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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE MEGAN LATHAM

PUBLIC HEARING

OPERATION CREDO AND SPICER

Reference: Operation E12/2107/0821

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON WEDNESDAY 16 APRIL, 2014

AT 2.01PM

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This transcript has been prepared in accordance with conventions used in the Supreme Court.

THE COMMISSIONER: Yes, Mr Di Girolamo, if you wouldn't mind coming back into the box, and I think, Ms Williams, it's your turn, yes.

<NICHOLAS ANTHONY DI GIROLAMO, on former oath [2.01pm]

10 MS WILLIAMS: Thank you, Commissioner. Mr Di Girolamo, you were asked some questions on 14 April at transcript pages 2258 to 2259 about a sign-on fee that you and Mr Rippon received when you became directors of Australian Water Pty Limited. Do you recall being asked about that matter?
---Yes.

And it was suggested to you in a question asked by Counsel Assisting that Mr MacGregor Fraser must have also received something if you and Mr Rippon were getting a sign-on fee, and you said you couldn't recall?
---Correct.

20 I put it to you that Mr MacGregor Fraser in fact received no sign-on fee when he became a director of Australian Water Pty Limited?---I, I, I wouldn't dispute that, Ms Williams.

Thank you. You gave some evidence yesterday at – or I think it might have been Monday, I apologise, at page 2417 of the transcript about an increase in your shareholding in RHIC from 50 per cent to 60 per cent in 2008 and you said that you acquired the additional 10 per cent from Mr MacGregor Fraser. Do you recall giving that evidence?---Yes.

30 I just want to ask you some questions about that matter. Could Mr Di Girolamo be shown Exhibit C84 please, Commissioner?---Thank you.

And could you turn to page 30, please, Mr Di Girolamo?---Yes.

And do you recognise this is a note prepared by you on 9 May, 2008?
---Yes.

And it's an accurate note, is it, of a discussion between you and Mr Rippon and Mr MacGregor Fraser on that date?---I believe so.

40 You see there the reference about a third of the way down the page to what's referred to as second issue? It reads now, "Second issue is loan facility from Abacus." Do you see that?---Yes.

That loan facility was loan of some \$3 million that was then proposed to be made by Abacus to RHIC. Is that correct?---Yes.

And you see in the very next line there you've recorded that, "Wolf wants all the directors to put second mortgage/guarantees." Is Wolf a reference to the, Mr Wolf, the person behind Abacus?---Yes.

And you see there in the following line you've attributed to Mr MacGregor Fraser the words, "I'm struggling with it and am a no?" Do you see that? ---Yes.

10 And then if you turn to the second page do you see these words attributed to yourself, that this would mean a reduction in shareholding?---Yes.

And without going through each and every line of the note, it was discussed, wasn't it, that Mr MacGregor Fraser's shareholding would have to be reduced in your view and Mr Rippon's view to 10 per cent if Mr MacGregor Fraser wouldn't provide a second mortgage or guarantee for the Abacus loan?---That's the discussion we had, we had with Mr MacGregor Fraser.

20 And as you record in the last entry in the note, Mr MacGregor Fraser asked for a little more time to think about it and come back to you?---Yes.

And Mr MacGregor Fraser did come back a short time later, didn't he, and confirm that he would not provide the security or guarantee?---Yes.

And his shareholding was in fact reduced to 10 per cent for that reason. That's right, isn't it?---Correct.

And at the time that his shareholding was reduced- - -

30 THE COMMISSIONER: To 10 per cent or by 10 per cent?

MS WILLIAMS: To 10 per cent, Commissioner. At the time that his shareholding was reduced Mr MacGregor Fraser expected that the loan from Abacus would proceed. Is that right?---Yes.

And ultimately however it didn't?---Correct.

40 During the balance of 2008 you didn't say anything did you to Mr MacGregor Fraser to disabuse him of the idea that the loan was going to proceed?---I think it was – the discussion went beyond the loan, I think it was a discussion that went also in relation to um, being prepared to provide those guarantees or mortgages going forward.

My question, sir, was, during the balance of 2008 you didn't say anything to Mr MacGregor Fraser, did you, to inform him that the loan from Abacus was in fact not proceeding?---He was aware it wasn't proceeding.

Well, I'm putting to you that he wasn't, he didn't become aware of that until about the end of 2008?---Ah, I don't accept that as a matter of time.

Well, do you have any recollection of telling Mr MacGregor Fraser at an earlier point in time that no \$3 million loan would in fact be forthcoming from Abacus?---I believe he would have been aware of the discussions that would have been occurring with them.

10 Well, I'm putting to you that he was not in fact involved in any discussions that you or Mr Rippon may have been having with Abacus. Do you accept that?---I, I don't. He may – I'm sorry, I accept that he may not have been at all those discussions, yes, I accept that, but I would have thought that he would have been kept informed of what was transpiring.

You're saying that because you assume that's what would have happened as opposed to- -?---I don't have, I do not have a direct recollection as I sit here today.

20 Thank you. So if Mr MacGregor Fraser says that he was not aware before the end of 2008 that the loan wasn't proceeding, you're not in any position to dispute that?---As a matter of timing I think that would be odd.

Moving to a different subject – you gave some evidence this morning about salaries and I suggest to you that you never had any discussion with Mr MacGregor Fraser to indicate to him that your salary represented anything other than what you regarded as the market value for your services in 2007 or 2008, did you?---Sorry, could you just put that question to me again, did I have an additional discussion with him?

30 No, that's all right, I'm moving to a slightly different topic. Do you recall giving some evidence earlier today in relation to whether profits or earnings of RHIC were in effect distributed to shareholders through salaries. Do you recall giving evidence about that subject matter?---I do.

Now, during 2007 and 2008 you never had any discussion with Mr MacGregor Fraser in which you indicated to him that your salary represented anything other than what you regarded as the market value for your services?---That's correct.

40 And specifically you didn't say anything to him that may have led him to believe that your salary incorporated an amount above that market value that would otherwise have represented a profit to the company?---I accept that.

Now, Mr Rippon's salary and Mr MacGregor Fraser's salary, as you've referred to already, were set in 2004?---Yes.

When those salaries came to be increased in about September 2008, AWH's subsidiary company, Australian Water No. 1, was about to begin earning revenue under the package 1 contract. That's right, isn't it?---Correct.

And the directors receiving the salaries decided upon in September 2008 would be providing services to Australian Water No. 1 so that it could perform its obligations under that contract?---Yes.

And Australian Water No. 1 of course had the ability to earn a profit under the package 1 contract?---Yes.

There was no impediment to AWH receiving from its subsidiary part or all of that profit as a dividend?---Correct.

10

And there was no impediment to AWH earning a profit out of non-stage 3 work?---Correct.

And there was no consideration given in September 2008, was there, to putting any component into salaries that might be regarded as profit?
---I don't believe so.

20

Now yesterday, Mr Di Girolamo, you gave some evidence at page 2434 of the transcript to the effect that it was your understanding that Mr Rippon, Mr MacGregor Fraser in the internal accounting team gave instructions to MBT in relation to their certification role. Do you recall giving that evidence?---I do.

Now the certification process related principally to salaries and what might generally be described as corporate overheads, that's right isn't it?---Yes.

Now MacGregor Fraser was the project director for stage 3?---Yes.

30

And his principal responsibility was attending the technical and the engineering aspects of the delivery of the works?---Vis-à-vis that role, yes.

And it as the role of the internal accounting team principally to deal with corporate overheads, that's right isn't it?---Yes.

And I suggest to you that if you understood that Mr MacGregor Fraser was involved in providing instructions to MBT in relation to their certification process you were mistaken in that understanding?---I don't accept that.

40

Well I suggest to you you're likely to have made an assumption which is in fact wrong?---It would have been based on my observation of what was transpiring.

Right. Isn't it the case that in giving the evidence you gave yesterday you simply named any possible candidate you could identify other than yourself as having being involved in giving instructions to MBT about their certification role?---No, I think it might be in cross purposes in terms of their certification role. I was referring to a process and who was involved in

that process in terms of getting the documentation together and giving it to MBT.

THE COMMISSIONER: Well that wasn't the context of the questions that were asked at the transcript reference to which Ms Williams is referring. It was, it was to do with the certification process whereby MBT were given instructions as to what was appropriate and within the scope of the stage 3 works?---Yes, okay, sorry.

10 MS WILLIAMS: And having received that clarification from the Commissioner are you able to agree with me that, well are you able to clarify whether you understood that Mr MacGregor Fraser had a role in giving instructions to MBT in the manner the - - -?---I maintain the evidence I gave.

All right. So well I'm, I'm suggesting to you that if you did have an understanding that Mr MacGregor Fraser was involved in giving instructions to MBT about the performance of their certification role you were mistaken in that understanding?---Um, I may have been but that was
20 what I understood.

Right. But you accept that you may well have been mistaken. Is that the effect of the answer you just gave me?---I'm saying that, that that was my understanding, Ms Williams. If I was wrong I was wrong. If that was my understanding it's also my understanding based on the evidence that I've heard here from Mr George.

Well I'm not sure how closely you were listening to Mr George - - -?
---Right, okay, sorry.

30 - - - with respect. If Mr - Mr MacGregor Fraser has given evidence which you may have heard that it was not his role to give instructions to MBT and that he didn't do so. You're not in any position to dispute that are you?---
Not directly, no.

Right, thank you.

THE COMMISSIONER: Mr Di Girolamo, do I understand you to say that, that your evidence in relation to that matter i.e. instructions given to MBT
40 was principally derived from the fact that you became aware of what Mr George said in his evidence or is it based on some other experience of yours?---I, I was saying that I thought his evidence corroborated what my observation was that Mr MacGregor Fraser had a role in it.

Well you keep saying your observation. What observations are you referring to?---In the office.

Well, like what? What did you see that allowed you to draw that conclusion?---That he was signing most of the, the payment schedules and -
- -

No, no, no, no. See this is where you've got to be - - -?---Okay, sorry.

You've got to be very, very careful about this?---Sure.

10 We're not talking about signing documents we're talking about instructions given to MBT at any time that there was a query about whether or not a particular invoice came within the scope of the stage 3 works. Did you have any direct observation of that query being directed to Mr MacGregor Fraser and Mr MacGregor Fraser and Mr MacGregor Fraser responding to it?---
Yes.

And in what circumstances?---I recall a discussion with Mr MacGregor Fraser whereby he was going to speak to Ian George about a certification.

20 Right. About particular invoices that you can refer to or just generally?
---Um, I think there was a time in June or July of 2008. And my recollection is that there's an email on the file to that effect.

And why was he speaking to you about it?---'Cause I think it was about the time when I was going to coming across to Australian Water Holdings and so he was going to be speak to Mr George about that.

Well that's a different topic entirely?---No, but it had to do with the process, Commissioner.

30 Well what I'm trying to get at is did Mr George, sorry, I withdraw that. Did Mr MacGregor Fraser to your recollection ever have a conversation directly with you where in he referred to particular invoices which were queried by MBT as - - -?---That specifically I do not recall.

Right. So you didn't, you don't recall ever having a conversation with Mr MacGregor Fraser to that effect?---No.

Right.

40 MS WILLIAMS: Mr Di Girolamo, on a related subject you gave evidence on Monday at page 2313 of the transcript to the effect that you understood based on some internal discussions that Mr MacGregor Fraser would look at invoices and receipts that had been certified by MBT before you went marching off to Sydney Water insisting that those invoices should be paid. Do you recall giving evidence to that effect?---I, I do.

Now may we take it that any such internal discussions if they occurred must have taken place during the period in which Sydney Water was asking to see invoices and receipts?---I accept that.

All right. And that would have been would it not after Sydney Water notified RH3 of its intention to conduct an audit in January 2009?---The issue with the audit was that that I think Mr Chadban was responsible in relation to coordinating the, the response to the audit.

10 Quite?---And my recollection is that that, that Bill was also involved in that but my recollection is that that, that Mr Chadban was primarily responsible for responding to that audit.

In fact you appointed Mr Chadban with responsibility for that audit process, correct?---That's my recollection, yes.

And it was you and Mr Chadban who attended the Dispute Resolution Committee meetings as representing RH3?---Yes.

20 And it was Mr Chadban who in fact reviewed some invoices and receipts that had been certified by MBT in order to provide the May 2009 break downs which have been shown to you earlier in your evidence, correct? ---Yes.

And that was done by, by Mr Chadban, well I withdraw that. You asked Mr Chadban to do that didn't you?---Yes.

30 And you wouldn't have asked him to do that if you understood that Mr MacGregor Fraser had in fact undertaken a similar process would you?---Mr Chadban was the CFO.

See I want to suggest to you that you're mistaken in your understanding or in your evidence that you gave on Monday to the effect that there was some internal discussion in which Mr MacGregor Fraser indicated either that he had or would review what MBT had been certifying?---Again I'd have to look at the context of the questions I was asked on, on Monday but, but I understand what you're saying.

40 Well I'm sorry to take the time to do this, Commissioner, but I think I should in fairness, could Mr Di Girolamo be shown pages 2313 and 2314 of the transcript please, Commissioner.

THE WITNESS: Thank you.

MS WILLIAMS: Do you have those pages open, Mr Di Girolamo?---I do.

The evidence I'm referring to commences at about line 13 on page 2313 and you'll see it's a question asked by the Commissioner and it continues until

the luncheon adjournment. If you can just take a moment to read through that and let me know when you've done that?---Yes, I've read that.

Now, when do you say that any internal discussion that you refer to in that evidence that gave rise to the basis of your understanding that getting to the bottom of it and looking at the invoices and receipt would be done by Mr MacGregor Fraser, when do you say that internally discussion occurred?
---Sorry, are you referring to the question after line 33?

10 THE COMMISSIONER: This was directed to ascertaining to whom you spoke about the various invoices that were improperly included in the certification process.---Commissioner, are you asking me about who I would have spoken to, to satisfy myself that that had not occurred.

Well, if you look at the question beginning at line 39 I think it encapsulates the point, why didn't you at some point in relation to Sydney Water's concerns say, look we need to find out what is being certified, let's get to the bottom of it and look at the invoices and receipts before we go marching off to Sydney Water insisting that all of these costs should be paid. Did
20 anybody seek to do that and your answer was, "My understanding is that that would be done by Bill MacGregor Fraser." That was the answer to that questions, that's Ms Williams - - ?---Yes.

- - - basis for the question that she's now going to ask.

MS WILLIAMS: Thank you Commissioner. And Mr Di Girolamo you'll see at the very top of the next top the Commissioner asked you, "Where did you get that understanding from?" And you said, "From the internal discussions we had." My question is, when do you say those internal
30 discussions took place?---I can't recall precisely.

Now, I'm putting to you that given that the discussion occurred in the context of Sydney Water's concerns any such discussion about this subject matter must have occurred during the first half of 2009, do you accept that?
---That may be correct.

And I put that to you on the basis that it was in January 2009 that Sydney Water notified RH3 of it's intention to conduct an audit and it was in April
40 2009 that RH3 issued a notice of dispute seeking payment of the disputed costs.

MR ALEXIS: I think I need to object to that question. The question of the audit was first raised in June 2008. My recollection is that there's a letter to that effect from Sydney Water.

MS WILLIAMS: I'm sorry Commissioner, I couldn't hear my learned friend from the back - - -

THE COMMISSIONER: Mr Alexis says that the first notice of the dispute occurred in June 2008.

MR ALEXIS: No, no, no, the notice with respect to the auditor was June 2008 and I do recall asking either Dr Schott or Mr Quill about the timing of the audit request which preceded the Hunter Mediation and there's a letter to that effect.

10 THE COMMISSIONER: In any event, given that the witness doesn't know when these internal discussions took place, there's a specific proposition being put which is that they occurred in early 2009 I think the witness agreed with that, didn't he?

MS WILLIAMS: Well perhaps I should just – I'm sorry, did you agree with that proposition Mr Di Girolamo?---I accept that there would have been discussions in early 2009 and if you are going to ask me if that then would have been Mr Chadban's domain I would answer that yes as well.

20 Thank you. And just in case there's any doubt I'm suggesting to you that Mr MacGregor Fraser never had any internal discussion with you in which he indicated that he either had or would review the documentation underlying any MBT certifications?---That could be correct.

30 Thank you. Similarly, Mr Di Girolamo, on yesterday I believe at page 2472 of transcript you gave evidence that you had had discussions with each of Mr Rippon, Mr MacGregor Fraser and Ms Power about what had been given to MBT for verification in 2009 and that they each told you that there was a process in place and that the memoranda payments and the invoices had been given to MBT, I suggest to you that you're mistaken in your evidence about having had any such conversation with Mr MacGregor Fraser?---I don't accept that.

Well, what precisely can you recall about that conversation that you say you had with Mr MacGregor Fraser?---I recall there was a general conversation where I was provided with a background of the process that was undertaken with respect to the certification.

40 Mr MacGregor Fraser didn't say to you during that conversation that the invoices and the memoranda of payments had been sent to MBT did he?---I don't specifically recall that.

Thank you. Mr Di Girolamo you gave some evidence yesterday at pages 2425 and 2426 of the transcript to the effect that in 2009 RH3 could have provided Sydney Water with invoices and records evidencing the management and administration costs and this could have lead to way forward to resolve the impasse between it and Sydney Water. Now you said that the invoice and records weren't provided because Sydney Water had no contractual entitlement to them, correct?---Yes.

And you've described this yesterday as a legal position taken by RH3 at that time?---Yes.

Now, was that position informed by legal advice?---Yes.

And legal advice from whom?---Allens.

10 And you've given some evidence earlier today in answer to questions from my learned friend Mr Littlemore about what was described as the raging dispute in 2007 and 2008 about the Other Stages Deed and whether Sydney Water was limiting RH3's role under that deed?---Yes.

I should say RHIC's role contrary to that deed.---That was our position yes.

And that dispute was still raging in 2009, that's right isn't it?---Yes.

20 And RHIC's position in that dispute was also based on legal advice as you've said?---Yes.

Now during 2009 there was also a dispute, was there not, between RH3 and Sydney Water about whether or not Sydney Water was obliged to pay for Package 1 pre-development costs?---Yes.

And in relation to that matter do you recall that Sydney Water had indicated in September 2008 that certain pre-development costs relating to Package 1 could be drawn from the Stage 3 credit facility?---That's my recollection, yes.

30 And do you recall that in January 2009, after RH3 had incurred those pre-development costs, Sydney Water changed it's position and said that RH3 was not entitled to recover the costs either under Stage 3 or under the Package 1 deed?---Yes.

Now at the time it was decided not to provide the invoices to Sydney Water, Sydney Water was maintaining that position that it didn't have to RH3 for the pre-development costs of Package 1.---Yes.

40 And Dr Schott said at page 598 of the transcript that the dispute that broke out about the Package 1 pre-development costs and about Sydney Water access to AWH's invoices and records were not unrelated, do you agree with that?---Yes.

And having regard to Sydney Water's position in relation to the Package 1 pre-development costs and also the Other Stages Deed, did you believe in 2009 that providing the management and administration invoices to SWC would be likely to lead to a resolution of the impasse between RHIC and RH3 on the one hand and Sydney Water on the other hand?---No.

Thank you Commissioner, I have nothing further. Thank you Mr Di Girolamo.

THE COMMISSIONER: Thank you. Yes Mr Alexis.

MR TAYLOR: Sorry, Commissioner, I indicated that I would like to ask to some questions.

10 THE COMMISSIONER: I'm sorry.

MR TAYLOR: Taylor solicitor, on behalf of Mr Sibraa.

THE COMMISSIONER: Yes, Mr Taylor.

MR TAYLOR: Mr Di Girolamo, would it be fair to say that you knew – sorry, you had not met or had any contact with Mr Sibraa until you engaged the firm Jackson Wells to act on behalf of Australian Water?---That would be correct, sir.

20

And is it also correct that other than perhaps one chance meeting at a football game, your only contact with Mr Sibraa was during the course of the retainer for Jackson, Jackson Wells held on behalf of Australian Water Holdings?---He's got a better memory than me 'cause I didn't remember the football game until then, yes.

Now, you were asked this morning by Mr Tyson in relation to your practice of making file notes and I think he said the years 2008 and 2009. Am I correct in saying that that was a practice that you adopted prior to that time and after that time?---I accept that.

30

And you took care to record accurately what was occurring in either a telephone conversation or a meeting in those file notes?---Yes.

And you were responsible for preparing on a regular basis CEO reports? ---Correct.

And similarly in relation to those reports you took care to accurately include relevant information in those reports?---Yes.

40

Now, how did you – I withdraw that. Might the witness be shown, Commissioner, Exhibit C11, and Mr Di Girolamo, could you turn up page 1832 please?---Yes.

That's a report you prepared?---Yes.

And that's headed 25 Thursday February 2010?---Correct.

And that's how you normally headed up your CEO reports?---Yes.

And you gave evidence that in relation to the entry at the bottom, "I'm informed that the Minister is satisfied with the information provided to date," et cetera, you ascribed that to Mr Sibraa, didn't you?---I think I did, yes.

Now, could you turn to 1835?---Yes.

10 That's also a CEO report that you prepared?---Yes.

What's the date of that report, please?---It says 26 Friday, 2010.

Are you able to tell the Commission what month that was?---Ah, not as I look at it right here right now I'm sorry.

Could you go to page 1837?---Yes.

20 See the third paragraph there, attachment 6 is a copy of the file note?
---Yes.

Was it your regular practice to attach relevant documents to your CEO reports?---Yes.

And if you could hang onto that folder, please. Could the witness now be shown Exhibit C17, please?---Thank you.

And could you please turn to page 3538?---Yes.

30 Do you see that's a memorandum to you from Kerry Sibraa and John Wells dated 10 February, 2010?---Yes.

If you just want to have a quick look at that, please, it runs for one page and one paragraph?---Yes.

Do you recall getting that memorandum?---Yes.

And could you just go back now to that other folder at C11?---Yes.

40 And could you once again go to page 1837, the last page I took you to?
---Yes.

Is that document you've just seen in the new folder the attachment you referred to in your CEO report?---I think it would be.

Do you recall receiving any other memorandum of that type around this time, that is February 2010, from Jackson Wells?---I couldn't recall as I sit here today.

But that's, that's – you wouldn't dispute that that is the attachment.
Correct?---I would not dispute that.

Thank you. Now, could you just go back to folder C11 again, sorry,
perhaps if you put C17 away. And once again go to page 1832. You've
already told us that's your CEO report of Thursday, 25 February. Correct?
---Yes.

10 Which is approximately 15 days after the date of the memorandum that I've
taken you to in relation to the other CEO report which doesn't have a
month. Correct?---Sorry?

The memorandum I took you to was dated 10 February, 2010. Correct?
---Yes.

And that was attachment 6 to the CEO report which if you want to you can
turn to at 1835?---Yes.

20 Which is dated 26 Friday but no month. Correct?---Correct.

And then coming back to 1832, that's dated 25, or 25 Thursday February,
2010?---Yes.

Is it possible these two CEO reports were prepared one day apart?---(No
Audible Reply)

Given that if 25 Thursday February, 2010 is a correct nomination of the date
and day, the next on is 26 Friday, 2010?---I doubt that.

30 Now, in that one on 25 February, 13, sorry, 1832, can you just have a read
of that, please, and in particular can you go to, well say, I'll give you a
number of examples. Paragraph 3, PPP proposal MWGC and after the
Roman numeral sub paragraphs it says, "The clarification sought in the
letter from DPC dated 8 March, 2010."?---I see that.

That postdates the date of this report, does it not?---Correct.

40 And over the page, paragraph 4, South East Queensland, first line, "AW
Queensland entered into an agreement with Sekisui House on 10 March,
2010." Once again the date of the report predates that date?---That's
correct.

And certainly for completeness, paragraph 5 heading Investors, second
paragraph, attachment 4 refers to a document dated 16 March, 2010?
---That's correct.

Would you accept that it's possible that your date of 25 February, 25 Thursday February 2010 on Exhibit C11 page 1832 is incorrect?
---Yes, that is a possibility.

I want to suggest to you that that memorandum that you received dated 10 February 2010 which is attached in 6 to the next CEO report which is 26 Friday, 2010, is your source of, source of information at that stage from Jackson Wells about what had happened that they'd been doing. Correct?
---That that was a source of information from Jackson Wells?

10

Yes?---Yes.

And if you have a look at page 1832, the bottom paragraph where you talk about, "I am informed the Minister is satisfied with the information provided," et cetera, where you use the words, "direct negotiation phase," does not appear in any shape or form in that memorandum which is on page 3538 in the other exhibit, being C17?---I'd have to go to C17, unless you want me to assume that.

20 Well, if you have any doubt about that, and because I asked you to read it before, but if you have any doubt about it, if you could be shown C17 again, page 3538 and 3539?--- I accept what you say.

You do accept it?---Yes.

There's no mention of direct negotiation at all?---Not in that memo, no.

30 Thank you. Now after you engaged Jackson Wells, did you communicate directly with Mr Sibraa in any way?---I thought my conversations were more with Mr Wells, who would tell me information or pass information on that Mr Sibraa had received.

So you're relying on Mr Wells to accurately report to you what he'd been told by Mr Sibraa, is that correct?---Yes.

And it's the situation that you didn't have any direct meetings with Mr Sibraa other than the original one in September 2009 that we've seen the file note about?---Yes, I thought there would have been a few others.

40 Are you able to recall when they were?---No, I don't.

Commissioner, just pardon me a moment. Do you recall having any contact either directly or indirectly with Mr Sibraa after September 2010?---I don't recall.

Yes, thank you Commissioner.

THE COMMISSIONER: Yes, Mr Alexis.

MR ALEXIS: Thank you Commissioner. Commissioner can I indicate at the outset that I propose to have Mr Di Girolamo step us through the key events from 2007 pausing only on the more significant matters and I'll endeavour try and keep the reference to documentation to a minimum if I can. Mr Di Girolamo with that introduction, do you recall on Monday of this week transcript 2279, that's a reference for the Commissioner, that you identified the genesis of the dispute with Sydney Water to be Mr Quill's letter of 6 December 2007?---Yes, but there was also a letter prior to that that caused us concern.

10

I understand that and what I want to do is to take you back into 2007 and come to Mr Quill's letter and then move forward to the dispute from there, if you follow. Could Mr Di Girolamo be shown Exhibit C15 at page 2834, 28 34.---Sorry Mr Alexis, I missed the - - -

2834.---Yes.

20 And was it this letter of 27 April 2007 from Dr Schott which indicated to you that Sydney Water would be putting a proposal in accordance with Clause 3.4 of the Other Stages Deed?---Yes.

And should we understand, and we'll come to the detail, that in the events that happened a proposal in accordance with 3.4 of the Other Stages Deed either was not put or not put in accordance with how you understood the deed to operate?---Yes.

And should we then understand that in May 2007 you had firstly a meeting with Mr Gordon Cameron?---Yes.

30 And who was Mr Cameron in terms of his special position at the time?---He had been appointed by Dr Schott as the relationship representative on Sydney Water's behalf for RHIC.

Thank you. Could the witness be shown please Exhibit 85, C85 open at page 6.---Yes.

And Mr Di Girolamo is this your file note of your meeting with Mr Cameron on 29 May 2009?---Yes.

40 And is this the conversation to which you were referring in your evidence, I think, at transcript 2280?

THE COMMISSIONER: Is it 2009 or 2007 Mr Alexis?

MR ALEXIS: Oh well, that's my error then, I'm sorry, I'm still in 2007.

THE COMMISSIONER: 2007.

MR ALEXIS: Yes. Yes. At transcript 2280 from line 30 Counsel Assisting was asking you questions about and I'll quote him, "the change of status," of what was going to occur, do you recall that?---Yes.

And he asked you who was told at Sydney Water and you referred to Gordon Cameron firstly. Then in your subsequent answer you made reference to there being a file note in relation to your conversation, do you recall that?---Yes I do.

10 And is the file note that we see in Exhibit C85 page 6 the file note to which you were referring?---Yes.

And you would draw the Commissioner's attention to what appear about half way down the page of that file note?---That's correct.

And then could we also go the further evidence you gave on this subject at 2281 where you refer to another discussion that Mr MacGregor Fraser and yourself had with a John Bueto B-u-e-t-o - - -?---Bueto.

20 - - - thank you and Mr Cameron?---That's correct.

And I think you also made a reference to a file note in that regard as well?---Correct.

Commissioner these documents have been provided to Counsel Assisting, could I provide Mr Di Girolamo with a copy of this document and a copy for you Commissioner and there are spare copies for those who have an interest in seeing it. Mr Di Girolamo, firstly, is this the file note to which you were referring in relation to the meeting with Messrs Bueto and Cameron?---Yes, I believe this is a file note prepared by Mr MacGregor Fraser.

30

Thank you. And it relates to a meeting on 19 June 2007?---Correct.

And if you turn to the third page of the meeting notes do you see that it's stated there that SWC, for Sydney Water Corporation at about point 5 on page 3, stated and there was then in the next sentence, a record of SWC's dated it understood RHIC operated under a non for profit arrangement an AW could have a different approach if any alternative proposal was submitted, do you see that?---Yes.

40

And in the next paragraph you see recorded there, we informed Sydney Water that RHIC only chose not to make a profit but there was no restrictions on RHIC's ability to change it's current arrangements to become a profit taker, do you see that?---I do.

And is your recollection that that noted meeting accurately records what was conveyed to those from Sydney Water during the course of that meeting on that subject?---Yes.

Thank you. Commissioner, I invited Counsel Assisting to tender the minutes.

MR WATSON: I tender that.

10 MR ALEXIS: Thank you.

THE COMMISSIONER: Exhibit C118. Do I take it, Mr Di Girolamo from the tenure of the notes that this was an acknowledgment of what was able to occur but that there'd be no change of status at that point in time?---Yes.

20 **#EXHIBIT C118 - NORTH WEST GROWTH CENTRE
PROVISIONS OF WATER INFRASTRUCTURE WORKS MEETING
NOTES- MEETING BETWEEN RHIC AND SYDNEY WATER ON
TUESDAY 19 JUNE 2007**

MR ALEXIS: Now, Mr Di Girolamo, just on the subject of the existence of a trust, should the Commissioner understand that in 2009 it's calendar 2009 there was correspondence directed to that subject amongst others between Allens representing AWH and Clayton Utz representing Sydney Water? ---Correct.

30 And the Commissioner will see a letter at C85 page 200, a letter from Allens to Clayton Utz of 13 July 2009 which deals with the dissolution or the winding up of the trust by resolution in 1999?---Correct.

Now who gave the instructions to Allen in relation, Allens in relation to that fact which was communicated undercover of the Allens letter of 13 July 2009?---That would have come from either Mr Rippon or Mr MacGregor Fraser.

40 And in relation to what had occurred historically was that a matter in respect of which you had discussed with them in terms of trying to ascertain what the position was so as to enable Allens to respond to the question Clayton Utz had asked?---It was the only way that I could find out 'cause I wasn't there at the time.

All right. And was that the time that you obtained access to the minutes and related documents that are in evidence relating to the dissolution of the trust?---Yes.

And the amendment to the articles of the company?---Yes.

All right, thank you. Now could Mr Di Girolamo be shown Exhibit C29 which is Mr Quill's letter to RHIC of 29 June 2007.

THE WITNESS: Thank you. I have that.

MR ALEXIS: Now I'm just coming back to the chronology concerning the way in which the dispute arose. You'll see, Mr Di Girolamo, in the third paragraph noting as you travel to it that Mr Quill's letter relates to an update
10 on first release precincts but you see in the third paragraph it says, "Please note that this letter is not a proposal to RHIC under clause 3.4" et cetera. Do you see that?---I do.

Now do you recall the receipt of that letter causing some concern on your part and those of your fellow directors at the time?---We were concerned that that paragraph was the first time that we ever received notification from Sydney Water that there could be anything but a proposal pursuant to clause 3.4 and then if you turn then to the last page "We were concerned as to how
20 you could have an alternative externally finance proposal that wasn't within the confines of clause 3.4 the other stages deed." That section in relation to the alternative externally finance proposal was also a significant deviation from the other stages deed which provided to RHIC the role of being the private sector funder of this Infrastructure in the North West Growth Centre of Sydney.

And how did you see the content of Mr Quill's letter sitting with the letter that you'd received from Dr Schott back on the 27 April 2007 to which I took you a moment ago?---Our view was that they were at odds.

30 Now I think that led to a fair bit of internal discussion which is reflected in a number of discussion and file notes to which I think Mr MacGregor Fraser was taken at some length during the course of his evidence. Do you recall that - - -?---Yes.

- - - in those file notes? And then ultimately Mr Rippon I think wrote to Dr Schott about it. If you could be shown Exhibit C30. His letter of 2 July 2007 will be coming to you shortly, Mr - - -?---Yes.

40 - - - Di Girolamo. And then I'll be coming back to C15?---Thank you.

And we see in Mr Rippon's letter that he refers in the fourth paragraph to, for concern namely that the letter that is Mr Quill's letter proposes a fundamental and unilateral change to our relationship inconsistent with our responsibilities under currently arrangements et cetera. Do you see that?
---Yes.

As Mr Watson would say pretty strong stuff?---Yes.

I gather, Mr Di Girolamo, that in July 2007 you and Mr Rippon and perhaps Mr MacGregor Fraser closely discussed the incoming correspondence to which we referred and the sort of response that ought to be sent back before the response was sent?---Yes.

And does Mr Rippon's letter reflect the concern that you had as is expressed in that letter?---Indeed it does.

10 Now could you be shown please Exhibit C15 open at 2895?---Sorry, just in relation to that letter to penultimate paragraph, Mr Alexis, was also important because there had been a meeting that we had attended with Dr Schott where she invited Mr Rippon to raise any issues with her directly and I think Mr Rippon was referring to that as well the road blocks.

20 Yes. Thank you. Now if you turn to C15 2895 there's the letter back from Mr Rippon which I think you signed on his behalf a letter of 13 July which opens with reference to the letter of 29 June being Mr Quill's letter and the letter of 2 July being Mr Rippon's earlier letter Exhibit C30. Do you see that?---I do.

And the position set out for example under the heading the deed towards the bottom of the first page in the letter and the position as set out in the balance of the letter particularly the fourth last paragraph on the second page of the letter which speaks about the "legal mandate" was that a position that the directors of RHIC took as to their legal and contractual position with Sydney Water at the time?---Yes.

30 And again was the subject of quite specific and extensive discussion between the directors for the purpose of determining the position that would be conveyed to Sydney Water under cover of this letter at the time?---Yes.

And if I can just go back to Exhibit C85, these are your supplementary documents I think, Mr Di Girolamo. If you can keep C15 with you because we'll be moving between that and Exhibit C85 but if you open C85 at page 7, do you have that?---I do.

40 Thank you. Is that your email to Dr Schott addressed "Dear Kerry" under cover of which you sent directly to her by email the letter to which I just referred which you'll see is reproduced in this particular exhibit at pages 8 to 11 inclusive?---That's correct.

Why did you send this by email in addition to the hard copy letter going to Mr Quill, what was the point of it at the time?---I think there was two things, the first is that, um, I probably didn't want to notify Dr Schott, um, about the personal situation surrounding Mr Rippon in paragraph 1 and, and I think um, in my mind would have been the fact that in the penultimate paragraph um, she wanted to be directly appraised of the situation and I think I'm asking her I hope this is still your preferred course but in terms of

whether she wanted me just to leave her alone and just speak directly to, to, to Mr Quill.

All right?---But the issue was that Mr Rippon had engaged Dr Schott.

Now could we then go back to C15 at page 2949?---Yes.

And is this the reply under Mr Quill's hand that was received to Mr Rippon's letter- - -?---Correct.

10

- - -that you signed? And no doubt when you read it you were concerned what was said, particularly in the third paragraph from the bottom of the first page of the letter about Sydney Water not accepting the suggestions contained in your letter that RHIC has a, "legal mandate."?---Absolutely.

So should we understand that that if you like framed the dispute in terms of contractual and legal entitlements going forward from this point?---Correct.

20

Now, I'm sorry to be jumping around, but not all the letters on this were in the original exhibit, but if you go back to C85, could I show you page 12? ---Yes.

And is this the reply from Mr Rippon although signed on his behalf by Mr MacGregor Fraser to Mr Quill's letter of 18 July?---That is the response, yes.

30

Yes. And in the penultimate paragraph – I'm sorry, it's the third-last paragraph, there's confirmation that RHIC does wish to receive a proposal in accordance with the Other Stages Deed. Do you see that?---Yes.

Now again as with the other correspondence, no doubt these issues were discussed between the directors because of the importance of it at the time? ---Correct.

40

And can you tell us why it was thought in July 2007 necessary to confirm that RHIC wanted to receive a proposal in accordance with the OSD? ---Because the OSD governed the contractual relationship between the two parties and gave RHIC its exclusive rights to perform its obligations in what was then known as the Rouse Hill Development Area.

So this was a quite intentional step taken to effectively engage Sydney Water into the contractual obligations enshrined in the Other Stages Deed? ---Yes.

Which is why- - -

THE COMMISSIONER: That's as you understood the deed in any event? ---Oh, indeed Commissioner.

MR ALEXIS: Now just coming to your understanding, at some point did you try and reality test that understanding by getting some legal advice?
---Yes.

And if Mr Di Girolamo could be shown Mr MacGregor Fraser's tender bundle, Exhibit C84, if you can keep all those things there, C84 pages 7 and following, you'll see the pagination in the bottom right-hand corner?---Yes.

10 And you'll see that Allens Arthur Robinson on 28 August, 2007 are writing to both you and Mr MacGregor Fraser concerning the RHIC project and if you thumb through to page 14 you'll see that there's a long letter of advice provided by Mr O'Brien, a partner of Allens, and his senior associate, Mr Wright. Do you see that?---I do.

Now, we can all read this in our own time, Mr Di Girolamo, but when you received this eight-page advice from your lawyers, did you form a view about whether or not your own view was correct or not in terms of the way in which the Other Stages Deed was to operate?---I believed that the Allens
20 report was consistent with my interpretation of the contractual relationship which um, was consistent with the manner in which Mr Rippon and Mr MacGregor Fraser had explained the contractual relationship to me.

All right. So did the receipt of that advice cause you to take a different course or maintain the one that had been exemplified by the prior correspondence to which I've stepped you through?---The latter.

Now, could you look now at C15, 3007?---Yes.

30 And you'll see that Mr Quill's writing a further letter on 14 September which effectively rejects the position in terms of contractual rights that had been put in the earlier correspondence. I draw your attention for example to the third-last paragraph on the first page of the letter. Do you see that?
---The third-last paragraph?

"Whilst acknowledging that RHIC sees its role as articulated, Sydney Water does not accept that view."?---Correct.

Do you see that?---Yes.

40 And in the next paragraph there's reference to, "Expectations and proposals variously indicated by RHIC do not accord with Sydney Water's view of the Other Stages deed," et cetera. Do you see that?---I do.

And then over the page you would have read no doubt with some concern the statement contained in the third-last paragraph, "In summary, Sydney Water's broad position is that it does not have any financial obligations to RHIC beyond those contained in the stage 3 deed." Do you see that?

---Well, that concerned me but just of concern was the last sentence in the paragraph preceding that.

Yeah. Now, to this point should the Commissioner understand that Sydney Water had not taken any step as far as you were concerned to engage clause 3.4 of the Other Stages Deed?---Up until this point of time, correct.

All right?---Other, other than Dr Schott's earlier letter saying that there would be a proposal pursuant to clause 3.4.

10

And at this time that's what, that is what you were waiting to receive. Is that right?---Yes.

And if you turn to C15 at 3028?---Yes.

Apologies, Commissioner. Oh, no, I've found it. Yes. Sorry, Mr Di Girolamo. Now, this is an email that you sent to Dr Schott on 25 February, 2007 which I think reflected how you saw the position at that point in time? ---That's correct.

20

In the second paragraph we see for example that you refer to the attempt to resolve with Ron, that's Mr Quill, an attempt, an apparent fundamental misunderstanding of the legal relationship?---Correct.

And was it your view in September 2007, Mr Di Girolamo, that Mr Quill seemed to be proceeding under a fundamental misunderstanding of the legal relationship?---Yeah.

30

THE COMMISSIONER: Are we talking February 2007 or 2008?

THE WITNESS: September.

MR ALEXIS: September 2007.

THE COMMISSIONER: Oh, I'm sorry, I thought you said February. 25 September, 2007?

40

MR ALEXIS: Correct. Sorry if I made an error there, Commissioner. And you'll see under the two subparagraphs about point 5 of the page you express there a concern that the position taken by Mr Quill constitutes an attempt to commercially frustrate RHIC?---Well, yes. The first one my recollection is, was that the project briefs were, were going out in relation to work that would have been undertaken at that point in time by RHIC and that Mr MacGregor Fraser was calling Sydney Water and saying to Sydney Water, we are now in a position to commence, "the predevelopment works" for the next stage, and he was being told, if my recollection is correct, from Sydney Water, there are no such works, but then he was finding out that project briefs were being provided to other third parties.

And Commissioner should understand that you reference in sub-paragraph 1 of our email to Dr Schott where you referred to the quote, "private sector" is a market which was unconnected to RHIC, third parties?---Correct and that would have been, if my recollection of the deed is correct would have been direct breach of clause 3.3 of the Other Stages Deed.

10 How did you find that out that there was apparently project briefs being issued directly to third parties in breach of how you saw it, the Other Stages Deed?---I think Mr MacGregor Fraser either found out from contacts in the market place or from works that were being perhaps tender out on the net from the website, the Sydney Water website, but I might be wrong on that, but that's what I have in my mind.

20 And so that's what you had heard and understood to be the position and at a time when you had not received any clause 3.4 proposal under the Other Stages Deed from Sydney Water, is that right?---Yes, because there would have had to have been technical work that would have had to be undertaken for the proposal to have come to us.

Now, could I ask you to go back to C85 which is the other folder, Mr Di Girolamo, and turn to page 17.---Yes.

Noting your email to Dr Schott of 25 September 2007, do you see this document briefing with New South Wales Treasury 29 September 2007? ---Yes.

30 Now did you prepare this document?---No, this looks like a file note prepared by Mr MacGregor Fraser.

And did this relate to an occasion where there had been a meeting with those recorded present, principally Mr Michael Schur, the Deputy Secretary Office of Infrastructure Management?---Correct.

40 Now, can you recall why it was that in the fact of the email to Dr Schott of 25 September 2007 and what had preceded that in terms of the communications with Sydney Water the briefing meeting with New South Wales Treasury was arranged?---My recollection is that it, there was the letter from Mr Quill albeit we had the concern about 3.4 so I'm talking to you about 29 June letter. The second last point in that was that we could prepare, in essence, a privately funded proposal so we started, we proceeded on that basis to prepare that. My recollection is that Dr Schott I think referred us to Treasury and to Michael Schur, to speak to Michael Schur in relation to that proposal and this I think seems to be a file note of probably the first meeting that we had with, with Mr Schur.

All right. If you could turn to page 18 of Exhibit C85.---Yes.

Is this your email to Dr Schott following a meeting that you had with her that day following the earlier email that you'd sent on 25 September?---No, no, this is Dr Schott's email to me - - -

I'm sorry, I do apologise.---?- - - where she's thanking me for having a without prejudice discussion. Again, that was a particularity for us because having a without prejudice discussion given the Other Stages Deed was on my understanding unusual but that's her email to me.

10 Yes, thank you for correcting me. That's her email to you and you replied 19 with the attached letter at pages 20 and 21, is that right?---Correct.

Now if you turn in C85 to pages 25 to 26 and have a look at page 28, were there, in a sense, parallel discussions occurring between you and Mr Schur at Treasury and with Dr Schott?---Yes.

And then ultimately, I think, if you have Page C85 at 30 and 31 there was a meeting convened with, the then Treasurer Mr Michael Costa on 8 November 2007?---Correct.

20

Now, just look at the attendees at that meeting, can you recall to mind and tell us how or through who or whom the meeting with the Treasurer for the 8 November was arranged?---Well, there was two things, in relation to this what was running parallel was the discussions that we were having directly with Sydney Water but in terms of any long term risk transfer funding model you would have had to have had the input of Treasury and that's why I said to Dr Schott had referred us to Michael Schur or Mr Schur of Treasury so we were presenting the proposal to Sydney Water and this file note of 8 November is the same, in essence, the same RHIC team with the 30 advisors from the Commonwealth Bank of Australia giving the same presentation, I believe, to the Treasurer and Treasury.

Now, can I just ask this, was this meeting in any way shape or form, arrangement through Mr Obeid Senior?---I don't believe so, no.

When we look at Exhibit C88 which is the telephone log of contact between you and Mr Obeid Senior it seems to be a very short conversation, if there was a conversation on 25 October 2007, the call is logged at 1 second but before that, the next call was back in April 2006?---Mr Alexis, if we were 40 speaking to Dr Schott and Sydney Water about this proposal and we'd been referred to Treasury, I wouldn't have then been going back to Mr Obeid to tee up the meeting with Michael Schur.

There would have been no need to?---No.

Now, just moving forward, can I come to the genesis of the dispute and it's conveniently at C85 at page 38, if you could turn to that. And this is a copy

of C29, Mr Quill's letter of 6 December 2007 which is the point at which I started a moment ago, do you see that?---That's correct.

Now at the time of receiving this letter, did you regard this as perhaps one of the most critical things to occur in the history of RHIC?---Absolutely.

Why?---Because in essence it eroded the contractual rights of RHIC that gave RHIC its very genesis in 1992. It no longer is sought to limit the role of RHIC to in essence a project management role.

10

Now I want to step you through what occurred in response to that, do you follow?---Sure.

And could you start by turning to C83 at page 42.---Yes.

And what do we see at page 42?---That's a briefing note to the Treasurer.

And did you prepare that?---Yes.

20 Now if you turn to C85 at page 483 do we have your notes of a telephone conversation with Mr Cominos (as said) on the 7 December 2007?
---Correct.

And could I ask you why it was that effectively off the back of Mr Quill's letter you prepared the briefing note to the Treasurer and was speaking with Mr Cominos (as said) the following day?---Because Mr Quill's letter was inconsistent with the contractual relationships. On the one hand we received the letter from him saying you could provide an externally finance proposal and then on the hand we received this proposal which basically
30 reduced us to a project management organisation.

Now if you look at the notes at about point 7 on the page the third dash point from the bottom you appear to have recorded this, "They would like to see the advice we obtained from AAR" a reference to Allens, do you see that?---Correct.

"In principle I have no problem with that but will need to get advice." Do you see that?---Correct.

40 And should we understand that this is Mr Cominos (as said) saying we'd like to see the opinion from the lawyers and subject to you getting advice you got no problem in giving it to them?---Well I wanted, I wanted to check with obviously Bill and John but my position was that seemed to be the legal dispute that was brewing in relation to how you're interpreting the contractual relationship and therefore if I could facilitate a resolution by providing our legal advice then I had no problem with that.

All right. Now do you still have C84 with you, that's Mr MacGregor Fraser's bundle? It might be the one on the floor, Mr Di Girolamo?---I do.

If it is, thank you. Could you turn to page 28 and 29 please?---Yes.

And you'll see that it's a shorter letter of opinion from Allens relating to the subject matter and you'll see the date 7 December 2007. Do you see that?
---Correct.

10 So how should we understand your communication with Mr Cominos (as said) the letter from Allens that day and how you responded to the request for the advice to be provided?---Sorry, can you just put that to me again, Mr Alexis?

Certainly. It wasn't one of my better questions. How should we understand what occurred you having spoken to Mr Cominos (as said) on the 7 December and having procured it seems a further letter of advice from Allens on that same day?---Well I imagine I would have called Leyton O'Brien from Allens and said I'd like a legal opinion or to provide my legal
20 advice given the conversation I'd had with Michael Cominos to provide that to Mr Cominos.

All right. And you did so?---I think I did, yes.

And it was suggested I think by learned Counsel Assisting on Monday that this was a bit unusual, it was like a barrister leaving their opinion on the bar table so the other side could see it. Now did you see what was going on here namely providing - - -?---Sorry, Mr Alexis, to interrupt you but to be
30 fair to Mr Watson I thought he was referring to the Brett Walker opinion not to this.

Well - - -

MR WATSON: I was actually referring to the Solicitor General's opinion.

THE COMMISSIONER: Yes, that's what I thought too. So the three of us are all at odds.

40 THE WITNESS: Sorry, sorry.

MR ALEXIS: All right. Well let me withdraw that and let me just come to the point. Did you regard in December 2007 as unusual or inappropriate to provide to a representative of Treasury a legal opinion that you had received on behalf of the company in relation to its contractual position?---Quite the opposite. The two parties had traded for 15 years with respect to a commercial arrangement that came to fruition in 1992. It appeared to the directors of RHIC that with the input of a new manager at Sydney Water that the interpretation of the relationship had gone askew, RHIC from its

inception had had open and transparent discourse with both Sydney Water and with the Government of the day and therefore to try and resolve this with the Government of the day was our intention.

And if you could turn to C15 at page 3034, is this your note of a further telephone conversation you had with Mr Cominos (as said) at Treasury in connection with his communication with the then Treasurer about what was to happen about the situation as it then stood?---That's correct.

10 And you'll see in particular the second paragraph about Mr Costa telling Dr Schott that he wants us to enter into a new agreement with Sydney Water. Do you see that?---Yes. My understanding was that the Treasurer took the view that the agreement required modernisation.

All right.

20 THE COMMISSIONER: Mr Di Girolamo, can I just ask you, prior to the provision of this Allens advice to the Treasury officer on 7 December had you at any stage, I haven't looked in any detail at all the other letters that have been exchanged between you and Dr Schott and you and Mr Rippon was there ever an occasion when you said to the representatives of Sydney Water we have advice as to the construction of the other stages deed and here it is?---Prior to that time?

Yes?---I don't recall, Commissioner.

30 MR ALEXIS: Now, Mr Di Girolamo, if you turn to C15 at 3036 and 3037 is the next thing you did write to Dr Schott about the position?---That appears to be so.

And you'll see that you indicated below your signature on 3037 that a copy of this letter either was sent or would be sent to the Treasurer the then Water Minister Mr Rees and Mr Schur, do you see that?---That's correct.

And then if you come back to 3035 you'll see the letter that went to the Treasurer and to the Minister for Water setting out the position and requesting as you'll see in the last paragraph a round table meeting. Do you see that?---I do.

40 Now I think there was a suggestion made that in the heat of this issue you went over Sydney Water's head. Do you recall that suggestion?---Yes.

By writing to Dr Schott and indicating by your letter that you were copying it to the Treasurer and to the Minister do you think you were effectively going over her head?---Um, I'd answer that two-fold, the first is that there was a lot, there was a lot happening at the same time. Like for example we were speaking to Mr Schur and the Treasurer in his office vis-à-vis the long term risk transport proposal but at the same time we were getting mixed

messages in relation to how one was supposed to actually interpret the other stages deed. So we already had dialogue with the Treasurer and Treasury in relation to that proposal that we were getting, we were at cross purposes though in how you interpret the deed. So the dollar was already there but I would not deny that I was also looking at getting the input of um, the Treasurer and the relevant Minister in relation to issues we had.

10 And is that because as I think we saw in one of your communications to Dr Schott you thought that Mr Quill had a fundamental misunderstanding about the contractual position?---But not only that I wasn't going over their head I was asking for a round table meeting and the Treasurer was saying why don't we sort this out, as early 2007 we were saying why don't we all get round the table and let's work out what your rights are what rights may not be and let's get it sorted out and I thought that was a really good idea to do it, either to do it together or to do it by way of a third party mediator.

20 All right. Now, I'll come then if I may to an event on 21 December where you had a meeting with Dr Schott and Mr Quill. Could you go to C15 at page 3042 and 3?---3042 and 30, yes.

20 And you'll see that you've recorded their concern about the position at the bottom of page 3042 and there's a reference to the very genesis of RHIC was to fund the infrastructure. Do you see that?---Well, the point that I was making, Mr Alexis, was that the only reason why you would have an exclusive arrangement like this was because in 1991 or just prior to then, the Government decided that it needed the private sector to fund the infrastructure. If you didn't need the private sector to fund you didn't need one exclusive private sector vehicle to be delivering this infrastructure. So for us that was the fundamental reason why the company had come into
30 existence. And when we did go back for example to Hansard's of 1991, that's what we found.

THE COMMISSIONER: Mr Di Girolamo, do you also appreciate though that, that when the company was set up for that purpose, the funding of the infrastructure of course was undertaken by a large number of developers who were the original parties to that deed?---Um, the funding of the original company was, Commissioner, but the funding- - -

40 Yes, but I mean there were a large number of developers who were parties to the deed and that was how in effect the works were funded?---That's correct.

Right?---No, I was – sorry, I'm not trying to be cute, but in terms of how the works were funded, that's not entirely correct, Commissioner. The works were funded at that time by what was called a section 27 charge that later became a section 74 charge.

Well, I appreciate that, but the point about that is that it was the developers who were entitled as it were to the funds in relation to that charge if they were- - -?---No, that's incorrect, that's- - -

No, if they were going to provide the infrastructure, it was simply a transfer of what would have otherwise been the charge to fund the infrastructure by the State and they- - -?---Unfortunately that's incorrect, Commissioner.

10 All right. Go on?---The, the, the, the, the, the only ability to collect a charge rests with the Crown.

I understood that?---So, so as I understood it, the, the Crown collected the charge from the developers when they sold the land then that charge would then be passed through – perhaps, perhaps we're on the same point so I apologise if I misunderstood you, Commissioner.

No, no, I was saying the same thing?---Okay, sorry.

20 But that was, that was the arrangement, namely that the levy would fund the infrastructure and it was paid to the Crown, but the point about the deed, the Other Stages Deed was that the developers who were a party to that deed in effect undertook that function, namely the infrastructure- - -?---Yes, the entity in essence- - -

Yes?--- - - -was taking, was taking the funding off the Crown's balance sheet.

Yes, I understand that.

30 MR ALEXIS: Now, Mr Di Girolamo, there's just a small point I want to draw attention to with respect to this meeting on 21 December, 2007?---Yes.

If you turn to page 3044 you'll see there's a subheading about point 5 of the page, "NAD and RQ – Separate Meeting." Do you see that?---I do.

40 Now, had you heard something involving Mr Quill prior to this meeting, something that had been conveyed to a third party about Mr Quill?
---We had heard that Mr Quill told a third party who was in discussions with us um, that he was in essence going to shut us down, i.e. commercially frustrate us.

And can I just identify the person involved, is that a Mr Kite?---Darryl Kite.

And I think there's a file note from Mr MacGregor Fraser which records the chance conversation that both you and he had with Mr Kite?---Correct. I actually also thought, Mr Alexis, that I'd made my own independent file note.

In any event, that's the background to it?---Correct.

And is this a point in the meeting where Dr Schott left and it was just you and Mr Quill one on one?---Well, Mr Alexis, my recollection was that I first actually raised it with Dr Schott and as a result of raising it with Dr Schott who told me um, that um, she didn't believe that that was the position that Mr Quill was taking, i.e. a position of intent, that I then thought the appropriate thing to do was to speak to him directly to clear it up.

10 And that's – thank you. And that's what your notes reflect?---Yes.

And if you look at the top of 3045 you've recorded Mr Quill as saying, "I assure you I'm playing it – or playing a straight bat," or something to that effect?---Well, can I go back to 3044 first?

Yes?---Because what I was surprised about was that Mr Quill says at the bottom, "It's a rumour, I heard it too, apparently that KS said the same thing."

20 Mmm?---Now, I hadn't heard anything um, in relation to Dr Schott acting in a particular way.

In any event, he's telling you at the top of 3045 that in terms of an assurance, "I'm playing with a straight bat." Is that what he said?---That's what he said to me.

Did you accept that?---Yes.

30 And did you give what had been said previously from Mr Kite any further thought?---No, I thought I said both to him and Dr Schott, well, if that's the position I accept it and let's move on.

All right. Now, can I then as a matter of chronology draw your attention to C85 at page 44 and is this letter of 21 December the next communication that was received with respect to the letter of 6 December, 2007, "Sydney Water's position remains unchanged." Do you see that?---Yes.

40 Now, the end of 2008- -?---There was also a peculiarity of this letter and that is that the second paragraph referred to any externally financed proposal being the subject of a PSC. That hadn't occurred previously.

Now, I think there was further conversations with Mr Schur at C85, 45 and 47. I won't take time now on that, Mr Di Girolamo, but can you come then to Exhibit C16 – I think we've finished with 15 – at page 3057. Mr Di Girolamo, you will also need C85?---I still have C85.

That's good to hear. Page 49 and 50?---I have 49 and 50 of C85.

Now, this is the meeting that occurred with Treasurer Costa at which Mr Obeid Senior attended and I think Mr Littlemore's already asked you some questions about this meeting. Do you recall that?---I, I, I've got the wrong document, Mr Alexis.

C16?---Right.

3057?---Right. Sorry, I was looking at- - -

10 That's all right. Let's start with your notes of that meeting. Do you have that?---I do.

And just look at the attendees to satisfy yourself that it's the meeting we're dealing with where Mr Obeid was present. Do you see that?---That is correct.

Thank you. And then you'll see that underneath your initial is recorded, "Handed our summary of correspondence and issues." Do you see that?
---Yes.

20

And at 3058 you'll see a document headed Issues?---Yes.

And if you go to C85 you'll see at page 50 the Issues document?---Yes.

And if you turn back to 49 you'll see the summary of recent discussions correspondence document. Do you see that?---Yes.

And should the Commission understand that at this meeting with Treasurer Costa you provided him with each of those two documents?---Yes.

30

And you spoke to them?---Yes.

Now, did Mr Obeid have anything to do at all with the preparation of either the issues document or the summary of correspondence document?---No.

THE COMMISSIONER: This wasn't the round table meeting that Mr Costa had suggested by way of the conversation with Mr Cominos back in December?---No, that round table meeting would have been with representatives of Sydney Water as well and Treasurer.

40

But that did ever occur?---No.

Well, did you ever inquire when it was going to occur or why it hadn't occurred?---My, I don't specifically recall, my understanding was that Sydney Water didn't want it to occur.

Well, hang on a minute, your information from Mr Cominos from Treasurer that the Treasury was suggesting a round table meeting to sort all of this out?---Correct.

And you don't know why it didn't occur and you didn't press for it to occur?---I thought I did I press but I think we ended up going down the line of having a mediation so it was replaced in terms of how we were going to negotiate.

10 Well, at the meeting with Mr Costa that's now being referred to, was there any discussion about having a round table meeting with representatives of Sydney Water?---I don't recall.

It wasn't a suggestion made by you or by the Treasurer at that meeting?---I can only go, I can only go what's in the file note Commissioner, I have other independent recollection.

All right.

20 MR ALEXIS: Now Mr Di Girolamo, just moving through this as quickly as we can back to C85 page 51.---Yes.

Here you're emailing Dr Schott and indicating - - -?---Sorry, sorry, can I just have that reference again Mr Alexis.

Yes, of course, C85 page 51. So this is the day after your meeting with Treasurer Costa and others on 22 February 2008.---I have that.

30 Thank you. And you'll see in the second paragraph you're indicating to Dr Schott we are unable to respond to the Sydney Water Project Management Proposal, do you see that?---Yes.

Now, why were you or why was the company so unable to respond as you put it there?---Because the view that we took was that we could not respond to a proposal that was in breach of the Other Stages Deed. We would be in essence changing the contractual arrangements or exceeding to the contractual change of the relationship between the two parties.

40 And what, you thought that if you proceeded down that pathway there may be no turning back?---Absolutely.

And just following chronology through, did you have another meeting with Dr Schott and Mr Quill on 5 March 2008, you'll see your notes at pages 52 and following of Exhibit C85?---That's correct.

And then if we go back to C16 at 3115.---Sorry, Mr Alexis, I just want to clear something up that I said earlier.

Please.---If you look at page 53 I just want to make sure I've got the timing right. You see that there's a discussion there that I had solely with Dr Schott and there was something about commercial frustration and that I said it was a dead issue and that, I believe, was my discussion with Dr Schott about the concern vis-à-vis Mr Quill.

Yes.---I just wanted to clear that up.

10 THE COMMISSIONER: Mr Alexis, I'm just wondering, I'm just wondering how much longer you'll be.

MR ALEXIS: I'm proceeding as quickly as I can.

THE COMMISSIONER: No, no, I have my own reasons for asking that, I'm not trying to put any pressure on me.

MR ALEXIS: I've got at least half an hour.

20 THE COMMISSIONER: All right. Thank you.

MR ALEXIS: Now, Mr Di Girolamo having noted that meeting and what you just said about that, could I take you to C16 at 3115.---Yes.

And that was the meeting that you had with, the then Water Minister Mr Rees?---Sorry, just that reference again.

3115.---My apologies. Yes.

30 With is Chief of Staff Mr Neilson, is that right?---That's correct.

And then - - -?---By the way I'm not sure if I've been previously been asked about who arranged this meeting but as I look at this file note I see Lance Northey and I think that Mr Northey may have arranged it.

And who was he at the time, in April 2008?---I think he was someone who was working for us from CPR.

40 Now if you go back to C85 pages 59 to 61 was there then a further meeting with Dr Schott and Mr Quill?---Sorry 59?

Pages 59 to 61.---That's correct.

And then at 62 there was received by you a letter from Dr Schott at page 62 and 63?---Yes.

And the second paragraph confirmed to you did it, Sydney Water's position concerning the OSD?---Correct.

So all the dialogue that had occurred lead to the position simply being reiterated to you, is that how you understood this letter?---Well, not only that, that this letter 10 April was in relation to that long term funding proposal also being discussed in tandem and we had decided as I understand it to draft a new project deed which would change the relationship and I believe that the fourth paragraph was rejecting what we put forward in that deed.

10 All right. Can I also, in addition to that, draw your attention to the final paragraph on that page and in particular the last sentence commencing consequently, Sydney Water intends to proceed to issues request for tender to the market, do you see that?---Yes.

Now, by the time you received this letter had you heard in the industry that tenders either were in the process of going or were about to be going from Sydney Water?---That was my recollection.

20 And was that a continuing piece of information you were receiving since at least that time of the email where you referred to project briefs?---I think that's right because we were talking to Sydney Water and trying to appease the situation by way of a new project deed to avoid the total break down as we saw it whereby in essence even the limited role they wanted us to perform would go out to a public tender.

And then there was another meeting, if you turn to page 64 of C85, this time you brought Mr MacGregor Fraser along and you'll see your notes going through to page 70.---I see that.

30 And then following that further meeting, did you get the letter at C16 page 3117.---Yes.

Which again makes reference to the issuing of tenders.---Yes.

Now on 17 April and on page C16 3118 did you then decide to write to the Treasurer and Mr Rees, 3118?---Yes.

40 And you sent them the letter to Sydney Water that follows at 3119 to 3126 indicating again that it was being copied to the Treasurer and to the Minister for Water?---Correct.

Now there's just a couple more references that I want to take you to. If you go back to C85 page 71 was this the further letter you got from Sydney Water under Dr Schott's hand, again confirming Sydney Water's position in particular in paragraph 3 on the first page of that letter?---Correct.

And then I think it's the case on about 22 April you became aware that tenders had been called for in relation to the provisions of project management services by Sydney Water?---That's when it became public.

And the Commission should, the Commissioner should see the request for tenders at 74 and 75 of Exhibit C85, is that right?---That's correct.

Thank you. Now, if you look at C85 page 76 the day after tenders were announced you wrote to Mr Cominos and Mr Neilson in your email that you, that we see at 76, is that so?---Yes.

10 And although we haven't been able to find the letters attached do you see in the second paragraph there's a reference to letters from our lawyers Allens Arthur Robinson to Sydney Water sent this morning?---Correct.

And what's your recollection as to what the content of those letters were in terms of what said in the next sentence about wishing to truly avoid a legal dispute?---I think the letters outlined our legal position in relation to why we believed the tenders and original 6 December 2008, sorry, 2007 letter was in breach of the other stages deed.

20 THE COMMISSIONER: Is this then the first time that you had provided that advice to Sydney Water?---I think that is, Commissioner, and I don't believe it's that letter of December 2007 I think there might have been additional letters.

No, but I mean in terms of providing the Allens advice to Sydney Water the first time that it was provided was in, in or about the 23 April 2008?---Yeah, correct, but what I'm saying is I don't actually think that it was that prior document that when you asked this question the first time I think it was - - -

30 A different one?---More updated advice, that's all I'm saying. Sorry.

MR ALEXIS: We're nearly there, Mr Di Girolamo?---That's okay.

Now if we look at page 77 of C85 this is an email that Mr Neilson sent you on behalf of Minister Rees on 23 April, is that so?---Yes.

40 And it's probably fair to say, tell me if you don't agree that he was rebuffing the request that you'd made for intervention by the Minister, you'll see that at the end of the second paragraph?---He was politely wishing me good luck.

Yes. Now did you ever receive a communication from the chief of staff for a Minister not in that sort of language but in effect saying look, don't communicate with us any further on this subject and good luck?---Oh, by the way I didn't believe he was saying don't communicate with me any further but no, I had no received prior to this an email from a Minister's chief of staff that, that you know was fairly forceful in saying you know the Minister will not intervene.

But when you received the email what did you think?---I thought I wasn't going to get much help from Minister Rees's office.

Now if we look at C85 page 79 we see that you're in Mr Walker's chambers on the 28 April 2008 and that's a note of the conference you had with Counsel and others, is that so?---That's correct.

10 And it was the result of that conference that the first of the opinions from Mr Walker and Mr Lockhart were obtained in relation to this subject, is that so?---That's correct.

And was that during that conference that there was discussion about a Ministerial direction and we see that in the second last paragraph of your file note, is that so?---My recollection is that, that Mr Walker raised it, he had recently conducted the Ferries review um, and he was of the view that the impasse or the dead lock could be broken by way of a Ministerial direction.

20 Now, Mr Di Girolamo, we're up to the end of April 2008. By that stage were you aware that Sydney Water had not paid RH3's claim for the months of January and February 2008?---I would have been aware that that was in dispute, yes.

And what about March, were you aware at the end of April - - -?---I think that was - - -

- - - that March was also stood outstanding?---I imagine I would, I can't recall here today but I imagine I would have.

30 So when you said to the Commissioner the other day that Mr Quill's letter of the 6 December was the genesis of the dispute, did you see some relationship at the time between the dispute as to legal rights and contractual interpretation on the one hand and the non payment of RH3 claims for the months of January, February and March on the other?---Yes.

And what was that relationship as you then saw it?---The relationship had to do with how you interpret the other stages deed or, or the contractual relationship between the parties.

40 I'm sorry, I may have been imprecise?---That's okay.

Did you see any connection between the fact that there was obviously a significant impasse on the contractual of entitlement on the one hand and the fact that RH3 had not been paid for the months of January, February and March 2008 on the other?---The connection - - -

In April 2008?---The connection was that we were being frustrated.

Is that how you saw it?---Yes.

All right. Now could the witness be shown Exhibit C52.

10 THE COMMISSIONER: I'm sorry, I just want to understand something here. Are you suggesting that you thought that Sydney Water was withholding amounts that were due to you in January, February and March of 2008 because their intention was to commercially frustrate you over the interpretation of the other stages deed or did you understand that they were not paying you because of a dispute in relation to the justification of costs or a combination of both. Which was it?---It would have to be a combination of both.

Right.

20 MR ALEXIS: Now, Mr Di Girolamo, have a look at Exhibit C52, you'll see that this is some material relating to MBT certification for the month of April 2008 and you'll see if you turn to page 6 and 7 that we have the Australian Water invoice to RHIC of 30 April 2008. Do you see that?
---Yes.

Now at some point was there a discussion with your fellow directors of both AW and RHIC about the time that was being devoted to the disputes as they then existed?---Yes.

Approximately when in connection with the invoice did those discussions occur?---Late February.

30 And who did you have those discussions with?---I believe the three of us discussed it.

40 And can you tell as best, tell the Commissioner as best you recall what was said?---Well I believe the issue was raised because um, there was the letter I think of 22 February between RHIC and Sydney Water or the file note where, or the email where we basically said we can't respond to the proposal um, there was discussion at that point in time with the Treasurer's office in relation to a new agreement and therefore, and there was also at that point in time the long term funding proposal and the discussion was that along the lines of that I had to be completely devoted to those matters.

All right. And was there also a discussion about your time and those of any support staff would be paid for?---The discussion was that there would be an invoice raised by Australian Water Pty Limited to RHIC.

Right. And was there discussion about what RHIC would do with that invoice in terms of that invoice being paid?---Yes, it would be passed on to RH3.

All right. Now in relation to that discussion was there any reference at all to the contractual position with respect to those charges being passed on as you put them?---Yes, it was accepted that it was within the confines of the contractual relationship.

Now at the time of this discussion, no doubt you'd spent a bit of time looking at the contractual material, did you have an opinion as to whether or not charges that AWH made to RHIC could be on-charged to RH3 and expensed to Sydney Water?---That was my belief.

10

And what was that belief based on?---Based on my examination of the contractual relationship.

Well, let's just be a little bit more specific. When you refer as you have to contractual relations, to what are you referring?---I'm referring to firstly the Other Stages Deed and the Stage 1 Deed which define the contractual relationship between RHIC and Sydney Water and then subsequently the RH3 Deed.

20

And are you able to recall to mind what particular provisions in the RH3 Deed informed that understanding?---Yes.

And what are they?---Um, if I could be shown the document.

Certainly. So if Mr Di Girolamo could be shown Exhibit C3 at page 767? ---Could I perhaps be shown the Other Stages Deed first?

30

Certainly. That's Exhibit C1. So if the witness could be shown Exhibit C1 at page 99?---What page, sorry, what page, Mr Alexis?

Okay, C1 99 is the cover page for the Other Stages Deed?---So um, the starting proposition in the Other Stages Deed is if you look at clause 2.1(a). The Other Stages Deed provides that this document in conjunction with the Stage 1 Infrastructure Deed - - -

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You'll have to speak into the microphone?---Oh, my apologies, sorry, Commissioner. It's this document and the Stage 1 Infrastructure Deed that together constitute the legal contractual relationship between the parties. If you look at recital D on page 101 you can see that RHIC has been set up to in essence provide for arrangements relating to the construction of other stage works which if you take my word for it is all of the Rouse Hill development area. If you then read that in conjunction with, with clause 3.1 you'll see that RHIC or its nominee shall procure the design, construction, commissioning of the stages of the other stage works and if you look at then 3.2 you'll see (a), you'll see that "RHIC or its nominee shall enter into such documents for the design, construction and commissioning of the other stage works including without limitation the provision of finance for the

construction.” So that was the genesis or the basis, the basic platform for the relationship. Is the Stage 1 Deed in this, Mr Alexis?

Yes. The Stage - - -?---Page 116?

Yes. If you then - because you’ve got to read the two documents together. If I could take you to clause, I think its 18.1 which is on page 159. “The Water Board shall indemnify RH” which is the Stage 1 company “on demand by way of continuing indemnity for and in respect of all losses, costs and expenses.”

THE COMMISSIONER: But that’s to do, that’s to do with the construction of the water infrastructure?---I’ll get to that, Commissioner.

Right?---It’s not limited to that.

MR KOSTOPOULOS: Commissioner, could I just - sorry.

THE COMMISSIONER: Well, you see, look - sorry, Mr Kostopoulos. I mean, I think everyone can read the deed?---Oh, okay, I’ll - - -

And we all understand the contractual relationship between the parties insofar as it was a, a relationship founded upon the construction of this - whether it be by project management or otherwise the infrastructure for the North West Growth Sector. The difficulty is what we’re trying to get at now is in what way was the provision of work which was essentially devoted to the resolution of a dispute with Sydney Water, in what way was that work and the, and the entitlement to on-charge to Sydney Water within the scope of these deeds, that’s the question so - - -?---Two, two paragraphs away.

All right. Well, can we go to those?---Sure. So if, if I can - so this refers to losses, costs and expenses under any relevant documents “(a) any WB event, (b) any WB default.” If we go to the definition of WB event - - -

MR OSLINGTON: With respect, I think the deed being referred to by the witness is the Stage 1 Deed with respect.

THE COMMISSIONER: That was what I thought but anyway we’re still in the Other Stages Deed are we?

MR ALEXIS: But, Commissioner, just so that my learned has it clear, the Other Stages Deed refers to the Stage 1 Deed for the purpose of definition.

THE COMMISSIONER: Yes, I understand that.

MR ALEXIS: Mr Di Girolamo, it might help if you just identify the provision and then I think we need to go to the Stage 3 Deed to respond

directly to the Commissioner's question?---Okay. So it's only in point 1(a) and (b), I then refer to clause 3 which defines the relevant documents in the deed um, and then if you wanted to then go to the stage - so that, that gives you the, the essence that those costs would form part of the agreement between the two, the two, the two entities and if you go to the Stage 3 Deed

That's Exhibit C3 at page 767?---I would refer you to clause 13.1. Sorry, Mr Alexis, can you please repeat the page.

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THE COMMISSIONER: 99.

MR ALEXIS: No.

THE COMMISSIONER: No, sorry.

MR ALEXIS: The Stage 3 Deed starts at 767.

THE COMMISSIONER: 767, I'm sorry, of Exhibit C3.

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MR ALEXIS: I think you're reaching for 836, 837 and 838. 838 in particular.

MR KOSTOPOULOS: Commissioner, whilst that, whilst that's being done can I just make an observation? I'm sorry to interrupt. But if there's work to do with all these deeds and the complexity and we know there's divergence of views, can't that be done by way of submissions, I mean otherwise we're - - -

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THE COMMISSIONER: Well, let's just get to the end of this, Mr Kostopoulos.

MR KOSTOPOULOS: Sure, thanks, Commissioner.

THE WITNESS: So it will be - and I'll just go to the clauses then so it will be 13.1(b)(ii) category cost (f) which is costs of operations. If you then go to 2.1, clause 2.1(a) that defines the cost of operations and that's, that's the relevant definition vis-à-vis 4 which refers to the other stages works and then finally I would then refer to 13.1(b)(ii)(j) with respect the reallocation and that Sydney Water will reallocate funds if category (f) becomes

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deficient and other funds are available.

MR ALEXIS: And what opinion did you form about the recoverability of the corporate costs and the legal costs associated with the dispute with Sydney Water in terms of its recoverability under the Stage 3 Deed?---They fell within the confines of costs of operations.

THE COMMISSIONER: So am I right in thinking that your conclusion was that you could keep seeking as many advices as you wished to obtain in relation to the dispute and all of that would be payable by Sydney Water?
---It would be payable under this agreement.

That was your view?---Yes.

10 Now, Mr Di Girolamo, just coming back if I may to the conversation that I think you told us occurred in February about the cost of your time in dealing with the dispute and how that would be charged in effect. Was the opinion that you formed about the way in which those costs could be charged a view that you held on your own or did others hold a view on that subject?---It was the view that the directors shared.

You were the only lawyer amongst them though?---That's correct.

20 MR ALEXIS: Now, if we just go back to the invoice at page 6 of Exhibit C52, perhaps I've covered it but can you tell the Commission please why it was that you thought it was appropriate for Australian Water to charge your executive time to RHIC knowing that that would be expensed to RH3 and charged to Sydney Water?---It's what I said before, Mr Alexis, it's a cost of operation.

THE COMMISSIONER: Sorry, did you say C52, Mr Alexis?

MR ALEXIS: No, I said C – I did say C52.

THE COMMISSIONER: At page?

30 MR ALEXIS: Page 6. That's the invoice, Commissioner- - -

THE COMMISSIONER: Yes.

MR ALEXIS: - - -of 30 April, 2008, which covers the months of March and April 2008. Now, could I also show you or have shown to you, please, Exhibit C53 and 52 can be returned?---Thank you. Yes.

40 And you'll see that this is the further invoice for the months of May and June in relation to the same subject matter together with some legal fees that were to be paid to Allens. Do you see that?---I do.

Now, in connection with this, Counsel Assisting asked you at 2258 of the transcript – I'm sorry, I'll withdraw that reference. It's 2273. He put this to you, why should, yes, why should Sydney Water be paying the legal fees and the expression was, "of somebody mounting a case against them." Do you recall that question, and your answer was, "Because it is required to under the contractual arrangements between Sydney Water, RHIC and thereafter the Stage 3 Deed." Do you recall that?---Yes.

And so is the answer to that proposition your understanding and belief of the Other Stage Deed, the Stage 1 Deed and the Stage 3 Deed that you held at the time?---Correct.

By the way, has your opinion about the availability of that contractual right changed at all since you formed that opinion back in 2008?---No.

10 And if events occurred again would you take the same position that you did back then?---I would hope those events never occurred again, but yes, I would take the same view.

Thank you.

THE COMMISSIONER: And you also indicated that you told Sydney Water that you were charging all those legal fees?---Yes.

20 And, and you did recall telling them that you were doing that?---I think Mr Alexis would have letters to that effect.

But at the time that they were being charged you told Sydney Water that?
---I believe so, yes.

MR ALEXIS: Well, let's come to that. And this was the reference I had in mind at 2258 of the transcript, Mr Di Girolamo. You were asked questions about whether or not Sydney Water were told about your executive time being charged pursuant to those two invoices to which we've just referred?
---Yes.

30 And your answer was, "I believe there were letters," that is more than one letter, and you said in June 2007. Do you recall that?---That was my recollection, yes.

And then further there was another reference I think to 2007, I think the position is it's 2008, isn't it?---I may have got that wrong, the date.

40 Thank you. And can I show you two letters to which Counsel Assisting has provided yesterday, and there are other copies here, Commissioner, if anyone wishes to have them and a copy for the Commissioner and a copy for the witness?---Thank you.

And, Mr Di Girolamo, if I could take up firstly the letter of 16 June, 2008?
---Yes.

Is this the first of the letters that you had in mind when answering the question at 2258?---Yes.

And you'll see on the third page there's a heading, Management and Administration and Project Construction Management. Do you have that?
---Yes.

And then if you turn to the last page of the letter there's a subheading, Management and Administration. And you'll see that there's a series of bullet points there, do you see about halfway through the reference to external advice with respect to legal tax and accounting functions?---Yes.

10 And importantly- - -

THE COMMISSIONER: Well, sorry, sorry, I just want to understand this because I thought – and this may be my misapprehension – but I thought when Counsel Assisting was asking the questions to which reference has been made at transcript 2273 and 2274 was to Mr Di Girolamo informing Sydney Water that he had charged legal fees that were referable to the dispute he was having with them, not that he had told them that he was charging them for fees with respect to external advice on legal taxation and accounting functions. There's somewhat of a difference, is there not?

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MR ALEXIS: I don't believe that's the evidence, with respect, 2273/74.

THE COMMISSIONER: Well- - -

MR ALEXIS: The questions there were directed to why should Sydney Water pay the legal fees and- - -

THE COMMISSIONER: Of somebody mounting a case against them.

30 MR ALEXIS: Yes.

THE COMMISSIONER: The context being that there are a number of questions in relation to the Allens advice.

MR ALEXIS: Yes.

THE COMMISSIONER: And then the question, the questions followed, "Did you tell them that they, that they were doing that?" And then there was reference to Mr Rippon's evidence to the effect that Sydney Water did
40 dispute that they should be paying legal fees- - -

MR ALEXIS: Yes, yes.

THE COMMISSIONER: - - -referable to the settlement of the dispute.

MR ALEXIS: I'll accept that, Commissioner, but I'm dealing with quite a different subject which is the evidence at 2258 where Mr Di Girolamo

referred to letters in June of 2007 which has now been corrected to 2008 and that's at 2258 line 25 and also at 2264 at line 25.

THE COMMISSIONER: All right. So as long as I understand, these questions do not relate to- - -

MR ALEXIS: This is not dealing with the- - -

THE COMMISSIONER: Right. Thank you.

10

MR ALEXIS: No, no, and I, and I, and so, Mr Di Girolamo, do you see in the first full paragraph after the dot points on the fourth page of the letter the reference to activities carried out by a core team that comprises three executive directors?---Yes.

And so is that a reference to Mr Rippon, Mr MacGregor Fraser and yourself?---Yes.

20

And then if you take up the other letter of 17 June, is this the other letter, that is the letter to Mr Ramsay to which you were referring in your evidence on Monday?---That's right.

And again if you want to just go directly to it at the top of page 2 you'll see the reference there to, "An expansion of our core team with the addition of an executive director and an executive assistant."?---That's correct.

Well, I'd invite Counsel Assisting to tender those two letters.

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MR WATSON: I tender them.

THE COMMISSIONER: Exhibit C119.

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#EXHIBIT C119 - THREE LETTERS; - JOHN RIPPON AS MANAGING DIRECTOR OF ROUSE HILL INFRASTRUCTURE (STAGE 3) PTY LIMITED (RH3), DATED 16 JUNE 2008 TO GORDON CAMERON AT SYDNEY WATER CORPORATION ROUSE HILL INFRASTRUCTURE PROJECT RE ALLOCATION OF FUNDS, DATED 17 JUNE 2008 JOHN RIPPON AS MANAGING DIRECTOR OF ROUSE HILL INFRASTRUCTURE (STAGE 3) PTY LIMITED (RH3) TO ALAN RAMSEY OF SYDNEY WATER CORPORATION- ROUSE HILL INFRASTRUCTURE PROJECT RE ALLOCATION OF FUNDS', SYDNEY WATER CORPORATION LETTER IN REPLY

MR OSLINGTON: Commissioner, if it's convenient I would ask that our response to that letter of 30 June be tendered, it's from Mr Ramsay. Could I

just read onto the record what, what part of the letter states. On the second page the first full paragraph, "In relation to your request for a further cost increase to cover an additional four staff, we do not believe that such an increase in the baseline operating costs of RH3 is reasonable, particularly given the limited amount of work remaining for RH3 to (not transcribable) its obligations under the Deed. In this respect I would draw a clear distinction between the costs of RH3 which Sydney Water is contracted to support under the Deed and the costs of other entities in the Rouse Hill Group who are not parties to the Stage 3 Deed." I'll get Counsel Assisting
10 - - -

MR WATSON: I'll tender that.

THE COMMISSIONER: I'll join that with Exhibit C119, thank you.

MR ALEXIS: I think it's already in, C16 3179.

MR WATSON: Well, it doesn't matter, it will be good to have it there.

20 THE COMMISSIONER: Yes.

MR WATSON: So that it gives us the whole picture. I'd hate anybody to think I wasn't being fair.

THE COMMISSIONER: Thank you.

MR ALEXIS: Now, Mr Di Girolamo, could I come to the events of late June 2008 and the two letters relating to the secondment of your employment across from AW to AWH. Do you recall those letters?
30 ---Yes.

And I think we should understand there was one from Mr Rippon to you and one from you to Mr Rippon to confirm the position?---Correct.

All right. Now, following the events leading up to those invoices for March, April, May and June 2009- - -?---2008.

2008, thank you?---Sorry.

40 Was there a discussion with your fellow directors about whether or not that should continue or alternatively whether there should be a secondment of your employment?---It was the latter.

And could you tell us what that discussion was and who it involved?
---I believe it involved the three directors deciding that I should be seconded full-time to AWH or RHIC.

And at transcript 2278 it was put to you that there was quote, "Just a coincidence," that Australian Water runs out of money as you're being asked to be seconded to RHIC. Do you recall that?---Yes.

And your answer was, "It's a coincidence in the sense that at the time there's a significant dispute between RHIC and Sydney Water and there's also a decision being made between the parties to rewrite the Other Stages Deed." Do you see that?---Yes.

10 And of course- -?---I don't see it but I recall it.

Yes, thank you. Now, what was the purpose of coming across as an employee rather than continuing to charge under the invoices that we saw for the earlier four months?---The purpose was to devote my time to RHIC.

And did you continue to do so?---Yes.

Because I think in the weeks that followed there was the request for the audit of RH3?---Yes.

20

There was the mediation that was ultimately convened before Mr Hunter? ---That's correct, and with that came trying to draft a new arrangement.

Particularly following the letter of 8 August 2008?---Yes, well, we ended up with the, yes.

Now, can I just deal with the audit and the events that occurred in connection with that. Now, it was suggested to you that the position that you took in respect of the audit of RH3 and in particular providing accounts, invoices and receipts of RHIC was an attempt by you to disguise a fraud. Do you remember that?---I do.

30

And the position I think you took was not only based on your interpretation of the contractual position but also legal advice. Is that right?---That's correct.

And then at 2294 you said in evidence in response to that general proposition the reason was that because it wasn't within the confines of the contractual relationship. Do you recall that?---Yes.

40

And then at 2295 you said, "It would change the contractual relationship between the parties," and you went on to say in response to the question about providing the material may well lead to a resolution of the dispute, you said, and I wish, quote, "The relationship at the time was like that, unfortunately it was not."?---That's correct.

Do you recall giving that evidence?---I do.

So can you just try and tell us in your own words how you would describe the relationship as you then saw it in mid 2008 with Sydney Water?---It was extremely fractured.

And was it the sort of relationship where you were concerned about each and every step that you took in terms of what its ultimate consequence might be?---There was, there was no doubt that, that it was um, legal positions at 10 paces, is the way I'd describe it.

10 Mmm. Now, at 2297 it was put to you that the determination not to provide accounts and invoices and the like was a determination by you to hide what you knew was a fraud. Do you recall that being put to you, which by the way you did not accept?---Correct.

Now, the decision in that respect, was that your decision alone?---It was the Board's decision based on our legal advice and we were very very concerned for the same reasons that we were concerned about not responding to the proposal dated 6 December, 2007, that we would be in essence changing the contractual relationship between the parties and therefore setting a precedent that we didn't want to set.

20 Now, back to C85 if I could. Could you go to page 111?---I don't have C85, sorry. Thank you. Is that page 11, Mr Alexis?

No, 111. And is that the letter under cover of which you advised Dr Schott, a letter of 18 November, 2008 of the change of name of Australian Water Holdings? You see that under the heading Corporate Structure?---That appears to be the one, yes.

30 It not only advised that, it also advised of Mr Sinodinos' appointment as Deputy Chair?---Correct.

But is that a marker in time which indicates when the relevant change of name from RHIC to Australian Water Holdings actually occurred?---It occurred at this time because we were entering into the package 1 arrangement and the entity that had been identified that would be the contracting party for package 1 was a company called Australian Water No. 1 and so we were doing to things, we were (1) establishing that company, and secondly changing the name of RHIC to Australian Water Holdings Pty Limited.

40 All right. Now, I just want to ask you some questions about the expenses that we've heard a lot about that were expenses in November and December 2008, and at 2287 of the transcript, and perhaps if it's convenient I might have the transcript shown to Mr Di Girolamo, so 2286 to 2288?---Thank you. 2286?

Thank you. And you'll see at line 35 on 2286 you told us, "I believe that they're mistakes in November and December 2008 from what I've seen." Do you see that?---I do.

And then at the foot of the page you'll see your evidence about those charges not being made intentionally. Do you see that?---I do.

10 And then over the page you'll see at about line 5 or thereabouts, "I can tell you why I don't think it was intentionally if you like." And then my learned friend says, "That's all right," and then took you to page 34 dealing with Solutions R Us. Do you see that?---Yes.

Now, I just want you to read please your evidence from about line 35 to the bottom of the page over to the top of page 2288 and I'm going to then ask you after you've read that whether the answer there covers what you had in mind before you were cut off at page 2287 line 5?---Up until 2288 line about 8.

20 Yes?---So predominantly from line 40 on 2287 to line 8 on 2288, that's what I would have been answering in relation to the question at the top - - -

THE COMMISSIONER: That's your explanation?---Yeah, yes, yes, Commissioner.

Yes, thank you.

MR ALEXIS: All right. Could I just invite your attention to one other thing if I may and if the witness could be shown Exhibit C47?---Yes.

30 And if you look at page 43 in the top right-hand corner - - -?---Yes.

- - - and then that's the expense list and then there's the documents behind it, if you could to page 46?---Yes.

And I just want to draw your attention to the handwriting on the docket, the letters AW and an initial, is that your AW and your initial?---That's correct.

And do we similarly see it at 47, 48, 49 and following?---That's correct.

40 So can you tell the Commissioner please at the time you were writing Australian Water on these dockets and initialling them what your purpose in doing so was?---To identify that they were expenses of Australian Water Pty Limited.

All right. Now can I come to a slightly different subject and if we could go back please to C85 at page 140. Mr Di Girolamo, I just want to go to the subject of the charging of the costs relating to the mediation - - -?---Yes.

- - - as part of the charge by RHIC to RH3. Do you follow?---I do.

Thank you. And firstly if you look at C85 at page 140 if you turn to - and this is obviously your note of the meeting that occurred with Minister Phillip Costa to which both you and Dr Schott attended, is that right?---That is correct.

10 And if you look to the second page of your note at 141 at about point 8 on the page you've attributed there in your note to Dr Schott "My managers are saying" et cetera and then you'll see the reference "that we shouldn't be paying for the mediation", do you see that?---That's correct.

Now is that an accurate note of what Dr Schott said during this meeting with Minister Costa - - -?---I believe so.

- - - about mediation costs?---I believe so.

20 And are you able to tell the Commissioner how it was prior to 19 January, 2009 Dr Schott understood that the costs of the mediation were being charged by RHIC to RH3 and expensed to Sydney Water?---I assume I would have informed them, Mr Alexis.

THE COMMISSIONER: I'm sorry, I didn't hear that?---I assume we would have informed them.

You're assuming you would have informed them?---Yes.

You don't know one way or the other?---I can't recall sitting here right now.

30 MR ALEXIS: But by the time of this meeting in January 2009, particularly based on what Dr Schott said to you, it's clear is it as far as you were concerned that she well understood that?---Based on that note, yes.

Mmm. And could I take you to Mr MacGregor Fraser's tender bundle Exhibit C84, if you've got that handy, it might be on the floor?---I have it on the floor.

And if you turn to page 38 you'll - - -?---Yes.

40 - - - see a letter from Allens to Mr Shirbin at Clayton Utz of 12 March, 2009 which relates to various elements of the dispute, costs of operation and other stages work, do you see that?---I do.

And you worked closely I gather with Mr O'Brien at Allens in relation to the day to day correspondence on the subject of the dispute?---I would have, yes.

And if you turn to page 40 we see that under the heading "Mediation" Mr O'Brien said on your behalf "the Australian Water companies consider that the cost of the mediation falls within both the categories of costs of operation and other stages works", do you see that?---That's correct.

And was that your belief at the time Mr O'Brien conveyed the content of this letter to Mr Shirbin?---Yes.

And was it your belief at the time of the mediation?---Yes.

10

Was it your belief in the weeks and months leading up to the mediation following the meeting with Mr Costa and the subsequent correspondence that was received from him concerning mediation?---Correct.

All right. Now could I go back to Exhibit C17, so C16 can be returned? ---C?

17. I'm moving as quickly as I can, Commissioner. And, Mr Di Girolamo, if you'd be good enough to open C17 at page 3351?---I have that.

20

And this is the notice of dispute that engaged the dispute resolution provisions of the stage 3 deed, is that so?---It is.

And although it's signed under Mr Rippon's name should the Commissioner understand that you in consultation with Allens had a significant role to play in the content of the notice of dispute?---I would have had a role to play, yes.

30

And if you turn to page 3356 or page 6 of the notice again do we see the subject of the mediation costs being the subject of express reference as an issue in dispute in the notice of dispute?---That's correct.

So, Mr Di Girolamo, what do you say to the suggestion that you tried to conceal the RHIC costs to RH3 being expensed to Sydney Water as including the mediation costs?---I've previously rejected that, Mr Alexis.

40

THE COMMISSIONER: Well, sorry, are we only talking about - I'm not sure what you mean to convey by mediation costs. That document indicates that it's in the sum of \$190,000. Is that right? The costs of the mediation according to that document was \$190,000, that's what, what's what you had tallied, is that right?---Oh, sorry, I didn't realise that you - - -

Yes?---I apologise.

No. \$190,000 was what you said was the cost of mediation to RHIC? ---That's what it says there "and additional overhead and corporate costs, these costs have been accounted for" - - -

Well, all right, well, then that's what I'm coming to?---Yes.

The \$190,000, that does not take into account a number of the legal fees that were previously allocated to RH3 costs prior to the mediation?---I, I couldn't - - -

They're just mediation costs?---I couldn't recall right now how that 190 was broken up.

- 10 But it has to be more than that if you take into account the early Allens advice about the construction of the other stages deed and the advice from Mr Walker and Mr Lockhart?---I think you'd be right.

So that had nothing to do with the mediation, those other costs to which I've just referred?---I would anticipate that they would be separate to those, Commissioner.

Right. Thank you.

- 20 MR ALEXIS: Now, Mr Di Girolamo, back to Mr MacGregor Fraser's tender bundle C84 and if you could turn to page 43 which are the minutes of a AWH board meeting on 28 April, 2009?---Sorry, Mr Alexis, the page numbers are getting a bit - - -

Certainly. 43 and following?---Yes.

And noting that the notice of dispute is dated 22 April we have within a week or so a board meeting where the subject of the RH3 deed is discussed at page 44 of Exhibit C84. Do you see that?---Yes.

- 30 And about point 7 on the page just above the heading "Financial position" do you see that you are recorded there as again stressing "That we had strong legal advice from Allens Arthur Robinson that we would be successful in any litigation seeking such a budget reallocation." Do you see that?---I do.

And is that an accurate recording of the understanding and position that you held at the time that the notice of dispute was issued to Sydney Water?
---Yes.

- 40 And did that position and understanding change at all through the dispute resolution process culminating ultimately in submissions being prepared to Mr Easton?---No.

And if you look in C84 at pages 48 and following - - -?---Yes.

- - - do you see the submission or the position paper as it's described that was prepared in about October 2009?---Yes.

Page 48?---Yes.

And although the end of the document indicates that it was sent to Mr Easton under the hand of both Allens and Mr Lockhart then of senior counsel did you play any role at all in the working up of the submission and its preparation and the settling of that document in the form that we see?

---Yes, I would have been involved.

10 And without going to the detail on the issues as to the proper construction of the other stages deed, the stage 1 deed and the RH3, stage 3 deed does that document reflect the opinions that you'd held up to that point in time?---It would.

Thank you. Now can I just very briefly go back to Exhibit C47 and then I'll move to another subject?---Yes.

If you turn to page 66 you'll see Mr Chadban's letter to Mr George of 3 June dealing with expenses for the month of May 2009?---Yes.

20

And you'll see that we have Mr George's certificate at page 67 the page before which reflects what Mr Chadban put in his letter to him. Do you see that?---No, I don't see the certificate.

I'm sorry?---Oh sorry, the page 465.

No?---No. 65?

You should have Mr Chadban's letter at 66?---Yes.

30 The page before is Mr George's certificate which reflects the amounts set out in Mr Chadban's letter for the month of May 2009?---Yes, there's just two numberings.

Oh I see?---You see at the top there's 66, bottom 267 and the one before is below 266.

Yes. But you had those?---Yes.

40 All right. Could I just bring you through please to page 76 and - - -?---276 or 76 at the top, Mr Alexis?

Follow the pagination in the top right-hand corner if you would?---Yes.

At page 76 - - -?---I have that.

Thank you. You'll see the bill from Allens Arthur Robinson for the period 30 March to 22 April 2009. Do you see that?---I do.

And if you then come back to page 69?---Yes.

You'll see if you turn the page sideways that Mr Chadban has allocated in his cost allocation template for the month of May the Allens fees if you locate them you'll see if you run your eye down the left-hand side there's the legal category - - -?---Yes.

- - - underneath taxation consulting. Do you have that?---I do.

10 And if you run your eye across the page you'll see the Allens invoices are allocated between RH3 and AW1. Do you see that?---I do.

And you'll see in the right-hand column next to the \$13,958 figure 100 per cent RH3 claim against SWC for unpaid monies. Do you see that?---I do.

Now in relation to the bill which is divided between the two if you come back - - -

20 MR OSLINGTON: Commissioner, in the interest of saving time I don't think I nor the, nor Counsel Assisting attacked the 2000, rather 2009 allocations.

MR ALEXIS: Well that's very good to hear, Commissioner, because this is in the middle of the folder C47 which is being described variously as the folder containing the hardcore fraud but anyway.

THE COMMISSIONER: I think you better, you better keep going, Mr Alexis - - -

30 MR ALEXIS: I will.

THE COMMISSIONER: - - - and do what you can but I mean apart from just taking the witness to documents and asking him to look at things it doesn't actually add to the, to the evidence.

MR ALEXIS: Well, Commissioner - - -

40 THE COMMISSIONER: Well the documents as I said on a number of occasions speak for themselves but by all means ask him what his understanding of that was.

MR ALEXIS: Well, Mr Di Girolamo, were actually involved in the preparation or subsequent review of Mr Chadban's cost allocation templates from month to month?---No.

If you were involved for example in this particular allocation in the month of May 2009 based on what you've told us about your understanding of the

contractual position would you have expensed the Allens fees any other way?---I don't believe so.

Commissioner, I have I think three topics to go.

Now, Mr Di Girolamo, can I move out of expenses and move to Eightbyfive and Mr Koelma?--- Yes.

10 And Exhibit C78 tells us that the service agreement that was entered into with him was one that occurred in March of 2009. You recall that?---Yes.

And I think you gave evidence that part of the service that he provided was research. Do you recall that?---Yes.

And in particular with respect to matters concerning policy and water infrastructure?---Correct.

20 And did that provide you with assistance in connection with the preparation of the PPP which we know was lodged in July of 2009?---Some of those matters would have been relevant to it.

At transcript 2386 you were asked whether you got any value out of Mr Koelma, did you get a contract through him, you said, "No. That he provided a service and I was happy with the service he provided." Do you recall that?---I do.

30 And then the next question as put at 2386 line 20, "Did he provide a service which gave any income whatsoever to Australian Water Holdings?" your answer was, "The answer to your question would be no." Do you recall that?---I do.

Now was Mr Koelma retained by AWH for the purpose of generating income for the company?---No.

Can I then come to, yes, Exhibit C11 at page 1681 and I'm now moving Mr Di Girolamo to some communications with Mr Tripodi when he was the Minister for Infrastructure?---C11?

40 C11, thank you. At page 1681?---Yes.

And you'll see there your letter to the then Premier and Mr Tripodi of 14 August. Do you see that?---I do.

Page 1681?---I see that, yes, sorry.

Thank you. And you'll see that there are the attachments referred to on the first page Mr Walker's opinion of 9 May 2008?---Correct.

And was the attachment one that included not only the opinion but also the appendix to that opinion which set out all of the correspondence and the content of correspondence that had passed between the company and Sydney Water?---Yes.

And over the page there's the letter that arose that out of the mediation?
---Correct.

10 And then if you look at the third last paragraph you also attach the further opinion of August 2009 from Mr Walker?---That's correct.

And I think attention was drawn to the fact that you quoted in this letter the top of the second page of 8 August letter in this letter to Minister Tripodi?
---I'm sorry, Mr Alexis.

Oh, you'll see the quote from the letter of the 8 August 2008 at the top of the page to your letter to Minister Tripodi?---That's right.

20 Now you had already discussed with him hadn't you the effect of the 8 August letter and the other stages deed with him hadn't you?---I believe so.

And if we could go to C17 at page 3418?---3?

418?---Yes, Mr Alexis.

And this is the note of your meeting with Mr Tripodi back in I think May of 2009. Do you see that?---Yes.

30 Now I just want to just come to this, you see about half way through your note you've recorded Minister Tripodi saying this is a very unique situation. Do you see that?---I do.

And is it your understanding that by the time of this meeting Mr Tripodi had at least considered the other stages deed and the letter arising out of the mediation of 8 August 2008?---I would assume that, yes.

And you're then discussing the application of the working with Government Guidelines?---Yes.

40 And you were putting the proposition that they don't apply?---We fell within a crack basically, yes.

Yeah. And did Minister Tripodi agree with you and say something the effect, "You are really a post tender PPP"?---That was his expression a post tender PPP.

And as you understood it that was based on a reading of the other stages deed as varied by the letter of 8 August 2008?---Yes.

All right. Thank you.

Commissioner, this arises out of the cross-examination of Mr Di Girolamo with respect to the Cabinet Minute and I regret to say I'm not sure that we provided Mr Counsel Assisting but it was found overnight and in the rush of it I apologise but I should have provided this to Counsel. Could I show you this document and a copy for you, Commissioner?---Yes.

- 10 Now I think overnight we found from your many volumes of material that has been produced to the Commission your email to Ms Leeson at the 5 February 2010?---That – I see that email.

And then if you look at the attached letter you provide a response with a capital R to the letter of 23 December 2009. Do you see that?---Yes.

Have you been able to find the actual response document there referred to? ---I haven't, no.

- 20 But in any event is your recollection that both the letter and the email was sent to Ms Leeson on 5 February 2010?---Yes.

Thank you. And I'll invite Counsel to tender it otherwise I'll tender it, Commissioner.

MR WATSON: I'll tender it.

THE COMMISSIONER: Exhibit C120.

30

#EXHIBIT C120 - EMAIL FROM NICHOLAS DI GIROLAMO ANNEXING A LETTER TO DIANNE LEESON AT DEPARTMENT OF PREMIER AND CABINET DATED 5 FEBRUARY 2010- 'AUSTRALIAN WATER HOLDINGS PPP PROPOSAL' PROVIDED BY COUNSEL FOR NICHOLAS DI GIROLAMO

MR ALEXIS: Can I now move to November 2010?---Yes.

- 40 And the witness will need Exhibit C26. Now just while that's coming to you, Mr Di Girolamo, a lot has been said about the heads of agreement dated 4 November 2010 and what occurred after it. Can I ask you some questions about what occurred before it. Do you follow?---Yes.
And if you have Exhibit C26 handy can you open it please to page 150? ---Yes.

And that's the cheque for the million dollars which appears to have been drawn on 4 November 2010. Do you see that?---I do.

And we turn to a copy of your bank statement at 155 should we understand that that cheque was banked on that day 4 November?---Yes.

Now can you tell us what had been discussed with Mr Eddie Obeid junior about the prospective transaction before the 4 November, that is before the occasion when you signed the document and received the cheque?---In essence that he would be purchasing 5 per cent of AWH for \$3 million.

10 And you were keen I think to receive the sum of \$1 million as soon as you could leaving aside the 2 million that came later, is, is that so?---Yes.

And was there a reason for that?---Um, I think I was purchasing a house.

Now - - ?---But there was also Mr Rippon wanting his proceeds as well.

I understand. And at page 2305 and following of the transcript there were various questions asked about whether or not the heads of agreement was intended to be a sale of shares or whether it was to be other or another
20 transaction or a series of transactions but when you met Mr Obeid on 4 November 2010 was that the first time you actually saw the document the heads of agreement?---Yes.

And was the fact that it was expressed as a heads of agreement have any particular significance or meaning to you at the time?---I think as I answered in response to Mr Watson - - -

MR WATSON: You can't be heard?---Sorry, Mr Watson. I think as I
30 answered um, to Mr Watson, yes, I saw that as a heads of agreement as opposed to the final agreement.

MR ALEXIS: Now if we can look at Volume 17 of 3562?---Sorry, 17?
17?---35?

Sorry, 3563 and I just want to take you to clause 1.1 on 3566?---I've got 3566.

40 Yeah. Now we see in clause 1.1 and we've been through it a number of times now that there was proposed to be a transfer of shares on Monday 8 November 2010. Do you see that?---I do.

Now was the prospective sale of shares provided for in clause 1 ever actually performed?---If you're saying were those share certificates provided the answer is no.

All right. Thank you. Did you ever regard yourself as parting with ownership of the shares as defined in the agreement either on 4 November or on 8 November or at some other later time?---No.

Now in your evidence at 2380 - I'm sorry, 2308 and 2309, you gave evidence about a further conversation with Mr Obeid Junior and further at 2349 about two weeks or so after this agreement was signed, do you remember that?---Yes.

10 And in essence I think you said that it was then agreed that it would be a loan of three million repayable in three years at 10 per cent?---That's correct.

With security over 50 per cent of your shares?---Correct.

Now at the time of this conversation two weeks or so after did Mr Obeid already have the signed share transfer forms?---Yes, I believe so.

20 And what was your understanding about the fact that he held those share transfer forms insofar as the subject of security over your shares was concerned?---That that was the security over my shares.

Now at 2319 you told Counsel Assisting that you were not entirely happy about the transaction becoming a loan but in the end you accepted that, do you recall that?---I do.

And at 2347 you made reference to a factor, namely Mr Rippon wanting the \$2 million, do you recall that?---Yes.

30 Were there any other factors which caused you to accept albeit in an unhappy way but nonetheless accept the loan that was being provided to you?---The purchase of the home.

Well, did you see it that you'd already received and committed the \$1 million because you'd got that back on 4 November?---Well, it happened simultaneously. There was a cheque there, we had to sign the document and we had a discussion.

40 But insofar as the conversation about the loan that you told us about occurred two weeks later did you feel you were in a position having received the first payment to do anything about it?---No.

Now do you recall you were asked some questions about the draft minutes that Mr Jabour had prepared and had attached to an email to you - - -?
---Yes.

- - - which drew attention to whether the content should either remain or not?---Yes.

And you recall giving evidence at 2322 about that subject being commercially sensitive?---Yes.

Now Mr Rippon wasn't at that meeting was he?---No.

And was the commercial sensitivity and therefore the question about whether it should remain in the management minutes one that related to Mr Rippon and the sale prospectively of his shares?---Yes.

10

All right. Could I then come to the loan from Mr Craparotta and I think I can deal with this, Mr Di Girolamo, without taking you to the documents?---Sure.

At transcript 2330, lines 10 to 20, you were asked why Mr Obeid Junior had agreed to effectively guarantee the loan, do you recall that?---Yes.

And your answer was that he wanted to help?---Correct.

20 Who did you understand he was helping in providing in effect a guarantee to Mr Craparotta?---Me.

And why did you understand that?---Because the money was being lent to me.

I'm on the home stretch, Commissioner. Now, Mr Di Girolamo, I want to come to the events around 20 November, 2012 and could the witness be shown C22 at 4268?---Sorry, what was the page, Mr Alexis?

30 4268?---Yes.

Now should we understand that the draft document at 4268 and 9 was prepared by you on a computer at your home at about the same time the document at 4266, obviously before execution - - -?---Yes.

- - - was prepared?---Yes.

40 And were they prepared because of what you had heard in the media concerning the inquiry that was proceeding before this Commission at the time?---There was media, yes, media scrutiny around.

All right. Now in relation to the document at 4268 and 4269 I think you said in your evidence that you didn't have the Heads of Agreement document available to you - - -?---No.

- - - at the time you prepared it?---Correct.

And had you before preparing this document gone into the accounting records of Australian Water Holdings at all to remind yourself in terms of the accounting position with respect to shareholder loans?---That was probably more pertinent.

Yeah, but did you have that?---No.

Had you sought that before you started exercising your mind about drafting a document?---No.

10

And is the position that you drafted the document and then looked at that position the following day or closely thereafter?---Correct.

And if you just have a look at the document in Exhibit C20 at 4064?
---Thank you. I think I still need this one.

4064?---Yes.

20

Do you recall whether you actually saw the ledger for your shareholder loans at the time of drafting the document in connection with you checking with Mr Groom or, or not?---No, it was after.

I know but do you recall actually looking at the ledger concerning your shareholder loans to the company?---I believe I would have.

And is that the document or perhaps the document in its electronic form that you looked at after you drafted the document at 4268 which informed you that on reflection what you drafted was wrong?---Correct.

30

All right. Now can I come back to C22 and come back to the document at 4266?---Yes.

Now after you prepared the document did you arrange to speak with Mr Obeid Junior?---Yes.

And did you meet with him and provide him with the document?---Yes.

40

And can you tell us please as best you recall what was said in the conversation around the time when the document was given by you to him?
---I think I've given that evidence.

I'm not sure you have?---Sorry. Um, um, it was words to the effect that I was concerned of the media scrutiny in relation to the Obeid family name.

THE COMMISSIONER: He has in fact given this evidence, Mr Alexis, a number of times.

MR ALEXIS: In connection with this document?

THE COMMISSIONER: Yes. Anyway, go on. Keep going, Mr Di Girolamo?---Sure. Um, and that I wanted to therefore break the nexus between the security over my shares and Eddie Obeid Junior for the benefit of AWH.

MR ALEXIS: And as best you recall what did Mr Obeid Junior say?
---He accepted that.

10 Right. And what discussion was there around the provision contained within clause 2 about the time for repayment?---Sorry, can you just put that to me again?

Certainly. Was there a discussion with him around clause 2 which relates to the time for repayment?---Yes. I think that would have been along the lines of to provide um, sufficient opportunity for in essence shares in, in AWH of mine to be sold in due course.

20 All right. Now, at the time you prepared the document and spoke to Mr Obeid and signed the document, did you have any idea as to whether or not this Commission might be investigating the affairs of AW or AWH or Mr Obeid Junior and/or yourself?---No.

Could I then come to 2013, and if you would turn through to C22 at page 4350?---Yes.

And you'll see that this is the redacted version of the Heads of Agreement – you'll not particularly at 4354?---Yes.

30 And did you learn on or about 1 February, 2013, during the course of evidence that Moses Obeid was giving to the Commission that Counsel Assisting, and this is transcript in that inquiry, Commissioner, at 3573 and 3574, that Counsel Assisting had sought to tender a redacted version of the Heads of Agreement apparently for security purposes?---I did, I heard that afternoon 'cause my phone wouldn't stop ringing from media inquiries.

Mmm?---And then I had a conversation I think with Mr Sinodinos who had also had a media inquiry.

40 And following the tender of the redacted version of this Heads of Agreement during the course of that earlier inquiry, I think there was articles at least in the Sydney Morning Herald about the question of whether or not the Obeid family had a “stake” in Australian Water Holdings. Do you recall that?---I think it was the following morning it was the water firm or the water factory and Obeid and Mr Costa's involvement.

All right. And was it in connection with that that in due course you spoke with Mr Vuaran, solicitor and counsel, with respect to what ultimately

we've come to learn is the Deed of Confirmation?---I was extremely concerned by the article and I was extremely concerned by the redacted version of the document.

Why were you concerned about that?---Because the redacted version of the document removed clause 3.

Now- - ?---And clause 3 contained two provisions, one an interest provision and one a consultancy provision.

10

All right. Now, once the deed had been prepared – and I don't think I need to step you through the stages of its preparation – did you arrange to meet with Mr Obeid Junior?---Once the Deed of Confirmation?

Had been prepared ready for execution?---Yes, I did.

Thank you. And did you give it to him?---I did.

And what did you say to him at the time you gave the deed to him?

20

---I believe I rang him first and told him that I had sought legal advice and that my legal advice was to um, enter into Deed of Confirmation um, and that I wanted to meet him to provide him with a copy of that deed so that he could review it and if he so saw fit, speak to the other parties to that deed and seek legal advice.

So he took the document from you and did so, as you understood it?

---As I understood it.

30

And then I think there were some, some changes made and ultimately that Deed of Confirmation was executed?---That's correct.

And at about the same time were you under pressure within AWH particularly from BG&E camp with respect to whether or not your position going forward in the company was tenable or not?---I wouldn't just isolate the BG&E camp, there was um, grave concern in relation to the link or the alleged link between myself and Eddie Obeid Junior, my name unfortunately appeared to have become toxic in the marketplace, we were receiving feedback from Sydney Water who had started writing letters in relation to seeking explanations, the letters that I think I've been taken to today, and Malcolm Crabb reported back to Peter Canaway and myself and I think Frank Cerra um, and my recollection is that he drafted a memorandum in essence providing an opinion that Sydney Water would feel much comfortable (as said) if I was no longer associated with Australian Water Holdings.

40

And ultimately that led to the sale of your shares pursuant to the agreement with BG&E on 19 April, 2013?---In the main, there were a couple of other extraneous personal factors, but in the main, yes.

Thank you, Mr Di Girolamo. Thank you, Commissioner. Sorry I exceeded my time estimate but I have endeavoured to go to the nub of - -

THE COMMISSIONER: Only by about an hour, but anyway, who's counting. Anything arising, Mr Watson?

MR WATSON: Just a couple of things. Lance Northey, who is he?
---I think he worked for a lobbyist company called CPR.

10

So he was yet another lobbyist you'd retained?---That's correct.

I'll have to review that ratio. Now, have a look at this. This is something that we've been shown was printed by the Daily Telegraph, and what apparently it reflects are a series of text messages which passed between a journalist at the Daily Telegraph, Andrew Clennell, and the Premier or the then Premier, Mr O'Farrell. Do you see this?---I do.

20

Who did you tell, who in the world did you tell that you'd bought Mr O'Farrell the bottle of Grange?---I don't believe I told anyone I bought the bottle of Grange, other than Jodi.

That's your wife?---Correct.

Well, you must have told I think Elizabeth Michael because we've seen it's on her credit card. Who else did you- - -

30

THE COMMISSIONER: Is this – sorry, Mr Watson, could I clarify something. This is 6 March in what year?

MR WATSON: This year.

THE COMMISSIONER: This year. Thank you.

MR WATSON: Who else did you tell?---I don't recall telling anyone.

It must have been Elizabeth Michael?---Yes.

40

Well, what about your co-directors or anybody there?---They may have known.

They – what do you mean, they may have known?---I don't recall specifically speaking to anyone about it.

Well, did you speak to Mr Clennell or somebody at the Daily Telegraph?
---Absolutely not.

Did you tell another politician, a fellow called Hartcher?---I don't believe so.

Are you sure about that?---I am sure about that.

All right. So- - -?---I resist the, I resist the suggestion that I leaked this information.

10 Well, why would, why would you be embarrassed about it, why would you call it a leak? It was just a fact as far as you were concerned, wasn't it?
---No, but if you're suggesting that I told Mr Clennell- - -

I just want to get to the bottom of it, Mr Di Girolamo, it's very late in the day. I just want find out how did Mr Clennell know- - -?---You'd have ask
- - -

- - -about this before ICAC did?---Sorry, you'd have to ask Mr Clennell.

20 All right. I'll tender that document because I've asked questions about it but I'm not sure that it takes this inquiry anywhere as a question of fact.

THE COMMISSIONER: Exhibit C121.

#EXHIBIT C121 - TEXT MESSAGES AS UPLOADED ON DAILY TELEGRAPH WEBSITE ON 16 APRIL 2014 OF COMMUNICATION BETWEEN ANDREW CLENNELL AND THE HON BARRY O'FARRELL DATED 6 MARCH 2014

30 MR WATSON: Thanks, Mr Di Girolamo. Thank you, Commissioner. I think that's the end of all of the evidence.

MR ALEXIS: Commissioner, as I understand it, Mr Di Girolamo's summons requires his attendance during Operation Spicer?

THE COMMISSIONER: Yes.

40 MR ALEXIS: So I understand he's not excused and will return when required by Counsel Assisting.

THE COMMISSIONER: Thank you.

MR ALEXIS: And he will attend as required of course.

THE COMMISSIONER: Thank you. Yes, Mr Di Girolamo, you can stand down.

THE WITNESS STOOD DOWN

[5.20pm]

10 THE COMMISSIONER: Just in relation to the provision of written
submissions, as I indicated earlier the submissions or rather a timetable for
submissions will be fixed at the conclusion of the evidence in Operation
Spicer so there's no desperate need to rush away to Chambers, but can I
indicate that I propose to publish on the Intranet the directions regarding
written submissions and the proposed length of those written submissions as
they accord with each relevant person the subject of allegations in the
inquiry. Following the publication of that proposal on the Intranet there
may be some scope – and I stress some scope – for a minor revision up or
down and that can be made, that further submission can be made briefly at
the beginning of Operation Spicer. So could I just ask counsel to pay
attention to that and consider their position. And could I also indicate that
the publication of the directions will stipulate that the submissions must be
in size 12 font, numbered, in numbered paragraphs and I do not expect there
to be laborious references to actual evidence given, other than references to
20 transcript by a page and line number.

Anything else, Mr Watson?

MR WATSON: No, thank you, commissioner.

THE COMMISSIONER: All right. Thank you. This inquiry is adjourned.
Thank you to counsel for their assistance.

30 **AT 5.21pm THE MATTER WAS ADJOURNED ACCORDINGLY**
[5.21pm]