

The Members of the Legislative Assembly
Parliament House
SYDNEY NSW 2000

In compliance with Section 38E of the *Public Finance and Audit Act 1983*, I present a report to the Legislative Assembly titled **Sydney Showground Moore Park: Lease to Fox Studios Australia.**

A C HARRIS

Sydney
December 1997

Performance Audit Report

**Sydney Showground,
Moore Park**

**Lease to Fox Studios
Australia**

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Executive Summary

Executive Summary

Audit Request A performance audit of the lease and development of the Sydney Showground at Moore Park was undertaken in response to a request by the Legislative Council (see the terms of reference at page 4).

Issues Addressed by Audit The audit addressed these issues, in particular:

- whether the processes used to provide the lease and development assistance to the beneficiary, Fox Studios Australia (Fox) allowed the State to receive good value under the arrangements
- the cost to the Government's accounts and the benefits expected for the State under the executed arrangements
- whether there are findings from the audit that would assist the Government in any future, similar dealings.

Audit Findings The audit finds that:

- the process for the lease and development of the Showground site commenced on the basis that no Government moneys would be provided and no theme park activities would be allowed:
 - ⇒ in the event, a State Government subsidy of between \$84.8m and \$106.8m (in net present value terms) is to be provided for the development
 - ⇒ the area of the Showground to be leased to Fox was extended to comprise 24.3 hectares of the 28.8 hectare site to allow Fox also to develop a family entertainment park.
- the process commenced under the former Government were intended to ensure that no one party was placed above another:
 - ⇒ in the event, the actual processes employed up to the General Election in March 1995 were so flawed as not to be relied upon to select a preferred proponent or to justify dispensing with a tender process
 - ⇒ the Ministry for the Arts, on 28 February 1995, did recommend that the Government suspend negotiations with other proponents and enter into direct negotiations with Fox, but this recommendation was not acted upon or approved by the then Government.

- prior to that election, the Opposition publicly committed itself, as a matter of policy, to deal directly with Fox:
 - ⇒ in announcing this position, it did not have the same information as was held by the Government on the various proposals which the Government had received and assessed
 - ⇒ in confirming this definitive position when it assumed Government, the Government limited the extent of this audit because it is not open to an Auditor-General under current legislation to question the merits of a Government's policy objectives.
- because the Government truncated any competitive process, by declaring its intent to negotiate with Fox, there can be no assurances that the arrangements finalised in those one-to-one negotiations achieved the best arrangements for the State:
 - ⇒ in addition statements made by Fox as to its need for an early decision and as to its unwillingness to compete in a tender for the lease and development rights, and knowledge that other options were available to Fox, made the selection/negotiating process more difficult for Government officials both before and after the General Election.
- it is likely that the development of the film and television studio on the Showground site will provide a net economic benefit to the State:
 - ⇒ this is notwithstanding that The Audit Office assessment of Government costs for the project are considerably higher than the Government's assessment
 - ⇒ the existence of this net economic benefit to the State does not mean that the best deal was negotiated or that the Government's funds could not have generated a better return if used elsewhere.
- there are a number of ways that the Government can improve on the way this project was conducted:
 - ⇒ importantly, when the Government makes a policy to advantage a specific entity in the absence of competitive process, it should clearly set out the basis and reasons why the particular decision is in the State's best interest
 - ⇒ such a justification is of particular value when, as in this case, the recipient of Government advantage or a related entity is able to confer, and has in the past conferred, political benefits to Governments and political parties. This does not imply that any such benefit was conferred on this occasion.

NSW Legislative Council Resolution 19 June 1996

That this House requests that the Auditor-General:

Examine the proposal to lease and develop the Sydney Showground site and advise, having regard to the tender process, whether the terms of the proposed lease (including State Government planning instruments and State Government financial assistance), provide a fair and reasonable economic return for New South Wales taxpayers.

The Auditor-General should specifically examine and report on:

- (a) the costs to be met by the State under the terms of the lease, having regard to planning conditions and long-term nature of the lease
- (b) an assessment of the benefits to flow to the developer of the site, which include length of the lease, planning considerations and whether such benefits are in the best interest of New South Wales taxpayers
- (c) having regard to the Valuer-General's report and the failure of the Government to release the BZW Report reviewing rent, whether the proposed rent of \$2m per annum is in the best interest of New South Wales taxpayers
- (d) the appropriate rental amount for the site that the Government should receive if it is advised that the proposed rent is not in the best interests of New South Wales taxpayers
- (e) any other matters within the jurisdiction of the Auditor-General that the Auditor-General believes are pertinent to Parliament's consideration of the proposal to lease and develop the Sydney Showground site
- (f) the true value and market rental of that part of the Sydney Showground to be leased to Fox Studios:
 - (i) in existing condition
 - (ii) in improved condition after proposed government expenditure on services and infrastructure
 - (iii) with regard to its enhanced value due to State Environmental Planning Policy 47 rezoning and development application approvals for usage and subdivision.

Resolution Short Responses

A review of issues relating to the lease and development of the Sydney Showground site has been carried out. This report contains all the observations, comments and recommendations of The Audit Office arising out of this performance audit.

- (a) The costs to be borne by the State Budget for the lease of the Sydney Showground to Fox amount to \$109m with contingency costs of \$31.5m. Refer Report Sections 12.3 and 12.4.
- (b) The net financial result for Fox is not known to The Audit Office. The executed arrangements do not ensure that the State will benefit from the development. However, The Audit Office considers that it is likely that the development of the film and television studio on the Showground site will provide a net economic benefit to the State. This is not captured by the State Budget. The direct effects on the State Budget is estimated to be negative \$84.8m to negative \$106.8m. Refer Report Section 12.3 for more details.
- (c) (d) (f) the Valuer-General provided advice on the rental value of the site. The Audit Office was advised that the rental in respect of that part of the site leased to Fox, with State Environmental Planning Policy 47 in place and the remediation works, was assessed (as at 28 November 1995) as initially being in the range of \$3.7m to \$4.0m. The total rental initially to be paid by Fox is capped in the range of \$2.5m to \$3.3m. The site rental is addressed in more detail in Section 11.3 and 12.5 of the Report.
- (c) (e)
 - Fox's unwillingness to compete for the site by a tender process, its stated urgency to occupy the site, the availability of other options to Fox, and the earlier intervention of the then Prime Minister in preferring Fox over other overseas or a local contender, helped to make the process most difficult for the Government of New South Wales
 - The truncation of any competitive process as a matter of Government policy means there can be no assurances that the arrangements finalised in the one-to-one negotiations achieved the best arrangements for the State
 - See also other comments in the *Executive Summary*.
- (f) The values and market rentals of that part of the Sydney Showground site leased to Fox using various valuation scenarios was reviewed. Exhibit 20 page 125 summarises the advice received by The Audit Office.

Recommendations

Flowing from the audit and its findings, it is recommended that:

1. Where a significant advantage is to be conferred on a profit-making entity, the Government depart from a competitive tender process only when a tender is not necessary to maximise the benefits to the State
2. When Government provides a significant advantage to a profit-making entity without a competitive tender process, it advise Parliament of the evidence that a tender was not necessary to maximise State benefits
3. Especially for complex arrangements involving a number of Government entities, one entity be responsible for the management of the project.

Response to the Report from Premier's Department of New South Wales

Thank you for the opportunity to raise the concerns of NSW Government agencies involved in the Fox Studios development.

Despite a series of corrections to earlier draft reports, the report still contains gross inaccuracies, defective analysis and flawed conclusions.

As the report should accurately reflect the development and status of the Fox project, I write to convey the following corrections and comments.

These are:

- The terms of reference for the audit from the Legislative Council call for an assessment of whether the project provides “a fair and reasonable economic return for NSW taxpayers.”

In the executive summary you acknowledge that it is likely the development of the studio on the Showground site will provide a net economic benefit to the state.

However no attempt has been made to calculate this figure.

The report therefore lacks an assessment of the benefit to the State of:

- increased payroll revenues
- increased direct employment
- increased Gross State Product
- associated multiplier effects

Given your terms of reference to examine “whether the proposed lease ... provides a fair and reasonable economic return for New South Wales taxpayers”, the agencies regard this as an inexplicable omission.

- It is the agencies' view that the negative net present value you have calculated for the project is wrong because it is based on an inappropriate attribution of cost elements.

Worse and without reason, no provision or calculation has been made of the positive economic benefits or revenues the Fox Studios will bring to the State.

- Our estimate of the net benefit for NSW is \$382 million over the 40 year lease period

For your information I have attached details of the Department of State and Regional Development economic benefit calculations.

- Our estimate of the properly attributable net cost is \$25.1M.

The attached table to this letter compares the cost elements line by line. Your estimate of total attributable cost purports to be \$109M, an over-estimate of some \$84 million.

The major points of difference are:

- your incorrect attribution of lease costs related to the Hordern Pavilion and Royal Hall of Industries (\$18.5 m is to be spent on the repair and refurbishment of buildings outside the area leased to Fox. This expenditure is not attributable to the Fox project)
 - RAS co-location (you claim \$5.1m, we maintain the correct figure is \$0.9m)
 - Rent discount (you claim \$18.1m, we maintain the correct figure is \$9.3 m)
 - Failure to include revenues from the site (\$51.1m)
- Your report focuses only on the financial aspects of this State investment. That's why you conclude "if this were a commercial venture on the part of the Government, this net present value result would be insufficient to justify the project."

You have therefore ignored Government's policy in this matter as referred to in the letter of 26 September 1996 by the Minister for State and Regional Development:

"...the purpose of the Showground proposal is not to maximise income from the disposal or lease of the site, but to secure the future of strategic job-creating industry in NSW."

- Your report also ignores the realities of fierce interstate competition to secure "footloose" international investment for NSW. If adopted by NSW your various conclusions and findings would impede this States' competitiveness in attracting investment and jobs.

- In regard to the selection of Fox, it has been made clear by successive Governments that direct negotiation with one or more respondents was a viable alternative to a formal tender process (see attached press release of 3 March 1995 by the then Minister for Arts, Peter Collins).
- Your interpretation of the planning process, planning instruments and in particular the creation of a State Environmental Planning Policy (SEPP) under the Environmental Planning and Assessment Act is wrong. The use of SEPP 47 for the Showground has occurred in a similar fashion on more than 50 other occasions.
- The chapter dealing with the Industry Assistance Agreement, lease obligation and commitments is inaccurate. It does not provide a correct assessment of the balance between costs and benefits, risks and returns.

The Industry Assistance Agreement makes it clear that Fox will invest over \$120M in the creation of a world class film studio facility. Present estimates are that Fox will now spend over \$150M.

The Agreement contains an unequivocal regime to apply in the event that Fox does not satisfy specified levels of investment and employment outcomes.

The consequences of this may include a withdrawal of industry assistance and the surrender of part or all of the lease site. The Agreement also provides for monitoring arrangements.

Enclosed please find a copy of the response to your report by Fox Studios Australia Pty Ltd.

Signed

C GELLATLY
DIRECTOR GENERAL

Date: 26 November 1997

Note: The attachments to this response are contained in *Appendix 13.10*.

The Audit Office Rejoinder to Response from Premier's Department of New South Wales

- The Report addresses and answers the Legislative Council's suggested terms of reference in its first pages. Acceptance that the project offers a fair and reasonable return for NSW taxpayers reflects a number of issues - including the Government's stated policy objective that the Sydney Showground site be the site for the Fox Studios complex.
- The Audit Office did not recalculate the Government's net present value of the project but accepts that it is likely to be positive. At the same time, the Report notes that the Government's \$209m figure is likely to be an overstatement of the project's value to the State because, for example, of adverse effects on existing studios.
- It would also be possible to include other costs such as to reduce the Government's estimated figure towards zero. These costs would include the adverse economic costs flowing from the taxes raised to support the Fox development.
- It remains clear that the benefits of the Fox development to the State have been reduced by the State's financial subsidies, unless they were essential to secure the project. Only Fox knows the answer to that.
- All of the expenses of the Hordern Pavilion and Royal Hall of Industries have been excluded from the lowest estimates of the Government's costs even though the Fox agreement will certainly involve a Government expense. Conversely, they have been included in the highest estimate even though not all of them are relevant.
- The Audit Office remains confident about the costs of the RAS co-location and the cost of the rent free period.
- But revenue from the site has always been reflected in the relevant figures on net costs (ie the NPV to the Government).
- It is agreed that the calculations do not included indirect benefits; they also do not include indirect costs.
- As stated above, the benefits from the State's intervention ultimately depend on the necessity of that intervention.

- It is wrong to suggest that the Report ignored Government policy, or Fox’s negotiating tactics, or the difficulties facing this and the former Government.
- It is wrong to suggest that a SEPP is “normal” or that it is not a “powerful” instrument.
- Although Fox Studios Australia Pty Limited is not really part of the Government and had and has no entitlements to examine or question this Report its complete response has been included as an appendix to this Report.

1. Background

1.1 Introduction

Legislative Council Resolution

The Legislative Council of the NSW Parliament passed a resolution on 19 June 1996, requesting the Auditor-General to examine the proposal to lease and develop the Sydney Showground site, with a number of matters being identified for specific examination.

The Legislative Council's request is reproduced in full on page 4.

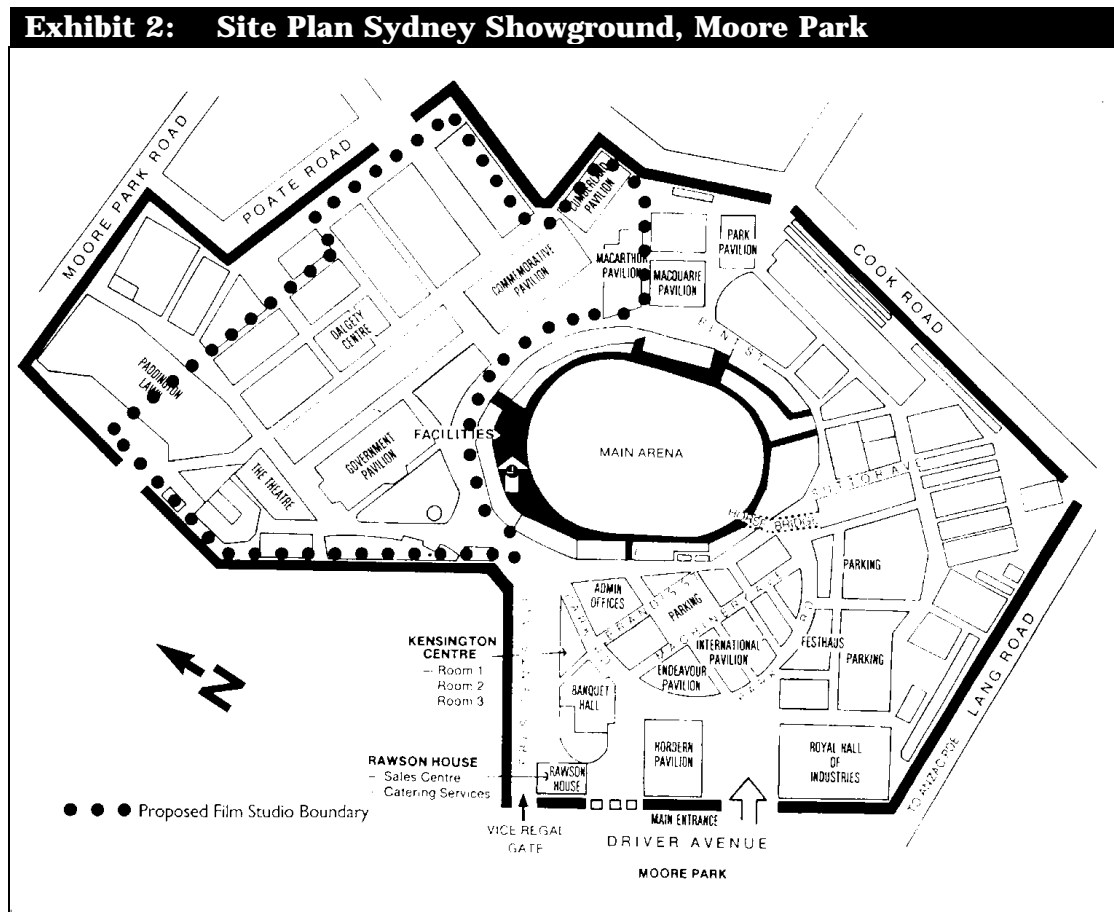
Description Sydney Showground, Moore Park

The Sydney Showground is located in the Sydney suburb of Moore Park and is approximately 3 kilometres from the centre of the city. The Sydney Showground has a total site area of 28.8 hectares and did comprise several open arena areas, a number of large, high clearance pavilions, and several smaller warehouse and office style buildings.

The Royal Agricultural Society (RAS) was incorporated as a body corporate by the Agricultural Society of NSW Act 1869 (the Incorporation Act). There have been no amendments of the Incorporation Act since it was promulgated in 1869. The Showground land was not vested in the RAS by the Incorporation Act. Rather it was vested in the RAS by various other Acts of Parliament for an estate in fee simple over a period of time as shown in Exhibit 1 while the buildings, improvements etc. were owned by the RAS.

Exhibit 1: Vesture of Land in RAS by NSW Acts of Parliament 1911-1958			
	Imperial Measurements		
Vesting Instrument	Acres	Rods	Perches
Royal Agricultural Society Act 1911	50	1	0
Royal Agricultural Society Act 1911	3	1	1
Royal Agricultural Society Amendment Act 1947	2	3	22
Royal Agricultural Society Amendment Act 1958	14	0	8
Total Imperial Measurements	71	5	31
Total Metric Measurement Equivalent	28.811 hectares		

A plan, which is not to scale, of the site is shown in Exhibit 2.



Source: Expression of Interest for Development of a Film Studio Complex on Part of the Showground Site, NSW Government December 1994.

Showground Lessee and Amount of Site Leased

The RAS signed a lease on 27 September 1996 which leased 24.3 hectares of the Sydney Showground site at Moore Park to Fox Studios Australia Pty Limited (Fox) effective from 23 April 1996. The period of the lease is 40 years with a option to renew the lease for another 10 years. Fox is an incorporated company within The News Corporation Limited group. The News Corporation Limited is a world wide company, with major newspapers, television stations, film production and book publishing companies.

Balance of Site Disposition

Excluding the Fox lease there remains 4.5 hectares at the site. This area comprises: Stables 2.5 hectares; Hordern Pavilion and Royal Hall of Industries 1.9 hectares; and a Sydney Electricity sub station which serves the Sydney Cricket Ground 0.07 hectares. The area that was leased to Fox and the remainder of the site will, in accordance with the Centennial Park and Moore Park Trust (Macquarie Sydney Common) Amendment Act 1992 (The Act), vest in the Centennial Park and Moore Park Trust (CPMPT) upon Ministerial certification of the vacation of the Sydney Showground by the RAS.

Showground Debate

The lease/development of the Showground has been a matter of considerable reference, discussion, comment and conjecture within a variety of forums:

- the NSW Parliament
- in the context of the NSW Parliament Estimates Committee and the Federal Parliament Senate Estimates Committee processes
- the media
- Courts of Law
- representations from the public in the form of letters (to the press, Members of Parliament, Ministers of the Crown and associated government agencies) and/or resident/community action groups.

Independent Commission Against Corruption Review

A complaint was registered under Section 10 of the Independent Commission Against Corruption Act 1988 following a request on 18 September 1995 from the Member for Bligh (Ms Clover Moore). The Independent Commission Against Corruption (ICAC) undertook an investigation under four specific heads of complaint (refer *Appendix 13.2*) relating to the proposal. ICAC's Operations Review Committee recommended that the complaint should not be the subject of any further enquires or a formal investigation. This advice was accepted by the ICAC Commissioner.

ICAC advised The Audit Office that the matter was referred within ICAC for consideration from a corruption prevention perspective, namely to examine the systems issues that the complaint raised in regard to the process followed to lease out the site and whether they were prone to corruption.

The Commissioner, in responding to the Member for Bligh, on 29 December 1995 advised that ICAC had found that there was no corrupt conduct involved with the awarding of the lease of the Sydney Showground. It should be noted that ICAC's review was more narrowly focussed than the review undertaken by The Audit Office. The Audit Office review encompassed such matters as compliance (including as to process and probity), economy, efficiency and effectiveness.

The Audit Objectives and Methodology

The Audit Office initiated a performance audit upon receiving advice of the Legislative Council resolution of 19 June 1996. The performance audit objectives and approach are detailed in *Appendix 13.1*.

In setting the extent and scope of the audit The Audit Office has been mindful of the Legislative Council resolution and the discussion, comment and conjecture associated with the lease of the Showground.

Limitation on Reliance

The audit was primarily undertaken for the benefit of Parliament, and reliance ought not to be placed that this Report addresses all interests or concerns of other parties/persons concerning the lease/development of the Sydney Showground site.

Delay to Audit

The conduct of this audit was delayed for a variety of reasons. This in turn had a flow-on affect on the costs incurred by The Audit Office in performing the audit and the reporting on the audit. Further comments on the audit conduct delay and audit costs are contained in Chapter 1 Section 1.3 *Cost of the Audit* and *Appendix 13.1*.

1.2 Lease Rationale and Approach

Previous Government

Prior to the State Election of 25 March 1995 the then Government was pursuing the development of a film studio proposal with the Sydney Showground being the preferred site. It was known that the RAS would be relocating to Homebush, a letter of intent having been executed to this effect on 2 November 1989. Consideration had been given to a film studio being situated in Sydney at least from the late 1980s.

A number of studies had been performed in the earlier part of 1994 which identified there were industry, cultural, economic and employment benefits available to NSW from a major film studio being located in Sydney and that the Showground would be an ideal site for that purpose. The then Government was in the process of effecting this, but the process was suspended with the Legislative Assembly prorogued on 3 March 1995 and the issue on 6 March 1995 of the writs for the State Election of 25 March 1995.

**Incoming
Government**

In the lead up to the State Election the then NSW Opposition spokesman on finance committed an incoming Opposition Government to negotiate directly with News Corporation to ensure the film studio complex was built on the Sydney Showground site.

Upon the change of Government in NSW the expression of interest (EOI) assessment process was suspended and direct negotiations were entered into with News Corporation.

**The
Government's
Policy Objectives**

The Minister for State and Regional Development and the Treasurer (Michael Egan MLC) was requested by The Audit Office on 25 July 1996 to set out any Government policy objectives relevant to the lease and development of the Sydney Showground site (the previous Government's policy/objectives having been superseded when the new Government came into office).

The Minister responded on 26 September 1996. A copy of the response is contained in *Appendix 13.3*. In summary, the Government's policy objectives relevant to this activity were:

- the Government sought not to maximise income from the disposal or lease of the site to highest bidder
but rather
- the Government sought significant social, cultural, economic and investment benefits accruing to the City of Sydney and the State from having film studios and related facilities at the Sydney Showground
and
- this particular usage enabled all of the essential characteristics of the existing Showground site to be retained having due regard to site being significant and historic.

The response received from the Minister for State and Regional Development acknowledges that the Government was aware of alternative uses for the Sydney Showground which would give a greater financial return to the Crown when it made its decision.

1.3 Cost of the Audit

The cost of the audit was \$507,602.

There were initially difficulties in obtaining access to relevant documents which impeded the conduct of the audit. The Audit Office received limited co-operation, and progress on resolving the situation very slow. The situation was not resolved until early November 1996. This caused several false starts for the audit, each time causing wasted time and incurring additional costs to The Audit Office.

The efficacy with which the audit was conducted was further compounded by:

- this being a whole of government project, with relevant project records dispersed over a significant number of separate agencies (rather than one agency taking responsibility for co-ordinating or keeping a complete set of records)
- records being kept in some instances without applying the codes of best practice for management of official records promulgated by the Archives Authority-Records Management Office (making access in to and use of the records very difficult and inefficient for the audit team). The keeping of records is discussed later in this report.

Whilst records were often of a poor standard, the overall volume of material was immense. Relevant information was scattered throughout this material, requiring a time-consuming detailed review of all available documents.

Although the quantity of material was large, the extent of effective documentation of key matters was often found to be poor. This necessitated a significant number of detailed personal interviews with agency officials. To ensure a wide range of points of view and issues were canvassed, The Audit Office also undertook interviews with a number of other parties, and received extensive submissions from various groups and individuals.

The cost of the Lease of the Sydney Showground, Moore Park performance audit is dissected into its component parts below in Exhibit 3.

Exhibit 3: Cost of the Performance Audit				
Audit Phase Dissection				
	Audit Phase 1 Costs (Note)	Audit Phase 2 Costs (Note)	Total Audit Costs	
	\$	\$	\$	
Direct Salaries Costs	39,578	270,386	309,964	
Overheads Charged on Staff Time	11,873	81,116	92,989	
Value of Unpaid Overtime	12,867	67,391	80,258	
Cost of Valuation and Legal Advisers	-	15,297	15,297	
Printing	-	9,000	9,000	
Other Miscellaneous Costs	-	94	94	
Total Cost	64,318	443,284	507,602	
Audit Task Dissection				
	Planning and Preliminary Fieldwork Costs	Detailed Fieldwork and Analysis Costs	Report Writing, Consultation and Tabling Costs	Total Costs
	\$	\$	\$	\$
Direct Salaries Costs	50,072	120,238	139,654	309,964
Overheads Charged on Staff Time	15,022	36,071	41,896	92,989
Value of Unpaid Overtime	15,611	19,601	45,046	80,258
Cost of Valuation and Legal Advisers	-	15,297	-	15,297
Printing	-	-	9,000	9,000
Other Miscellaneous Costs	-	94	-	94
Total Cost	80,705	191,301	235,596	507,602

Note: The audit has been broken into two (2) phases as follows

- **Phase 1** - covers the period from the initial commencement of the audit up until the audit was reactivated (19 June 1996 to 3 November 1996). Suspension of the audit was required for a prolonged period due to lack of access to required material.
- **Phase 2** - covers the period from the audit re-activation until the tabling of this report (4 November 1996 to 8 December 1997). The phase 1 suspension meant that, due to other staff commitments made during the intervening period, a new audit team had to be assembled for phase 2, involving some considerable loss of acquired knowledge.

1.4 Acknowledgment

The Audit Office acknowledges the co-operation and assistance that was extended by some organisations and individuals to The Audit Office generally, and in particular to those officers responsible for the conduct of the audit, namely: Stephen Horne (Controller) and Steve Sullivan (Project Manager); the performance audit team (Geoff Newton, Deb Jackson, Ruth Sawyer); and the financial analysis team led by Phil Thomas (Assistant Auditor-General), with support from Rahoul Ray, Kim Rossington and Martin Smith.

2. Chronology of Key Events

2.1 Chronology of Key Events

As part of the audit, The Audit Office prepared a detailed chronology of events. The following is a summarised version of that chronology.

2 November 1989	The Government announces that it and the RAS signed a letter of intent for the relocation of the RAS from Moore Park to Homebush Bay.
8 December 1992	The Act was assented to, its salient points being the repeal of the RAS Act 1911 and vesting the Sydney Showground in CPMPT on 8 June 1993.
15 June 1993	The Centennial Park and Moore Park Trust (Royal Easter Show) Amendment Act 1993 (The Amendment Act) was assented to. The Amendment Act's salient point was to defer the vesting of the Sydney Showground in CPMPT until the Minister for Environment after consultation with the RAS certified in writing that the RAS had vacated or substantially vacated the Sydney Showground. The Amendment Act's operative date was 7 June 1993.
18 October 1994	The Prime Minister's Creative Nation Statement announced News Corporation's wish, through 20th Century Fox to develop a major film studio complex at the Sydney Showground.
8 November 1994	The Minister for the Arts announced that 20th Century Fox would have to compete with other tenderers for the proposed studios at the Sydney Showground.
8 December 1994	The dates for the closure of the Expression of Interest (EOI) submissions and the content of the call for expressions was signed off.
9 December 1994	The Minister for the Arts made a press release announcing that the Government would call for EOI in the development and operation of a film studio complex at Sydney Showground site. The press release states "...the Government, has in place clear guidelines for proposals of this nature and these guidelines will be followed".
10 December 1994	The first advertisement of the EOI appears.
3 February 1995 4.00 pm	The close off date and time for EOI submissions to be lodged in the tender box at Property Services Group.

10 February 1995	The Evaluation Committee (EC) met and agreed that only 4 respondents satisfied the key EOI requirement/preference (the rest of the responses received were culled) and that there would be clarification talks with the shortlisted respondents.
16 February 1995	The probity auditor is engaged.
28 February 1995	EC report compiled/submitted advising that the Government could go to tender or enter direct negotiations with one or more respondents.
28 February 1995	Submission by the Ministry for the Arts to the Minister for the Arts advising “The Ministry and Film and Television Office are of the view that the level of benefits...from Fox’s proposal justify a decision to...go into direct negotiations with Fox”. (There is no evidence that this advice was accepted by the then Government).
3 March 1995	The Minister for the Arts announces three companies/major bids remain from the EOI for further detailed negotiation. The Minister also said “A probity auditor has acted throughout the evaluation phase and has advised that as an alternative to going to tender, the process of evaluation may be suspended at this stage and one-on-one discussions undertaken”.
3 March 1995	The Legislative Assembly is prorogued and in accordance with “caretaker” Government conventions no decision is made on the lease of the Showground following the EOI nor were any negotiations held with remaining EOI respondents.
20 March 1995	The front page of the Sydney Morning Herald gives selective quotes from the Department of State and Regional Development report/briefing note to the Premier and advises that News Corporation is threatening to take its planned studio complex from Sydney to Melbourne.
20 to 23 March 1995	Comments are publicly made by the then Opposition spokesman on finance (now the Treasurer and Minister for State and Regional Development) to the effect that the Opposition would deal directly and exclusively with News Corporation.
25 March 1995	The State Election was held and resulted in a change of Government in NSW.
12 April 1995	News Corporation wrote to the Premier outlining considerations and requirements in respect of a Fox Filmed Entertainment Australian production facility at the Sydney Showground site.

20 April 1995	The Government announces that it will enter into negotiations with Fox Filmed Entertainment to develop the Sydney Showground as a film studio complex and that the Inter-departmental Committee (IDC) has decided to suspend the assessment of the other EOIs while clarification is sought of the Fox proposals.
3 July 1995	DSRD and Fox execute a broad Heads of Agreement as a result of detailed consideration of the News Corporation proposal of 12 April 1995 and subsequent negotiations.
14 November 1995	The probity auditor submits a retrospective report to DSRD, structured on the lines of certain questions which had arisen publicly.
14 November 1995	The Minister for Urban Affairs and Planning in accordance with the Environmental Planning Assessment Act 1979 (EPA Act) recommended to the Governor the making of State Environmental Planning Policy Number 47 (SEPP47). The zoning of the Sydney Showground site from Open Space (Restricted Access) to its current use was the result of SEPP47.
14 November 1995	Fox signs the Fox Industry Assistance Showground Agreement (FIASA).
23 November 1995	A side letter to the FIASA is executed by the Treasurer (on behalf of the Ministerial Corporation for Industry) and Fox. The side letter relates to the contemplated lease between the RAS and Fox.
28 November 1995	The Treasurer as Minister for State and Regional Development and as Minister administering the State Development Industry Assistance Act 1966 signs the FIASA.
29 December 1995	ICAC wrote to the Member for Bligh advising that there were no indications of corrupt conduct and therefore complaint(s) received were not sustained.
19 June 1996	The Legislative Council requests the Auditor-General to review the proposal to lease and develop the Sydney Showground.
27 September 1996	The RAS executes a lease (40 years with an option to renew for a further 10 years) with Fox for 24.3 hectares of the Sydney Showground site. Simultaneously the Olympic Co-ordination Authority and the RAS execute an agreement which sets out the arrangements for the relocation of the RAS to Homebush Bay.

3. The Planning Context

3.1 The Policy Process

At the State Government level, consideration had been given to a film studio complex being developed in Sydney over an extended period of time, at least from the late 1980's.

**Alternative Uses
for the
Showground Site**

Various individuals and groups had suggested alternative uses for the Sydney Showground site over a long period, including its dedication as open community space. In 1989 the Government initiated a competition to obtain a range of suggestions for development of the site. A range of proposals were received, including a variety of commercial development proposals. Prizes were awarded for several proposals (\$50,000 in prize monies was awarded), however, none of the options was subsequently pursued.

On 2 November 1989 the Government announced that a letter of intent had been signed with RAS for the relocation of the RAS from Moore Park to Homebush Bay. The future use of the Moore Park Showground site thus became a specific issue to be resolved.

**Creative Nation
Statement**

On 18 October 1994 the Prime Minister's Creative Nation Statement, officially announced News Corporation's wish, through 20th Century Fox to develop a major film studio complex in Sydney at the Showground.

In his "Creative Nation" announcement on 18 October 1994 the then Prime Minister stated:

I am pleased to announce today that after negotiations with the Commonwealth Government and subject to the settlement of some final details, The News Corporation Limited and its film production company, 20th Century Fox, have agreed to establish a movie studio in Australia to produce major international length feature films. ... The Commonwealth Government and 20th Century Fox have discussed locations for the studio in Sydney and believe the Showground site to be the most suitable - this of course, is a matter for discussion with the NSW Government. The Commonwealth will assist with site preparation and development.

The announcement itself raises issues about the processes followed by the Commonwealth which allowed funds to be provided for the benefit of a particular firm. These matters of concern do not fall within the scope of this report which only deals with NSW issues.

The announcement did, however, place pressure on the process that the State would follow in developing the Showground site.

**Film Studio
Policy**

The use of the site for film and television activities had been an option being advanced for some time in the State by the Ministry for the Arts (MA) and the Film and Television Office (FTO). Minor activities of this sort had apparently been undertaken at the site over a long period. This policy option had progressed favourably, to the point where a draft State Government policy for a film studio at the Showground had been developed.

The prospect of using the Showground in this way had been publicly supported by the then Minister for the Arts. However, the policy was not submitted to Cabinet for deliberation before the October 1994 announcement by the then Prime Minister and News Corporation.

The October 1994 Commonwealth announcement by Prime Minister Keating had a significant impact on the planning horizon of the concept for a film studio at the Sydney Showground. Circumstances changed from a long term goal, subject to the interests of other parties, to an urgent attempt to deal with perceived possibilities and threats to that goal.

The Government responded to the Fox/Commonwealth plan on 8 November 1994 when the Minister for the Arts announced that 20th Century Fox would have to compete with other tenderers for the proposed studios at the Sydney Showground. This was reiterated, in a press release on 9 December 1994, where the Premier announced the call for expressions of interest.

The MA and FTO had developed the draft arts policy in relation to a film studio, and thus had initial carriage of the project as a means of implementing that draft policy. The role of Department of State and Regional Development (DSRD) amongst other matters was to co-ordinate cross-government issues relating to the EOI process and assist FTO and MA in the co-ordination of the process to call EOI. Department of Public Works and Services (DPWS) was requested to assist the development of the EOI document and to handle other aspects such as placing of advertisement and recording receipt of bids. Premier's Department also became involved.

The Government was not the owner of the site. RAS was the existing legal owner of the site, which was to vest in the CPMPT after RAS vacated the site. Pursuing its interest in State development, the Government took on a number of roles, which it exercised in the following ways:

- establishment and control of a committee structure to call and manage the EOI process
- granting of consent to the Showground lease by the Minister of Land and Water Conservation, as administrator of RAS Act
- planning issues being addressed through the Minister for Planning.

Observations

The urgent context within which project planning had to be undertaken placed considerable strain on the planning processes. A DSRD briefing paper in November 1994 noted that:

A fast track approach has been taken with issues being identified and, where possible resolved in parallel with other activities rather than the preferred option of sequentially.

Not only was planning made difficult by being considerably rushed, but the planning framework which arose was complex, involving many agencies and a range of other complicating factors. This created a complex pattern of relationships and responsibilities which makes misunderstanding, inefficiency and omissions more likely.

The Audit Office considers that for projects with features such as the Showground lease, significant benefits would derive from the use of generally accepted project management and planning techniques.

The benefits to project management that adequate planning can achieve include:

- arrangement of relevant facts in a logical order and indicating the project pathway and critical timing
- providing a venue to test ideas, including the sensitivity of the various factors to one another
- assisting the co-ordination of activities
- creating a set of benchmarks to test performance or achievement of project objectives
- providing a comprehensive background and set of relevant issues to be reported to decision makers.

4. Expressions of Interest: Defining the Process

4.1 The Importance of Due Process

Public and Private Sector Processes

In any major public sector development project (and particularly where significant public benefits are to be awarded) great importance is placed on the process to be followed. The process must both be, and be seen to be: open and fair; competitive; appropriate to the situation; and producing the best results for the State and for taxpayers. Transparency of the process is also an essential feature, to ensure effective accountability for actions taken and results achieved.

It has sometimes been suggested that private sector projects are less encumbered with process requirements, and that developers and investors consider public sector requirements to be excessive and inefficient. However, private sector projects are equally concerned with achieving the best result, and the importance of probity issues has received considerable attention in the private sector as it has in the public sector.

In any event, it has been made patently clear in recent years that, in dealing with the public sector, private sector groups must both expect and comply with the high standards for process and probity which public accountability demands. This may even extend to limiting commercial-in-confidence provisions, which private sector groups usually seek to impose on the release of information concerning the details and terms of the deal which has been struck.

The EOI Process The use of an EOI process is common practice for major projects, for a number of reasons.

However, the use of an EOI process followed by a formal tender phase (as is usual), takes time. In the case of the Showground proposal, time was a key factor in considering how the matter should be handled.

4.2 Establishing the Selection Process

The then Minister for the Arts publicly indicated that Fox would be required to compete with other proponents in the development of a film studio on the Showground site. The Premier reinforced this in a 9 December 1994 press release calling for expressions of interest:

The State Government has taken this path so that no one interest is placed above any other, and that no person has a preferred position.

However, as discussed later, whilst an EOI process was employed, the circumstances placed pressures on this process which limited its effectiveness as a vehicle for awarding Showground development rights to any one participant.

Conduct of a Tender

DSRD initially recommended a two stage process concluding with a tender (ICAC advice had been sought and obtained on this process).

DSRD's recommendation was stated in the following terms:

At this time, due to the complexity of these issues, going to immediate tender is not recommended and therefore, the following timetable could be adopted:

*Expression of Interest document (possibly with unresolved issues)
Issued end 1/95;*

*Return of preliminary proposals
Issued mid 4/95;*

*Issue of Tender for site (outstanding issues to have been resolved)
Issued mid 7/95.*

By December 1994 DSRD had modified this position, and did not propose to specify a definite second stage (ie the formal tender stage) in the EOI document. In a letter to ICAC the reasons for taking this course were stated, in summary, as being:

- there were a limited number of international players, so the process should be as flexible as possible
- if only one respondent met assessment criteria then the tender process would be a commitment to extra delay for no obvious benefit.

This modified position was consistent with a desire to maintain the interest of Fox in the Sydney Showground site. Pressure existed because Fox said it was working within a short timeframe to make a decision on where it would develop a film studio, and because locations in other States were available for the development of a film studio. (Fox had also said that it would not participate in a tender process.)

The EOI process which was implemented reduced the initially suggested timetable considerably, and did not commit to a (second) formal tender stage. At the same time there was little effort to compensate for the possible truncation of the process.

Substantial efforts to alert potentially interested parties might have been expected, (since the EOI timetable was to be so short). This would have been feasible due to:

- DSRD claiming that there would be a limited number of international players with the experience and the necessary capacity
- a July 1994 Kinhill report providing a starting point for identifying potentially interested parties.

The Audit Office could identify no substantial effort to identify competitors to the Fox proposal who might have allowed an outcome that is more attractive to the State than that achieved.

Issues associated with the EOI timetable and EOI document are of sufficient importance to warrant detailed comment. This is provided in the following chapter.

5. Expressions of Interest: Timetable and EOI Document

5.1 Pressure on the EOI Timetable

Issues Related to the Site A DSRD submission dated 26 October 1994 set out a timetable of approximately 269 days for the EOI process. That excludes the second stage tender process which was originally recommended by DSRD. Difficulties cited by DSRD supporting an appropriate (ie not too short) timetable for the selection process included:

- land ownership, lease and disposal options, including portion of site to be utilised
- relocation and timetable of the RAS's move to Homebush Bay, including management of transitional arrangements
- legislative issues: implications of the RAS Act 1911, The Act (including The Amendment Act changes)
- heritage, planning and Local Government building issues
- community expectations and concerns regarding Government policy and planning for 'non studio' components of the Sydney Showground site.

Pressures on the Timetable But there were several factors that worked to shorten the timetable. These included:

- industry expectations
- the position of Fox following the announcement of Prime Minister Keating
- Fox's own views that it did not wish to participate in a competitive process and that it wished for an early decision
- the impending State election
- Victorian interest in the Fox proposal.

This was summarised in an MA submission dated 2 November 1994 which advised that:

- with the high level of expectation within the industry it is important that the Government not be seen to set up unnecessarily bureaucratic processes and delays
- Fox had clearly indicated that they were eager to proceed to an agreement as soon as possible.

These pressures meant that the recommended deadline for the closure of the EOI period of 14 April 1995 was brought forward to 15 February 1995.

Request by the Minister for the Arts

Subsequently the Minister for the Arts requested that the EOI period close by 20 January 1995 and a decision be made by 24 February 1995. In response to this request, DSRD made a submission which set out some of the implications of the shorter timetable, being that:

- Christmas and New Year represented a break in normal work patterns
- the quality of submissions may be inhibited
- some submissions may be prevented altogether
- it may be viewed as a lack of sincerity on the Government's behalf and indicator of a predetermined outcome
- ICAC advised that shortening the already short period may be perceived as creating probity problems
- DPWS (the tender "experts") supported the original closing date of 15 February
- the gains from adopting the truncated timetable were not clear when considered against the potential problems that may be created.

Request by the Premier's Department

Subsequent to the Minister's request, Premier's Department requested that the EOI period close by 27 January 1995, and that advice be provided to all respondents by 3 March 1995. The Premier's Department suggested that this timetable was appropriate because Government intentions for a film studio at the Showground were already known.

Exhibit 4: Total Days Allowed for EOI and Expected Completion of Evaluation		
Source of Timetable	Total Length of EOI Process	Evaluation period completed
EOI actual timetable adopted	133 days	end February 1995
EOI draft document as at 29 November 1994	164 days	end March 1995
IDC critical path diagram, 15 November 1994 Meeting	255 days	end June 1995
DSRD submission dated 26 October 1994	269 days	mid July 1995

The timing of advertisements varied in local and overseas publications and shortened the available time for interested parties overseas to respond, as Exhibit 5 shows:

Exhibit 5: Timing of Advertisements			
Publication location	First advertisement date	EOI closing date	Days to respond
Australia	10/12/94	3/2/95	56
Overseas - UK	16/12/94	3/2/95	49
Overseas - USA	19/12/94	3/2/95	46

Source: The Audit Office Analysis

Observations

DSRD understood and appreciated the importance of a reasonable timeframe to conduct the process. The difference between the original DSRD timetable proposed to the actual shortened timetable is over 100 days. This reduction was the result of a range of pressures to which the selection process for the project was subjected.

The expertise needed by proponents to address the matters required by the EOI document would have gone beyond just that of film production. Other required expertise included:

- the design and management of a redevelopment and building project on a multi hectare site
- the analysis of the impact of large development on the surrounding urban areas and services.

The development and operation of a film studio complex on the Showground site is a major business decision by both the Government and proponents, and must be carefully considered and researched. The EOI document required respondents to provide detailed information in relation to an extensive range of matters (refer Section 5.2 *The EOI Document*).

It is not clear that the eight week period, particularly over the Christmas period, was adequate for domestic respondents to prepare a comprehensive and complete response to the issues requested by the EOI document. (As it turned out, none did.) Overseas parties not familiar with the environment in New South Wales would have less capacity to respond adequately in view, inter alia, of timing of overseas advertisements.

Even the tender process for the sale of the State Office Block allowed over three months for the submission of tenders. Exhibit 6 illustrates timing details of the State Office Block and several other major development projects in recent years which have been reviewed by The Audit Office.

Exhibit 6: Timing EOI/Tender Responses and Associated Assessment for a Selection of Government Projects					
	Luna Park	M2 Motorway	Eastern Distributor		Sale of the State Office Block
EOI/Tender First Advert Date	18/3/92	8/9/93	21/9/94	15/5/95	6/12/95
EOI/Tender Closing Date	30/4/92	2/12/93	20/12/94	8/8/95	20/3/96
Days to Respond	44	86	91	86	106
Proponent Selected	15/6/92	11/2/4	3/3/95	27/11/95	30/5/96
Days to Assess EOI/Tender Responses	47	72	74	112	72

Source: The Audit Office Performance Audit Reports on these Projects

It could also be argued that equal opportunity was not afforded all interested parties. Fox had already met with the Minister for the Arts on 19 October 1994 to discuss the project and had *“been advised that a tender process is likely”*. This gave Fox approximately seven additional weeks to consider their options. Had the overall EOI period been longer the advance notice to Fox would be less of an issue. However, given the short EOI period allowed, any additional time would seem to have been an advantage. (There were also two clarification forums in existence, Fox/News with the Ministry of Arts and Property Services Group (PSG) for all others. The EOI only gives the latter option, however, representatives of Fox met with the MA during January 1995 to outline their potential response to the EOI. This is a serious deviation from, and inconsistent with, the process stated in the EOI.)

It is not apparent that the advertising strategy was highly effective. The international advertisements were either USA or UK based and there is no record of the reasons the particular publications were selected to advertise the EOI. An Australian respondent complained that they were not aware that EOI had been called for until 20 January, 1995 and that advertisements *“did not appear in “ENCORE”, the recognised trade journal for the Australian (film and television) industry”*.

The final EOI timetable adopted had the following implications:

- the adequacy of the period needs to be assessed in light of the unusual nature of the development and detailed information required to accompany bids
- for practical purposes the time for overseas respondents to respond to the call for EOI was between 6.5 to 7 weeks
- the time period between the close of the EOI and the date for advising respondents was substantially reduced down to 3.5 weeks

Whilst an EOI process was used its effectiveness was limited, perhaps substantially.

5.2 The EOI Document

5.2.1 Technical and Operational Information

The EOI document required respondents to provide detailed information in relation to an extensive range of technical and operational matters, including:

Clause 4: Outline business plan of proposed development including, descriptive information with conceptual plans, indicative scope of works, program and budget estimate together with financial return to Crown.

Clause 6: Indication of intensity of use including:-

- i. likely staff and visitor numbers.
- ii. parking requirements;
- iii. public transport requirements;
- iv. adequacy of existing access, egress and internal roadway system.
- v. indication of vehicular traffic generation.
- vi. likely services requirements including power, water, and communications.
- vii. likely hours of operation.

5.2.2 EOI Conditions and Assessment Criteria

Conditions and assessment criteria in the EOI document included:

Conditions:

Failure to comply with the following conditions may lead to disqualification:

1. EOI must be placed in a sealed envelope, marked "EOI - RAS Showground Film Studio" and placed in the Tender Box at the offices of the PSG, Level 17, 100 William Street, Sydney, NSW, Australia 2011 by 4.00 pm on Friday 3 February 1995. See also "Enquires and Submissions" page 12.
2. EOI must address all matters itemised in "Information To Be Provided By Respondents" (refer page 9).

Assessment:

1. All EOI will be assessed by the Evaluation Committee in accordance with the "Criteria for Assessment" (refer page 10).
2. The recommendations of the Evaluation Committee and the final decision by the Crown will be at their sole discretion. No reasons will be given.
3. All respondents will be informed of progress of the Expression of Interest process by Tuesday 28 February, 1995.

Criteria For Assessment:

All expressions of interest will be assessed by an Evaluation Committee and short-listed in accordance with the following criteria:-

1. Relevant experience of respondent
2. Financial capacity of respondent to enter into lease undertake required development and successfully operate the film studio complex
3. Optimisation of financial returns to the Crown, including the containment of financial risk
4. Level of compliance with "Crown Requirements and Preferences" and "Information to be Provided by Respondents".

An important criteria was that the EOI indicated that proposals should result in no cost to the Crown, either directly or indirectly.

Observations

The language used in the EOI document under *Conditions and Assessment* is not fully consistent with that used under *Information To Be Provided By Respondents* in terms of whether particular items and actions are mandatory. In some places the EOI document indicates that failure to comply *will result in the EOI not being considered*, whilst in other places it states that failure to comply *may lead to disqualification*. It would appear that the intention was that all such matters were to be considered as compulsory for an EOI to comply and be considered. Poor drafting can create unnecessary confusion and disputes

The overall adequacy of the EOI document needs to be considered in the context of its role in the selection process. Available evidence indicates that the EOI document was devised to serve as the first stage of a two-stage process ending with a tender which would be based on a more detailed specification. This is consistent with a major element of the EOI document: all responses to the call for EOI would be assessed on the basis of criteria set out in the document; and a shortlist would then be developed. However, a second stage tender process did not eventuate.

Viewed in this light, not all necessary information was included in the EOI document that would allow respondents to prepare the various plans and budgets required in a suitably detailed and reliable fashion, and hence assist rigorous assessment of the various EOI proposals. For example:

- issues relating to the Showground site, including the area available, date when the RAS would vacate the site and the uses permitted by future planning instruments were not settled during the EOI process
- the EOI requested respondents to comply with government policies, however, those policies were not specified.

6. Expressions of Interest: Assessment

6.1 Components of the Evaluation Process

The major components of the EOI assessment process identified by The Audit Office were:

- culling of responses considered as non-conforming
- development of weighted assessment criteria (WAC)
- clarification meetings with shortlisted respondents
- evaluation of the shortlisted respondents using the WAC
- preparation of Evaluation Committee report
- submission of recommendation to Minister for the Arts.

6.2 Initial Cull of EOI Submissions

When opened at the appointed date and time, the tender box at PSG contained 11 EOI (and a solicitor's letter on a related legal matter). After 4.00 pm on 3 February 1995 another four submissions were received, with a further submission received on 6 February 1995, giving a total of sixteen EOI.

Twelve EOIs responses were culled on the basis of being non-conforming because there was no stated intention that the respondents would include 3 sound stages in the complex. The remaining four respondents became the first shortlist produced in the evaluation process.

Observations

The Audit Office noted a number of deficiencies with the initial culling process:

- the EOI responses were assessed by a group of officials which did not include representatives of all agencies which had been specified to comprise the EC (refer Section 6.4 *Evaluation Using the Weighted Assessment Criteria*)
- the conformity of submissions was not assessed against all of the mandatory requirements set out in the EOI document. Rather, the main culling criteria applied was Crown Requirements clause 10: being that a minimum of three sound stages is to be included within the complex

- the Fox bid was not culled, although it did not indicate an intention to construct 3 sound stages. (The Audit Office was advised that Fox was given the benefit of the doubt in that regard. The meeting that occurred between Fox representatives and the MA and FTO on 23 January 1995 allowed Fox to canvass the number of stages it wished to develop)
- submissions showed a very low level of compliance with the mandatory information requirements of the EOI document. None of the respondents placed on the shortlist fully complied with all of those requirements and some were substantially non compliant.

6.3 Development of Weighted Assessment Criteria

To assess shortlisted EOI submissions in detail, and rank them on an objective basis, the EC determined it would develop a set of WAC. A set of 22 WAC, refer *Appendix 13.4 Weighted Assessment Criteria*, were developed by the EC for this purpose. Although it is not clear from the project records, the development of the WAC appears to have occurred sometime between 3 February when the EOI closed and 23 February 1995.

Observations

The Audit Office has a number of concerns about the development of the WAC.

The EOI document indicated that the criteria for assessment included the level of compliance with “Crown Requirements and Preferences” and “Information to be Provided by Respondents”. No mention of the use of the WAC was included in the EOI document. The WAC excluded or varied some criteria indicated in the EOI document.

Thus proponents were not fully informed of the criteria which would be used to assess their submissions, nor of the relative weighting which would be given to certain criteria. Knowledge of this information influences the content of submissions, and is generally regarded as an important element of best practice in calling and assessing proposals (it is recommended in the Premier’s Department *Guidelines for the Engagement and Use of Consultants*).

There are no written records indicating:

- when compilation and weighting of assessment criteria occurred
- reasons for inclusion or exclusion of assessment criteria
- reasons for weightings given to assessment criteria
- who was engaged in the development of the WAC
- whether the WAC was signed off by a senior officer for use in the evaluation process.

In developing the WAC, some of the assessment criteria set out in the EOI document were excluded, and some were varied.

There were at least two significant criteria in the EOI document which were left out of the WAC:

- Crown Requirements (clause 9):
 - respondents are required to comply with relevant Government policies.
- Information to be provided by respondents (clause 6):
 - indication of intensity of use including:
 - (i) likely staff and visitor numbers
 - (ii) parking requirements
 - (iii) public transport requirements
 - (iv) adequacy of existing access, egress and internal roadway system
 - (v) indication of vehicular traffic generation
 - (vi) likely services requirements including power, water, and communications
 - (vii) likely hours of operation.

A number of the WAC used different wording to the counterpart assessment criteria in the EOI document which changed the emphasis of the assessment criteria.

Exhibit 7: Changed Assessment Criteria - Two Examples		
EOI DOCUMENT CRITERIA	WAC USED	COMMENTS ON EFFECT OF CHANGE
The development designed and operated in sympathy with other Showground uses and the amenity of the surrounding neighbourhood. <u>This should address urban & architectural design principles.</u>	The development designed and operated in sympathy with other Showground uses and the amenity of the surrounding neighbourhood.	Unable to assess impact due to the limited information provided by most respondents and the lack of detail to support scores awarded.
<u>Although</u> public access and associated leisure activities and facilities may be considered, <u>a theme park is not to be included.</u>	Public access and associated leisure activities and facilities may be considered.	Fox indicated that a themed public attraction was an essential part of their bid. There is no evidence that any of the other shortlisted submissions sought similar attractions of any significant scale.

Source: EOI Document and EC WAC

In terms of the theme park criteria, the change in wording with the WAC was only of significant relevance to the Fox submission. Although only Fox had a large scale public entertainment facility as a major element in their proposal, the wording used in the WAC did not differentiate between the various proposals, and all were awarded identical scores for this item.

Subsequently, the DSRD/FTO report referred the issue of associated leisure facilities to the Government for guidance in the following terms: *the government needs to determine the type and intensity of the use on the remainder of the site.* This guidance was sought after the detailed assessments using the WAC had been completed. The Audit Office was unable to determine that specific advice required on this issue was ever received, and in any event no rescoring was undertaken.

The usual meaning of criteria is a set of standards or tests as a basis for assessment. However, a number of the WAC do not provide any form of test or standard against which submissions could be assessed, for example:

8. *Public access and associated leisure activities and facilities may be considered*
20. *Nature of proposed film studios.*
22. *Preferred timetable for undertaking development and commencing operations and payment of rental.*

The weightings given to a number of WAC were inappropriate in relation to their relative importance. For example:

- statement of the respondent's contact details received a weighting of 10, while
- an outline business plan (including conceptual plans, budget estimates and financial return to the Crown) received a weighting of only 5.

While these weightings are inappropriate this did not appear to make a material impact on relative scores. Only in the case of 4 WAC score-sets did the scores awarded to each shortlisted submission not equal each other or fall within a narrow range

6.4 Evaluation Using the Weighted Assessment Criteria

The EOI document indicates that:

All expressions of interest will be assessed by an Evaluation Committee.... The Evaluation Committee will include representatives of the following:- Premier's Department, Department of Treasury, Department of Conservation and Land Management, Property Services Group, Ministry for the Arts, New South Wales Film & Television Office, Centennial Park & Moore Park Trust and the Royal Agricultural Society.

After the initial cull, a probity auditor was engaged to assist the EC (see Chapter 8 on this matter). A series of clarification meetings was scheduled between the EC and each of the four shortlisted proponents, after which each submission was assessed by the EC against the twenty two WAC which the EC had developed. The scores compiled by the EC were reviewed by the probity auditor the following day, who made the following observations:

The mathematical evaluation involved the assignment of a raw score (1-10) which was multiplied by a weighting factor (1-10) to give a weighted score.

Statistical analysis of the aggregate scores showed them all to be equivalent since the departure of the weighted scores from the mean was less than the probable scoring replication accuracy.

Thus the scoring process was unable to discriminate between the respondents.

Notwithstanding, one submission was culled through this assessment process. This respondent had addressed the points required by the EOI document to a significantly greater degree than other shortlisted respondents. However, the EC considered that the bid did not have sufficient professionalism of presentation to be further considered. The remaining three proponents were placed on a second shortlist. This completed the EC's work, and a report was submitted (see Chapter 7 for discussion of the reporting and process).

Observations

Few records are available explaining the facts and events of the evaluation process. Through discussions The Audit Office has confirmed that representatives of the CPMPT, The Treasury, MA or the Department of Conservation and Land Management were not present, contrary to the arrangements specified by the EOI document. (FTO from the Arts portfolio was in attendance, in accordance with specified arrangements.)

The Audit Office is concerned that clarification meetings between the EC and proponents to be evaluated were poorly minuted, and 2 of the 4 meetings were not attended by the probity auditor. Written confirmation of the clarification meeting discussions with the proponents did not occur, although it was agreed at the prior meeting of the EC, on the advice of DPWS, that this would be done.

Overall, documentation of discussions and deliberations by the EC was poor, impairing the transparency and accountability of this vital aspect of the selection process.

To reach any valid judgement on a number of the WAC, a great deal of information would have been required. Records available indicate that none of the respondents that reached the second shortlist had included sufficient information in their responses regarding matters such as heritage and environmental aspects of the site that would allow reliable scores to be calculated for these WAC.

The WAC included several business planning aspects. However, business planning would have been subject to significant contingencies as a result of yet to be determined factors such as:

- the RAS relocating and the total area of the site allowed for the development and operation of a film studio complex and associated facilities on the site
- planning/zoning mechanisms that would allow a film studio complex and associated facilities.

It might be expected that contingencies required to cater for such factors would be of such magnitude and nature as likely to render unreliable the time and cost projections included in submissions at that time.

On many criteria each of the submissions scored similar marks. However in regard to four criteria marks tended to vary:

1. *The film studio complex is commercially viable.*
10. *The development results in “no cost” to the Crown, either actual or underwriting sense and provides a suitable financial return to the Crown.*
17. *Background and relevant experience of respondents including the development and operation of film studio complexes.*
18. *Financial capacity of respondent to proceed with proposed development.*

Information provided by Fox, Crawfords and Global lacked detail on significant matters sufficient to allow ranking or differentiation of the responses on the criteria of commercial viability and other aspects of the project. For these missing details the EC apparently relied on information reported in the press or received orally.

In addition to the absence of estimates of development costs, no respondent demonstrated a clear capacity and commitment to fund those costs. None of the proponents addressed the “no cost to the Crown” criteria effectively. Each sought various forms of direct or indirect financial assistance.

No respondent specifically addressed all aspects of the experience criteria, particularly experience in the development of film studios. This requirement was compulsory but none of the respondents was rejected for not providing this information.

The Audit Office acknowledges that the EC had a difficult task to perform, and was required to exercise professional judgement. However, there were substantial limitations on the material available; many of the WAC were highly subjective; and concerns exist about the development and weightings of the WAC.

Scorings using the WAC are unlikely to be meaningful or truly indicative, and the rejection of one of the shortlisted bids so lacks justification that it must be regarded as arbitrary. In the case of the 4 WAC where scores did significantly vary between shortlisted respondents, those scores cannot be substantiated by any material reviewed by The Audit Office. Nevertheless, the scorings produced by the EC using the WAC did slightly differentiate in nominal terms between the three remaining submissions, with the Fox submission scored highest: and some officials may have been influenced by this in finalising their considerations and providing advice to the Government (even though the probity auditor provided a technical explanation that statistically the scores of all three submissions should be considered equivalent).

7. Assessment of Proposals and Final Selection

7.1 Results of the EOI Assessments

The results of the EC's assessments using the WAC were submitted on 28 February 1995, a date which marks the effective end of the EOI process. Two actual papers were prepared, being:

1. an assessment report signed by the Chair of the IDC and EC (who was also the Director of the FTO)
2. an assessment report signed by a DSRD official with a significant involvement in the whole process.

The probity auditor did not submit a report at that time (one was subsequently requested many months later, to assist in responding to matters raised by ICAC concerning the assessment process).

The two reports mentioned above have near identical wording, and are referred to here as the DSRD/FTO assessment reports. Those reports are the formal record of the group of persons involved in the evaluation of bids. They were prepared shortly after the WAC assessments had been completed. Much of the content of the reports concerns the discussions that occurred during the clarification meetings between the EC and the proponents.

The DSRD/FTO assessment reports do not recommend a particular bid, because the assessment scoring process had not produced a clear result. Rather, the reports seek direction on several key points and set out various significant matters which may influence directions from the Government to be taken from this point. The two main parts of the reports consist of:

- setting out four unresolved issues related to the site (with a recommendation that the Government provide direction on those issues), being:
 - ◇ the date the RAS would vacate from the Showground site to Homebush Bay
 - ◇ the size of area that will be available for development into a film studio complex
 - ◇ “associated leisure activities” requested by Fox and the extra area to accommodate these additional facilities
 - ◇ whether to suspend the EOI process and enter into direct negotiations with one or more respondents or proceed to a tender process.

- comments upon the perceived positions of the final-shortlisted respondents in relation to other key issues contained in each bid, being:
 - ◊ the position of Fox and possibility of Fox developing a film studio complex elsewhere
 - ◊ the sensitivity of the remaining two bids to potential competition should studios be developed elsewhere
 - ◊ Fox's negative attitude to participating in a tender process.

The FTO/DSRD reports stated these matters in the following way:

Fox has made a commitment to establishing a studio facility in Australia. However it may proceed to another site elsewhere in New South Wales or interstate, especially Victoria, which has offered incentives, if:

- i. most of the (Showground) site is not available
- ii. it (Fox) cannot have their associated entertainment facility
- iii. it cannot get vacant possession before mid 1997
- iv. resolution of the NSW Government issues is not achieved by the end of April 1995.

In addition they (Fox) gave a strong indication that they may not participate in a tender process.

Both Crawfords and Global have indicated that they probably would not be willing to develop the Showground site if another major studio complex was developed first in Australia.

The Committee is of the view that:

1. if another major studio is developed elsewhere in Australia then neither Crawfords nor Global would develop the complex at the Showground
2. timing is of the essence as far as Fox is concerned.

Observations

Records of the clarification meetings examined by The Audit Office are supportive of the points made in the DSRD/FTO reports regarding Fox, including its apparent reluctance to participate in a competitive (tender) process.

Other than Fox, all other shortlisted respondents appeared to be co-operative with the potential tender process.

On the issue of sensitivity to potential competition, a question was put by the EC in varying forms to three of the respondents, but not to Fox.

It was reasonable for the EC to consider the practical impact of the intentions or activities of one respondent on other bids, if significant issues arose. However, The Audit Office considers that excessive weight was given to these matters in the DSRD/FTO reports.

At the time of the EOI none of the parties knew when the development of the site would commence, or the value of government financial and other support for the development. The EOI was being addressed on a hypothetical basis. What any party may ultimately have done, or not done, can only have been conjecture. As such, little reliance should have been given to the factors mentioned above in government decision making.

This view is supported by a comment from one of the proponents, Global, who read about the contents of the DSRD/FTO report in a media article after the report was released (without authority). A representative of Global who read the media article subsequently advised the Chairman of the IDC/EC that he disagreed with the interpretation of Global's position as stated in the DSRD/FTO report.

A key criteria in the EOI document was that proposals should result in no cost to the Crown, either directly or indirectly. No submission satisfied this condition. However, the DSRD/FTO report did not mention the likelihood of the Government making a financial commitment to the project, although a Treasury representative requested that this point to be made.

7.2 The Final Decision

The results of the EOI assessment process had not produced a clear leader, and as such the DSRD/FTO assessment reports do not recommend a particular bid. This is not surprising, since the original intention of the EOI process was not to select a final proponent, but to cull the list of proponents down to a shortlist. As to how to proceed from that point, the DSRD/FTO reports advise:

The process may take a number of forms including:

- the government can decide to negotiate with one or more parties and suspend process with the others, or
- proceed to formal tender.

The Chairman of IDC/EC was Director of the FTO. The FTO was within the MA area of responsibility and the FTO Director reported to the Secretary of the MA.

The Secretary of the MA prepared a submission to the Minister to action the DSRD/FTO reports. The submission (dated 28 February 1995) stated in part that:

The Ministry and the FTO are of the view that the level of benefits which would accrue to the industry and the State from Fox's proposal, and the very likely possibility of Fox locating in Melbourne, justify a decision to suspend consideration of the Crawford or Global proposals and go into direct negotiations with Fox.

Whilst the MA submission was being considered, the *Moore Park Showground Regional Environmental Plan (REP) Advisory Committee*, established under Section 22 of EPA Act, held its inaugural meeting (2 March 1995) to consider necessary requirements for the proposed development as part of a regional environmental plan.

It is uncertain as to whether a formal second-stage tender process would have been undertaken. Fox was opposed to a tender process, and said it would not participate in a tender. The Audit Office could locate no evidence that a decision to proceed with a tender had been made. The then Government had been disposed towards proceeding with a tender phase and had also been advised of the possibility of entering into negotiations. This was neither confirmed nor abandoned before the process was interrupted by the caretaker Government period.

A change of government occurred at the election on 25 March 1995. The incoming Government had established a policy while in Opposition that it would deal exclusively with Fox.

While it is necessary to avoid questioning the merits of the policy objectives set by a Government, it is clear that the Opposition's policy avoided submitting the development of the Showground to a lively competitive process. Usually the likely costs of policies would be weighed against the likely benefits. It is difficult to see how such an analysis could have been undertaken by the then Opposition without access to full information.

Such an approach can also give rise to perceptions that the arrangements finally executed are not necessarily in the best interests of the State.

On 12 April 1995 News Corporation wrote to the Premier of the incoming Government outlining considerations and requirements in respect of a Fox Filmed Entertainment Australian production facility at the Sydney Showground site. Salient points were:

- suspension of tender process
- suspension of REP process
- peppercorn lease for a minimum of 40 years
- phased occupancy with exclusive possession after 1997 Royal Easter Show
- to meet acceptable commercial returns the facility needed to accommodate a themed public attraction and an unfettered production environment must be provided.

On 20 April 1995 the Government announced that it would enter into negotiations with Fox to develop the Showground as a film studio complex, and that the IDC has decided to suspend the assessment of the other EOIs while clarification is sought of the Fox proposals.

On 26 April 1995 the Premier wrote to the Minister for State Development advising that negotiations with Fox were to proceed immediately. The carriage of the project would rest with the Minister and DSRD. The latter would be supported by a taskforce of agencies previously represented on the IDC.

7.3 Delayed Advice to Respondents

A press release on 3 March 1995 indicated that Fox, Crawfords and Global had been included on a second shortlist.

However, there is no evidence of correspondence advising of progress in the evaluation of responses being sent to Global or Crawfords between 28 February 1995 and 1 June 1995.

Observations

On one reading, the MA submission which makes the final recommendation to the Minister appears to imply that the level of benefits which would flow from the Fox proposal are superior to the benefits from other bids and hence action is justified to ensure the Fox bid is not lost. However, in discussions with The Audit Office the submission's author did not agree that was a proper interpretation. The author said that there was not sufficient information available at that time to conclude that the Fox proposal would generate *greater* benefits than any other. Although it is not entirely clear from the words used in the submission, from available material and discussions with various officials, the basic reasoning behind the proposed course of action appears to be:

- Fox intended to go ahead with a film and television studio development somewhere in Australia
- Fox wanted to move on the matter quickly, and did not wish to go through prolonged processes involving competitive bids
- if the Fox deal was lost to Sydney, Fox would undertake the development elsewhere
- if Fox undertook the development elsewhere, and did so quickly, then the other proponents would not proceed with a development at the Sydney showground site: leaving NSW with no development of this kind whatsoever.
- Commonwealth financial assistance may not be available if a developer other than Fox is engaged.

Two questions arise from this. Is this reasoning sustainable by the facts, and is the proposed course of action reasonable in the circumstances? Some time later (in November 1995) the probity auditor wrote an account which is germane to these matters. The probity auditor stated, in part, that:

1. All respondents were informed that if the process proceeded, it might be by tender or negotiation with one or more parties.
2. Fox indicated that:
 - it would set up a studio in Australia
 - if not in Sydney then in Melbourne
 - it needed an answer by 25 April 1995
 - it would not respond to a public tender.
3. Both Global and Crawfords indicated that if Fox set up a studio first in Australia, they probably would not be willing to develop the Showground site.
4. (the 4th proponent's) presentation had been considered as lacking in professionalism.

In these circumstances it was only possible to negotiate with Fox. Any process which awarded a tender to either Global or Crawfords would have been ineffective since Fox would have established elsewhere.

However, as indicated earlier, the likely actions of the other proponents if Fox did develop elsewhere is conjecture, and the above interpretation of their intentions has been disputed by at least one of the proponents.

What Fox may have actually done if a formal tender process was undertaken is also open to debate. In discussions with The Audit Office, Fox made it clear that they regarded a Sydney base for such a development as very strategic and desirable, and that the Showground site was probably the best possible option available. How readily they may have actually walked away from a requirement that the process to put to tender is unknown.

In Hansard, and in his formal response to The Audit Office, the current Minister for State and Regional Development has stated that:

The (current) Government ... took the view, as a matter of policy which was announced well before the last election, that it wanted Fox studios on the (Showground) site ...

The current Government's policy objective was thus formulated before it had access to any of the details disclosed in the EOI process. The disclosures made in the EOI process, the scores applied to the respondents, the proportion of the site allocated for an entertainment area versus a studio complex, the relative merit of each submission as shown by that process were not relevant to its policy objective of securing a Fox studio at the Showground site.

It is not open to the Auditor-General under current legislation to question the merits of government policy objectives. That is a matter for the Parliament, the community and the media to consider and debate. When policies are set out in very specific terms, such as is the case here, limitation is also placed on evaluation of the various means, or options, by which outcomes may be achieved.

The Audit Office is thus not able to consider whether alternate means may have been able to achieve a strategic objective (ie the development of a film industry in NSW) more effectively, efficiently or economically. The Audit Office is limited to commenting upon the processes followed, and the effects of actions taken and decisions made (ie the results in terms of costs and benefits).

Where the Government wishes a particular arrangement to be its policy objective or outcome, it is proper that it disclose the grounds used to choose the particular arrangement from the several options available. The lack of such justification, rather than the merit of the arrangements, can raise important questions about accountability and probity. It is important, for example, that the Government assure NSW residents that preferring Fox has a rationale based on serving the interests of the State rather than other interests. The justification advanced by the Government at the time for the particular arrangement it supported does not address these bases adequately. It is also not persuasive to justify a decision by cost-benefit data or other analysis only available some time later.

8. Probity Audit Issues

8.1 Perceptions of Probity Audit

In recent years there has been a significant increase in the use of probity auditors on major projects to provide assurance that due process has been followed and activities carried out in a legal and ethical manner. The 1996 ICAC publication *Probity Auditing: When, Why and How* highlights a range of concerns and issues to be considered in the effective use of probity auditors. In particular, the extent of assurance and credibility actually delivered to a project by the involvement of a probity auditor is a function of the role and tasks which they undertake.

In relation to the EOI process for the Showground project the involvement of a probity auditor was given great importance by various persons seeking to prove that the process was conducted with probity, accountability and due process. In a letter dated 23 February 1995 to the Premier, the Chair of the IDC and EC stated inter alia:

We have a Probity Auditor on board (!) and we are doing everything correctly.

The Premier, in a letter dated 25 July 1995 to the Editor of the Sydney Morning Herald, stated inter alia:

- In November 1994 an interdepartmental committee was to call for EOI to redevelop the Showground as a film studio complex
- A probity auditor was appointed to oversight the committee's work.

The Treasurer, in an attachment to a letter dated 9 November 1995 to ICAC, stated inter alia:

To ensure probity and accountability throughout the selection and negotiation process, the government appointed a Probity Auditor ... (who) was employed at the EOI stage and continues to provide advice to the government during its current negotiations with Fox.

... please note that the selection criteria and processes set out in the document calling for expressions of interest ... were compiled within the process of assessment by the IDC with the participation of the Probity Auditor.

The Minister for the Arts, in a press release dated 3 March 1995, is quoted as follows:

... a Probity Auditor has acted throughout the evaluation phase and has advised that as an alternative to going to tender, the process of evaluation may be suspended at this stage and one-on-one discussions undertaken ...

Observation

The use of probity auditors reflects the desire to establish a strong perception to external observers that processes are of the highest standards. However, there are currently no specific formal standards for probity audit work. The extent of reliance to be placed on the presence of a probity auditor must be judged on the actual circumstances and terms of their engagement, and the specific details of the role they have undertaken.

In the case of the Showground project, The Audit Office considers that many of the statements citing the probity and accountability advantages from the use of a probity auditor considerably overstate the advantages that were available.

8.2 Role Performed by the Probity Auditor

The probity auditor was engaged part way through the EOI process, with active involvement limited to approximately 1 week (from 22 February 1995 to 28 February, 1995). A total of 6 hours of time was claimed by the probity auditor for work during that period.

A letter of offer dated 16 February 1995 from the Chair of the IDC/EC to the probity auditor stated inter alia:

It is envisaged that your services would be required in the near future to assist in clarification of matters with each of the four shortlisted respondents following the recent receipt of EOI in developing a studio complex.

It is envisaged that your consultancy would continue through the tender stage for this project should this occur.

In terms of tasks undertaken, the probity auditor advised The Audit Office that he provided advice to the EC regarding:

- the interpretation that could be made of the scores awarded to EOI responses (that is, whether the scores could be used to rank the bids)
- the contents of the DSRD / FTO final report.

In other records it was noted that the probity auditor provided advice regarding the evaluation methodology prior to the evaluation of the responses using the WAC.

In advising The Audit Office on the tasks undertaken, the probity auditor advised of various functions which he was not asked to undertake. Specifically, he advised that:

- he had no direct involvement with the IDC, only the EC
- he was not involved in developing the weighted criteria used to assess responses on the first shortlist
- he did not conduct any major review or offer any opinion on the reasonableness of the weighted criteria used to assess submissions
- he did not attend the clarification meetings with Global and Fox held on 27 February 1995 due to prior commitments, but did attend similar meetings with Crawfords and another respondent on 23 February 1995
- he did not submit any report or note, in support or otherwise, of the DSRD / FTO final report
- he provided no report or oral briefing to the MA in connection with the MA submission and its recommendations to the Minister.

The probity auditor advised The Audit Office that after submission of the EC final report (28 February 1995) he had had no ongoing active involvement with the Showground project until he was asked to prepare a report to assist in responding to various matters raised by ICAC in connection with the assessment process (November 1995). The probity auditor was later involved in a review of the proposed FIASA.

The probity auditor also advised The Audit Office that he does not consider that he conducted a probity audit of the EOI process, bearing in mind the limited scope of work performed and the duration of involvement.

Observations

The Audit Office considers that limited reliance can be placed on the probity audit function for the Showground project. This is due to a number of factors:

- the probity auditor was not engaged from the beginning of the selection process
- the probity auditor's terms of engagement provided a very limited role in the period that he was engaged; in fact, he was meant to be an adviser on probity issues rather than a probity auditor
- the probity auditor could not fully carry out all elements of the engagement as specified
- the probity auditor did not provide a contemporaneous report of the evaluation process undertaken.

Prior to 22 February 1995, that is, the first day that the probity auditor became actively involved, a number of important events in the EOI process had already occurred, including:

- preparation of EOI document and advertising of the call for EOI
- receipt of submissions from respondents
- culling of 12 responses considered by the evaluation group as non-conforming.

Once engaged, the role of the probity auditor was set out in narrow terms. The terms of engagement were set out in a few short paragraphs. There were other important functions which the probity auditor could have performed, but which were not provided for in the engagement. For example, there was no attention of actual or potential conflicts of interest for EC members that may impair their ability to participate in the evaluation of EOI responses.

The briefing received by the probity auditor was oral only, he was not given important information to assist familiarisation with the project (such as a statement of Government policy or existing reports from KPMG or Kinhills). This approach did not help to maximise the effectiveness of the probity auditor.

No contemporaneous report by the probity auditor was produced regarding tasks performed, or as confirmation of advice given. The probity auditor has advised The Audit Office that no report was required or requested of him at that time, and that it would not have been possible to submit a comprehensive probity report in view of the limited scope of work he had been engaged to perform. No request was made for any form of report from the probity auditor until November 1995, when the ICAC was investigating aspects of the selection process. This request was made at very short notice, and a short report was required to be prepared on the spot. Hastily prepared recollections of detailed matters some nine months later do not represent an adequate substitute for a contemporaneous report. Without a written report at the time, less reliance can be placed on the use of a probity auditor.

In his November 1995 report the Probity Auditor stated that:

The market interest had been thoroughly and widely tested.

As mentioned earlier, The Audit Office does not agree that the market testing strategy was highly effective. The Audit Office sought clarification from the probity auditor about what steps had been taken to reach the opinion provided above. The Probity Auditor has advised that the EC provided him with an oral report only, which confirmed to his satisfaction the sufficiency of the advertising and timing involved in the EOI process. The Audit Office does not consider that this represents a sufficient depth of enquiry to reach a valid opinion on such an important issue concerning the fairness of the process, and does not agree with the conclusion.

The probity auditor has subsequently agreed with The Audit Office that he did not have adequate information available to him to form a valid opinion regarding the adequacy of market testing.

The selection and engagement of the probity auditor occurred without due regard to the procedures required by Premier's Department guidelines as shown below in Exhibit 8:

Exhibit 8: Compliance with 1990 Premier's Department Guidelines for the Engagement and Use of Consultants		
Summary of Premier's Department Guidelines		FTO/DSRD Compliance
1.	detailed specification of the engagement including: <ul style="list-style-type: none"> the objectives of the project a statement of individual tasks required criteria for selecting the consultant. 	x
2.	in the case of minor consultancies (ie up to \$50,000), one officer is sufficient to analyse quotes or tenders and to make recommendations for acceptance.	✓
3.	a report on the recommended consultant that includes: <ul style="list-style-type: none"> the extent to which the specification has been satisfied (see point 1) ability of consultant to successfully undertake the work reference checks on the applicant. 	x
4.	a letter of engagement or formal contract that includes reference to: <ul style="list-style-type: none"> the original specification (see point 1) the agreed fee and method of payment agency officer responsible for consultancy agreed documentation to be provided prior to final payment. 	x
5.	evaluation report of each consultancy at its conclusion prior to the final payment of fees.	x

Key ✓ = compliance
 x = non-compliance

Source: The Audit Office Analysis

Although specific standards do not exist for the performance and conduct of probity audit work, the following table compares arrangements for the engagement of the Showground probity auditor against the better practice elements set out in the ICAC probity audit guideline released in 1996 (after the relevant activity on this project). The Audit Office regarded those ICAC guidelines as an appropriate model to measure compliance.

Exhibit 9: Compliance with ICAC Probity Audit Guidelines		
ICAC Terms of Engagement		FTO/DSRD Compliance
1.	Role of probity auditor in the process is established	✓
2.	The scope of the audit is defined	✗
3.	Full and free access to records, personnel, meetings and premises is authorised	✗
4.	State fees, reporting time lines and completion dates	✗
5.	Specify reporting relationships	✗
6.	Define ownership of probity auditors working papers	✗
7.	Specify arrangements to retain probity auditors material during and after the audit and how it will be maintained	✗

Key ✓ = compliance
 ✗ = non compliance

Source: The Audit Office Analysis

8.3 Interpretation of Probity Auditor's Advice

As already mentioned, the probity auditor did not produce a contemporaneous report to confirm his advice or set out his views. However, considerable use has been made of what advice the probity auditor apparently provided, or was believed to have provided.

The probity auditor has indicated to The Audit Office that:

- he advised the EC that the question of whether to conduct a tender as a second stage, or to hold direct negotiations with any particular respondent, was a political decision and as such should be referred to the Government to provide directions upon
- he advised the EC on the statistical interpretation which could be placed on the results of the WAC assessments
- he had not given an opinion in relation to the notion of direct dealings being commenced with any particular party
- had he been asked whether direct dealings with Fox were acceptable, he would have indicated that in his opinion, given the circumstances, it would have been a logical and

acceptable course.

The probity auditor also indicated that he was present during the drafting of the final DSRD/FTO report, and held no concerns in terms of the process matters it advocated. As previously mentioned, that report states in part:

- The process may take a number of forms including:
 - ◊ the government can decide to negotiate with one or more parties and suspend process with the others, or
 - ◊ proceed to formal tender.

The Treasurer, in an attachment to a letter (dated 9 November 1995) to ICAC, states *inter alia*:

The Fox proposal was viewed by the Probity Auditor (Document 4.5) as being the superior proposal.

The probity auditor indicated to The Audit Office that he was concerned only with process matters, and had made no specific comments on the merits of the Fox proposal.

The MA submission and final recommendation to the Minister (dated 28 February 1995) stated the probity auditor's advice in the following way:

A Probity Auditor who has acted during the evaluation phase, has advised that as an alternative to going to tender, the process of evaluation may be suspended at this stage and one-on-one discussions undertaken without prejudicing a Government decision.

The probity auditor has indicated to The Audit Office that his advice to the EC was limited to: advising that a preferred proponent could not be recommended and to identify that the option for direct negotiations was available, without however, his either favouring or opposing this option.

ICAC has commented on the importance of the advice said to have been given by the probity auditor, describing it as "pivotal". Various parties have subsequently quoted the probity auditor's advice in terms which make it appear far more detailed and specific than the probity auditor himself advises was the case. Given the reliance which people wish to place on or the use they wish to make of the work of probity auditors for such projects, it is a necessity that probity auditors provide a contemporary written report confirming all of their advice and setting out in detail the nature of their involvement with the process. However, the report should not comment on the merits of proposals as to do so would be a compromise of independence by the probity auditor.

9. The Records of the Process

9.1 Introduction

This section focuses on records in terms of:

- the existence of formal policies and the application of judgement to the keeping of records
- the ability of the record keeping function to respond to a Freedom of Information (FOI) application
- specific instances where records for important decisions, judgements and events are clearly deficient.

There is close relationship between the quality of records and the quality of the process.

9.2 Quantity Of Records Reviewed During Audit

During the conduct of this audit, 148 files from 4 agencies were reviewed. They contained a total of 24,375 pages (refer Exhibit 10 at the end of this chapter).

In addition, the Audit Office is aware of other agencies, notably Department of Urban Affairs and Planning (DUAP), CPMPT and Department of Lands and Water Conservation which also have records relating to the lease and development of the Sydney Showground.

9.3 Importance Of Record Keeping

The Western Australia Commission on Government¹ in Report Number 2 of December 1995, noted that:

Official records bear silent testimony to the administration of a government. ... Proper record keeping serves two purposes. First, it is a prerequisite to effective accountability. Without it, the end purpose of FOI legislation can be thwarted. Without it, critical scrutiny by the Parliament, the Auditor-General and the Ombudsman can be blunted. Secondly, records themselves form an integral part of the historical memory of the State itself. A record keeping regime which does not address both of these requirements is inadequate.

¹ The Commission on Government was established in response to a recommendation made by the Royal Commission into the Commercial Activities of Government and Other Matters (WA Royal Commission).

9.4 Existence of Agency Policies and Procedures

Observations

The existence of agency-level policies and procedures at agencies was an issue considered during the audit and discussed with DSRD. Apart from involvement in the Sydney Showground, DSRD acts in a facilitator role for approximately 300 current State development projects. Those discussions indicated that:

- a Code of Conduct existed that required officers to *maintain adequate documentation to support any decision made*
- a set of standards for files existed

On examination these standards were considered brief, being only one page long and dealt with matters mainly relating to:

- physically securing documents to files
- physical appearance of the files
- movement and access to files.

9.5 Archives Authority of New South Wales

Existence of Best Practice Guides

The Archives Authority of New South Wales has as an objective the improvement of the quality and keeping of official records so that they facilitate the transaction, monitoring and auditing of official business.

The Records Management Office, part of the Authority, develops and promotes standards and codes of best practice for official records management.

File Creation Guide

In 1994 the Records Management Office issued a revised edition of a guide titled “File Creation”.

The guide notes many matters in relation to administration of files, including the concept of a summary sheet for file contents and that documents are paginated (folio numbered) from first to last. The key points that would appear on a summary sheet are:

- the date of each document
- a description of the document
- file movements to other areas for action.

Observations

9.6 Deficiencies in Record Management

Files Lack Structure

The use of summary sheets, as proposed by the Records Management Office, was not evident in the files maintained for the project by DSRD.

A schedule was produced by DSRD for an FOI application on 24 July 1995. The schedule shows the material on file was not kept in chronological order.

The FOI schedule only covered volumes existing at the time of the FOI application, approximately 40 volumes. However, by January 1997, DSRD had 103 volumes of files covering 27 subject categories. It was not until mid March 1997 that DSRD updated the schedule. This updating of the schedule occurred to accommodate a potential call for all documents to be presented to the Legislative Council. For a considerable period of time DSRD did not have a complete index or summary of all documents in existence.

Not all material relating to particular subjects was contained within the particular file category. For example, the engagement and work of the probity auditor was not contained on the one subject file. It was spread over several subject categories.

Shredding of Documents

A senior DSRD officer also had copies of Sydney Showground documents in his office and used these as his own working files for the project.

Most of these documents have now been shredded as they were considered by DSRD officers to be duplicates.

Observation

It is of concern to The Audit Office that if there were any written comments on those documents, then these are now lost.

Duplication of Records Project files would be expected to contain one copy each of pertinent documents. In addition it would be appropriate that a copy of the same document should be retained if there are handwritten comments on it or attachments to it, pertaining to the project, which differentiate it from another copy of that same document. Review of project files showed significant duplication within the project files held by DSRD.

E-Mail E-Mail is a variation on the normal form of documentation, in that it is typed, however, it is not always printed to a physical record. Only a small number of printed copies of E-Mail were observed in the files of DSRD.

Observation As a matter of good procedure all important E-Mail should be treated like any other official record and arrangements be made for retention.

The Audit Office was advised by DSRD that all pertinent electronic communications were printed and stored on file. The Audit Office makes no finding whether DSRD E-Mail has or has not been retained.

9.7 Freedom of Information Request

The Objects section of the Freedom of Information Act 1989 states inter alia:

The objects of this Act are to extend, as far as possible, the rights of the public:

a) *to obtain access to information held by the Government, ...*

**Response To
July 1995
Freedom Of
Information
Request**

The DSRD, among other agencies was the recipient of a FOI application.

Due to the deficiencies in record management already noted earlier, no summaries of documents existed at the time of the request. As a first step in responding to the FOI application, a schedule of documents was prepared covering the approximately 40 volumes that existed at that time.

In August 1995, DSRD asked the FOI applicant to narrow the scope of the request because, in the opinion of DSRD, the FOI request represented an unreasonable redirection of the agency resources.

Observations

The DSRD staff spent 158 hours compiling the FOI document schedule. Based on a set charge of \$30 per hour the cost was \$4,740. However the actual cost, after taking into account the mix of staff levels and on costs, would have been considerably more.

Had the files been kept according to the Archive Authority guidelines it is likely that the time and costs incurred with the determination of the FOI application would have been significantly less. It is probably wrong that the full costs of developing this document schedule were seen as FOI costs.

**9.8 Important Aspects Of Project Not
Recorded
Adequately**

Formal policies and procedures can be guides on specific matters and also act as principles to guide decisions regarding when records should be kept. In addition, however, judgement also needs to be applied to record keeping. The skill is to recognise all important decisions and events to ensure that evidence material is produced and retained for an appropriate period.

Observations

**Important
Aspects not
Recorded**

In relation to the Showground, there were a number important aspects of the process that do not have adequate records available. The records were either:

- required by existing guidelines; or are
- reasonable expectations of due process, noting the importance of the matters concerned.

Probity Auditor	Records of the appointment of probity auditor did not meet the requirements of 1990 Premier's Department guidelines.
DPWS	The engagement of DPWS to assist in the EOI process did not meet 1990 Premier's Department guidelines because no detailed specification of the tasks was prepared to serve as basis for engagement.
Committee Members	<p>There were no written records on the selection of committee members indicating:</p> <ul style="list-style-type: none">• how the committees members were selected, ie there are no analysis of skills or experience• why a representative from the CPMPT was not included in the EC, although this representation was specified in the EOI document.
Reports to Decision Makers	Two reports, one signed by the Chairman of the IDC/EC and the other by the CEO of the MA, both dated 28 February 1995 effectively mark the end of the incomplete EOI process. Review of related materials and interviews with officers concerned has indicated a deficiency in the information supporting those reports and their preparation.
The IDC/EC Chairman Report	<p>The records supporting the report signed by the Chairman of the IDC/EC were deficient due to there being no:</p> <ul style="list-style-type: none">• record of who was involved in preparation of the report and whether the draft was considered by all members of the EC and IDC prior to signing• written confirmation by the probity auditor of his advice regarding direct negotiations with respondents. This was important in the prevailing circumstances where the shortlisted respondents concerned had not met all compulsory assessment criteria.

MA CEO Report The records supporting the report signed by the CEO of the MA were deficient:

- the report referred to the benefits of the Fox bid, but those benefits are not specified or differentiated from those attributable to other shortlisted respondents. This was important in the prevailing circumstances, where in view of the probity auditor's advice, the quantitative evaluation of respondents using the WAC had not shown a clear leader
- due to absence of written confirmation by the probity auditor of his advice regarding direct negotiations with respondents.

Committee Meeting Records

Records of IDC and EC meetings indicated the following:

- the Chair of the IDC/EC meetings did not sign the minutes, nor did the minute secretary
- only two sets of IDC minutes were confirmed at a subsequent meeting. For all other meetings held the minutes of the previous meeting were never confirmed
- the IDC met in late November 1994 without minutes of the meeting being maintained
- the Evaluation Committee would appear to have met a number of times in the latter half of February 1995, with 27 February, 1995 being one instance. However, no minutes were maintained of that, or of other probable meetings
- the only formal documentation concerning the EC meetings in late February 1995 were the two similarly worded reports dated 28 February 1995 signed by the Chair of the IDC and Evaluation Committee, and another signed by an DSRD officer. Neither of these reports gives a full account of what occurred during this period.

**Weighted
Assessment
Criteria
(WACs)**

There were no written records regarding the compilation and weighting of assessment criteria indicating:

- when the compilation and weighting of the assessment criteria occurred
- who participated in the compilation and weighting of assessment criteria
- the reasons for the weightings given to individual assessment criteria
- the reasons why certain criteria indicated in the EOI document were left out, eg compliance with government policies
- that a senior officer accepted the draft weighted assessment criteria as adequate for use in the evaluation process.

**Clarification
Meetings
Records**

There are no official transcripts or minutes of the Confirmation Meetings held with the shortlisted EOI parties. Only unedited drafts exist, most of which contain clear evidence of numerous omissions and gaps in the record of the discussion.

Those omissions and gaps within the drafts were in regard to matters pertinent to the assessment of the bids, including:

- the number of studios to be developed
- size of site available
- lease conditions - potential rental for site
- planning issues and mechanisms
- potential volume of business at developed site - economic viability
- potential financial commitment from the New South Wales Government to the project
- impediments to tender process
- community use of facilities
- leisure activities - outdoor entertainment facilities at the site
- arrangements during Royal Easter Show - implications of restricted site availability.

Evaluation of Bids (Using the WACs)

Written records produced at the time of the evaluation of the bids do not indicate:

- when the evaluation of bids occurred
- which officers participated in the evaluation of bids
- the reasons or factors for differentiation between the scores awarded to respondents bids, especially in relation to criteria where the scores varied
- a formal review of the evaluation scores by the probity auditor.

In relation to the first three points made there are no known records available in relation to the these matters.

In addition, not all assessment sheets sets, thought to be either 3 or 4, used during the evaluation by individual officers were retained. Those which do remain do not record relevant details such as the name of the evaluating officer and date of evaluation.

9.9 Extent of Showground Project Material to be Reviewed

Exhibit 10 illustrates the extent of documentary material reviewed by The Audit Office in the conduct of this performance audit.

Exhibit 10: Statistics Pertinent to Showground Documentary Material					
Item	DSRD	Premier's Department	MA	FTO	Total
Number of Registered Files	103	20	15	10	148
Number of Folios (ie. pages of Documents on Registered Files)	13,793	4,190	2,756	3,636	24,375

Source: The Audit Office

10. RAS Leasing Ability, Planning Instrument & Controls, and Other Associated Matters

10.1 Introduction

This section comments on:

- the ability of the RAS to lease the Sydney Showground Site to Fox
- environmental planning instruments
- development applications.

The Audit Office has not undertaken a detailed review of the technical side of the development at the Sydney Showground site. It has considered the legalities associated with the submission and content of development applications, and other legal matters (Environment Planning Authority [EPA] licensing for the site and environmental impact statements [EIS] requirements).

10.2 Legal Ability to Lease the Site

Legal Advice

Extensive legal advice has been obtained by the Government over a period of time from various sources on the subject of leasing and vesting of the Sydney Showground site. Sources of advice on this matters have included:

- to DPWS from Baker and McKenzie; (29 July 1991)
- to Cabinet Office from Crown Solicitor Office (CSO); (29 July 1986, 21 October 1994, 4 November 1994)
- to DSRD from CSO (11 April 1995, 27 June 1995, 11 September 1995, 10 October 1995, 13 November 1995)
- to CSO from Clayton Utz (31 August 1995).

The Audit Office has not obtained further legal advice on this matter because sufficient legal consideration has been provided through the above sources.

**Macquarie
Common**

In 1811 Governor Lachlan Macquarie made a proclamation setting aside some 400 hectares of land for a common and/or public recreation. The land upon which the Sydney Showground at Moore Park is situated was originally part of the Macquarie Common. By virtue of Acts of Parliament (refer Section 1.1 *Description of Sydney Showground, Moore Park* for details) the land comprising the Sydney Showground site at Moore Park was vested in the RAS on a fee simple basis.

As to whether the 1811 proclamation by Governor Lachlan Macquarie would apply once the site was vacated by the RAS, there was an effective revocation of the Macquarie dedication by virtue of the *Royal Agricultural Society Act 1911* (RAS Act 1911) Section 3. RAS Act 1911 Section 3 states that “any dedication of any part of the said land as a common or for public recreation or for any other purpose is revoked”. A similar revocation was contained in the earlier RAS Act 1902 (the 1911 Act repealed the 1902 Act, which in turn had repealed earlier legislation).

**RAS Usage and
Occupancy
Rights**

Through Section 4 and 5 of RAS Act 1911, the RAS had limits imposed on its right of use and occupancy of the Moore Park site.

Under Section 4 the RAS can:

occupy and use the said land for the purpose of holding shows and exhibitions of agricultural, horticultural, and pastoral produce, implements, machinery, minerals, arts, manufactures and live stock, and for any other purpose that the Minister for Lands or his nominee may sanction.
(emphasis added)

The underlined words are of prime importance in considering the RAS/Fox lease.

RAS Act 1911 Section 5 allows for the Moore Park site to be revested, following gazettal, in the Minister for Lands: if the RAS fails to comply with Section 4; if RAS sells or attempts to sell the site; or if RAS places an encumbrance on the site by lease or mortgage without the Minister’s permission.

There is not an express provision in RAS Act 1911 regarding the revesting of the land in the case of the RAS ceasing to use and occupy the site. Nevertheless it was felt that Sections 4 and 5 of RAS Act 1911 were sufficient for the land to be revested in the Crown if the RAS vacated the site.

Crown Lands Act 1989

On that basis, up until late 1992, the site once revested would have become unalienated Crown land which was then subject to the provisions of the Crown Land Act 1989, except for any continuing lease, mortgage or charge over the land for which permission by the Minister for Lands had previously been approved under RAS Act 1911.

The Act

This arrangement was superseded in 1992 by the *Centennial Park and Moore Park Trust (Macquarie Sydney Common) Amendment Act 1992* (the Act) which was assented to on 8 December 1992 (operative date was 8 June 1993 because an earlier proclamation did not occur). The Act's salient point was to repeal RAS Act 1911 and to vest the Sydney Showground site in CPMPT. However, the Act still contained a similar vesting provision regarding continuing site encumbrances such as existing leases and mortgages previously approved under RAS Act 1911.

The latter is another point of prime importance in considering the RAS/Fox lease.

Drafting Errors and Unintended Legal Consequences

Shortly after the assent of The Act the then Government contended that there were drafting errors and unintended legal consequences associated with it. An issue had arisen concerning a mortgage held on the site (this had been sanctioned by the Minister for Lands) for monies borrowed by the RAS, which caused some difficulty and debate at the time.

The Amendment Act

The *Centennial Park and Moore Park Trust (Royal Easter Show) Amendment Act 1993* (The Amendment Act) was developed to rectify the situation (assented to on 15 June 1993). The salient points of The Amendment Act were:

- retrospectivity to 7 June 1993
- defer the repeal of RAS Act 1911 and the vesting of the Sydney Showground site in accordance with The Act until the Minister for Environment certifies that RAS has vacated the site (emphasis added).

This deferral of the repeal of the RAS Act 1911 is a further major point of note when considering the RAS/Fox lease.

Because of this amendment, vesting of the site in CPMPT (which is provided for by the Act) will arguably not occur until such reasonable time as the Minister for Environment formally certifies that the RAS has vacated the site. RAS would thus continue to be the legal owner of the site until such certification occurred. As such, legal advice was that RAS could continue to enter into at least some lease arrangements as provided for under RAS Act 1911.

**Ministerial
Consent to Fox
Lease**

Pursuant to RAS Act 1911, on 26 September 1996 the Minister for Land and Water Conservation sanctioned:

- occupation and use of 24.3 hectares of the Showground site for the purposes of a studio and family entertainment complex and car parking facilities
- a lease between the RAS and Fox for 24.3 hectares of the site for a period of 40 years, with an option to renew for a further 10 years.

On 27 September 1996 RAS and Fox duly entered into such a lease, whose operative date was 23 April 1996.

Observations

The Audit Office has no legal capacity to doubt the advice that the Government has obtained regarding the validity of the RAS/Fox lease and usage at the Sydney Showground site. It is not clear, however, that Parliament would have intended RAS to be able validly to enter a lease which was not directly relevant to its purposes and which essentially entailed its abandoning the site after passing the benefit of the site to another party for a considerable time.

Because RAS Act 1911 still has effect, with the Minister's sanction, the RAS/Fox lease is taken by the Government to be valid.

Once RAS vacates the site (and the Minister for Environment formally certifies this) it seems that ownership of the Moore Park Showground site will transfer to CPMPT, with the Fox lease remaining but under a new "landlord".

10.3 Environmental Planning Instrument

Original Site Planning Instruments	For planning purpose, the development status of the site applying to the RAS occupancy and usage came under the City of Sydney Planning Scheme Ordinance (PSO) and South Sydney Local Environment Plan (LEP) Number 125. The LEP is a <i>environment planning instrument</i> under the EPA Act, while the PSO was a planning instrument used under previous planning legislation. Permitted use(s) of the site under the PSO was <i>6(b) recreation-restricted access</i> . Under the LEP allowable uses (with consent), were musical entertainment, public buildings, public entertainment and public refreshment rooms. Although filming had taken place at the Showground for many decades, a film studio was prohibited by the existing site planning instruments.
Environment Planning Instrument (EDI)	A change in zoning status and hence permissible development under planning law could be achieved through a LEP or a regional environment plan (REP), or state environmental planning policies (SEPP). These are the various instruments under the EPA Act which can be used to change zoning. LEPS are primarily the domain of local government while REPs and SEPPs are the domain of the State government.
REP Initiation	The day after the Prime Minister's Creative Nation announcement of 18 October 1994, the then Minister for Planning advised the Premier that a REP was the most suitable vehicle to explore all proposals and options for the use of the Sydney Showground site. Accordingly formal action commenced to undertake a REP. Gazettal of a REP was estimated to take a minimum of 12 months. DUAP was aware that a SEPP could be used to rezone the site before completion of the REP process.
Government Policy	A change of State government occurred at the 25 March 1995 election. The new Government, whilst in Opposition had given a commitment to having Fox Studios on the Sydney Showground site as part of its election platform. Upon taking up office, this commitment was converted to a Government policy objective.
Gazettal of SEPP	At the end of June 1995 the Premier indicated that zoning of the site was to be varied through a SEPP. On 14 November 1995 the Minister for Urban Affairs and Planning recommended to the Governor the making of State Environmental Planning Policy No 47 - Moore Park Showground (SEPP47). The policy was gazetted on 17 November 1995.

The Minister recommended SEPP47 without public consultation, but there was consultation with relevant Ministers. There is no legal requirement under the EPA Act which compels the Minister to hold public consultations before making a SEPP, although there have been a number of instances where the public has been invited to make comment.

The zoning of the site via SEPP47 made it permissible for the site to incorporate a film studio, family entertainment complex and car parking facilities.

The making of SEPP47 meant that the sole consent authority for development applications for the Sydney Showground site was the Minister for Urban Affairs and Planning.

SEPP47 Validity SEPP47's aims and objectives are detailed in *Appendix 13.5*. A SEPP bypasses the ordinary steps for development consent through the relevant local council. Legal action was commenced in the Land and Environment Court challenging the validity of SEPP47 and this action was dismissed. Subsequently the matter was taken to the Court of Appeal and this action was also dismissed.

10.4 SEPP47 Development Applications

Ministerial Development Consent SEPP47 makes the Minister for Urban Affairs and Planning the consent authority for development applications (DA) in respect of the Sydney Showground site. It is a very powerful instrument. If there is any conflict between SEPP47 and any other planning instruments or requirements, SEPP47 prevails.

Staged Development The Showground reconfiguration and establishment of studio and family entertainment complexes and associated car parking is being undertaken as a staged development. The development was consented to under the EPA Act. This particular staged development started with a *Master Plan*, whose consent gives broad guidelines. Following this, subsequent detailed development applications can be submitted for each of the various stages or elements of the project. The DA's submitted to the Minister for Urban Affairs and Planning as consent authority are detailed in Exhibit 11.

Exhibit 11: Fox Development Applications						
Development Application	Date Lodged	Site Area Hectares	Value \$m	Public Exhibition Period	Ministerial Determination Date	
<i>DA 1/96 Master Plan - Overall development concept for the various land uses</i>	2/1/96	24.3	93.0	8/1/96 - 15/2/96 (6 weeks)	24/4/96	
<i>DA 2/96 Subdivision - Subdivision of site into four lots</i>	2/1/96	28.8	N/A	8/1/96 - 15/2/96 (6 weeks)	24/4/96	
<i>DA 25/96 Working Studio Park (Part) Stage 1 of film and television studio facilities and film related development</i>	5/7/96	7.44	28.1	8/7/96 - 5/8/96 (4 weeks)	5/12/96	
<i>DA 36/96 Working Studio Park (Balance) Stage 2 of film and television studio facilities and film related development</i>	12/12/96	4.16	2.5	13/12/96 - 14/2/97 (9 weeks)	22/4/97	
<i>DA 37/96 Family Entertainment Park and Studio Tour part of Working Studio</i>	12/12/96	11.84	71.1	13/12/96 - 14/2/97 (9 weeks)	22/4/97	

Legend: N/A = Not Applicable

Source: Fox DAs

Master Plan Variations

The consent to the master plan is a consent in general terms only because it does not allow actual work to be carried out. It also does not necessarily bind the applicant (Fox) to detailed plans. Development intentions are not set in concrete. The master plan Ministerial consent condition 2 states “The development of the site shall be carried out generally as described in DA 1/96.....”. Use of the word “generally” gives a wide latitude in the detailed DAs which were subsequently submitted. In the DA’s following the master plan, Fox has had to state clearly any variations and the extent thereof, from the statement of environmental effects consented to in the master plan and from the master plan itself.

Observation

There is seemingly no enforceable obligation on Fox to resubmit a new master plan because of the variations occasioned by the detailed DAs. This is so, even though variations from the original master plan may be significant.

Some parties have argued that consent is being granted to DAs in a perfunctory manner, with insufficient consideration of their impacts, particularly where variation from originally stated intentions is significant. The Audit Office did not examine the adequacy of detailed review of technical matters by the consent authority. However, approvals which the consent authority issued indicate that the process used was that normally applied to such matters.

For projects of this sort, the issue of variations to the master plan is something which consent authorities need to manage carefully. At some point, if variations were of such a magnitude as to render the original master plan fictional, the consent authority would need to consider taking action to address the situation in a manner which was fair both to the proponent and to the community. The point at which such a state is reached is obviously a matter for judgement, and community interaction with the consent authority may be one means of judging the situation.

**DA Legal
Compliance
Requirements**

The paperwork required by law when a DA is submitted to the Minister for consent in accordance with SEPP47 includes:

- information in the form of Schedule 5 form (whose specification basis is the Environmental Planning and Assessment Regulation 1980) and associated accompaniments and site owner approval
- matters coming within Section 90 of the EPA Act
- matters specified in SEPP47 itself, notably Section 15.

Observation

The Audit Office reviewed the DAs submitted for consideration and consent by the Minister and found no non-compliance with the legal requirements for DA lodgement.

Publicising DA

In accordance with SEPP47, DAs are to be publicly advertised so as to enable residents and other interested parties to submit comments to the Minister for consideration prior to a determination on the DA.

Observation Advice was received by The Audit Office that, in the opinion of some parties, insufficient time was allowed for interested parties properly to review and to make comment on DAs submitted. However, all DAs (refer Exhibit 11) were open for view and submission of comments in accordance with the *de minimus* 28 days specified in SEPP47. In addition, there had been normal notification to residents and other interested parties to facilitate submissions to the Minister.

Environment Protection Authority (EPA) Licences In accordance with relevant legislation, RAS had the status of *scheduled premises*, and EPA licences had been granted in accordance with this classification. Compliance with these licences is reviewed by the EPA. These licences lapse when RAS vacates the site. Fox does not have the status of scheduled premises at present, and accordingly no EPA licences have been granted. The EPA did indicate that based upon information provided by Fox it was unlikely that there will be a requirement for EPA licensing.

Observation An application for scheduling is a matter for Fox to decide itself. If the premises are not scheduled then South Sydney Council will handle matters in respect of matters such as noise control.

Environmental Impact Statement (EIS) The development being undertaken by Fox is not classified as a *designated development* under EPA Act, and therefore an environmental impact statement is not legally required. However, a statement of environmental effects has been undertaken and forms part of the development consent conditions.

The receipt of the Commonwealth funding of \$7m towards site remediation was originally dependant on undertaking an EIS for the proposed Fox use of the site. However, following a determination by the Minister administering the Commonwealth *Environment Protection (Impact of Proposals) Act 1974*, the requirement for an EIS was removed. This was based upon the proposal proceeding subject to compliance with consent conditions imposed by the Minister for Urban Affairs and Planning consent conditions for the master plan.

10.5 Other Matters

CPMPT Involvement

CPMPT, in discussions with The Audit Office, indicated considerable dissatisfaction with their being excluded from most of the long range planning discussions for the site and negotiations with Fox. CPMPT did not have a close involvement because the Trust's representatives, the Chairman and the Director, declined to sign confidentiality agreements concerning the negotiations. Such an undertaking was seen to conflict with the obligations at law imposed under the Centennial Park and Moore Park Trust Act 1983.

As the future legal owner, and hence future landlord to Fox at the site, CPMPT advised The Audit Office that it was their feeling that they should have been included in the EC which assessed bids received in response to the EOI. It was specified in the EOI that CPMPT would be one of the members of the EC. However, they were not provided with the opportunity to participate in the EC assessment process.

CPMPT advised The Audit Office that they were also concerned that the terms of the lease with Fox did not reflect a range of matters which they would have sought if they had been involved with the negotiations. CPMPT currently has a number of small leases for operations on its property, and felt that the various principles and conditions which it seeks to impose on its lessees were not present in the lease to Fox.

CPMPT advised The Audit Office that in their view they felt that it, more than RAS or any other party, was closely interested in the small details of the arrangement, as they would be the ones involved with a close daily relationship with Fox. As such, they felt that they may have scrutinised matters more closely and critically, and imposed greater demands upon Fox.

Parking

One example of this, cited by CPMPT to The Audit Office, was parking arrangements. CPMPT believe that they have a good appreciation of these matters, and are not satisfied that the arrangements established with Fox for parking or that the areas general parking arrangements are optimal. As a result, CPMPT have recently made submissions seeking funds to construct additional parking facilities on their property in the area. (See the report of the special audit of the Eastern Distributor² for more information on this matter.)

² Audit Office of NSW Performance Audit Report Review of Eastern Distributor July 1997

Under DA 37/96 Fox will have car parking for 2,000. Parking in the Moore Park has been a problem for some time. Advice was received that there are presently about 150 major event days there. The RAS site was able to handle about 2,000 cars on these major event days. With Fox on site this parking will no longer be available. This will place pressure on Moore Park and Centennial Park and surrounding residential areas. The situation will be further exacerbated with the closure, under the CPMPT management plan, early in the next century of Moore Park for car parking.

Another potential problem with parking was that of support operations at the Hordern Pavilion. Issues of the logistics for accessing this parking, and its availability at times required, were raised by CPMPT with The Audit Office.

Observation

The general parking problem around Moore Park existed well before Fox came on the scene. DSRD did engage consultants to undertake a parking options study to meet the future needs for all uses in the Moore Park area. A copy of the December 1995 parking options study was provided to CPMPT. However, CPMPT advised The Audit Office that they considered this study to be superficial and accordingly CPMPT were undertaking a more detailed study.

11. Industry Assistance Agreement and Lease Obligations and Commitments

11.1 Introduction

This section comments on the legal obligations and commitments between the Government and Fox flowing from:

- the Fox Industry Assistance Showground Agreement (FIASA)
- the lease of the Sydney Showground for that portion of the site to be occupied by Fox.

11.2 FIASA

Government Negotiator

The negotiations for the establishment of a film studio complex at the Sydney Showground for the Government side was headed by the Premier's Department. The detailed legal substance of the matter was undertaken on behalf of the Government by the legal firm of Clayton Utz with input from CSO. Clayton Utz was engaged by the Premier's Department while DSRD retained the services of the CSO.

The execution in November 1995 of FIASA, and the associated leasing arrangements side letter, by Fox and the Government (via the Ministerial Corporation for Industry [MCI]) were the detailed products flowing from the negotiations undertaken between the respective parties for the establishment of a film studio complex at the Sydney Showground.

Advice was received that the compilation of the FIASA and the side letter which were satisfactory to both the Government and Fox was the result of a long and difficult process.

Key Obligations and Commitments

The key obligations and commitments of the Government and Fox to each other under the FIASA include the following:

Fox will:

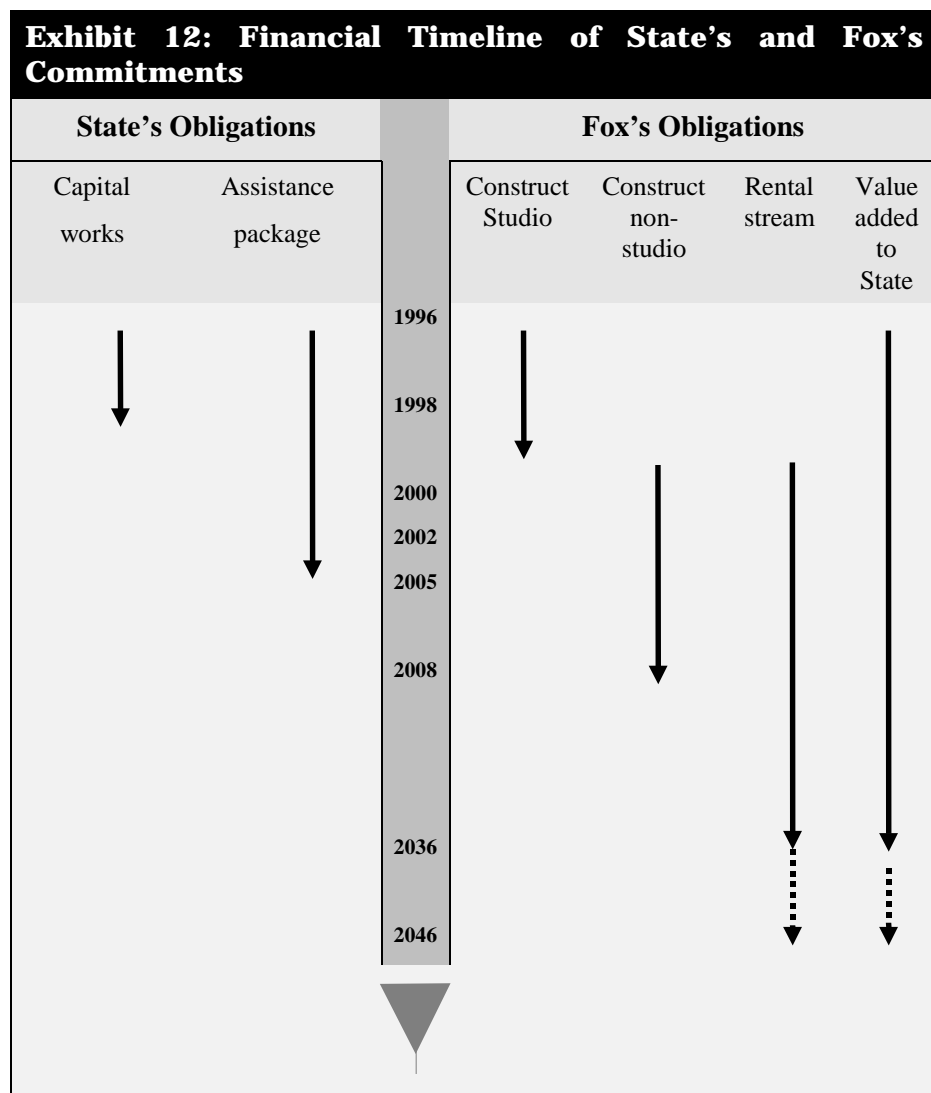
- construct various facilities
 - a film studio, a commercial entertainment facility and car park (\$121.6m in total)

- provide value by adding to the State's economy
(for example providing employment: 500 full-time equivalents by 2005, development of the film industry, use of goods and services derived from the State, etc.)
- have a studio area comprising:
 - 3 major sound stages as well as production facilities
 - at least 10 hectares (including the backlot)
- provide car parking for a minimum of 1,250 cars within the non studio area.
- perform the MCI works
- provide access to the studio use area to persons/parties other than Fox for use as a studio on arm-length commercial terms
- consider requests from MCI, up to a maximum of 5 times per year, to rent or provide access by community groups to the Fox site in conjunction with community use activities in the Hordern Pavilion and Royal Hall of Industries pavilions and/or the Stables site.

While the State will:

- Re-mediate the existing RAS facilities
 - building works, hydraulics, electric power, etc.
 - to a maximum contribution of \$31.4m
(funded by State \$24.4m and Commonwealth \$7m)
- Provide industry assistance to Fox
 - payroll tax, stamp duty, land tax
(up to an estimated \$7.6m in total).

A summary of the key items in the FIASA is contained in *Appendix 13.6* while Exhibit 12 gives a financial timeline associated with the respective parties obligations and commitments under the FIASA.



Source: FIASA

Note: The exhibit is for illustrative purposes only and has not been drawn to scale

Fox Industry Assistance

Fox is being provided industry assistance by MCI. MCI will meet a number of State taxes and charges. The details of this assistance and its actual and/or estimated costs are shown in Exhibit 13.

Exhibit 13: MCI Industry Assistance to Fox		
Assistance Type	Assistance Period	\$M
Payroll Tax - for employees of Fox and its related bodies corporate and productions using the Studio	8.5 years (1/1/1997 to 30/6/2005)	6.1
Stamp Duty - payable by Fox under the RAS/Fox lease and FIASA	Paid 10/96	0.3
Land Tax - payable under Fox Showground site leases	9.0 years (1/1/1997 to 30/12/2005)	1.2
	Total	7.6

Source: DSRD

**Conditions
Precedent**

The obligations and commitments of Fox and the State (through MCI) were subject to satisfaction of conditions precedent. Some of these conditions precedent were specified conditions precedent. These were subject to an indemnification payment by the State to Fox of up to a maximum of \$3.5m in the event of the FIASA being terminated. The conditions precedent and the Fox cost items that are included within the indemnification payment are detailed in *Appendix 13.7*. This creates another instance of risks being borne by the Government without corresponding risk being borne by the private sector. No specific provision exists for costs incurred by the Government in developing agreements with Fox to be reimbursed by Fox in the event that Fox had decided not to proceed with the project.

**Direct
Employment
Benefits**

The project aims to achieve in accordance with Clause 5.4(a) the direct employment effects in connection with the studio as shown in Exhibit 14.

Exhibit 14: Direct Employment Effects	
Financial Year	Minimum Number
1998-99	150
1999-2000	200
2000-01	300
2001-02	350
2002-03	400
2003-04	450
2005-06	500

Source: FIASA

There are no direct employment effects specified for the non studio area that is the family entertainment park.

Capital Expenditure Commitments

The capital expenditure is to be funded by Fox and third parties for \$68.6m and \$53m respectively within a stipulated timeframe in respect of the film studio and family entertainment complexes and the associated car park. Exhibit 15 details the expenditure amounts and the associated timeframes

Exhibit 15: FIASA Capital Works Expenditure Commitments and Timeframes					
Capital Works	Fox		Third Party		Total
	\$'000	Timeframe	\$'000	Timeframe	\$'000
<i>Studio Area</i>					
Studio	24,700	1/1/1996 to 30/9/1999			24,700
Backlot Facilities and Facades	4,000	1/1/1996 to 30/9/1999			4,000
Studio Tour Facilities	15,300	1/1/1996 to 30/9/1999			15,300
Studio Post Production Services			12,000	1/1/1996 to 30/9/2000	12,000
Total Studio Area	44,000		12,000		56,000
<i>Non Studio Area</i>					
Technology Upgrade, Repair and Maintenance	8,217	1/10/1999 to 30/9/2002			24,651
	8,217	1/10/2002 to 30/9/2005			
	8,217	1/10/2005 to 30/9/2008			
Family Entertainment Complex			41,000	1/1/1996 to 30/9/2000	41,000
Total Non Studio Area	24,651		41,000		65,651
Grand Total	68,651		53,000		121,651

Source: FIASA

Absence of Usage Performance Indicators

No performance indicators on usage or Australian content are stipulated in the FIASA. The monitoring and reporting of Fox production was a matter of particular concern to some groups in the Australian film industry.

Performance Criteria and Sanctions Fox performance criteria specified in the FIASA are shown in Exhibit 16.

Exhibit 16: Fox Performance Criteria and Sanctions

Performance Criteria	Sanction
Studio Area	
The studio use area must be used as a studio that is filmed entertainment and sound recording facilities and studios for the generation and recording of images and sound and the broken usage at any time cannot exceed 6 months	Upon MCI's request Fox will surrender the lease that is all the Studio and Non Studio area
The studio use area must comprise a ground area of at least 10 hectares as from 30 September 1998 or within 12 months of obtaining exclusive possession of studio use area and the broken usage at any time cannot exceed 6 months	Upon MCI's request Fox will surrender the lease that is all the Studio and Non Studio area
Fox must demonstrate a firm commitment to perform Capital Works within first 12 months of set time limits	FIASA terminated and upon MCI's request Fox will surrender the lease that is all the Studio and Non Studio area leased
Fox must expend on Capital Works an amount at least equal to specified amount and nature of expenditure and within the set expenditure time periods	FIASA terminated and upon MCI's request Fox will surrender the lease that is all the Studio and Non Studio area leased Cessation of industry assistance
Fox must use reasonable endeavours to achieve specified levels of employment in connection with the Studio in each financial year-refer Exhibit 18	Cessation of industry assistance
Fox is to provide access to the Studio Use Area and all facilities under the control of Fox to persons or bodies other than Fox on arm-length commercial terms	Cessation of industry assistance
Non Studio Area	
Part of the non studio area must be used for providing 1,250 car parking spaces and the broken usage at any time cannot exceed 6 months	Fox will nominate 2.5 hectares of the site that is studio and non area for surrender
The non studio use area excluding the car park must be used for the purposes of a family entertainment complex that is an entertainment complex for use by the general public (including restaurants, retail areas, cinemas, tours and attractions and any complementary, subsidiary or ancillary developments or facilities) and the broken usage at any time cannot exceed 6 months	Upon MCI's request Fox will surrender the Non Studio Area
Fox must demonstrate a firm commitment to perform Capital Works within first 12 months of set time limits	Upon MCI's request Fox will surrender the Non Studio Area
\$20m must be expended on the Non Studio Capital Works	Upon MCI's request Fox will surrender the Non Studio Area

Source: FIASA

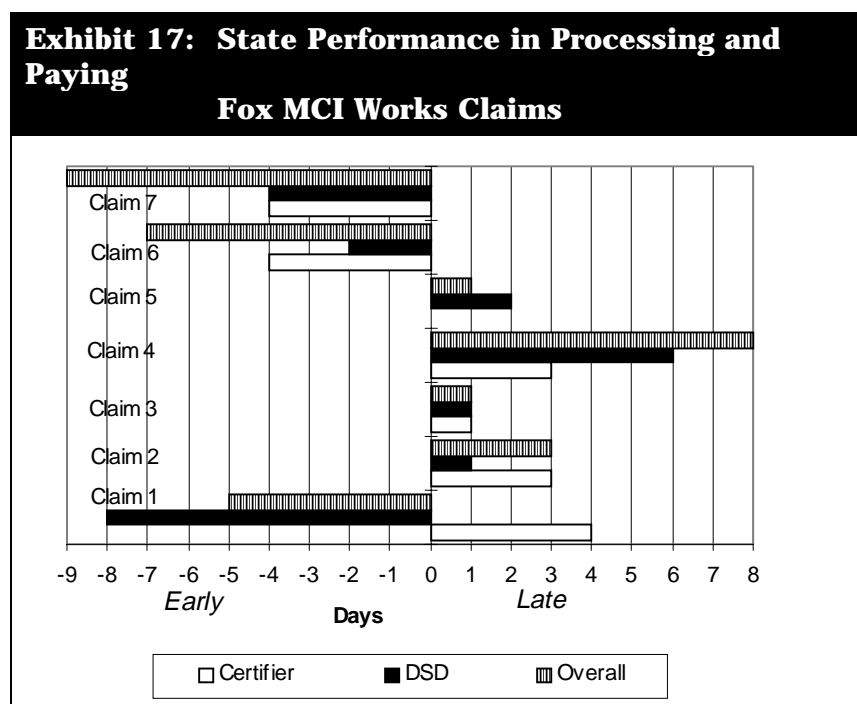
In accordance with FIASA clause 5.4(b) a nominated representative from Fox and MCI meet at least twice a year to discuss the achievement of Fox performance criteria.

Observations

Based upon the development applications submitted by Fox, it will exceed the minimum requirements as regards:

- sound stages (there being 6 sound stages, an increase of 3)
- the working studio park will be 11.6 hectares, 1.6 hectares above the minimum specified space
- car parking for 2,000 cars has been provided, an increase of 750.

The performance of the State in the certification and payment of Fox MCI works claims up to 4 November 1996 is shown in Exhibit 17.



Source: The Audit Office Analysis

The Government and Fox have publicly cited different employment figures associated with the Fox lease and with that specified in the FIASA. As mentioned earlier (refer Section 11.2 *Direct Employment Benefits*) the FIASA only indicates that in respect of the studio area the minimum full time employment number the project aims to achieve by 2005-06 is 500.

When the FIASA was executed in November 1995 the Government media announcement advised that the development will generate 1,600 direct and indirect jobs. Another Government pronouncement at the end of November 1995 cited the employment figure as being 6,000 jobs, which is the figure contained in the Kinhill report. This report (whose underlying premise was that there would be 3 sound stages), advised that there would be 1,200 film industry jobs and, because of a multiplier effect, 5,600 jobs in other industry sectors.

Fox cited publicly a maximum of 700 film production jobs, 300 entertainment complex jobs and, from a multiplier effect, 1,500 jobs in other industry sectors.

The Government had wished to include specific performance indicators on usage and Australian content. However, Fox gave no written guarantees, and provided only an oral commitment to seek to use the sound stage facilities as much as possible. In addition, the Chief Executive of News Corporation indicated to the Premier that the inclusion of binding production performance indicators would result in the project going to another State. Fox has, however, publicly stated that it expects to supply between 25-40% of the studio production undertaken at the Showground.

The Audit Office understands that similar debate and absence of written guarantees also occurred in Queensland when film studios were established there.

11.3 The Sydney Showground Lease

Key Points of the Lease

Under the Sydney Showground Lease, Fox is:

- the lessee for a period of 40 years commencing 23 April 1996 with an option to renew for a further period of 10 years
- to take the land and buildings in their existing condition and return them ultimately to the State (CPMPT) at the expiry of the lease, in a good state of repair
- responsible to maintain and preserve any heritage items
- responsible for all development costs and outgoings for the duration of the lease, including rates and taxes, repairs and maintenance costs, insurance (other than for heritage items)

- charged a base rent of \$2.5m for the non studio area as from 1 January 1999 (the non studio area is rent free until then)
- charged a turnover rent of up to 33% of the base rent
- charged no rent for the studio area
- charged rent of \$1 if the non-studio area is surrendered
- responsible for insurances other than that relating to heritage buildings
- unable, without prior written consent of the “landlord”, to sublease a substantial part of the premises or any part of the studio use area if the sublet part is more than 75% of the latter (a substantial part of the premises means in case of the studio use area, 2 or more hectares: for the non studio use area, subletting more than 50% of that area for use as a car park or more than 40% of that area for use other than a carpark).

Any new development would revert to the State (CPMPT) at the expiry of the lease.

Flowing from and/or as an adjunct to the lease the State is responsible for:

- relocating the RAS to a new Showground at Homebush Bay. The new site has an estimated net cost after a Commonwealth contribution is \$359m. This includes some \$32m for fast tracking the relocation (because of the Fox deal)
- demolishing the Suttor Stand because the site of the stand is to be vacant under the lease (although as recently announced Fox is incorporating the Stand in its facilities)
- as part of the co-location of Fox and RAS, providing temporary structures for the 1997 Royal Easter Show (\$2.1m) and the demolition of buildings in the Machinery Square and the removal of the bitumen covering of the area (\$0.9m). These temporary structures will be re-located to Homebush Bay.

- maintaining the Hordern Pavilion and Royal Hall of Industries site in good repair and condition, and to keep the area outside of the buildings in a clean and tidy state. (CPMPT has estimated costs of \$18.5m to cover various engineering works relating to those sites. This expenditure should improve CPMPT's ability to earn rental income from these buildings).
- insuring the heritage buildings (estimated cost is \$57,000 approximately per annum)
- compensating the RAS for any failure to meet contractual obligations for the relocation to Homebush, and underwriting RAS profits to a maximum of \$30m in the initial period of relocation at the new site.

Site Rental

As explained elsewhere, the rent payable by Fox has two components: one being a fixed component referred to as the Base Rent, initially from 1999 being \$2.5m per annum and adjusted periodically to reflect movements in the CPI and in market rent (rent is calculated on only 14.3 hectares of the 24.3 hectares leased). The other component, termed Turnover Rent, is based on 5% of revenue from tours by the public of the studio area and the sale of goods and services including car-parking in the non-studio area.

Under the Lease the Turnover Rent payable is not to exceed 33% of the Base Rent.

To the extent that the studio area exceeds 11.5 hectares, Fox will pay a proportionately adjusted Base Rent. Similarly, if Fox does not provide car-parking facilities on the Non-Studio site then 2.5 hectares will be surrendered, with a commensurate reduction in rent.

Rent Reviews

As from 1 January 2003 (and every eight years thereafter), the base rent for the following four year period is that determined by the Valuer-General as the market rent:

- assuming the studio area is not part of the site
- assuming the studio area does not exceed 10 hectares
- assuming that the use to which the non-studio area is put is the only use to which it may be put
- assuming that the site is not contaminated
- having regard to restrictions and obligations on the use of the non-studio area

- disregarding all of Fox's improvements (including the MCI works) to the site
- disregarding the goodwill created by Fox's business.

A further revision of the base rent will occur as from 1 January 2007 (and every eight years thereafter). The base rent will, for the following four year period, increase in line with the consumer price index to a maximum of 12% over the market rent determined by the Valuer-General for the previous four year period.

In simple terms this caps the CPI increase to less than 3% per annum during the first four-year period.

Early Cessation of Lease

Neither the Fox lease of the Sydney Showground or the FIASA make any provision for Fox

- to bear any cost associated with reconfiguring the site in the event of an early cessation of the site occupancy
- to receive compensation for buildings etc. left on the site.

11.4 Conclusion on Contractual Obligations etc

Contractual Obligations for Benefits to the State

Apart from the intended direct employment benefits associated with the studio mentioned earlier, the economic effects on New South Wales were not addressed within FIASA in a way which performance achievements can be monitored and if needed be actioned to attain them.

The cap on economic effects on New South Wales under the contract is most visibly demonstrated by FIASA Clause 2.3

Neither MCI or Fox will commence an action in any court of law for damages, specific performance or any other remedy arising out of any breach by any party of any provision of this clause 2.

(Clause 2 is the intentions of Fox and the Government which are detailed in *Appendix 13.6*).

However, a dispute resolution mechanism and process is contained in Clause 18 of the FIASA.

The Government's policy objectives for the lease has as its prime criterion economic development and "community benefits" for Sydney and NSW.

This is reflected in the agreement which outlines the intentions of the parties (Clause 2.2) and the access by the industry to the facilities (Clause 11). However, if the enunciated benefits are important to the State, then The Audit Office considers that it would not be unreasonable to have these secured in the agreement between the State and Fox.

This does not appear to be the case. In fact, there appear to be mechanisms that allow Fox to be released from a number of significant commitments:

- delivering any of the economic benefits or performing any of the other obligations in Clause 2.2 of the FIASA
- constructing the car park
- constructing the entertainment complex
- paying a market rent in the event that only the studio complex is pursued by Fox
- paying any damages for breach of contract or non-performance.

The consequences for Fox if it does not meet these is, in general terms, the loss of relevant land or ongoing industry assistance.

Because of the way the agreement has been constructed Fox, apart from its own investment, has minimal contractual incentive to continue fulfilling certain performance criteria once it has received the State's assistance package (valued up to \$7.6m) up to the year 2005. This is because the assistance:

- is not linked to ongoing performance by Fox of its obligations
- is paid at the initial phase of the contract period.

This does not imply that Fox would not continue to perform in terms of all performance criteria. However, the agreement has not provided the State with a strong contractual position.

But of greater concern is that the publicly acclaimed benefits of the project are limited to a pursuit on a 'best endeavours' basis. Given the extent of the Government's financial commitment to the project, the Government has accepted considerable risk about the return. In addition, there is no evidence that DSRD will monitor the economic benefits of the industry assistance.

Commercial considerations might restrain Fox from renouncing the project, but the agreement does not place the Government in a strong position should Fox decide to walk away from the facility at some future point. Should this happen, the agreement provides for no compensation to the Government other than taking over what would then be a non-commercial facility. This might impose a further cost burden on the Government to return the site to a suitable condition for whatever purposes were deemed best.

At least until Fox commits considerable resources to the site the agreement leaves much of the underlying risk with the Government and taxpayers, whilst much of the benefit lies with Fox.

12. Financial and Economic Aspects

12.1 Introduction

Legislative Council Resolution

The Resolution of the Legislative Council requested that the Auditor-General advise whether the terms and costs associated with the lease of the Moore Park Showground provide a fair and reasonable economic return for NSW taxpayers. A number of specific matters were proposed by the Legislative Council to be given attention in the Auditor-General's consideration of this issue, including:

- benefits to flow to the State
- costs to be borne by the State
- site rental.

These matters are addressed in this chapter. In this chapter fair and reasonable is taken to mean that the arrangements are effective in meeting the State's objectives and that the arrangements have been achieved economically.

Benefits to flow to the developer of the site are also considered in this Report, as part of the analysis of legal issues and contractual obligations (refer Chapter 11).

Legislative Limits

In assessing the financial and economic provisions of the lease, it is not open to the Auditor-General to question the merits of the Government's policy objectives. This is a requirement imposed by the *Public Finance and Audit Act 1983*. Debate upon such matters falls into the domain of Parliament, the media and the community.

Observation

It is open for the Auditor-General to consider the extent of achievement of the policy objectives set by Government, and to make related observations concerning costs and benefits flowing from actions taken in pursuit of the stated objectives.

Available Information

As discussed elsewhere in this Report, records and information relevant to this audit were fragmented between a range of agencies, difficult to obtain, and sometimes poorly organised. It was not possible to obtain adequate assurance that all relevant documents and information was available to The Audit Office. No one person appeared to have an understanding of the overall situation.

Observation

Were this a financial statements audit, an auditor would regard the relevant records as inadequate to form a reliable opinion. This situation contrasts with the level of documentation which was examined during another similar recent performance audit, concerning the *Sale of the State Office Block*³, where a significantly better situation regarding available records and information was encountered.

12.2 Government Policy Objectives

In considering financial and economic aspects, as a starting point The Audit Office sought to clarify the Government's policy objectives in relation to this matter, and its intended outcomes in terms of the financial and economic aspects of the lease. The Audit Office wrote to the responsible Minister for advice (the Treasurer and Minister for State and Regional Development). The Minister's response is reproduced in full at *Appendix 13.3*.

The Minister's reply reiterates various statements, previously recorded in Parliamentary Hansard, to the effect that the Government's objectives were not directed at simply securing the maximum possible economic return from the site. This is made very clear in statements such as the following:

... With regard to the Showground deal and the economic returns it will deliver to the taxpayers of New South Wales, I firstly remind the Opposition that the primary purpose of the showground proposal is not to maximise income from the disposal or lease of the site. I emphasise that this is not the purpose of the exercise.

... If the purpose of the showground proposal was merely to get the maximum number of dollars for its sale or lease, the Government would not be talking about film studios and related facilities at the showground. I can think of a dozen and one uses that would reap a much more significant number of dollars for the State of New South Wales.

... I am sure the Government could have got more money if it were prepared to lease the site for a regional shopping centre, or sell or lease it for high density housing, as the previous Government wanted to do at one stage.

... As I said the purpose of the showground proposal is not to maximise income from the disposal or lease of the site, but to secure the future of a strategic job-creating industry in New South Wales.

³ Audit Office of NSW Performance Audit Report Sale of the State Office Block, October 1996

In developing its policy objectives relating to use of the Showground, issues other than economic factors were equally prominent in the Government's purpose, such as:

- establishing a strategic position for Sydney in the Australian and international film production business
- retaining the essential characteristics of the site.

The essence of the Government's policy objective was to use Fox:

... to secure the future of a culturally significant, employment generating industry for the State of NSW.

12.3 Claimed Benefits Flowing to the State

Intentions of the Parties

Whilst the Government has clearly stated that maximising income from the site was not its objective, deriving significant economic benefits to the State is nonetheless a key feature in the Government's rationale for leasing the site in the manner it has.

To examine these matters The Audit Office considered the substance of the relevant agreements (namely the FIASA between the State and Fox, and site leases between the RAS and Fox), and various reports obtained by the Government providing analysis of benefits.

The intention of the parties is set out in Clause 2 of the FIASA. An extract of key items from the FIASA is provided at *Appendix 13.6*.

Whilst these intentions are formally stated, Clause 2 contains a number of key items relating to generating overall benefits for the State which are general in nature and/or which do not call for action by either the State or Fox. Presumably, it is assumed that benefits of the type desired will naturally flow from the activity being undertaken on the site. Other aspects of the clause secure Fox's intention to pursue certain actions (which will, presumably, lead to benefits for the State) such as:

- encouraging the development of the film industry in the State
- using goods and services produced, manufactured or provided in the State
- employing permanent residents of the State.

Clause 2 indicates that each party will use reasonable endeavours to achieve the objectives set out in the Agreement. It does not indicate how, when or if their achievement will be examined. Neither is there an indication of what liabilities, if any, might flow from a failure to secure such benefits, or at least to attempt reasonably to do so.

**Expert
Assessments**

Contracts and Agreements are chiefly legal documents, and as such are often more concerned with matters of process than with macro long term outcomes. The Audit Office thus sought to examine available studies, produced for the Government by experts, which expressed views on such outcome and benefit-based issues.

A study by Kinhill Engineers provided a favourable report, estimating that operation of three sound stage studios could generate additional film and television production in NSW of up to \$108m per annum which, with multiplier effects, would generate economic benefits of some \$241m per annum.

Observations

This result does not represent 'profit' and it does not consider the overall net economic effect. Costs to the State, costs to the community and costs to other businesses also need to be considered.

For example, one study conducted by the DSRD (which was generally supportive of the economics of the project), nevertheless observed:

... There are 48 other sound stages in the State which receive no government assistance. The economics of their operations will suffer if the proposed project goes ahead.

and continued:

However to some extent the proposed project represents a higher level of facility and the projects proponents claim that they will be increasing the size of the market by attracting filming that may otherwise be carried out overseas.

The study also observed:

that the existing industry is already suffering the effects of unfair competition from taxpayer subsidised film studios in Queensland, South Australia and Victoria.

Consideration of options or alternatives appeared fairly limited in assessments viewed by The Audit Office. For example, in one study conducted by DSRD, the only alternative considered was of converting the site to parkland. This is inconsistent with the approach adopted in a majority of State projects, where wide ranging economic effects (including environmental issues) are regularly considered in evaluating a project.

An officer advised The Audit Office that:

the range of uses (for the Showground site) considered was reasonable, but a detailed exhaustive examination had not been made as to what was the maximum use and a formal conclusion reached and documented.

The same officer advised that DSRD had never provided “a clear report on all options and costs”, despite repeated requests to do so. However, this is not inconsistent with the policy position advanced by the Minister (in Hansard) that:

The Government ... took the view, as a matter of policy ... that it wanted Fox studios on the site ...

Employment Generation

The generation of employment is a key factor in the overall economics. The Kinhill report estimated that additional annual production attracted or retained would generate approximately 1,200 film industry jobs and 5,600 jobs in other sectors (notably services 2,600, trade 1,300 and manufacturing 900). However, employment projections are open to various interpretations.

Observations

The Kinhill study quoted above was bullish on the effect of employment on the State’s economy. That analysis could overstate key aspects of benefit from the Fox development. A later report obtained by DSRD was considerably less bullish on the employment effects, although more bullish on the impact on gross domestic product (GDP).

In any economic analysis, the methodology and the construction of the so called “base case model” upon which projections are made are fundamental to the results produced by the analysis. A different set of assumptions and variables would produce a different result, and there is often considerable disagreements between professionals of the relative merits of different treatments. This makes it impossible to reach a definitive answer on such matters.

Significantly, the later economic evaluation obtained by DSRD indicated concern that, given the methodology of the earlier study, the results of the earlier study should have been much lower than those of the later analysis. The reverse was in fact the case.

Net Present Value

To derive a figure which can be used to assess the overall economic benefit of a project, and compare this with other options or other projects, raw annual figures of benefits created do not present the full picture. It is usual to undertake a process which seeks to add together gains, losses, benefits and costs over an extended period (usually ten years at least), and to convert this back to a figure in current dollar terms. This is referred to as Net Present Value (NPV). NPV can be computed for any form of project, and it can be computed for the project itself (which is of great interest to investors) and/or in macro terms (which considers overall impact on the economy [GDP]).

The economic appraisal by DSRD (which appraisal included more up to date figures than the Kinhill study) calculated the macro economic NPV of the proposal to be \$220m taken over ten years (ie not per annum).

The project-specific NPV (ie the NPV to the Government) was not computed in the DSRD study.

Observations

The Audit Office has undertaken an analysis of NPV to the Government for the Showground project. To do this, a range of costs from a wide variety of agencies have had to be assembled, with considerable difficulty. In many cases agencies could provide little information on costs they had incurred in connection with the project.

Using a real discount rate of 7% (as used by DSRD study), The Audit Office has calculated a likely negative NPV to the Government of between -\$84.8m and -\$106.8m⁴. The project is intended to provide positive economic benefit to the State as a whole, as the DSRD study indicated, but the agreement as structured does not provide an economic return to the State Government⁵. (This merely means that the State taxpayer is subsidising the beneficiaries of the gross Fox project. And the cost of the subsidy is less than the value of these benefits.)

The NPV to the Government can be varied to analyse the project in different ways. For example, considering the effect of different discount rates and breaking up the total costs into different financial components. The following table shows the results of varying these parameters.

Exhibit 18: NPV to the Government			
		With Maximum Turnover Rent \$m	With No Turnover Rent \$m
NPV Real Rate	4.00%	-93,765	-120,880
NPV-Real Rate	7.00%	-84,816	-106,827
NPV-Real Rate	10.00%	-79,750	-98,766

In October 1993 engineers Norman Disney Young (NDY) estimated the cost of repairing and maintaining the Showground site if occupied and used by the RAS until 2015. The report estimated costs at that time of \$84m, over 22 years, for the work on the Showground site related to:

- compliance with building ordinances and urgent repairs
- other repairs and future replacement; and
- preventative maintenance.

⁴ Assumptions underpinning this analysis are:

- because no revenue projections for the non-studio area were able to be obtained, calculations have been made on the basis that the maximum turnover rent is payable.
- that the lease will continue until 2046
- The Valuer-General estimated a rental for the whole site, with SEPP 47 in place but without the MCI works as \$2.9m to \$3.3m pa. The midpoint of this rental range has been used (\$3.1m).
- Market rental escalation of 4% pa at the commencement of each eight year period with a 12% CPI adjustment midway through that period.

⁵ Project-specific NPV was prepared by The Audit Office for another major project in 1995, the M2 Motorway (recently operational). In that case NPV was calculated to be around \$+92m.

Some parties may be inclined to consider that the development of the Showground site into a film studio has prevented the need for monies to be spent on the site for the continued use of the RAS. The Audit Office urges caution to those who would draw this conclusion. The many variables that may have interacted if the site was not developed into a film studio complex cannot be readily determined. Accordingly, assessment of the financial consequences of the film studio development should be only of the basis of costs and revenues directly attributable to that development.

If this were a commercial venture on the part of the Government, this negative NPV result would be insufficient to justify the project. There are also other risks and long term liabilities (discussed elsewhere) which fall to the Government, adding even further actual and potential financial liabilities to the State.

The NPV cost to the Government represents the premium which the Government has agreed to bear in achieving its stated policy objective to lease the site to Fox “to secure the future of a strategic job-creating industry in NSW”.

A factor in the Government’s decision may have been the findings of the 1993 NDY Showground dilapidation report, which showed that existing Showground facilities, including those now leased to Fox, required repairs and maintenance estimated then to cost \$84m. However, as commented upon elsewhere in the report, costs to establish the RAS at the new site are far greater than this amount.

The net financial result for Fox is not known to The Audit Office. However, it can reasonably be assumed that the results would have to exceed an investment hurdle rate established by Fox (generally considered as the minimum rate of return required from a project, having regard to the cost of debt and equity capital) if it is to serve its stockholders.

Public statements by a Fox official have indicated that most of Fox’s revenue will flow from the entertainment park of the development, not the film studios. The official also commented that the film studio would not be viable without the entertainment operations, and that in the order of 80% of the total revenue was expected to come from the entertainment facilities.

12.4 Costs to be Borne by the State Budget

12.4.1 Summary of Costs

Types of Costs Costs to be borne by the State in connection with the lease of the Sydney Showground to Fox can be divided into several categories:

- Financial Assistance to Fox
- Costs Associated with Implementing the Lease
- Legal and Other Costs Incurred by Government Agencies.

In addition, although not of direct relevance to the deal with Fox, there are significant costs to the State associated with relocating the RAS to its new venue, constructing facilities required by them there, and underwriting their viability at the new site.

Available Information The Audit Office has not been able to establish to its satisfaction that all relevant costs have been identified and disclosed. Considerable time and effort has been expended in an attempt to inform Parliament of as many factors as possible.

However, the legal, contractual and administrative documentation associated with the matter is massive, and cost-related items are scattered throughout it. Extensive examination of documentation has been required, and even then it is not certain that all relevant documentation has been sighted. A breakdown of costs identified, by agency, is provided at *Appendix 13.8*.

Observations A large number of agencies were formally approached by The Audit Office to identify costs which they may have incurred that were relevant to the matter. A number of agencies advised that they were unable to identify from their records specific information relating to costs for work connected with the Fox deal and subsequent actions flowing from it.

A further complication is presented because costs relating to establishing RAS at its new site are enmeshed with costs relating to Olympic developments.

On one counting, costs to be met by the State amount to between \$91m and \$109m⁶ depending on the treatment of Hordern Pavilion and Royal Hall of Industries, with contingency costs of \$31.5m, as follows:

INDUSTRY ASSISTANCE

MCI Works (net of Commonwealth contribution)	\$24.4m
Payroll Tax	\$ 6.1m
Land Tax	\$ 1.2m
Stamp Duty	\$ 0.3m

LEASE COSTS

Rent Discount	\$18.1m
Hordern Pavilion, Royal Hall of Industries	\$18.5m
RAS Co-location	\$ 5.1m
Accelerated RAS Relocation	\$32.0m
Insurance of Heritage Buildings	\$ 1.0m

OTHER COSTS

Staff Costs	\$0.6m
Legal and Technical Advice	\$1.9m

TOTAL **\$109.2m**

A contingent cost of \$31.5m may be payable in the respect of the guarantee of RAS profits at Homebush and a claim for damages, refer Section 12.4.6 *Contingent Costs* for details.

Brief details of what these costs involve follows.

⁶ However, significant further costs and liabilities could also be considered as part of the overall costs. See comments regarding RAS relocation later.

12.4.2 Financial Assistance to Fox

MCI Works

Fox must carry out and complete various engineering works (referred to as the “MCI works”) to bring buildings and the site to an acceptable commercial standard. These works also include building works to the extent of making them safe and structurally sound but appear to exclude works of an unnecessary aesthetic nature or any fitout or redesign or refurbishment specifically for Fox’s purposes.

Exhibit 19: MCI Works	
Works Component	\$’000
Close Circuit TV Sewer Inspection	338
Roof Replacement and Asbestos Removal	1,213
Dust Monitoring	15
Relining Diversion and Gross Pollutant Trap Package	1,646
General Building and External Repairs	11,455
Site Infrastructure	9,625
Contingencies	1,450
Project Supervision	2,597
Insurance	113
Consultants	2,918
Total	31,370

Source: DSRD

The MCI Works must be performed by Fox and the entity called MCI (the Government) must pay Fox the first \$31.4m (originally the amount was \$32m but this was reduced by \$0.6m) for the cost of these works. The Commonwealth has contributed its \$7m to the State.

Payroll Tax

The MCI must pay payroll tax for employees engaged by Fox, its related bodies corporate and others in connection with the use of the Studio for film production for the period from 1 January 1997 to 30 June 2005 of up to \$6.1m, estimated by the Department of State and Regional Development at \$5.4m.

Land Tax

MCI will pay on behalf of Fox any land tax payable under the leases until 31 December 2005. The Department of State and Regional Development estimates that this will cost \$1.2m.

Stamp Duty

MCI will pay on behalf of Fox any stamp duty payable under the RAS Leases and the Assistance Agreement. This amounted to \$326,467, paid in October 1996.

12.4.3 Lease Costs

Rent Discount	The DSRD study (refer Section 12.2 <i>Claimed Benefits Flowing to the State</i>) indicates that a lease at below market rental was amongst the assistance that Fox was seeking. The rental of the site was discussed in Section 11.3 <i>Site Rental</i> . The Audit Office estimates that the NPV of the rental discount for the site, including rent free period, amounts to \$18.1m, based upon the rent as expressed in the Lease. (refer Exhibit 21 for further illustration and comment on the rent discount).
Hordern Pavilion, Royal Hall of Industries and Stables	The Lease requires that the Lessor, effectively CPMPT, maintain the Hordern Pavilion and Royal Hall of Industries site in good repair and condition, and to keep the area outside of the buildings in a clean and tidy state. (CPMPT has estimated the various engineering works relating to these sites will involve costs of roundly \$18.5m. These will presumably offset higher income than otherwise from the rest of these buildings.)
Co-location Costs	The co-location of RAS and Fox for the period of the 1997 Royal Easter Show required the demolition of buildings in Machinery Square, the bitumen covering of the area and the erection of temporary structures, at a cost of approximately \$3m. The temporary structures, also required to allow co-location, cost \$2.1m and will be re-located at Homebush Bay.
Insurance of Heritage Buildings	The lessor must insure the heritage buildings. It is understood that the cost of this insurance is approximately \$57,000 per year. This equates to a net present of \$800,000 to \$1.2m, say \$1.0m for the period of the lease.

12.4.4 Other Costs

Staff Costs	Some agencies with involvement in the arrangement were unable to estimate the extent to which staff had spent time on the project, or did not respond to the requests for information by The Audit Office. It is likely that, for Premier's Department in particular, these staff costs would be significant. The total amount for agencies that did estimate staff costs was \$566,552 (refer <i>Appendix 13.8</i>).
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Legal and Technical Advice Agencies estimate that legal costs relating to the project amounted to \$775,066 and technical advice amounted to \$688,904 (refer *Appendix 13.8*).

12.4.5 RAS Costs at Homebush

Accelerated RAS Relocation Costs to relocate the RAS from the Moore Park Showground to a new site at Homebush (the Olympics site) are considerable, and are directly necessary if the Showground is to be leased to Fox. Costs considered here are due to the acceleration of the RAS leaving the Moore Park site due to the Fox deal, and not the Olympics.

Before the Fox deal was conceived, the Government had received a report detailing costs which would be required to renovate the dilapidated facilities at the Moore Park Showground. Costs in the vicinity of \$84m were estimated in 1993 by NDY (covering some 11,500 items, including \$32m worth of preventative maintenance). The significance of these costs was a factor in considering alternate uses of the site. However, costs to relocate RAS are even greater.

Whilst the intention that RAS would move to Homebush Bay arose prior to the Fox deal, the effect of the deal has been to hasten the RAS relocation. It is estimated that additional costs of accelerating the move of the RAS arising from the Fox deal are some \$32m. This represents cost penalties for construction being accelerated.

OCA has advised that establishing RAS at Homebush is budgeted to cost \$384m in 1996-97 dollars. The Commonwealth Government will contribute \$25m towards this. However, the proportion of costs which can be attributed to RAS is difficult to determine, because some of the facilities constructed under this project will be used for Olympic Games purposes. For example, the RAS Showring will be used for baseball during and after the Olympic Games.

12.4.6 Contingent Costs

Other Costs

The Crown Solicitor's Office has advised that Sydney Showground Markets Pty Limited (SSM) has claimed damages for loss of \$1.5m, resulting from an alleged lease between the RAS and SSM not proceeding as envisaged by SSM due to action by the State. The Supreme Court has twice struck out SSM's proceedings.

Under the Lease, RAS must leave the Moore Park site. The Olympic Co-ordination Authority (OCA) must compensate RAS if the net operating surplus of the RAS falls below certain levels, during the period of relocation of the Royal Easter Show from the Moore Park to Homebush Bay. This period is specified as four consecutive financial years, the last year ending on 30 September 2000. The maximum value of compensation payable by OCA over the four years is \$30m. If the net operating surplus of the RAS exceeds specified levels then no compensation is payable by OCA. Further, if compensation is payable in one year, it may be reduced, if during another year RAS surpluses exceed specified amounts.

12.5 Site Rental

Turnover Rent

From 1 January 1999 turnover rent is payable to the extent it exceeds the minimum rent, and is capped at 33% of the basic rent. Turnover rent is based on 5% of revenue derived by Fox from tours by the public of the studio area and the sale of goods and service, including car-parking, in the non-studio area.

No relevant revenue projections for this component have been obtained to date, and a likely rental income stream cannot be estimated. However, total rent might be in the range of \$2.5m per annum (with no turnover rent) to \$3.3m per annum (maximum rent cap).

Because The Audit Office has been unable to obtain estimates of Fox's future revenues it is unable to comment whether the rental cap adversely affects the State's commercial position.

BZW Review Because the rental arrangement is based, in part, on turnover at the site, BZW⁷ described it as “an improvement” on a previous arrangement (which they had earlier described as “for the non-studio site to be within reasonable commercial parameters having regard to the transaction as a whole”).

An independent valuation obtained by BZW (apparently in 1995), based on the proposed permitted usage, indicated an approximate rental value for the studio area of \$1.3m per annum, and \$2m per annum for the non-studio site. In total, this amount is at the top of the range payable under the lease in 1999, but it is unclear whether or not the BZW valuation considered the effect on rentals of carrying out the MCI works (which if included, would increase the rental value).

Valuer-General’s Review The Valuer-General was engaged by The Audit Office to provide advice on the rental value of the site, in line with the aspects requested by the Legislative Council Resolution. The Valuer-General’s Office provided to The Audit Office valuations⁸ of:

- the Sydney Showground site (“Showground”)
- that part of the site leased to Fox (“Fox part”)
- that part of the site not leased to Fox (“non-Fox part”).

⁷ engaged by the Government to carry out a review of the proposed rental arrangement.

⁸ on the following bases:

1: Zoned 6(b) Recreation (Restricted Access) under the City of Sydney prescribed Planning Scheme, and in existing condition: “As Showground without MCI Works”.

2: Zoned 6(b) Recreation (Restricted Access)) under the City of Sydney prescribed Planning Scheme, and including the MCI Works: “As Showground with MCI Works”.

3: With regard to the provisions of the State Environmental Planning Policy No. 47 and with rezoning and development application approvals for usage and subdivision in place, and in existing condition: “SEPP 47 without MCI Works”.

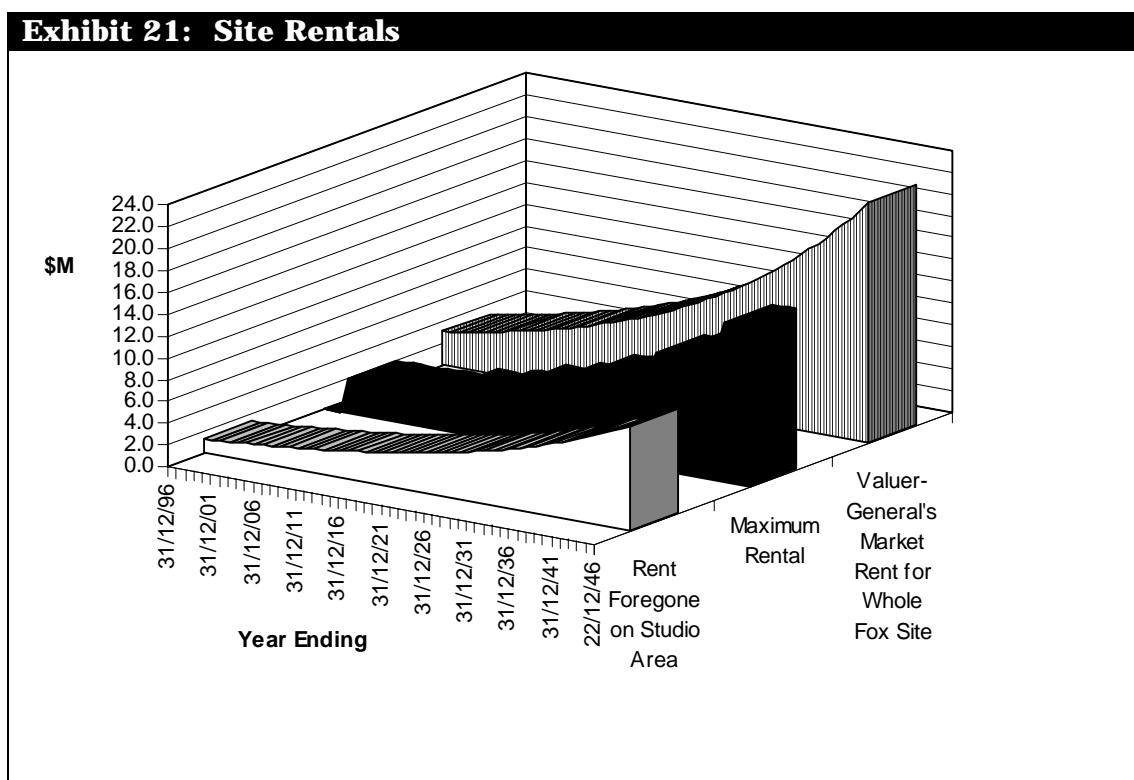
4: With regard to the provisions of the State Environmental Planning Policy No. 47 and with rezoning and development application approvals for usage and subdivision in place, and including the MCI Works: “SEPP 47 with MCI Works”.

Observations The table below summarises these valuations.

Exhibit 20: Valuer-General's Valuations			
Valuation Base	Part	Capital Valuation	Rental Assessment (\$pa net)
Showground without MCI works	Showground	23.1m - 26.5m	1.9m
	Fox part	13.7m	1.1m
	non Fox part	9.1m - 10.5m	0.7m
Showground with MCI works	Showground	34.1m - 39m	2.7m
	Fox part	25m - 28.6m	2m
	non Fox part	9.1m - 10.5m	0.7m
SEPP 47 without MCI works	Showground	45.8m	3.2m - 3.7m
	Fox part	41m	2.9m - 3.3m
	non-Fox part	6m	0.4m - 0.5m
SEPP 47 with MCI works	Showground	65m	4.5m - 5.2m
	Fox part	52m	3.7m - 4m
	non-Fox part	14m	1m - 1.1m
As a residential redevelopment site	Showground	80m	Note ⁹
	Fox part	70m	Note 9
	non-Fox part	11.4m	Note 9

The Valuer-General advised that, with SEPP 47 in place and in existing condition, the estimated rental for that part of the site to be leased to Fox was in the range of \$2.9m to \$3.3m per annum.

⁹The Valuer- General advised that due to the unique character of the site, assumed to be vacant and having residential development, its rental value for a long term lease would be best expressed as an up-front payment. In cases where outstanding sites have been sold on a long-term lease basis such payments often equate to freehold value.



Source: The Audit Office Analysis

Exhibit 21 compares the market rental for the whole Fox site, based on information provided by the Valuer-General, with rental amounts payable under the Lease. The exhibit highlights that Fox has received industry assistance in the form of a rent discount through no rent being payable for the studio area.

12.6 Accounting Treatment

Accounting Treatments

In carrying out this audit, The Audit Office has not become aware of any explicit attempts by the Government (at an agency or central agency level) to consider how this project would be reflected in the State’s accounts. This is despite the fact that some agencies are probably affected during the present reporting period.

Observation Without attempting to anticipate the proposed disclosure in the State's accounts, aspects of the arrangements which will be important in this regard will include the:

- lease agreement (and corresponding rent) with Fox
- State's reversionary interest in the land improvements
- cost of relocating RAS
- non-binding nature of Fox's obligations.

A lease of the type employed here might effectively amount to a sale, at least in terms of accounting treatment for the transaction.

In this regard, The Audit Office has not yet commenced (although there is an intention of conducting) an examination of the overall arrangements as part of its ongoing financial audit activities, with a view to arriving at an opinion.

13. Appendices

13.1 The Audit Process

13.1.1 Audit Objectives

Overall Audit Objective

Upon receipt of the Legislative Council request a performance audit was initiated. The overall audit objective was:

to evaluate the efficiency, effectiveness of proposed arrangements to lease the Sydney Showground , and to assess compliance with probity and regularity requirements in the process relating to the proposed lease.

Audit Sub-objectives

Sub-objectives for the performance audit were established in the following terms:

- *to determine whether the terms of the proposal to lease the site provide a fair and reasonable economic return for NSW taxpayers; and*
- *to determine whether the leasing process has been administered with due regard to probity and in accordance with current Government policy in relation to procurement and disposal of assets.*

13.1.2 Audit Approach

The audit approach adopted to form an opinion on the key matters identified by the audit was to:

- compile models of better practice for:
 - the disposal of assets by sale/lease

The disposal model was primarily developed from:

⇒ The Audit Office of NSW Performance Audit Report - Sale of the State Office Block, October 1996. This audit had compiled best practice guidelines drawing mainly upon “best practice” guidelines developed by the Australian National Audit Office (1993) and ICAC’s “Contracting for Services: The Probity Perspective” (1995)

⇒ Premier’s Department - Competitive Tendering and Contracting Out (1991), Procurement and Disposal Guidelines (1995)

- ⇒ Public Works and Services - Code of Practice for the Construction Industry (1996), Capital Project Procurement Manual (1993), Private Sector Participation Guidelines (1992) and Public Works Contracts Manual (1994)
- ⇒ State Development - Guidelines for Private Sector Participation in Infrastructure Provision (1990)
- ⇒ Treasury - Treasurer's Directions.

□ probity auditing

The probity audit model was developed from:

- ⇒ ICAC's draft paper of August 1996 "The Do's and Don'ts of Using a Probity Auditor"
- ⇒ Premier's Department Guidelines for the Engagement and Use of Consultants (1990 and 1996)
- ⇒ The Audit Office own experience of being a probity auditor.¹⁰

- compare the processes and practices in the lease of the Sydney Showground with The Audit Office models of better practice
- review various consultancy reports on the economic benefits flowing from film studios being established through the lease and development of the Sydney Showground site
- review of written representations by the probity auditor and the involvement of the probity auditor
- review legal opinions on the ability to lease the Sydney Showground site
- review reports on the value of the site and the associated site rental

¹⁰ Audit Office of NSW Performance Audit Report State Rail Authority - Tangara Contract Finalisation, November 1996

- review the Fox Industry Assistance Showground Agreement and the Sydney Showground Lease to understand the substance of these documents as regards:
 - ⇒ what are the obligations of the State and Fox to each other
 - ⇒ what are the anticipated outcomes from this agreement
 - ⇒ how binding are these obligations upon each party
 - ⇒ the financial aspects of the project.
- engage the Valuer-General to provide valuations of site having regard to the Legislative Council's request and the highest and best use value for the Sydney Showground site
- establish the legal requirements for the lodgement of development applications and check compliance therewith.

Call for Documents

To facilitate the conduct of the audit a call for documents was made. Volume Two of the Auditor-General's Report to Parliament for 1996 (page 123) comments on:

- the attempts to gain access to relevant documents as wide, and as far back, as would be reasonably necessary to address the audit's objectives
- the reasons why the Auditor-General at that point in time did not persist further with the issue of access to all relevant documents.

In summary, there was a severe limitation on the scope of the audit which precluded The Audit Office producing a meaningful report at that time or indeed to comply with the Legislative Council's request for a report on this matter by 17 September 1996. Accordingly the audit was postponed until such time as the necessary documentation could be provided without the possibility of prejudicing negotiations between the Government and other parties. The Legislative Council extended the date for submission of the report to 17 November 1996.

The Sydney Showground lease was executed on 27 September 1996. On 4 October 1996 the Government advised that The Audit Office could access commercial in confidence documents which had been previously withheld. Conditional access was also granted to Cabinet papers and documents subject to legal and professional privilege. Following discussion of the nature of the conditions of use the Government advised on 24 October 1996 that all documents relevant to the audit would be available to The Audit Office.

Suitable arrangements were made by DSRD in early November 1996 to facilitate access to the documents by The Audit Office and the audit recommenced in earnest. The President of the Legislative Council and the Speaker of the Legislative Assembly were kept informed of the audit of the lease of Sydney Showground site and the reporting date (the Auditor-General corresponded on 20 August 1996, 13 and 15 November 1996 respectively and 25 March 1997). In the course of the audit The Audit Office also accessed documents held by the Film and Television Office, Ministry for the Arts, and the Premier's Department.

Reporting Date	As mentioned <i>Appendix 13.1 Call for Documents</i> the Legislative Council requested that the Auditor-General report to Parliament by 17 September 1996. However, this was amended to 17 November 1996. There has been no further motions or notices by the Legislative Council to amend the reporting date. The Auditor-General has kept the President of the Legislative Council and the Speaker of the Legislative Assembly informed of the audit of the lease of Sydney Showground site and the reporting date.
Correspondence Received and Discussion with Member for Bligh	Direct correspondence was received from the Member for Bligh by The Audit Office. The Audit Office also met with the Member for Bligh who had requested prior to the Legislative Council resolution that the Auditor-General investigate the Lease of the Showground.
Discussion with ICAC	The Audit Office met with Commission officers to discuss the investigation undertaken by ICAC into the lease of the Sydney Showground. Discussion centred around matters arising from the investigation and the extent of ICAC enquires so that review work was not duplicated.
Correspondence Received and Discussion with Resident and/or Community Groups	The Audit Office received direct correspondence from a number of resident/community groups. In addition, The Audit Office met with these resident/community groups so that the groups had the opportunity to orally outline their views, ensuring that their views on the lease and development of the Showground were fully and properly understood by The Audit Office.
Discussions with Key Officials	During the course of the audit, The Audit Office also held discussions with a range of persons/organisations.

13.2 Four Specific Heads of Complaint Investigated by ICAC - Lease of the Sydney Showground Site

1. The bypassing by the State Government of the processes and procedures established to ensure accountability, probity and public protection and benefit.
2. The implementation of the proposed lease against the spirit and intent of an Act of Parliament.
3. The apparent conflict of interest when the Chairman and Chief Executive of the Company negotiating the lease is also an Executive Committee Member of the Organisation which is the prospective lessor.
4. The assurance that public property is not being used for the commercial advantage of a private company to benefit a political party and to the detriment of the public interest.

13.3 Government's Policy Objectives in Leasing and Development of the Sydney Showground Site

I refer to your letter dated 25 July regarding the Government's policy objectives in leasing the Sydney Showground to Fox Studios Australia.

In my role as Minister for State and Regional Development I am committed to the growth of strategic industries where this leads to economic development through the generation of new investment and jobs in NSW.

With regard to the proposed Sydney Showground development, independent reports prepared by Kinhill, KPMG and Norman Disney Young noted a number of points:

Firstly, that even though NSW has the largest share of Australia's film and television industry, it is still in desperate need of a large film studio complex if it is to grow, or at least keep pace with other Australian States, especially Victoria and Queensland. The creation of a film studio of international standard would provide a much needed boost to this industry.

Secondly, the Showground was an ideal location for such a film studio development.

Thirdly, the development of a world class film studio in Sydney would bring substantial economic, employment and cultural benefits to NSW. The Kinhill Group estimated that a three sound stage studio (smaller than Fox's six) would generate \$241m p.a. of economic activity throughout the State. With regard to employment, Kinhill stated that a film studio of this size would create 1,200 industry jobs and another 5,600 jobs in other sectors.

Over the last year and a half I have outlined in Parliament, in the press and to the ICAC the Government's primary policy objective with regard to the Showground proposal. Our objective is not to maximise income from the disposal or lease of the site, which could easily be achieved by its sale as medium density housing, but to secure the future of a culturally significant, employment generating industry for the State of NSW.

Prior the March 25 1995 State election I was quoted in the Sydney Morning Herald (21/3/95):

“a new sound stage complex could inject \$100 m a year into the NSW economy and ... Labor would embrace the \$20 m initial investment for the new complex”.

“We would be negotiating with them ... to have one of the world’s largest film producers wanting to use Sydney as their South-East Asian base”.

In Parliament on November 22 1995, I stated that:

“The Government has never regarded the showground site as simply a vacant site to be disposed of by lease or sale to the highest bidder. The Government regards the site as very important for Sydney and its overriding objectives are to win a major slice of the world’s film-making industry for Sydney, for New South Wales and for Australia - with immense social, cultural and economic benefits, as I have indicated to the House on previous occasions.”

And in Parliament on June 19 1996, in response to Opposition requests that the Auditor-General examine the Showground Lease:

“With regard to the Showground deal and the economic returns it will deliver to the taxpayers of New South Wales, I firstly remind the Opposition that the primary purpose of the showground proposal is not to maximise income from the disposal or lease of the site. I emphasise that this is not the purpose of the exercise. The purpose of the exercise is to secure the future of a strategic job-creating industry in New South Wales and to find a first-class use for a fabulous first-class site. If the purpose of the showground proposal was merely to get the maximum number of dollars for its sale or lease, the Government would not be talking about film studios and related facilities at the showground.

I can think of a dozen and one uses that would reap a much more significant number of dollars for the State of New South Wales. That is not the purpose; the major purpose is to make sure that a magnificent new industry is located in Sydney, an industry that will create enormous opportunities for talented young Australians and will be an enormous economic boost to the city and to the State. What is more it will make Sydney the second biggest English-speaking film-making location in the world. That is the name of the exercise, and that is what the previous Government was attempting to do. It was unable to do so; it was unable to deliver the deal.”

“The other consideration was to make sure that this significant, indeed historic, site that everyone knows as the showground has a first class use. I am sure the Government could have got more money if it were prepared to lease the site for a regional shopping centre, or sell or lease it for high density housing, as the previous Government wanted to do at one stage.

The Government could have got a lot more money but it took the view, as a matter of policy which was announced well before the last election, that it wanted Fox studios on the site and wanted the site to retain all of the essential characteristics of the existing showground site: a site that the public could visit; a site where worthwhile economic activities were taking place; and a site with an industry that the whole of Sydney and New South Wales could be proud of. As I said the purpose of the showground proposal is not to maximise income from the disposal or lease of the site, but to secure the future of a strategic job-creating industry in New South Wales.”

This has been the consistent objective of the Government with regard to the development of a film studio at the showground.

I trust this information helps in your audit of the Sydney Showground

Signed

MICHAEL EGAN
MINISTER FOR STATE & REGIONAL DEVELOPMENT
Date: 26 September 1996

13.4 Weighted Assessment Criteria Used by Evaluation Committee

Weighted Assessment Criteria	Weighting Factor
1. The film studio complex commercially viable	8
2. The facilities available for use by local film makers and industry users	8
3. Heritage aspects appropriately addressed	8
4. The requirements of the RAS accommodated	10
5. The development designed and operated in sympathy with other Showground uses and the amenity of the surrounding neighbourhood.	8
6. All car parking for the use of the development contained on site	8
7. Environmental protection of the site appropriately addressed	9
8. Public access and associated leisure activities and facilities may be considered	7
9. A minimum of three sound stages included within the film studio complex	10
10. The development results in “no cost” to the Crown, either in an actual or underwriting sense and provides a suitable financial return to the Crown.	8
11. The development contained within the indicated site boundaries; some flexibility may be possible within the overall Showground area.	5
12. Limited public access incorporated	7
13. Co-location of local production, post production and other film related activities on the site	6
14. The use of public transport in gaining access to the complex encouraged	2
15. The utilisation of existing operators within the film and television industry in NSW in the development and operation of the complex	6
16. Name of respondent including company details, contact person, address, telephone and facsimile numbers	10
17. Background and relevant experience of respondents including the development and operation of film studio complexes	10
18. Financial capacity of respondent to proceed with proposed development	10
19. Outline business plan of proposed development including, descriptive information with conceptual plans, indicative scope of works, program and budget estimate, together with financial return to the Crown	5
20. Nature of proposed film studio operations	8
21. Indication of level of rental payable, including review mechanism, for duration of the lease	1

22. Preferred timeframe for undertaking development and commencing operations and payment of rental	1
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13.5 SEPP 47 Aims and Objectives

SEPP47 aims to:-

- (a) enable the redevelopment of the Moore Park Showground in a manner that is consistent with its status as an area of importance for state and regional planning in New South Wales
- (b) improve and enhance the cultural and recreational facilities of Sydney for New South Wales by furthering the development of Sydney as a world class film, television and video production centre
- (c) recognise the state significance of a film and television studio on the Moore Park Showground in terms of employment generation and additional revenue for the state
- (d) allow a range of film, television, video and related development, commercial uses associated with the film, television and video industry and other entertainment, recreational and educational activities on the Moore Park Showground
- (e) ensure that a range of impacts is considered by the consent authority in determining development applications
- (f) ensure that community and equestrian uses can continue on parts of the Moore Park Showground and that provision is made for public access
- (g) to recognise the heritage significance of the Moore Park Showground and protect any archaeological relics.

13.6 Summary of Key Items in the FIASA

1. Objectives of the project (as per Clause 2.1):
 - (a) to establish and operate in Sydney at the Fox site for the term a major range of sound stages and production facilities of the highest international standards for the production of film, television and multimedia products and for the general enhancement of the Australian film, television and related cultural activities industries for the purposes of fulfilling the intentions of the parties; and
 - (b) to develop and use the non-studio area as a family entertainment complex and as car parking facilities for that number of car parking spaces as are required to service the general public visiting the Fox site as set out in the initial development consent, during the term, in accordance with the provisions of this Assistance Agreement.
2. Intentions of the parties include that (as per Clause 2.2):
 - (a) the project will establish a world class sound stage and production facility for use not only by Fox but generally by the film, television and related industries in the State
 - (b) three major sound stages, as well as production facilities, on the Fox site will be in commercial operation from no later than 30 June 1998
 - (c) the remainder of the studio complex (other than those facilities referred to above) on the Fox site will be in commercial operation by no later than 30 June 2003
 - (d) the use of the complex on the Fox site, in particular the studio, will foster the State's film, television and related industries and will enhance the quality and quantity of productions in the State as well as the national and international reputation of the State as a propitious and fertile centre for film and television industries

- (e) MCI will provide assistance to the film, television and related industries and will facilitate the provision by Fox of the infrastructure of sound stages production, post production and related activities, all on the terms contemplated by the Assistance Agreement
- (f) each party will use reasonable endeavours to achieve the objectives set out above
- (g) Fox will encourage the development of the industry in the State
- (h) Fox will use, where practicable, goods produced or manufactured and services made available in the State in connection with the project
- (i) Fox will employ, where practicable, persons permanently resident in the State in connection with the project.

13.7 FIASA Conditions Precedent and Indemnification Payment Components

Conditions Precedent

Conditions Precedent Events as per FIASA Clause 3.1 include (note 1):

- registration at Land Titles Office of the Showground Site subdivision plan (note 2)
- issue of certificates of title in the name of the RAS for the Showground site by the Land Titles Office (note 2)
- consent of the Minister to the entry into the RAS/Fox Lease and to the proposed use of the site (note 2)
- entry into the RAS Lease
- consent or approval (if required) from the Federal Treasurer under the Foreign Acquisitions and Takeovers Act 1975
- procurement by Fox of the Conservation Plan
- MCI approval of the Conservation Plan (note 2)
- irrevocable consent by RAS to lodgement of the Initial Development Application, the Initial Building Application, and all subsequent development and building applications and any other applications necessary for the development and use of the Fox site
- initial development consent being granted (note 2)
- EPA licences being granted (note 2)
- granting of MCI Works Building Approval and Initial Building Approval (note 2)
- satisfaction or waiver of all conditions precedent to the RAS/Fox Lease
- RAS/Fox Lease becoming unconditional or the conditions precedent being waived. (note 2)

Notes

1. One condition precedent not yet met has been excluded because its inclusion is seen by the Government as being against the public interest as the Government sees it.
2. This is a specified condition precedent and in the event of termination of the FIASA because of non satisfaction Fox was entitled to a maximum indemnification payment of \$3.5m from the State.

**Specified
Conditions
Precedent Costs**

The Specified CP costs, as per FIASA Clause 3.9(d) include:

- development application fees
- building application fees
- architectural fees
- structural engineer fees
- environmental assessment fees
- geotechnical fees
- services engineer fees
- quantity surveyor fees
- heritage consultant fees
- BCA consultant fees
- land surveyor fees
- traffic engineer fees
- programmer fees
- production consultant's fees
- legal fees (if approved in advance by MCI)
- disbursement for consultants
- Fox operating costs (excluding salaries)
- Fox shutdown costs (excluding Salaries)
- Fox Los Angeles costs (excluding salaries)
- town and urban planners consultants fees
- registration and approval fees
- other disbursements incurred by Fox on project.

13.8 Project Carriage Costs Incurred by Agencies Associated with the Lease of the Sydney Showground

Note 1	Premiers Department	DSRD	MOA	Department of Public Works and Services	Department of Urban Affairs and Planning	Department of Land and Water Conservation	Cabinet Office	Crown Solicitors Office	FTO	Grand Total
<i>Staff Costs</i>										
1994/95	Note 2	90,253	Note 2	47,230	26,735	4,254	Note 2	-	Note 3	168,472
1995/96	Note 2	94,218	Note 2	37,070	137,101	8,527	Note 2	-	Note 3	276,916
1996/97	Note 2	39,593	Note 2	29,592	51,579	0	Note 2	-	Note 3	120,764
Total	Note 2	224,064	Note 1	113,892	215,415	12,781	Note 2	-	Note 3	566,152
<i>Technical Advice</i>										
1994/95	-	112,000	91,208	-	-	-	-	-	Note 3	203,208
1995/96	62,500	266,968	-	42,991	-	-	-	-	Note 3	372,459
1996/97	-	102,693	-	10,544	-	-	-	-	Note 3	113,237
Total	62,500	481,661	91,208	53,535	-	-	-	-	Note 3	688,904
<i>Legal Costs Note 4</i>										
1994/95	-	-	-	-	-	-	-	13,150	Note 3	13,150
1995/96	-	364,662	-	-	-	-	-	127,139	Note 3	491,801
1996/97	-	134,508	-	-	98,005	-	-	37,602	Note 3	270,115
Total	-	499,170	-	-	98,005	-	-	177,891	Note 3	775,066
GRAND TOTAL	62,500	1,204,895	91,208	167,427	313,420	12,781	-	177,891	Note 3	2,030,122

Source: Agency Records

- Notes**
1. The Olympic Co-ordination Authority advised that the costs associated with the Sydney Showground lease had insignificant financial effect. Whilst the RAS advised in effect that matters associated with the Sydney Showground Lease were undertaken within existing resources and as part of normal work.
 2. The costs could not be quantified by the Agency
 3. The Agency did not provide information to The Audit Office
 4. Amounts have been adjusted where appropriate so that the Crown Solicitors costs are not double counted. The Crown Solicitors costs represent amounts invoiced to other agencies.

13.9 List of Exhibits

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13.10 Attachments to Response of 26 November 1997 by Director General, Premier's Department

13.10.1 Department of State and Regional Development Economic Benefit Calculation

Net Benefit to NSW Arising from Securing the Fox Studios Investment for this State - \$382m in Present Value Terms

Value added, the net increase in economic activity at Fox Studios, has been calculated using the projected Fox Studio payroll plus the returns to K (capital) for the project. Returns to capital were not available from Fox, so they were estimated by the Department of State and Regional Development and based on an analysis of market returns to the capital employed.

The sum of the payroll and the returns to capital appear as initial effects in the table. These were multiplied by the Type IIB ratio (ratio of flow on effects to direct effects) for the industry (sourced from the Australian Bureau of Statistics) to give the indirect or flow-on effects, arising from the project. Only 75% of the indirect effects were included to take account of a possible 25% leakage of indirect effects to other states and countries. This is standard practice when using an Australian table to take account of the fact that some of the project inputs will be purchased from outside NSW.

The base case was calculated using the same methodology. The base case identifies what would happen if the Government had not taken any action to support the project and the project had not gone ahead. The base case assumed that if the Fox Studios did not locate at the site, the site would be used for the next best use and this would generate around half the value added of the Fox Studios and this value added would start to flow 2 years after the date the Fox project would have started.

The base case was subtracted from the Fox Studio case to give a 40 year cash flow stream. This was then discounted back to the decision date (1995-96) at 7%. Discounting was done to value the cash flows in 1995-96 dollars. A rate of 7% was chosen to be consistent with NSW Treasury guidelines. This gave a gross benefit to the State of \$406,832,000 in present value terms. Known NSW Government costs of \$25,100,000 were subtracted from this to give the Net Benefit to the State of \$381,732,000.

Year	1995-96 (000)	1996-97 (000)	1997-98 (000)	1998-99 (000)	1999-00 (000)	2000-01 (000)	2001-02 (000)	2002-03 (000)	2003-04 (000)	2004-05 (000)	2005-06 (000)	2006-07 (000)	2007-08 (000)
Value Added Payroll		0	0	14700	21000	21000	21000	21000	26250	26250	26250	26250	26250
Returns to K		0	0	300	600	900	1200	1500	1500	1500	1500	1500	1500
Initial effects		0	0	15000	21600	21900	22200	22500	27750	27750	27750	27750	27750
Multiplier (T2B)		1.7620	1.7620	1.7620	1.7620	1.7620	1.7620	1.7620	1.7620	1.7620	1.7620	1.7620	1.7620
Indirect effects		0	0	26430	38059	38588	39116	39645	48896	48896	48896	48896	48896
Total effects		0	0	41430	59659	60488	61316	62145	76646	76646	76646	76646	76646
NSW effects (1)		0	0	34823	50144	50841	51537	52234	64422	64422	64422	64422	64422

Base Case

Value Added Payroll		0	0	0	0	7350	10500	10500	10500	10500	13125	13125	13125
Returns to K (2)		0	0	0	0	0	0	0	0	0	0	0	0
Initial effects		0	0	0	0	7350	10500	10500	10500	10500	13125	13125	13125
Multiplier (T2B)		1.7620	1.7620	1.7620	1.7620	1.7620	1.7620	1.7620	1.7620	1.7620	1.7620	1.7620	1.7620
Indirect effects		0	0	0	0	12951	18501	18501	18501	18501	23126	23126	23126
Total effects		0	0	0	0	20301	29001	29001	29001	29001	36251	36251	36251
NSW effects (1)		0	0	0	0	17063	24376	24376	24376	24376	30470	30470	30470

NSW Effect		0	0	34823	50144	33778	27162	27858	40046	40046	33952	33952	33952
PV at 7% (40yrs)	406832												
Less: costs	25100												
Net Benefit	381732												

(1) Initial effects plus 75% of indirect effects to take account of assumed leakages to other States.

(2) Returns to capital are \$2 million rental in 1996 and 1997 after which the site becomes parkland and no financial returns to capital are received.

Year	2008-09 ('000)	2009-10 ('000)	2010-11 ('000)	2011-12 ('000)	2012-13 ('000)	2013-14 ('000)	2014-15 ('000)	2015-16 ('000)	2016-17 ('000)	2017-18 ('000)
Value Added Payroll	26250	26250	26250	26250	26250	26250	26250	26250	26250	26250
Returns to K	1500	1500	1500	1500	1500	1500	1500	1500	1500	1500
Initial effects	27750	27750	27750	27750	27750	27750	27750	27750	27750	27750
Multiplier (T2B)	1.7620	1.7620	1.7620	1.7620	1.7620	1.7620	1.7620	1.7620	1.7620	1.7620
Indirect effects	48896	48896	48896	48896	48896	48896	48896	48896	48896	48896
Total effects	76646	76646	76646	76646	76646	76646	76646	76646	76646	76646
NSW effects (1)	64422	64422	64422	64422	64422	64422	64422	64422	64422	64422

Base Case

Value Added Payroll	13125	13125	13125	13125	13125	13125	13125	13125	13125	13125
Returns to K (2)	0	0	0	0	0	0	0	0	0	0
Initial effects	13125	13125	13125	13125	13125	13125	13125	13125	13125	13125
Multiplier (T2B)	1.7620	1.7620	1.7620	1.7620	1.7620	1.7620	1.7620	1.7620	1.7620	1.7620
Indirect effects	23126	23126	23126	23126	23126	23126	23126	23126	23126	23126
Total effects	36251	36251	36251	36251	36251	36251	36251	36251	36251	36251
NSW effects (1)	30470	30470	30470	30470	30470	30470	30470	30470	30470	30470

NSW Effect PV at 7% (40yrs) Less: costs Net Benefit	33952	33952	33952	33952	33952	33952	33952	33952	33952	33952
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Year	2018-19 ('000)	2019-20 ('000)	2020-21 ('000)	2021-22 ('000)	2022-23 ('000)	2023-24 ('000)	2024-25 ('000)	2025-26 ('000)	2026-27 ('000)	2027-28 ('000)
Value Added Payroll	26250	26250	26250	26250	26250	26250	26250	26250	26250	26250
Returns to K	1500	1500	1500	1500	1500	1500	1500	1500	1500	1500
Initial effects	27750	27750	27750	27750	27750	27750	27750	27750	27750	27750
Multiplier (T2B)	1.7620	1.7620	1.7620	1.7620	1.7620	1.7620	1.7620	1.7620	1.7620	1.7620
Indirect effects	48896	48896	48896	48896	48896	48896	48896	48896	48896	48896
Total effects	76646	76646	76646	76646	76646	76646	76646	76646	76646	76646
NSW effects (1)	64422	64422	64422	64422	64422	64422	64422	64422	64422	64422

Base Case

Value Added Payroll	13125	13125	13125	13125	13125	13125	13125	13125	13125	13125
Returns to K (2)	0	0	0	0	0	0	0	0	0	0
Initial effects	13125	13125	13125	13125	13125	13125	13125	13125	13125	13125
Multiplier (T2B)	1.7620	1.7620	1.7620	1.7620	1.7620	1.7620	1.7620	1.7620	1.7620	1.7620
Indirect effects	23126	23126	23126	23126	23126	23126	23126	23126	23126	23126
Total effects	36251	36251	36251	36251	36251	36251	36251	36251	36251	36251
NSW effects (1)	30470	30470	30470	30470	30470	30470	30470	30470	30470	30470

NSW Effect PV at 7% (40yrs) Less: costs Net Benefit	33952	33952	33952	33952	33952	33952	33952	33952	33952	33952
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Year	2028-29 ('000)	2029-30 ('000)	2030-31 ('000)	2031-32 ('000)	2032-33 ('000)	2033-34 ('000)	2034-35 ('000)	2035-36 ('000)	2036-37 ('000)	2037-38 ('000)
Value Added Payroll	26250	26250	26250	26250	26250	26250	26250	26250	26250	26250
Returns to K	1500	1500	1500	1500	1500	1500	1500	1500	1500	1500
Initial effects	27750	27750	27750	27750	27750	27750	27750	27750	27750	27750
Multiplier (T2B)	1.7620	1.7620	1.7620	1.7620	1.7620	1.7620	1.7620	1.7620	1.7620	1.7620
Indirect effects	48896	48896	48896	48896	48896	48896	48896	48896	48896	48896
Total effects	76646	76646	76646	76646	76646	76646	76646	76646	76646	76646
NSW effects (1)	64422	64422	64422	64422	64422	64422	64422	64422	64422	64422

Base Case

Value Added Payroll	13125	13125	13125	13125	13125	13125	13125	13125	13125	13125
Returns to K (2)	0	0	0	0	0	0	0	0	0	0
Initial effects	13125	13125	13125	13125	13125	13125	13125	13125	13125	13125
Multiplier (T2B)	1.7620	1.7620	1.7620	1.7620	1.7620	1.7620	1.7620	1.7620	1.7620	1.7620
Indirect effects	23126	23126	23126	23126	23126	23126	23126	23126	23126	23126
Total effects	36251	36251	36251	36251	36251	36251	36251	36251	36251	36251
NSW effects (1)	30470	30470	30470	30470	30470	30470	30470	30470	30470	30470

NSW Effect PV at 7% (40yrs) Less: costs Net Benefit	33952	33952	33952	33952	33952	33952	33952	33952	33952	33952
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13.10.2 Table Comparing the Cost Elements Line by Line

Fox Studios

COSTS TO THE STATE BUDGET

The report claims on page 5 and page 119 that the cost to the State budget amounts to \$109m with additional contingency costs of 31.5m.

Comment:

Our calculation of the costs borne by the State is \$25.1m consisting of:

Industrial Assistance:

Ministerial Corporation of Industry works (net of Commonwealth contribution)	\$24.4m
Payroll tax (1)	6.1m
Land tax (2)	1.2m
Stamp Duty	0.3m

Lease Costs:

Rent Discount	9.3m
RAS Co-location	0.9m
Accelerated RAS re location	32.0m
Insurance of heritage buildings	1.0m

Other Costs:

Staff Costs (3)	0.0m
Legal and Technical advice (4)	1.0m

TOTAL COSTS **\$76.2m**

Revenue	
Site Rentals	38.4m
Payroll Tax (1)	12.7m

NET TOTAL COSTS TO STATE BUDGET **\$25.1m**

- 1) Payroll tax concessions provided until 2001-02 after which payroll tax revenue will flow to the State.
- 2) Land tax concessions provided until 2005-06 after which land tax revenue will flow to the State.
- 3) No additional staff were hired for this project. It was carried out by staff whose normal function is to secure investments of this type for the State.
- 4) A large portion of the Legal and Technical advice was "core business" of agencies and funded out of exiting Community Service Obligation resources as normal work.

13.10.3 Press Release Friday, 3rd March 1995 - Minister for the Arts

STATE GOVERNMENT ON TRACK FOR FILM STUDIOS

Three major bids remain from seventeen Expressions of Interest for film studios at the Showground, NSW Minister for the Arts, Peter Collins QC, MP, announced today.

The Inter-Departmental Committee established by the Fahey Government to evaluate submissions has reported back to the Premier and the Minister for the Arts.

“The State Government is firmly committed to the establishment of a film studio complex at the Sydney Showground,” said Mr Collins.

“Interest has ranged from very large to very small film companies.”

“Several have indicated interest in becoming tenants at the Showground, rather than lease-holders for the overall studio complex,” said Mr Collins.

The Minister announced three short-listed companies for further detailed negotiation:

- Crawfords Production Pty Limited, a wholly owned subsidiary of Oberon Broadcasters Pty Ltd
- Fox Filmed Entertainment, a wholly owned subsidiary of News Corporation Ltd
- Global Television Pty Limited, a wholly owned subsidiary of TMS Limited.

“The total area of the Showground to be made available for studio purposes is one matter to be resolved,” said Mr Collins.

“I have consistently indicated that the boundaries identified in the Kinhill Report are not absolute and indicate what is generally regarded as the minimum area required for a major studio complex.”

“However, some existing uses, notably equestrian facilities will be retained in Government plans for the Showground,” said Mr Collins.

“A further major issue for negotiation and ultimate Government resolution is the timing of the RAS relocation.”

“A Probity Auditor has acted throughout the evaluation phase and has advised that as an alternative to going to tender, the process of evaluation may be suspended at this stage and on-on-one discussion undertaken,” said Mr Collins.

13.10.4 Fox Studios Australia Pty Ltd Response to Auditor General's Report, dated 15 October 1997

FOX STUDIOS AUSTRALIA PTY LIMITED

RESPONSE TO AUDITOR GENERAL'S REPORT DATED 15 OCTOBER 1997 **(as revised on 4 and 7 November 1997)**

Since 1995, Fox has invested over \$120m in the Australian film industry through its capital investment in the film and television studio, due to open in April 1998, and in film production. That investment has provided hundreds of jobs for the people of New South Wales – in construction and in film production.

Following detailed comment by Fox in relation to earlier drafts, the Auditor General's Final Report (Report) now acknowledges that the Fox development will provide a net economic benefit to the State. Fox believes that its development will provide the New South Wales film and television industry with the infrastructure to become a major participant in the global film and television production industry.

The Auditor General has removed much of the questionable commentary and emotive prose of the previous drafts. The Report strains to find negative conclusions and draws the inevitable conclusion that New South Wales receives a net economic benefit from the Fox development.

Fox rejects many of the findings of the Report. It assumes a perfect negotiating environment and timetable for the parties and ignores the realities of commercial negotiations in which both parties strive to achieve the best possible result for themselves and conclude with an agreement striking a balanced outcome.

Fox is extremely disappointed that the Audit Office took 16 months to write the 150 page Report at a significant cost to taxpayers, but in that time had only one one-hour briefing (and an hour site tour) from Fox representatives and on that occasion or after did not ask a single question or seek to clarify any aspect of Fox's presentation.

It makes assertions about Fox's conduct which have not been raised with Fox at any time. Indeed in the only meeting with representatives of the Auditor General's staff, 9 officers of the Audit Office visited Fox for a site inspection on 19 December 1996. Any comments at that session were volunteered by Fox and there was at no stage any exchange in response to formal questions from the Auditor General's representatives as implied in the Report. The Report ignores most of the written comments provided by Fox in response to the previous draft prepared by the Audit Office.

Although the Report now concludes that the Fox development provides a net economic benefit to the State, the specific benefits generated by Fox's investment, which Fox provided in its detailed previous responses to earlier drafts to the Audit Office are not identified in the Report. Fox believes that this omission causes a serious imbalance in a Report of 150 pages.

Failure to consider the extent of the achievement of the policy objectives set by Government

The Report avoids analysing Fox's satisfaction of the Government's policy objectives in permitting Fox to build a film and television studio at the Moore Park Showground. The Treasurer states the Government's primary objective succinctly in his reply to the Auditor General:

if the purpose of the Showground proposal was merely to get the maximum number of dollars for its sale or lease, the Government would not be talking about film studios and related facilities at the Showground.....the purpose is...to secure the future of a strategic job-creating industry in New South Wales. (pp. 136-7)

The Report identifies other issues (p.136) prominent in the Government's purpose, such as:

- establishing a strategic position for Sydney in the Australian and international film production business retaining the essential characteristics of the site.

The New South Wales Government has provided industry assistance to Fox to encourage Fox to select New South Wales as the site for the building of much needed infrastructure for the New South Wales film and television industry. Fox is clearly achieving the objectives of the Government through adapting the majority of the heritage buildings, roads and landscape areas of the site to create a state of the art film and television studio.

The facilities will:

- (a) encourage Australian film makers to widen the scope of possible films from primarily location based to include studio based productions providing jobs and skill enhancement; and
- (b) encourage offshore film makers to film in Sydney providing jobs, skill enhancement and international exposure for Australian actors and crew.

The Report fails to consider the contributions of Fox to the film and television industry since the consummation of the negotiation

The tally of the direct impacts of Fox's investment to date is:

- The studio is on target to open its doors in April 1998.
- Fox has spent over \$30 million to date on the development.
- Fox has financed over \$70m worth of production in Australia since 1995.

- The investment of Fox in the Australian film Oscar and Lucinda enabled it to be filmed in New South Wales - with its wealth of Australian talent - from the Booker Prize winning novel by Peter Carey, directed by Gillian Armstrong, and starring Cate Blanchett as Lucinda and Ralph Fiennes as Oscar. In the course of a shoot of approximately 10 weeks in Sydney, Grafton and the Hunter Valley \$14 million was injected into the New South Wales economy, including \$500,000 in Grafton in the space of 3 weeks.
- BABE – the Sequel is being shot in New South Wales. Fox has reprogrammed its construction program to enable the production to take place at the Showground.
- Dark City - another Australian production of international standards filmed at the Showground for 5 months in 1996. Fox delayed its construction program to enable this to occur.
- Baz Luhrmann located his post production office for Romeo and Juliet at the Showground. During 1997, Fox has provided Mr Luhrmann and his Australian creative team with offices offsite.
- Fox has established an Australian based production joint venture with Mel Gibson and Bruce Davey's Icon Productions known as Fox Icon Productions. The joint venture employs several people full time and a number of script assessors part time. It is temporarily located offsite until the Studio is open. Fox Icon Productions is financing the development of a number of screenplays with Australian writers, directors and producers with the intention of producing films in Australia for the international market.
- Fox is financing the development of a number of screenplays for film and television with Australian writers, directors and producers.
- Fox is developing attachment programs with various industry associations and educational institutions to provide hands on training.
- Australia's pre-eminent post production businesses - Spectrum in picture editing, Sound firm in sound editing and Animal Logic in digital effects are locating their businesses at the Studio availing themselves of the opportunity to upgrade their equipment and develop their businesses.
- Fox is partnering with Global Television for the provision of equipment for television production at the Studio.
- A number of film service companies are seeking space at the Studio as soon as it opens including Samuelsons, the major supplier of camera equipment to the film and television industry.
- Fox is in regular receipt of requests from film and television businesses wishing to relocate to the Studio.
- Fox is in receipt of multiple applications for use of the facilities from the time that it opens in 1998.

- Fox is currently employing approximately 35 staff together with a number of part time script assessors and researchers. The Fox construction program is employing several hundred persons (including a number of apprentices). When the site is fully operational employment generation will account for in excess of 1,500 direct jobs on the most conservative projections.
- Fox has sponsored film and television industry activities to a value of \$250,000 since it commenced operations in Australia.

The Report ignores these impacts on the New South Wales economy although they are central to the State's policy in capturing and encouraging the investment and development.

Flawed approach in calculation of NPV to Government

The Report applies a flawed approach in calculating the net present value of the Government investment as it relates to Fox – ignoring the macro economic impacts and the contribution of Fox to date. The net present value to the Government is positive. Fox calculates that it is approximately \$12m - \$26m using a discount rate of 7% as adopted by the Report, depending on the maximum rental payments on the site.

Lack of substantiation

The Report makes some sweeping statements without any supporting analysis – a practice inconsistent with generally acceptable auditing standards. It quotes anonymous sources which makes the veracity of the Report questionable.

Failure to consult with Fox

Positions and statements are attributed to Fox which were not addressed by any of the nine members of the Audit Office who met with Fox on 19 December 1996. Given a Report of some 150 pages which has taken the Audit Office 16 months to complete, to have met with Fox for approximately one hour (only at the suggestion of Fox's representatives as to a briefing prior to a site tour) and even then only informally, is surprising.

It must be emphasised that other than for the site tour the Audit Office have made no formal or informal contact with Fox at any stage in the course of the preparation of the Report and have at no time conducted any formal review of materials or interviewed any of the working Fox professionals who have been involved throughout the negotiations with the Government and the development of the project.

SPECIFIC COMMENTS ON REPORT

EXECUTIVE SUMMARY

Audit Findings

Fox rejects a number of the Audit Findings.

⇒ To claim that the process for the lease and development of the Showground site commenced on the basis that no Government moneys would be provided and no theme park activities would be allowed (p.2) is misleading. Those matters were not Government requirements in the expressions of interest document issued by the Government in November 1994 (Expressions of Interest). The Expressions of Interest contains 10 requirements and 7 preferences. The Fox proposal complies with all 10 requirements in the Expressions of Interest and 5 of the 7 preferences.

That the development should result in “no cost” to the Crown, either in an actual or underwriting sense and provide a suitable financial return to the Crown was simply one of 7 preferences in the Expressions of Interest.

In making the statement that the Expressions of Interest did not permit a theme park and then asserting that a considerable proportion of the site will be an entertainment park without consideration of the planning controls governing development on the Site and the content of Fox's development applications is careless.

The term theme park is applied to entertainment complexes with permanent outdoor rides such as rollercoasters. SEPP 47 does not permit outdoor rides. The Government has ensured that the site cannot be used as a theme park. Although the Lease and FIASA refer to the public area as the Non Studio Area and Family Entertainment Complex and the Fox development applications use the description Family Entertainment Precinct the Report ignores these descriptions and adopts Entertainment Park and Family Entertainment Park. This appears to be a deliberate choice to evoke the image of a theme park.

Fox is not developing a theme park – one of the requirements (no.8) in the Expressions of Interest:

Although public access and associated leisure activities and facilities may be considered, a theme park is not to be included.

⇒ The Report asserts that a Government subsidy of between \$84.8m and \$106.8m (in net present value terms) is to be provided to the development (p.2). Fox disagrees with the supporting analysis for these figures. They are not the figures offered to Fox. At the time Fox commenced negotiations with the Government there was no information provided to it as to the financial assistance available. That assistance was the result of protracted negotiations between Fox and the Government. The Report and its emphasis on this issue is misleading.

The Report finding claims that *the area of the Showground to be leased to Fox was extended to comprise 24.3 hectares of the 28.8 hectare site to allow Fox to also develop a family entertainment park.*

One of the preferences in the Expressions of Interest (no.2) states:

The development should be contained within the indicated site boundaries, but some flexibility may be possible within the overall Showground area.

⇒ There is no rationale for the statement *there can be no assurances that the arrangements finalised in those one-to-one negotiations achieved the best arrangements for the State* (p.3) This statement misunderstands the negotiation process between the Government and Fox which ultimately arrived at the concluded terms. The Report also does not justify the latter part of that statement by indicating how Fox did not satisfy the Government's goals.

⇒ The Executive Summary (p. 4) states there are a number of ways that the Government can improve on the way this project was conducted and then:

1. discusses only one of its recommendations;
2. the recommendation singled out for further comment is that Government must justify its policy decisions – when the Auditor General has no jurisdiction to comment on Government policy;
3. makes an unacceptable claim that such a justification is of particular value when, as in this case, the recipient of Government advantage or a related entity is able to confer, and has in the past conferred, political benefits to Government and political parties and provides no evidence substantiating the assertion. Indeed it goes on to state This does not imply that any such benefit was conferred on this occasion emphasising the irrelevance of the comment. Furthermore, nowhere else in the Report of 150 pages is there any reference to the statement or any justification for making the claim. Such a speculative and loaded statement leads any objective reader to dismiss the credibility of the Report and question the motive of the author. The claim is false and is completely rejected by Fox.

This response follows the receipt of 3 drafts of the Report and 2 further sets of amendments to the Report. The Fox quote included at the end of the Report's Executive Summary is a comment from its response to the second draft. Fox notes that in reaction to the comment the Audit Office removed much of the emotive language and significantly revised its conclusions in a number of relevant areas.

Resolution Short Responses

- (a) Fox disputes the conclusion as to the costs to be borne by the Government (refer to the Fox response to Sections 12.3 and 12.4).
- (b) Fox concurs with the Report's conclusion that there will provide a net economic benefit to the State. The conclusion as to the direct effects on the State's budget is disputed (refer to the Fox response to Sections 12.3 and 12.4)
- (c),(d),(f) Fox believes the rental is a market rental commensurate with the risk undertaken by the Government.
- (c),(e) Fox believes, as accepted by the Report, that the Fox development will result in a net economic benefit to the State. Some examples of the benefits provided by Fox are listed on pp 2-3 of this Response.

1. BACKGROUND

Showground Debate

There has been no discussion, comment or conjecture in relation to the Lease of the Showground to Fox in the Courts of Law as the Report erroneously states (p. 16) (our underlining). The only litigation instituted in relation to the Project challenged the validity of SEPP 47 – the planning instrument which governs development on the Site. The applicants, Save the Showground for Sydney Inc lost at first instance before the Chief Judge of the Land and Environment Court and again on appeal to the Court of Appeal. The case did not deal with the Lease.

The discussion on the Showground Debate does not refer to the statements of support from the film and television industry or any of the positive commentary.

ICAC Review

The positioning of the comment that ICAC's review is much more narrowly focussed in the review undertaken by the Audit Office (p. 16) immediately after a comment that ICAC had found there was no corrupt conduct involved with the awarding of the lease of the Sydney Showground leads to the inference that if ICAC's review had been more widely focussed then corrupt conduct may have been found. There is no justification for this inference and it should be removed.

3. THE PLANNING CONTEXT

3.1 The Policy Process

Creative Nation Statement

There is no basis for the statement that the Creative Nation announcement raises probity issues about the processes followed by the Commonwealth which allowed funds to be provided for the benefit of a particular firm (p. 28). If, as also stated, these matters do not fall within the scope of this Report which only deals with NSW issues the statement is unnecessary and should be deleted.

7. ASSESSMENT OF PROPOSALS AND FINAL SELECTION

7.3 *Delayed Advice to Respondents*

The statement is made that In discussion with the Audit Office, Fox made it very clear that they regarded a Sydney base for such a development as very strategic and desirable, and that the Showground site was probably the best possible option available. How readily they may have walked away from a requirement that the process be put to tender is such an opportunity is unknown (p. 60).

As indicated elsewhere, no discussion took place with Fox as Fox was never questioned by the Audit Office. A Fox representative made a statement to the Audit Office in its meeting with the Audit Office representatives that in the opinion of Fox, the Showground was the best available site in Sydney. Further, if the Showground was not available Fox would have seriously considered the offers made to it by the Victorian Government and outside of Australia.

At no time did the officers of the Audit Office ask Fox how readily it may have walked away from the project.

10. RAS LEASING ABILITY, PLANNING INSTRUMENT AND CONTROLS (PLANNING AND BUILDING) AND OTHER ASSOCIATED MATTERS

10.2 Legal Ability to Lease the Site

Ministerial Consent to Fox Lease

It is not appropriate for the Audit Office to opine that it is not clear however that parliament would have intended RAS to be able validly to enter a lease which was not directly relevant to its purposes and which essentially entailed its abandoning the site after passing the benefit of the site to another party for a considerable time (p. 87). This is in light of the fact that the Auditor General has reviewed advice from Government which does not dispute the ability of the RAS to enter into such a lease.

It is also unclear what purpose is served by the reference with the Minister's sanction, the RAS/Fox Lease is taken by the Government to be valid.

10.3 Environmental Planning Instrument

Original Site Planning Process

The statement that a film studio was prohibited by existing planning instruments (p. 88) is incorrect. It was not expressly permissible (rather than prohibited) and in light of the history of film making at the Showground since the 1920's, existing use arguments have never been challenged in those 70 years.

Gazettal of SEPP / SEPP 47 Validity

The comment that the making of SEPP47 meant that sole consent authority for development applications for the Sydney Showground site rests with the Minister for Urban Affairs and Planning (p.89) ignores the matters which the Minister is lawfully required to take into account under SEPP 47 (including the views of other entities such as the Environment Protection Authority and the Heritage Council).

The validity of SEPP 47 was upheld by the Chief Judge of the Land and Environment Court and subsequently, 3 judges of the NSW Court of Appeal.

This section of the Report is peppered with unnecessarily provocative and unfair comments including:

The Minister recommended SEPP 47 without public consultation. There is no legal requirement under EPAA which compels the Minister to hold public consultations before making a SEPP, although there have been a number of instances where the public has been invited to make comment.(p.89).

The comments indicate that the Audit Office misunderstands the scheme of the Environmental Planning and Assessment Act. All the judgements in the litigation upheld the validity of the creation of SEPP 47. State Environmental Planning Policies are a part of the tiered planning regime in NSW. The Development Applications for the site have been on extensive public display at multiple locations in Sydney.

10.4 SEPP 47 Development Applications

Ministerial Development Consent

It is inappropriate for an audit Report to describe an instrument properly created under an act of Parliament as a very powerful instrument (p.89). Such a description is unnecessarily emotive.

Master Plan Variations

It is standard for Development Consent Conditions to state that development to be carried out generally as described in the DA. The Audit Office makes an observation that there is no enforceful obligation on Fox to resubmit a new master plan because of the variations occasioned by the detailed DA's. This is so, even though variations from the original master plan may be significant (p.90). This comment fails to acknowledge that:

the process for consideration of variations to the approved Masterplan must comply with the legal requirements of the Environmental Planning and Assessment Act;

the Masterplan did not give any permission to carry out physical works;

development cannot lawfully be carried out unless it is the subject of an operative consent.

It is not appropriate for the Audit Office to comment that some parties have argued that consent is being granted to DA's in a perfunctory manner with insufficient consideration of their impacts particularly where variation from originally stated intentions is significant (p.91). The comment assumes there were significant variations to the Masterplan and fails to refute the validity of the arguments by reference to the lengthy and thorough development application, public exhibition and submission period and thereafter the lengthy review process undertaken by the Department of Urban Affairs and Planning. The rationale for variations to a masterplan is that plans develop with the passage of time as a result of increased information and more detailed designs. The relevant parties which have advanced those arguments should be identified.

The observations made about the approval process for variations to an approved masterplan are superfluous and indicate a lack of understanding of the legal regime governing the approval process under the Environmental Planning and Assessment Act.

Publicising DA

The Audit office stated that it received advice that, in the opinion of some parties, insufficient time was allowed for interested parties properly to review and to make comment on DA submitted (page p. 92).

Those parties are not identified.

All Fox development applications were open for public inspection in at least 4 venues for periods longer than the minimum 28 days specified in SEPP 47. Those exhibition dates are as follows:

DA 1/96 – 7 weeks

DA 2/96 – 7 weeks

DA 25/96 – 4 weeks

DA 36/96 – 9 weeks

DA 37/96 – 9 weeks

Further, the Department of Urban Affairs and Planning accepted late submissions and the publication of the development applications exceeded the statutory requirement. Despite the inclusion of public inspection periods for the Fox DAs in the Report, the Report chose not to draw attention to those periods but selected a negative conclusion - leaving the Report imbalanced.

Environmental Impact Statement

It is incorrect to state the receipt of the Commonwealth funding of \$7M towards the site remediation was originally dependant on undertaking an EIS for the proposed Fox use of the site (p.92). It indicates a misunderstanding of the requirements for the use of Commonwealth monies in a State project. The making of decisions and recommendations and the incurring of expenditure by the Commonwealth Government requires it to ensure, to the greatest extent practicable, that matters affecting the environment to a significant extent are fully examined and taken into account (Section 5: Environment Protection (Impact of Proposals) Act, 1974). If the relevant Minister (in this case, the Minister for Communications and the Arts) determines that the matter is one which affects the environment to a significant extent then the Commonwealth Environment Protection Agency (CEPA) is required to consider whether an Environmental Impact Statement (EIS) is required. In this case, CEPA recommended to the Minister that an EIS was not required. The Report is wrong and a correction should be made.

There is no requirement for an EIS to be prepared under State legislation: in its place a comprehensive Statement of Environmental Effects and supporting reports were prepared, as required.

10.5 Other Matters

CPMPT Involvement

It is untrue for the CPMPT to claim it was excluded from most of the long range planning discussions for the site and negotiations with Fox (p.93). The CPMPT was a vocal component of the negotiations with Fox for the Lease.

The comments of the CPMPT as to its concern that the terms of the lease with Fox did not reflect a range of matters which they would have sought if they had been involved in the negotiations (p.93) are inappropriate and given undue weight. The CPMPT's comparison with its short term park licences (and the Audit Office's acceptance of this statement) reveals a commercial naivety as the terms of a short term lease or licence are traditionally very different from a long term lease. Fox reiterates that the CPMPT and its external lawyers commented on the Lease terms throughout the negotiation of the Lease.

Parking

It is not appropriate for parking arrangements to be dealt with in the Lease. They are being dealt with commercially in discussions with the CPMPT and in conjunction with the development application approval process. Fox has sufficient parking on its site for its facilities. It is also required to provide 400 spaces for patrons of adjacent facilities. At Fox's instigation, the Moore Park Transport Committee was established, the first attempt to have all interested parties meet with the common goal of resolving traffic and parking issues in the Moore Park Precinct. Fox is also a member of the Premier's Working Party formed in 1997 to address parking issues in the Moore Park Precinct.

It is inconsistent for the CPMPT to remove parking from Moore Park – the location for parking for activities conducted at the Hordern Pavilion and to then allege concern in relation to parking for support operations at the Hordern Pavilion (p.94) nor is it an appropriate matter to be raised under the terms of reference as it relates not at all to the content of the parliamentary reference.

11. INDUSTRY ASSISTANCE AGREEMENT AND LEASE OBLIGATIONS AND COMMITMENTS

11.2 FIASA

Absence of Usage Performance Indicators

If the Audit Office elects to identify that that the monitoring and reporting of Fox production was a matter of particular concern to some groups in the Australian film industry (p.100) then those groups and the matters of concern should be identified. As required under the FIASA Fox reports on access to the industry in its 6 monthly reports to MCI.

11.3 The Sydney Showground Lease

Key Points of the Lease

The matters identified (pp. 104-105) as flowing from the Lease are false. Only the 4th (first section only) and 5th dot points are covered within the Lease. The Suttor Stand will not be demolished. Fox will retain and adapt it for use in its development. The other matters which relate to the relocation of the RAS are external to and independent of the Lease. If the CPMPT asserts that Fox is responsible for its demands for refurbishment of the Hordern Pavilion and the Royal Hall of Industries then the revenue from the operation of those buildings across the life of the Lease should be included in any assessment of the value of the Fox development. The Report does not do so.

11.4 Conclusion on Contractual Obligations etc.

Contractual Obligations for Benefits to the State

The Report states that there appears to be mechanisms that allow Fox to be released from a number of significant commitments (p.107). The remedies available to MCI for any breach by Fox are clearly set out in the FIASA. For example, if Fox fails to meet its obligations in relation to the use of the site under Clause 8.1 of the FIASA, MCI can exercise its right to call for surrender of the Lease or the relevant part of the Lease under Clause 8.2 of the FIASA.

If Fox should ever walk away from the facility (a concern raised at p.108) the Government is left with an asset which has been significantly enhanced. It is inappropriate for there to be any other compensation to the Government. The Government would inherit a substantially enhanced asset (with a value in excess of \$150M) capable of reallocation on commercial terms. The concern expressed is commercially mistaken.

The conclusion drawn about the risk to the Government does not refer to the improvements made by Fox and therefore is unsustainable. As identified at the commencement of this response, one of the clear flaws of this Report is its failure to consider the achievement and the risks assumed by Fox, which on any reasonable analysis are substantial.

12. FINANCIAL AND ECONOMIC ASPECTS

The Report's financial and economic analysis is flawed due to:

- The incorrect assumption that fair and reasonable economic return for NSW taxpayers means that arrangements are effective in meeting the State's objectives and that the arrangements have been achieved economically (p.110). Fox disagrees that only a pure economic assessment is required. Reasonableness is a well established objective standard having regard to all the circumstances – not merely that arrangements are achieved economically. The economic impact is on any reasonable analysis substantive and beneficial to the State economy. The Report itself acknowledges that conclusion in the Executive Summary.
- the inclusion of costs which do not relate directly to the lease of the Showground to Fox (Section 12.4.3)
- the failure to specifically identify relevant considerations – namely the macro economic benefits to flow from the development and the verifiable benefits to date although acknowledging that there is an economic benefit to the State in the Executive Summary.

In order to perform an analysis of the financial benefits to be received by the Government only those costs directly associated with the Lease should be considered and a full analysis needs to be made of the economic benefit from the Project to all parts of the State economy.

The Audit Office neglected to raise this issue (or indeed any issue) with Fox in its sole, brief meeting with Fox. To claim that no person appeared to have an understanding of the overall situation (p.110) and yet fail to question the Fox representatives as to their understanding of the situation is inconsistent and more importantly, misleading.

12.3 Claimed Benefits Flowing to the State

Intentions of the Parties

Despite the Treasurer's assertion that the primary purpose of the Showground proposal is not to maximise income from the disposal or lease of the site in analysing a topic entitled Claimed Benefits Flowing to the State the Report considered the substance of the relevant agreements (p.112) and considered historical reports but did not interrogate Fox about this issue. This issue is at the heart of the negotiation between Fox and the Government and such benefits should surely, in any reasonable context, be a matter for inclusion in the Report.

Prior to commencement of operations the macro economic impacts can only be identified by reference to economic assumptions and multipliers. However it is clear (and indeed, conceded by the Report in its Executive Summary) that there will be a macro economic benefit – only its magnitude is unknown. To date one impact is certain, the employment and flow on financial benefits of the productions already undertaken on the site.

The summary of state benefits is selective and ignores the information supplied by Fox in its comprehensive responses to previous drafts of the Report.

The reference to forty eight other sound stages in the State which receive no government assistance, and whose viability could suffer if the Fox project goes ahead (p. 113) is misleading and given undue weight.

It makes no distinction between say, warehouses and the advanced, sophisticated purpose built facilities being erected at Moore Park. This statement is not supported by industry opinion.

Observations

The Report irrelevantly includes the statement (p. 117) that a Fox official ..commented that ...in the order of 80% of the total revenue was expected to come from the entertainment facilities under the topic of Benefits to the State. The statement is inaccurate. No questions in relation to this issue were directed to Fox in its meeting with the Audit Office.

Fox can only assume that the Audit Office is relying on misleading reports in The Sydney Morning Herald published in 1995 (which at the time Fox unsuccessfully sought to correct). No effort was made to corroborate the statement with Fox.

Fox has always stated that it requires revenue from the Family Entertainment Precinct to justify the capital expenditure on the Studio. As with any commercial enterprise the Fox development must be commercially viable.

The Audit Office has calculated a likely negative NPV to the Government of between -\$84.8m and -\$106m. The project is intended to provide positive economic benefit to the State as a whole, as the DSRD study indicated, but the agreement as structured does not provide an economic return to the State Government. (This merely means that the State taxpayer is subsidising the beneficiaries of the gross Fox project. And the cost of the subsidy is less than the value of these benefits.)

The basis for the calculation of the NPV to the Government is based on incorrect assumptions in relation to the inclusion of outgoings not relevant to this Project.

The Audit Office's calculation of NPV is fundamentally flawed for the reasons outlined at the commencement to this section 12.

Applying the same discount factor as the Audit Office (7%) Fox calculates a positive NPV of between approximately \$12m and \$26m to the term of the Lease.

12.4 Costs to be borne by the State

12.4.1 Summary of Costs

The tally of costs to the Government (p.119) of \$109M (net of Commonwealth contribution of \$7M) is disputed because the Lease costs are exaggerated. The Lease costs to the Government are set out below:

12.4.3 Lease Costs

All of the costs categorised as Lease Costs other than the insurance of the heritage buildings should not be attributed to the Project.

Costs are included which are not relevant to the proposal to lease and develop the Sydney Showground, namely the costs to relocate the RAS and the redevelopment by the Centennial Park and Moore Park Trust of the Hordern Pavilion and the Royal Hall of Industries.

The relocation of the RAS is not the subject of the terms of reference. As stated in the Chronology of Key Events in the Report, the Government's decision to relocate the RAS to Homebush Bay was made in November 1989, 5 years prior to the call for Expressions of Interest in relation to a film studio at the Showground. The relocation of the RAS was part of the platform for the 2000 Olympics bid. Issues and costs associated with the RAS relocation are clearly independent of the decision to lease the Showground to Fox. If the RAS has negotiated an agreement with the Government to provide it with co-location costs and accelerated removal costs – negotiations in which Fox was not involved – that should not be attributable to Fox.

Similarly the ambit claims made by the Centennial Park and Moore Park Trust for amounts which differ with the amounts agreed by the Government should not be attributable to Fox. If such costs are to be included then on any rational and fair minded basis the revenue from those facilities should be included as a benefit to Government. The Lease merely requires the buildings be kept in good repair and condition and the external areas to be kept in clean and tidy state.

The relocation of the Suttor Stand should not have been included because the Government always indicated it would be relocated. It is not a cost of the Fox lease. However the Government recently requested Fox to consider retaining the Suttor Stand for adaptive reuse. Fox has agreed to retain and refurbish the Suttor Stand for an alternative use.

The only valid Lease cost is the insurance of the Heritage Buildings

The true direct costs to the State are:

MCI Works (net of Commonwealth contribution)	\$24,370,000
Pay Roll Tax	\$ 6,073,000
Land Tax	\$ 1,250,000
Stamp Duty	\$ 326,466
<u>Insurance of Heritage Buildings</u>	<u>\$ 1,200,000</u>
	<u>\$33,219,466</u>

12.4.4 Other Costs

Insufficient information is supplied (including breakdowns between the RAS relocation and the Fox Project) to verify the validity of the Staff Costs and the Legal and Technical Advice Costs.

12.4.5 RAS Costs at Homebush

The decision to relocate the RAS was made long before the decision to lease part of the Showground to Fox. These costs cannot be considered direct costs to the Fox Project.

12.4.6 Contingent Costs (p.123)

The Sydney Showground Markets claim is an ambit claim and is understood to be without merit and in any event falls within the costs associated with the relocation of the RAS. Similarly the RAS revenue guarantee is absolutely and completely irrelevant to the Fox Project.

SUMMARY

Fox firmly believes that on any independent analysis the Fox development at the Showground allows the State to receive more than good value under the arrangements with Fox. The Fox development secures a substantial future for a strategic job-creating capital intensive industry in New South Wales.

Fox Studios Australia Pty Limited
11 November, 1997

Note:

Page numbers originally cited in the Fox Studios Australia Pty Limited were amended to accord with the actual page numbering of this Report.

13.11 Glossary of Terms

Caretaker Government Period	The caretaker government period operates from the issue of writs and the dissolution of the Legislative Assembly until the election result is clear or the new Government is appointed.
Expressions of Interest Process	An invitation for capable parties to formally indicate an interest in participating in a nominated project. Specifications for the project will be general and conceptual, based around a broad community need or objective. Respondents therefore have scope to develop alternative plans and proposals provided that the project concept is not significantly altered. As projects are only defined on a conceptual basis an Expressions of Interest process is unlikely to generate proposals that are readily comparable with each other or constitute offers that would be legally enforceable if accepted.
Fox Family Entertainment Complex	An entertainment complex for use by the general public, including restaurants, retail areas, cinemas, tours and attractions and any complementary, subsidiary or ancillary developments or facilities, to be constructed on part of the Non-Studio area.
Fee Simple¹¹	<p>“Fee” denotes land which can be passed on by inheritance while “simple” denotes land which can be passed on to an heir. Hence land which is held in “fee simple” is land which can be passed on to another.</p> <p>Strictly speaking all land governed by English law is owned by the Crown, land cannot be owned by a private individual. However, the law recognises the right of a person to hold land on certain conditions. One such condition is as the holder of the estate in fee simple. This is the most privileged of all conditions and allows a person to treat the land as if it did in fact belong to them. A person who holds the estate in fee simple may therefore dispose of it, mortgage it, lease it, grant an easement over it or use it for their own use generally. The right of the holder of the estate in fee simple is so extensive that although the Crown owns the land it cannot acquire it back from the holder of the estate in fee simple unless adequate compensation is paid.</p>

¹¹ S Marantelli, C Tikotin: *The Australian Legal Dictionary*, Second Edition (1986)

Fox Industry Assistance Showground Agreement	Refers to the Fox Industry Assistance Showground Agreement (FIASA), signed in November 1995 and subsequent amendments thereto under which the State, through the Ministerial Corporation for Industry, has agreed to provide industry assistance to Fox Studios Australia Pty Limited. The objectives of the project and intentions of the parties, as set out in the Assistance Agreement, are shown in <i>Appendix 13.6</i> .
Fox Site	The Showground site at Moore Park excluding the Hordern Pavilion and Royal Hall of Industries, the Stables areas. It is an area of 24.3 hectares. For the purposes of this Report it comprises Studio Area and the Non-Studio Area.
Lease	The agreement, signed 27 September 1996 and commencing 23 April 1996, in which the RAS leases the Showground site at Moore Park for forty years, with Fox having the option to continue to lease the site for a further ten years.
Ministerial Corporation for Industry	The Ministerial Corporation for Industry, a statutory body incorporated under the State Development and Industries Assistance Act 1966, through which the State provides industry assistance. Its functions are to promote, encourage and stimulate the establishment, expansion and development of industries and the carrying out, by business undertakings and prescribed institutions, of projects that are likely to assist the establishment , expansion or development of industries.
Non Studio Area	Refers to that part of the Fox site not forming part of the Studio Area, comprising the Family Entertainment Complex, Car Park and the Fox Administration Site.
Studio Area	Refers to that part of the Fox site to be used as a studio and a backlot.
Tender Process	An invitation for capable parties to submit an offer which if accepted will form the basis of a legally enforceable contract. Specifications for project will be detailed, with the work to be performed, goods and / or services to provided clearly defined and explained, including all relevant technical information. There will either no or only limited scope for submitting offers, based on a varied specification. Further, the contractual obligations of the parties in the event of an offer being accepted will also be clearly defined in the invitation to tender.

13.12 Acronyms

CSO	Crown Solicitors Office
CPMPT	Centennial Park and Moore Park Trust
DA	Development Application
DPWS	Department of Public Works and Services. A reference in this report to DPWS should before April 1995 be taken to mean the Property Services Group.
DSRD	Department of State and Regional Development. A reference in this report to DSRD should before April 1995 be taken to mean the Office of Economic Development which came within the Premier's Department.
DUAP	Department of Urban Affairs and Planning
EC	Evaluation Committee
EOI	Expression of Interest
EPA	Environment Protection Authority
EPA Act	Environmental Planning and Assessment Act 1979
Fox	Fox Studios Australia Pty Limited
FIASA	Fox Industry Assistance Showground Agreement
FOI	Freedom of Information
FTO	Film and Television Office
GDP	Gross Domestic Product
ICAC	Independent Commission Against Corruption
IDC	Inter-departmental Committee
MA	Ministry for the Arts
NDY	Norman Disney Young

News Corporation	The News Corporation Limited
NPV	Net Present Value
OCA	Olympic Co-ordination Authority
PSG	Property Services Group. In this report PSG should, where appropriate, be taken to mean DPWS.
RAS	Royal Agricultural Society of NSW
RAS Act 1911	Royal Agricultural Society Act 1911
SEPP47	State Environmental Planning Policy Number 47
The Act	Centennial Park and Moore Park Trust (Macquarie Sydney Common) Amendment Act 1992
The Amendment Act	Centennial Park and Moore Park Trust (Royal Easter Show) Amendment Act 1993
WAC	Weighted Assessment Criteria

Performance Audit Reports

Agency or Issue Examined	Title of Performance Audit Report or Publication	Date Tabled in Parliament or Published
Department of Housing	<i>Public Housing Construction: Selected Management Matters</i>	5 December 1991
Police Service, Department of Corrective Services, Ambulance Service, Fire Brigades and Others	<i>Training and Development for the State's Disciplined Services: Stream 1 - Training Facilities</i>	24 September 1992
Public Servant Housing	<i>Rental and Management Aspects of Public Servant Housing</i>	28 September 1992
Police Service	<i>Air Travel Arrangements</i>	8 December 1992
Fraud Control	<i>Fraud Control Strategies</i>	15 June 1993
HomeFund Program	<i>The Special Audit of the HomeFund Program</i>	17 September 1993
State Rail Authority	<i>Countrylink: A Review of Costs, Fare Levels, Concession Fares and CSO Arrangements</i>	10 December 1993
Ambulance Service, Fire Brigades	<i>Training and Development for the State's Disciplined Services: Stream 2 - Skills Maintenance Training</i>	13 December 1993
Fraud Control	<i>Fraud Control: Developing an Effective Strategy (Better Practice Guide jointly published with the Office of Public Management, Premier's Department)</i>	30 March 1994
Aboriginal Land Council	<i>Statutory Investments and Business Enterprises</i>	31 August 1994
Aboriginal Land Claims	<i>Aboriginal Land Claims</i>	31 August 1994
Children's Services	<i>Preschool and Long Day Care</i>	10 October 1994
Roads and Traffic Authority	<i>Private Participation in the Provision of Public Infrastructure (Accounting Treatments; Sydney Harbour Tunnel; M4 Tollway; M5 Tollway)</i>	17 October 1994
Sydney Olympics 2000	<i>Review of Estimates</i>	18 November 1994
State Bank	<i>Special Audit Report: Proposed Sale of the State Bank of New South Wales</i>	13 January 1995
Roads and Traffic Authority	<i>The M2 Motorway</i>	31 January 1995
Department of Courts	<i>Management of the Courts:</i>	5 April 1995

Agency or Issue Examined	Title of Performance Audit Report or Publication	Date Tabled in Parliament or Published
Administration Joint Operations in the Education Sector	<i>A Preliminary Report A Review of Establishment, Management and Effectiveness Issues (including a Guide to Better Practice)</i>	13 September 1995
Department of School Education	<i>Effective Utilisation of School Facilities</i>	29 September 1995
Luna Park	<i>Luna Park</i>	12 October 1995
Government Advertising	<i>Government Advertising</i>	23 November 1995
Performance Auditing In NSW	<i>Implementation of Recommendations; and Improving Follow-Up Mechanisms</i>	6 December 1995
Ethnic Affairs Commission	<i>Administration of Grants (including a Guide To Better Practice)</i>	7 December 1995
Department of Health	<i>Same Day Admissions</i>	12 December 1995
Environment Protection Authority	<i>Management and Regulation of Contaminated Sites: A Preliminary Report</i>	18 December 1995
State Rail Authority of NSW	<i>Internal Control</i>	14 May 1996
Building Services Corporation	<i>Inquiry into Outstanding Grievances</i>	9 August 1996
Newcastle Port Corporation	<i>Protected Disclosure</i>	19 September 1996
Ambulance Service of New South Wales	<i>Charging and Revenue Collection (including a Guide to Better Practice in Debtors Administration)</i>	26 September 1996
Department of Public Works and Services	<i>Sale of the State Office Block</i>	17 October 1996
State Rail Authority	<i>Tangara Contract Finalisation</i>	19 November 1996
NSW Fire Brigades	<i>Fire Prevention</i>	5 December 1996
State Rail	<i>Accountability and Internal Review Arrangements at State Rail</i>	19 December 1996
Corporate Credit Cards	<i>The Corporate Credit Card (including Guidelines for the Internal Control of the Corporate Credit Card)</i>	23 January 1997
NSW Health Department	<i>Medical Specialists: Rights of Private Practice Arrangements</i>	12 March 1997
NSW Agriculture	<i>Review of NSW Agriculture</i>	27 March 1997
Redundancy Arrangements	<i>Redundancy Arrangements</i>	17 April 1997

Agency or Issue Examined	Title of Performance Audit Report or Publication	Date Tabled in Parliament or Published
NSW Health Department	<i>Immunisation in New South Wales</i>	12 June 1997
Corporate Governance	<i>Corporate Governance</i>	17 June 1997
Department of Community Services and Ageing and Disability Department	<i>Large Residential Centres for People with a Disability in New South Wales</i>	26 June 1997
The Law Society Council of NSW, the Bar Council, the Legal Services Commissioner	<i>A Review of Activities Funded by the Statutory Interest Account</i>	30 June 1997
Roads and Traffic Authority	<i>Review of Eastern Distributor</i>	31 July 1997
Sydney Showground, Moore Park	<i>Lease to Fox Studios Australia</i>	December 1997



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