the licence, the annual rent payable increased from \$24 363 in 1999 to \$26 500 in 2015. While the licence provided for annual rent reviews, Finance did not always adjust the rent in accordance with the relevant provisions (Table 1).

16 The ANAO also requested that Finance provide copies of other documents such as records of discussion, minutes of meetings, emails or similar. No such documentation was provided.

17 In February 2016, Finance recommended that the Minister agree to the proposed lease.

18 See <http://www.aph.gov.au/Parliamentary_Business/Senate_Estimates/fapactte/estimates/add1617/finance/index>, questions 41 and 42, [accessed 13 April 2017].

19 *ibid*, questions 41 and 42.

Table 1: Application of 1999 licence annual rent reviews

Year	Commencement rent	Annual adjustment	New annual rent
1999	\$24 363	Not applicable	Not applicable
2000	\$24 363	\$676	\$25 040
2001	\$25 040	\$286 ^a	\$25 326
2002 to 2011	No annual rent reviews as Finance considered the licence had been terminated and operated on holding over provisions for 10 years ^b		
2012 & 2013	Finance did not apply the rent review provisions		
2014	\$25 326	\$716	\$26 042
2015	\$26 042	\$458	\$26 500
2016 lease	\$26 500	\$928	\$27 428

Note a: Given the time that has elapsed Finance was unable to explain the basis of the small adjustment in 2001.

Note b: Finance was unable to provide documentation: between itself and the NSWRA effecting the termination of the licence in 2001; or demonstrating that it had considered, at the time the holding over arrangement would have commenced in 2001, whether the annual rent review applied to the holding over arrangement.

Source: ANAO analysis of information provided by Finance.

19. Between 2002 and 2011, Finance did not adjust the rent as it considered that the licence had been terminated in 2001 and had operated on holding over provisions for the period. However, in 2012, the Supreme Court of New South Wales found that the licence was valid, meaning that it had not been terminated.

20. Finance advised that establishing an appropriate annual lease fee for the Malabar Headland site is challenging. The site is a unique property in terms of the Commonwealth's property management portfolio because of its location in a major capital city and the particular circumstances of the property. In addition there are no comparable benchmark properties and the NSWRA is a community organisation. Nevertheless, Finance could have provided greater advice to the Minister on value for money considerations of the new lease. The advice could have included the rationale for basing the new annual lease amount on the previous licence fee, and alternative approaches for setting the lease fees (other than solely in relation to the rental amount prevailing at the end of the previous licence agreement).

As part of the decision-making process to lease part of the Malabar Headland to the NSWRA, has the Department of Finance and the Department of the Environment and Energy provided advice on economic, environmental, and social issues and appropriately documented the decision?

21. One of the Property Management Framework principles is 'appropriate accountability measures' and departmental guidance²⁰ states that officials should maintain sufficient documentation to provide an understanding of the reasons for significant property related decisions. In addition,

20 Department of Finance, Resource Management Guide No. 500—Overview of the Commonwealth Property Management Framework, September 2015, Finance [Internet], Canberra, p. 12, available from <<http://www.finance.gov.au/sites/default/files/rmg-500-overview-cpmf.pdf?v=1>> [accessed 30 May 2017].

Finance guidance²¹ encourages non-corporate entities to consider a range of factors, including environmental and social impacts, when managing Commonwealth property.

22. As previously noted, Finance provided formal advice to the Minister on the proposed 2016 lease on three occasions: in June and November 2015; and February 2016. This advice addressed some of the economic, environmental and social impacts of the proposed lease (Table 2).

Table 2: Advice to the Minister for Finance on economic, environmental, and social issues and decision appropriately documented

Date	Economic advice	Environmental advice	Social advice	Decision appropriately documented
June 2015	Yes	Yes	No	Yes
November 2015	Yes	No	Yes	Yes
February 2016	No	No	Yes	Yes

Source: ANAO analysis of documents provided by the Department of Finance.

23. Finance’s advice on:

- economic issues addressed the funding sources, costs and scope of remediation works, for both NSWRA activities and to implement the Australian Government’s commitment to return equestrian activities to the Headland (June and November 2015);
- environmental issues were limited to the transfer of Lot 202 to the State of NSW for use as a national park (June 2015); and
- social issues noted that limiting the number of shooting days, and excluding Sundays, would enable public access to the newly created national park sections of the Headland and balance the requirements of the NSWRA with access by the broader community (November 2015 and February 2016).

The three formal briefs and the Minister for Finance’s decisions are appropriately documented.

24. The documentation provided by the Department of the Environment and Energy focused on the return of equestrian activities to the Malabar Headland. This followed an announcement by the then Minister for the Environment, the Hon Greg Hunt MP, that the entire Malabar Headland would be kept in public hands for perpetuity and the south-eastern section of the Headland would be transferred to the state of New South Wales for use as national park.²² The Minister for the Environment was not involved in the decision-making process for the 2016 lease between the Commonwealth and the NSWRA. In this context, the documentation provided by the Department of the Environment and Energy did not include any advice to the Minister for the Environment on issues relating to that lease.

21 Department of Finance, Resource Management Guide No. 500—Overview of the Commonwealth Property Management Framework, September 2015, Finance [Internet], Canberra, p. 9, available from <<http://www.finance.gov.au/sites/default/files/rmg-500-overview-cpmf.pdf?v=1>> [accessed 30 May 2017].

22 Hunt G (Minister for the Environment) and Stokes R (NSW Minister for the Environment), ‘Returning Malabar Headland to the people of New South Wales’, joint media release, 18 March 2015 [Internet] <<http://www.environment.gov.au/minister/hunt/2015/pubs/mr20150318.pdf>> [accessed 18 April 2017].