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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE DAVID IPP AO QC

PUBLIC HEARING

OPERATION NAPIER

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON FRIDAY 1 JULY 2011

AT 10.05AM

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THE COMMISSIONER: Mr Alexis.

<MARK JAMES FERGUSON, on former oath

[10.09am]

10 MR ALEXIS: Thank you, Commissioner. Mr Ferguson, yesterday afternoon I showed you the valuation that had been obtained for Currawong and attention was drawn to an email that you sent to Mr Watkins attaching that email that you indicated had been sent on 11 January, 2011. Can I just show you the email. And, Commissioner, I'm not sure if a copy was provided to you yesterday.

THE COMMISSIONER: Yes, it was.

20 MR ALEXIS: It was. We have copies of that for those who haven't already seen it. I think most people have already received a copy. Now, is that the email that you were referring to yesterday, Mr Ferguson, which sent by attachment the Currawong valuation?---Yes.

Thank you. Can I just draw attention to the last sentence in the first paragraph which refers to the draft MOU and the reference to that setting out a requirement for LPMA and PWC, a reference I assume to Pittwater Council, is that right?---Yes.

To get a valuation?---Yes.

30 So the cost of the valuation for Currawong was that a cost that was shared between LPMA and the Council?---No.

And did you understand that based on the terms of the progressive drafts of the Memorandum of Understanding that you, as the General Manager of Council, were to procure the valuation for Currawong and also the valuation for the Newport site?---No.

You, nonetheless, procured those valuations?---Yes. I procured as the General Manager of Pittwater Council.

40 Well, thank you, but did you do so because you understood that the progressive draft of the MOU required that?---No, not at all.

So it was a step taken quite independently of the MOU, is that - - -?---That's correct.

Can I just ask you to go back to the draft MOU that we went to yesterday behind tab 6 of Exhibit 1 which is being shown to you now. And can I just ask you to look at that document commencing at page 26 over on 27 which is the draft definition provisions and you'll see at the top of the page there's

a reference to the definition of contract which refers us to a standard form of Contract of Sale. Do you have that, Mr Ferguson?---Yes.

And then there's an expression called Date of Exchange which tells us that it means 56 days from the date of the valuer's report or the second opinion, and you'll see that the expression "second opinion" is defined further down the page?---Yes.

10 Which seems to relate to an opportunity to obtain a second opinion on matters concerning valuation, do you see that?---Yes.

And then if you drop down in the definitions you'll see that there's an expression called Gifted Land and that refers to lots 5 and 6 of DP25340 which is the Newport land, isn't it?---Yes.

And the sale land further down is defined, I think, as the land surrounding the Currawong site, is that so?---I couldn't be sure. The lot 1 is but I don't know about the other lots.

20 All right?---I need to be clear on that.

In any event if you just come over to page 28 of the draft MOU you'll see in proposed clause 3.1 that the parties are to agree in respect of sub-paragraph 2 the engagement of a valuer, do you see that?---Yes.

To undertake a valuation of the Council's gifted land and sale land?---Yes.

30 If council's agree to selling part of the investigation land and, relevant part of the investigation land, do you see that?---Yes.

And do you see in sub-paragraph 3 of this draft MOU, "contemplated that the cost of the valuer fees would be paid by each or the parties 50/50." Do you see that?---Yes.

40 Now, we know as this document was being worked through that you instructed the valuer for Currawong by about the first or second week of November and we know, I think, that by the end of December you'd also obtained in addition to the Currawong valuation the valuation for Newport, is that so?---Yes.

Now, did the proposed provisions of the MOU play a, a role in the procuring of those valuations by you or not at all?---Not at all, no. The, the date of the instructions for both valuations were prior to the date I'd first seen the, the MOU on 6 December I think it was.

Now, the MOU I think, and let me just put this proposition to you and we'll go to some detail if you disagree, but should we understand that insofar as the valuations were concerned the proposal that is reflected in this document

provided that those valuations would be given to the LPMA and if there was some issue about it then there'd be the second opinion procured which is what I took to you earlier but that there would be then some process towards the completed transfer of lands within that timeframe after the time for the second opinion expired?---You're referring to a document that never got signed and had a life that ran for, ran for a, well, for a year 'til the, probably 'til 31 December, 2011, yes.

10 All right. But, but the proposition in this document, at least in the draft form which you understood existed in December 2010, contemplated that valuations would be provided between the parties and that there would then be some preparation of contractual arrangements within a timeframe once valuation issues had been agreed. Is that so?---Yes.

20 And should we understand if we look for example on page 28 to clause 2 that you well understood that even if the MOU had been entered into it didn't purport to operate as a legally enforceable contract and that's because the legally enforceable contracts were to ultimately be in a form of the contracts for sale which would be entered into after the valuation exercise that we've just stepped through came to a conclusion. Is that right?---That, in terms of the detail that wasn't finalised in terms of how that land was to be transferred. It was not, it was not finally agreed, the method by which it was, that it was a sale or a transfer under the Crown Lands Act or other.

All right. Now, when we come back to this email - - -

THE COMMISSIONER: I'm sorry, I don't that your question's been answered, Mr Alexis.

30 MR ALEXIS: Oh, I see, thank you, Commissioner.

Was it your understanding, Mr Ferguson, that whilst the MOU if agreed and executed did not operate as a legally enforceable contract, the parties under the MOU would work towards the entry into of contracts relating to the various transfer and gifting of the lands after the valuation exercise that we've stepped through had come to a conclusion?---Yes. You added the word sale and transfer and sale so yes.

40 Yes. All right. Thank you.

THE COMMISSIONER: Mr Ferguson, there's something I'm not sure if I understand, I take it, well, I'm not sure if that's right either. Did you approve of the MOU terms in principle? I mean, you understand what I mean? I'm not saying did you commit yourself but were you in principle in agreement with what is set out in there?---We had, the first I saw that document was on 6 December. We had a meeting on 8 December and we put forward a range of propositions in terms of what we'd sought to have amended but - - -

I see?--- - - - in terms of the, in terms of the finalisation of the MOU there was never a final agreement on the form of the MOU.

I understand, I understand that?---Yes. So in terms of - - -

(not transcribable) there was not - - -?---No.

10 - - - even an agreement on the form of an understanding which was not to be an agreement?---Yes, there was, there was agreement in the principles.

Yes, but not a legally binding agreement?---That's correct.

Now, can you just remind me when you, when you instructed the valuers first to provide the valuations for the Newport land and the, I'll call it the surrounding land but that's really land to the north of Currawong, isn't it? ---The, the valuation for the Newport land was sought on 30 November.

20 Yes?---The valuation for Currawong was sought prior to that.

And - - -?---The valuation, sorry.

Sorry. When did you receive the valuations again, I'm sorry? Was it before the MOU? Before the middle of December when the MOU, when you saw the MOU for the first time?---We'd received the valuation on the, the Newport land on 23 December, I probably didn't see it until January because I was on leave.

30 And the surrounding land?---We didn't receive a valuation for the North Mackerel, we received, we received valuations for property known as 28 Ralston Road which is part of McKay Reserve which is on Barrenjoey Road. So when you see - Commission 3 Independent Valuations one for part of McKay Reserve which fronted Barrenjoey, one in the Newport lands and Currawong.

And that's two?---Sorry. Newport lands, two, and the third valuation was Currawong.

40 Right. I see. So, and did you give - what I'm trying to understand is why the MOU deals with the valuations as if the Department had never seen them?---The Department, the Department had only - - -

Do you understand what I mean? The MOU sets out provisions for the obtaining of valuations?---Yes.

Does it not?---Yes, it does.

For the surrounding property for the gifted land and the sale land as those terms are defined in the MOU?---Yes.

So the inference I draw is that by the time of the MOU, the time you saw the MOU the government had not seen any valuations for either the gifted land or the sale land?---That's correct.

10 MR ALEXIS: Now, Mr Ferguson, can I just get this clear with you. When you provided Mr Watkins with the Currawong valuation on 11 January, was that because of the provision that you thought would be worked into a final form of MOU to undertake and provide valuations or was it quite independent of that?---I was aware of the MOU at the time, but, and I provided Mr Watkins with a copy of the valuation following discussions about what we thought the value of the property was worth.

20 But in doing so were you working in accordance with what you understood the general principles contained in the MOU to be or were you working quite independently of that?---I was providing - the valuation for Currawong was provided, was developed, prepared by Council independently of the MOU so, but when the MOU identified that then we made that information available to Mr Watkins.

Well, can I just come back to the email that started the series of questions on this subject. And can I draw attention again to the last sentence of the first paragraph where you expressly seem to be referring there to the draft MOU and the requirements set out in that document for valuation, do you see that?---Yes.

30 So weren't you saying under cover of this email that here's the valuation in accordance with the requirements of the draft MOU? I'm paraphrasing, of course, but isn't that really what you're saying?---Where is that, where that's document, sorry, what's the - - -

I showed you the email, I think, came from your Council yesterday?
---Okay.

You should have it on - - -

40 THE COMMISSIONER: Just read it again?---Yes, okay.

The last sentence of the first paragraph?---Yes.

MR ALEXIS: And just so we're clear, Mr Ferguson, you had in mind when you sent the valuation to Mr Watkins that the draft MOU as it then stood at that time contained requirements to procure valuations and pass them on to the LPMA as part of the working through of these arrangements?---That's not correct.

Well, why is that not correct?---Not for the Council to procure the valuations, there was no agreement who was to procure the valuations.

I see. All right. The subject of that what I put to you is correct?---There was a proposition of valuations being obtained.

And that was for the Currawong as well as the gifted land as defined which you've told us, I think, included the Newport land?---Yes.

10 Thank you. Can I tender the email, Commissioner.

THE COMMISSIONER: Yes. The email of 11 January, 2011 at 2.59pm is Exhibit 21.

**#EXHIBIT 21 - EMAIL FROM MR FERGUSON TO MR WATKINS
DATED 11 JANUARY AT 2:59PM**

20 MR ALEXIS: Now, Mr Ferguson, can I show you some aerial photographs of the Newport land, with a copy for you, Commissioner. Now, Mr Ferguson, do you see that I provided you with a series of four aerial photographs, the first in the series showing in plan lot 5 and lot 6 which comprise 69A Beaconsfield Street, Newport outlined by the red line on the aerial photograph?---Yes.

And if we turn the page can you assist me as to whether or not the particular lot depicted – I see, it's headed lot 5. So is that lot 5 in that aerial photograph, that is to say, the northern lot?---I, I assume so. I'm not sure
30 which one's lot 5 and which one's 6 for certain, sorry.

In any event, we can see from what's depicted on the two aerial photographs if one goes over to lot 6 or what's headed lot 6 the approximate configurations of each lot?---Yes.

And then finally, the last aerial photograph identifies the approximate location of the Crown land that is located between the western boundary of lots 5 and 6 and the foreshore?---Yes.

40 Now, is that Newport Anchorages, I think it's referred to, to the northern side of the two lots that we're speaking of? You see the marina berth and all the yachts?---I'm not certain, but probably, if that's a fair answer.

Now, should we understand that lots 5 and 6 have a battleaxe form of access to what I think is Beaconsfield Street on the eastern side of each of those two lots?---Yes.

And clearly enough residential development to the north, to the east between the two battleaxe parts of those two lots and to the south, is that so?---Yes.

Thank you. I tender those aerial photographs, Commissioner.

THE COMMISSIONER: Yes. The four aerial photographs of the Newport land will be Exhibit 22A to D respectively.

10

#EXHIBIT 22 - AERIAL PHOTOGRAPHS A-D RESPECTIVELY

MR ALEXIS: Now, Mr Ferguson, yesterday afternoon when I showed you the valuation for the Newport land, do you still have that with you? Perhaps a copy can be provided to the Commission.

THE COMMISSIONER: Thank you.

20 MR ALEXIS: Now, should we understand, Mr Ferguson, that you obtained this valuation for the purpose of determining the value of the contribution that Council financially was making to the proposed state park that had been discussed with Mr Watkins?---Yes.

And if we look at page 7 of the valuation if I can use the pagination of the valuation report, so I'm looking at page 7 of 31. Do we see and see accurately a reference about halfway down the page to the zoning of that land, namely open space and recreation as I think we discussed yesterday? ---Yes.

30

And then we see that the basis of the valuation that you obtained firstly assumed highest and best use taking into consideration the nature of the surrounding development, do you see that?---Yes.

And as I think we also discussed yesterday, the valuation assumed a rezoning to permit single lot residential housing on the land?---Yes.

40 And thirdly the valuation was to consider the marriage value, the detail of which I'll come to in a moment but you understand what I'm speaking about. Now, can I just ask you on the subject of assumptions underlying this valuation to turn to page 15 of the valuation, that is page 15 of 31 and should we understand that in addition to the broad assumptions that we've already identified and we see again a reference in paragraph 1 under the heading "Basis of valuation to rezoning," do you see that?---Yes.

But should we understand that there were also some assumptions, number 2 being that the existing underground stormwater pipe situated on lot 5 could be repositioned - - ?---Yes.

- - - to run parallel to the western boundary?---Yes.

And are you able to indicate by reference to the aerial photographs approximately where that stormwater pipe ran?---I'm sorry, I couldn't.

No, all right. Then I think if we just drop down to assumption number 4, there's reference there to an existing ROW which I think we should understand is a reference to a right of way, is that so?---Yes.

10

In other words, there was an encumbrance on the title which favoured the adjoining lot, number 4. Is that so?---Yes.

And the proposition which was assumed was that there would be some extinguishment of that encumbrance. Is that so?---Yes.

So that lot 5 adjacent to lot 4 would become unburdened by that right of way once the land became Crown Land. Is that right?---Yes.

20

Now, do you know whether either in late December or in January or indeed the months that followed before the contract for Currawong was exchanged whether any consideration was given to what might be involved in the extinguishment of the right of way which is in favour of the adjoining lot? ---There, there wasn't detailed discussions about it but our, our advice was, our view was that by the transfer of the lots to the Crown would in fact bring about a extinguishment of the easement that would require the, there'd be a, apart from the Crown, through the transfer process the, the easement could be extinguished but it'd be on the basis of payment of some compensation.

30

And that's payment of compensation to the owner of the dominant tenement or the owner of the land to which that right of way benefitted?---Yes.

And was there any discussion about what the amount of compensation for the extinguishment of that easement might be?---No.

And when you tell us that there were discussions about this subject matter, with whom did you have discussions?---Internally within our organisation - - -

40

I see?--- - - - there was discussion, yes.

All right. So we should understand that the prospective extinguishment of the right of way that burdened lot 5 with attendant compensation payable to the owner of lot 4 was not the subject of any discussions between you and Mr Watkins?---No.

THE COMMISSIONER: Or with the owner of lot 4?---No. One comment though, the owner of lot 4 already had a legal access. This was a secondary access and the basis of compensation is usually on the basis of the net loss of value to the owner of the adjacent property as a consequence of the extinguishment of the easement.

Did you, am I right in thinking that it would be open to the owner of lot 4 to attempt to resist this?---Yes.

- 10 MR ALEXIS: Now, Mr Ferguson, do you see also that some assumptions were made by the valuer concerning the removal of some trees? Do you see paragraphs 5 and 6?---Yes.

And should we understand, and perhaps what we can do is go back to some photographs on page 2 of the valuation, and I'm looking at the photograph on page 2 of 31, and is that the stand of, a photograph of the stand of trees that is being referred to in assumption number 5 on page 15 of 31, that is the several large trees which are located on Council's land toward the rear boundary and in, and in proximity to the waterfront land can be removed?

- 20 Do you see that?---Yeah. I would, it's, yes.

So, so the valuer is assuming that those trees proximate to the waterfront can be removed. Is there any tree preservation order applicable in, under the, in Pittwater which might have something to say about the removal of those sort of trees?---The, the process for which those trees would be removed would be through a Development Application process or after the approval of the Development Application if that wasn't determined at that time, by application through Council's tree preservation order process.

- 30 And that process naturally enough would engage public opinion on whether or not that application should be granted or not. Is that how we should understand it?---The Development Application process, yes.

Mmm. And similarly in paragraph 6 of the assumptions we see reference there to a large number of Casuarina trees located on the Crown Land waterfront and the assumption seems to be that they can be substantially thinned. Do you see that?---Yes.

- 40 And is the same position obtained in relation to the thinning of trees such as Casuarina trees, there would have to be some Development Application and- -?---It would be likely you'd do that in, in, in any Development Application process, yes.

Right. Now, if I could ask you to come back to the executive summary on pages 7 and 8 of 31, and noting as we have the underlying assumptions the valuer made, should we understand that you learned when you first saw this valuation, which I gather was when you got back from leave, perhaps early

January, that lot 5 and lot 6 had respective values at the time of valuation of course of 1.3 and 1.6 million totalling 2.9 million?---Yes.

And that was of course assuming the rezoning and development consent for residential development and extinguishing easements, removing trees and all of those sorts of things?---Yes.

10 Now, can I now come to the subject of marriage value. And do you see in the executive summary on page 8 of 31 there's a reference to a share of marriage value after amalgamation with Crown Land of \$785,000?---Yes.

And just to understand the detail of that, could you come through please to page 28 of 31. And can I just check that we understand this marriage value correctly. And do you see on page 28 there's a subheading about halfway down the page, Value of Council Land Before Amalgamation With Crown Land. And we have the two market values to which we've referred?---Yes.

20 And then the valuer has looked at the value of those two Council lots after they amalgamated with the Crown Land on the waterfront and one can see that that's had an upward effect on the value of two Council lots. Do you see that?---Yes.

And in order to work out what the effect of the consolidation of those two lots with the Crown Land is, one looks at the overall amalgamated value subtracts the value as part of amalgamation, I'm now on page 29, Mr Ferguson at the top of the page, and you'll see that the resulting position is that there is a marriage value resulting from the amalgamation of both parcels of land together with the Crown Land of just over \$1.12 million? ---Yes.

30 And then if we come down the page we see that the valuer has apportioned that marriage value between the Crown Land and Council land and that's how we derive the 70 per cent share of that marriage value of the \$784,000 rounded to 785,000. Do you see that?---Yes.

40 So should we understand, Mr Ferguson, that when you got this valuation and understanding, of course, all the assumptions we're worked through, the value of Council's contribution to the proposition of the State Park was just over 3.6 million, assuming, of course, that the Government would be prepared to pay 70 per cent of the marriage value and by pay I mean in a working through a value sense?---Yes. But it also indicated that there was a gross realisation of 4.45 million, bringing into account the Crown Land that was landlocked.

So when you got this valuation and I'm sorry, I probably should ask you a bit more precisely, can you recall when it was that you actually got this and you looked at it for the first time and understood the points that I've just made with you?---I couldn't honestly, no.

But was it around 11 January, that is the time that you sent to Mr Watkins the valuation for Currawong under cover of your email of that day?---I couldn't say whether it was before or after.

But it's likely, isn't it, that when you sent the Currawong valuation to Mr Watkins on 11 January you would have had in your possession the valuation for the Newport land that seems to be dated at least 23 December?
---I cannot say. I might have but I, if it, there's probably email traffic
10 between myself and Glenn Davis that'd define when I got the document.

All right. Well, perhaps your counsel might be able to assist us with that?
---Yeah.

But is there any doubt though that by at least mid-January 2011 you had received the valuation regarding the Newport land and appreciated that the value of that land together with the proportion of its marriage value with the Crown Land was just over 3.6 million?---Yes.

20 Thank you. Now, can I ask when it was that you told Mr Watkins that the value of the Newport land together with the proportion of marriage value was just over 3.6 million?---I didn't tell Mr Watkins.

Why not?---This was a valuation prepared by Pittwater, by a valuer for Pittwater Council. It was part of the due diligence by me as general manager to have a qualified, an advice, expert advice, independent advice provided by a qualified, a qualified competent person so I could provide advice to the Council. That was the purpose of this valuation.

30 But, Mr Ferguson, whilst that might be so as we discussed and I thought established yesterday your meeting with Mr Watkins and others on 1 October involved discussions about the value of the Newport land you recall I took you yesterday to your file note of 1 October which recorded in terms a value of 5 to 6 million and I took you to Mr Watkins' email of 6 October to Mr Fenn which referred to the house blocks that will be given to the Crown selling for between four to \$6 million. Do you remember that?
----Yes.

40 And so in January or whenever the precise date was that you read and considered this valuation, you would have appreciated no doubt that that was the basis upon which Mr Watkins might be operating, namely the house blocks at Newport might recoup ultimately something between five to seven and four to \$6 million. You knew that, didn't you?---The, the, the discussions were on the basis of four to \$6 million, that's correct.

Well, you had knowledge of the Newport land reflecting a Council contribution of just over \$3.6 million so you appreciated no doubt that there was significant difference between the values that had been discussed

between you and the valuation that you knew existed from a registered valuer?---The valuation presented was at the lower end but it didn't necessarily mean a substantial departure from the discussion of 1 October.

So did you make a deliberate decision not to tell Mr Watkins about this? ---It, it wasn't deliberate, it was a, and it was, this was, this report was for the purpose of providing due diligence for Pittwater Council.

10 But your discussion with Mr Watkins had proceeded at least from 1 December on the basis that Council would be making an approximate 50/50 contribution to this. You knew that, didn't you?---The, the 50/50, the Council did not agree to the 50/50.

20 But I thought you told me yesterday when I took you to the email at page 2 behind tab 1 of Exhibit 1 that at the meeting on 1 October this was discussed and that what was recorded in this email accurately reflected what was discussed. And I took you to the second bullet point which records in terms, "Council to provide 50 per cent contribution (dollars or land)." Remember that yesterday?

MS FISHER: I object. That was not the question that was put yesterday, it was never put to this witness that that email or note accurately reflected what was put at the meeting. Parts of the email were put to the witness and in terms of read, was read to him, do you see that, yes. That's my objection, Your Honour.

30 MR ALEXIS: Well, I won't pause to debate the objection, I'll withdraw it and I'll take Mr Ferguson to the transcript. Can you get the transcript of yesterday up, please. I'm going to show you some evidence you gave yesterday to the Commission, Mr Ferguson, at page 348. And, Mr Ferguson, I'll ask you if you wouldn't mind to have open Exhibit 1 at page 2. And do you see at the top of page 348 I asked you to look at Exhibit 1 at page 2, and you'll see that I referred to an email from Mr Foster to Mr Schultz. Do you see that at the top of page 348?---Yes.

40 And then just passing over the preparatory questions do you see at about line 23, and you'll see the numbering down the left-hand side of the transcript page, I put this to you – "And should we understand if you look at the second bullet point just below halfway down page 2 the reference to, 'Council to provide 50 per cent contribution (dollars or land)'. Do you see that? Answer, 'Yes.'" And just refresh your recollection by reference to the email at page 2 if you would. Do you see that my question adopted what's recorded in that email in the second bullet point?---Yes.

And then you see that in the next question at about line 25 I refer to something called the "amended purchase price of Currawong" and there seems to be a formula and then I just put in my question to you what is set

out under that second bullet point, “amended purchase price equals whole purchase price”, et cetera. Do you see that?---Yes.

And then you see the next question at 35. Now, leaving aside whatever that might mean - - -?---Sorry?

I’m sorry, Mr Ferguson, I’m back to page 348 of the transcript, line 35. Do you see the question, “Now, leaving aside whatever that might mean should we understand that 50 per cent contribution from the Council either in
10 dollars or land related to the parcels of land adjacent to Beaconsfield Street at Newport?” Answer, “Yes.”. Do you see that?---Yes.

Didn’t you accept from me yesterday that as you understood the proposed arrangements Council was contributing 50 per cent either in dollars or land and that that was to be in the form of the parcels of land adjacent to Beaconsfield Street at Newport?---No, I didn’t agree, I qualified that remark, that was put to us that the Council would contribute 50 per cent and we - 50 per cent and we indicated that we would contribute the land and that
20 would be the land that we would contribute. We, I also qualified that in conjunction with my meeting with the Minister to say we’re not happy with the Memorandum of Understand identifying 50 per cent contribution and we never agreed to a 50 per cent contribution, we agreed to the Council’s liability being capped at the specific parcels of land.

I see.

MR CURTIN: There’s some relevant transcript, Commissioner, at 349 - - -

MR ALEXIS: I was just going to come to that. Now, Mr Ferguson, you
30 recall yesterday you described the discussion at this meeting as a “back of the envelope” exercise in terms of value?---Yes, I did.

And if you look at the bottom of page 348 you’ll see that a question I put to you is, “The value of the Newport land discussed at this meeting or is this a file note of what you thought it was worth?” And you’ve confirmed at the top of page 349, “It was discussed at the meeting in terms of the value of the land.” And then I put to you, “So is the position that insofar as Council’s contribution was concerned which is described in the email at page 2 the 50
40 per cent contribution that was in the order of five to six million from the Council.” And you said, “The proposition was put that the Council contribute 50 per cent. That wasn’t agreed to at that meeting, but notionally the value of the land, Council’s land may represent 50 per cent but Council was offering to the Crown the Beaconsfield properties which may have a value. At that time we didn’t have them valued but we had done an exercise valuing the land, our property people had a look at it, somewhere between fifteen hundred, two thousand a square metre and we came up with the back of the envelope assessment.” “So we should understand that the five to six million reference is a back of the envelope assessment not the product of a

valuation that had been obtained?" Answer, "That's correct.". Do you see that?---Yes.

So is that what you're telling me as the qualification to your acceptance of what I put to you back on 348 at about line 35 that the 50 per cent contribution either in dollar or land related to the Newport land, do you see the answer that I've already taken you to was, "Yes." Is the qualification at the top of page 349 the qualification to which you wanted to refer me?

10 ---There was also the other land that the Council is contributing and that was discussed as well, the Great Mackerel and other, other lands that the Council may contribute, but we indicated that that may well represent 50 per cent, but ultimately the value of the land is the value of the land and we want our liability capped at what we provide within the total agreement.

So, Mr Ferguson, should we try and understand this to be representative of the position as you understood it by at least mid-January 2011. Council would be contributing land not cash, is that so?---Yes.

20 And as far as the Council was concerned it wasn't wishing to commit to any arrangement whereby you had to effectively stump -up 50 per cent of the acquisition cost of Currawong, it wanted to provide land at whatever value that might turn out to be, is that, in short, the Council's position?---Yes.

You understood, I think, from your discussions with Mr Watkins at least from 1 October that he was looking at receiving the Newport land which had been the subject of back of envelope type discussions and put that in the order of five to 7 million or something of that order?---No, the, could I respond?

30 Please?---Yes. The, the estimate was four to 6 million and if I could qualify the back of the, the back of envelope comment it should, should be referred to and I've provided the Commission with, it was an approximation by our property people what the value was based on a, other sales within the area and they produced an assessment of what they believed at fifteen hundred to \$2,000 per square metre and that was, but it had no, it did not have a, an evaluation by a valuer. It was assessment, an approximation of what, what they thought the valuation, the market value would be.

40 Yes. But, Mr Ferguson, in your discussions with Mr Watkins from at least 1 October through until January 2011 did you convey to him anything which would have indicated that an approximately 50 per cent contribution by the gifting of land would not in dollar terms be half of the acquisition cost of Currawong?---No.

And if I can just step back to the Memorandum of Understanding to which we referred to earlier this morning, did you understand, and I'm looking particularly again at page 28 behind tab 6, did you have any sense of obligation at least under the provisions of the draft Memorandum of

Understanding as at mid or late January to provide Mr Watkins with what you understood to be the result of the valuation of the Newport land insofar as that was part of the definition of the gift of land and the draft MOU contemplated the obtaining of valuations and the exchange of information relating to that?---No.

10 So should we understand, therefore, that if that is how the Memorandum of Understanding and its terms would have operated if the document from page 25 had been executed, then you by mid or late January had taken a different view as to the way in which the process would be worked through in order to transfer the Newport land and the other arrangements in relation to the establishment of the State Park?---It is likely that the - - -

THE COMMISSIONER: Do you mind just answering that yes or no?
---Could I, repeat the question, sorry.

20 MR ALEXIS: Well, it seems, does it not, Mr Ferguson, that by mid to late January you at least stepped if not started to walk away from the understanding contained in the Memorandum of Understanding which provided for, at least in draft form, the obtaining of valuations and the exchange of information relating to those valuations so that the contractual arrangements that this document contemplated could be worked towards. That must be so, isn't it?---No, we didn't step away from it. We'd, I'd, we just secured a valuation.

30 If that's true, Mr Ferguson, Mr Ferguson, if that's true why didn't you give Mr Watkins the valuation for the Newport land so that he could, if he wished to under the draft Memorandum of Understanding, take steps to obtain the second opinion as defined so as to work out respective values?
---You're referring to an agreement that was, was not signed, was not finalised between the two parties and there was, there was little dialogue starting to emerge, emerge on the MOU.

THE COMMISSIONER: But as I understand it, please correct me if I'm wrong, you'd led Mr Watkins to believe that the value of the land was between four to 6 million or between five to \$7 million that you were going to, that the Council was going to give?---Between four to six.

40 So his, so the reference to five to seven is wrong, is it?---I hadn't seen that document.

No, I'm just asking you if - - -?---Well, no, yes, yes.

It's wrong?---Yes.

You, you, you assert that you said nothing which led Mr Watkins to believe that the value was between five to \$7 million?---My, yes. And the, the- - -

So but you do agree that you had led him to believe that the value of the Newport land was between four to \$6 million?---That's correct, but his assessment of the five to seven may come from the, the addition of the other lands.

Now, Mr Ferguson, you know that Mr Watkins was under the belief that the value of the land that the Government was going to get in this proposed deal which you were attempting to facilitate and for which you had had the idea, you know you kept from his the fact that the valuation was not four to \$6 million but something that could be close to a million dollars less than four million?---I had prepared, I had achieved that, received that valuation for the benefit of Pittwater Council and- - -

That's not what I, I know who you received it for the benefit, for whose benefit you'd received it, Mr Ferguson, but you had led Mr Watkins to believe, as you have accepted, that the value of the land was between four to \$6 million, but you had then subsequently found out that it was worth almost a million dollars less than the lowest value which you had put to Mr Watkins, so you decided to keep that information from him, did you not?
20 ---No. There was no, no attempt to keep the information from him.

Well, you didn't tell him. You didn't tell him that what you'd said to him before was wrong, did you?---It was in the lower end of the range. The valuation of gross realisation.

But it was not between, in the lower end of the range, you'd given him a range of four to \$6 million and this valuation was substantially less than that?---The total gross realisation was four point four five.

30 Mr Ferguson, did you not think that Mr Watkins would be very interested in the actual valuation which your, which the valuers you had retained had produced?---I'd assume that- - -

Or would you think that he would be totally, he'd find this totally irrelevant?---Mr, Mr Watkins is the CEO of the LPMA that has a range of valuers and property experts and my presumption was he would have achieved and determined his own valuation and reached a decision of his own professional opinion.

40 So you thought it was quite appropriate to bring him under one impression, realise that the impression you brought him under was false, and remain silent?---Well, that's not correct, no.

But that's what you did, isn't it?---Mr Watkins is the CEO of the LPMA.

Is that what you did?---No.

So you told, but you didn't tell Mr Watkins the truth?---Yes, I did.

Perhaps you can explain to me how you told him the truth when you didn't tell him that the valuation you had received was substantially less than the valuation you had given to him?---At that stage there was no, there was, there was not the dialogue. There, there, I was never up, we never, he never sought to seek a valuation independently.

You knew that Mr Watkins was taking steps based on what you had told him about the valuation, did you not?---I knew Mr Watkins was taking, yes.

10 And he was relying on what you had said?---I don't believe he was relying on what I said, no.

Yes, Mr Alexis.

MR ALEXIS: Mr Ferguson, would you agree with the proposition that from the time of early discussions with Mr Watkins about the formation of the proposed State Park right through until the time announcement was made that the government had purchased the site, there had been close and cooperative arrangements between you and Mr Watkins to achieve that
20 outcome?---Yes.

And would you describe the work that you did and from what you could see the work that he was doing as work that was exploited between you for the mutual beneficial outcome of the Pittwater community, in particular, as well as the general community?---Yes.

And in the course of your dealings with him did you treat the exercise as an arm's length commercial negotiation or did you treat it more like two people seeking to obtain, because of common interest, a joint outcome that was
30 beneficial to all?---The combination of both. We both headed up organisations, we had to represent their interests as well as jointly towards a common objective.

And I think as you've accepted from the Commissioner's questions and the answers you've given you, at least by mid or late January 2011, had an expectation that Mr Watkins was working on the basis that he would ultimately recoup out of the sale of the gifted land about half of what it was going to cost the Government to buy the Currawong site?

40 MS FISHER: I object to that, I'm not sure that the witness has accepted that long proposition and all its parts.

THE COMMISSIONER: If you're not sure then why do you object?

MS FISHER: I'll clarify my objection. In my view the witness has not accepted - - -

THE COMMISSIONER: In your view?

MS FISHER: My objection is that the witness did not accept that proposition and all its constituent parts as it's now being put to him that he did accept it.

THE COMMISSIONER: Mr Alexis.

10 MR ALEXIS: Well, Commissioner, the proposition has been put and in my submission has been accepted.

THE COMMISSIONER: Perhaps we can just move on, the transcript will speak for itself.

MR ALEXIS: It will. Now, Commissioner, can I tender please the valuation report relating to the Newport land of 23 December, 2010?

20 THE COMMISSIONER: The valuation report of 23 December, 2010 relating to the Newport land is Exhibit 23.

**#EXHIBIT 23 - VALUATION REPORT DATED 23 DECEMBER 2010
RELATING TO NEWPORT LAND**

30 MR ALEXIS: Thank you, Commissioner. Now, Mr Ferguson, yesterday we touched on the filing on behalf of Eco Villages of the appeal in the Land and Environment Court on 22 December, 2010 relying upon a deemed refusal, do you recall dealing with that yesterday?---Yes.

And we have, I think, your email at page 35 behind tab 7 which conveys advice in that respect to Ms Connolly at the LPMA, is that so?---Yes.

Now, should we understand that that application came before that Court on about 3 February, 2011, is that your understanding?---Yes.

Now, - - -?---2 February.

40 Thank you. Now, by that stage had you, and by you I'm referring, of course, to the Council, but had you retained solicitors to represent the Council's interest in that appeal?---Yes.

And, I think, the firm Mallesons had been retained?---Yes.

And by that stage is your understanding that that firm had retained both senior and junior counsel to appear as necessary at the preparatory hearings, but ultimately on the hearing of the appeal?---Yes.

And by the first return date on 2 or 3 February had you instructed your solicitors to take steps to engage consultants that inevitably in these sorts of merit appeals are engaged to deal with the matters in issue on the appeal?
---Yes, that's correct.

Now, on or at least by the first return date did you understand that Eco Village, the appellant, had engaged the firm Maddocks to represent their interest in the appeal?---Yes.

10 And did you come to learn that that firm had engaged both senior and junior counsel to appear as necessary during the preparation stages but ultimately to appear on the final hearing?---Yes.

And did you have any understanding as to whether consultants had also been retained on the Eco Village side of the record in relation to the merit appeal issues?---Yes.

20 And no doubt you would have some idea of who they were because of the need for expert evidence and the need to retain experts early for these sorts of things. Is that so?---Yes.

Now, the matter I think came before the court and then was adjourned to a hearing in early March, is that so?---Yes.

And were you in court observing and listening to the hearing that occurred on that occasion?---On 8 March, yes.

30 Thank you. And can you just give us a brief outline of what the matter in issue was which led to that contested application on 8 March?---I wasn't there for the whole hearing but my, my knowledge of the issue, it started, the original issue was that the applicant had lodged an amended plan as well as a deemed application for appeal for deemed refusal and then the matters for contention that were to be discussed, considered on 8 March related to the heritage value of the site, the access, parking, fauna and flora, geotechnical issues, coastal processes, public interest issues, there's a, there was a range of key issues that were to be identified. The fact that the developer proposed to develop within the 9(b) zone and within the 7(a) zone as well meant that there were significant issues, the water supply, so there was a whole range of impacts, visual impact and the general character of
40 the, of the site were under threat as a consequence of the development application.

So was the matter in issue at that hearing in March one that concerned whether or not the appellant was able to amend the application from the form that it was at the time there was a deemed refusal?---They lodged simultaneously on 22 December an application for a deemed refusal and an amended plan that took two of the, two of the dwellings off the, off the plan so there was an amendment and the debate was around whether or not the

Council had the power to accept the plan in view of the fact that the JRPP was the determining authority.

I see. Now, the result of that application was that Eco Villages I think was permitted to have the appeal proceed on the basis of the amended plans. Is that right?---Yes.

And so in that respect should we understand that Council resisted that result and lost the application?---I, I'm, I'm not, I'm not sure of that.

10

Well, to the extent that Council was resisting - - -?---Oh, yes, yes.

- - - Eco Village being able to rely upon an amendment development application - - -?---Yes, I'm sorry, yes, yes.

- - - that position ultimately was not accepted and so when the case was set down for hearing I think from the week commencing 20 June that was going to proceed on the basis of the amended development application?---Yes, yes.

20

And that development, amended development application raised for consideration all of the various issues that you've just averted to in your previous answer?---That's correct.

And was that one of the issues before the judge who heard the application that the amendment was going to increase the number of issues and that might have some impact on whether the Council might be ready and those sorts of things?---Yes.

30 So against all of that the matter was set down on the amended issues. Is that so? That's how we should understand it?---To, to my knowledge, yes.

Now, are you able to give us some indication and I'm asking for something very approximate, Mr Ferguson, as to the cost that the Council had incurred in relation to the appeal proceedings in the Land and Environment Court up until the time of the determination of that application on 8 March?---I could give you a figure of what we spent on that application to, to date which would pretty well, it's \$230,000.

40 And we should understand that that relates to the costs associated with the appeal that Eco Villages lodged with the court on 22 December, 2010? ---Yes, but it, it incorporates the consultants, the specialist consultants required to undertake the assessment as well so there was part of the assessment of the application required independence, independent advice as well as the legal advice.

Thank you. Mr Ferguson, in your dealings with Mr Watkins during this period may we take it that you kept him abreast of what was going on in

relation to the appeal and in particular the result of the court hearing that we've just referred to?---I, I had a number of discussions with Mr Watkins and, and some of them were around the court proceedings, yes.

And did you ever have any discussion with him about what the likely cost of prosecuting the Land and Environment Court appeal might be to Eco Villages as the appellant?---Yes, I would have provided some estimate to that, yes.

10 And was that in part based on the, the estimate that you had been provided by your own lawyers as to, and consultants as to - - -?---Yes.

- - - the likely cost of the case?---Yes.

And are you able to recall to mind the sort of prognosis that you gave in terms of likely future cost of the litigation to Eco Villages?---Well, we had an expectation of \$700,000 and I suggested to him that that cost would be of that order for them as well.

20 THE COMMISSIONER: For them, for - - -?---For Eco Villages.

MR ALEXIS: Now, in so far as the - - -

THE COMMISSIONER: Mr Alexis, is that a convenient - - -

MR ALEXIS: Could I just ask one or two more questions and then I'll finish this topic?

30 Insofar as the prospects of success or otherwise of the appeal is concerned and we've referred I think to counsel being engaged and you having the benefit of advice from solicitors, but by or around 8 March did you have a view as to the likely outcome of the appeal?---We were, we were reasonably confident (not transcribable) issues so we, we believed we'd have a chance of winning the appeal but that definitely was not certain in the Land and Environment Court and any, there's no guarantees.

40 And you recall speaking with Mr Watkins about that subject matter around or up to 8 March, that is what you regarded as the likely outcome of the appeal?---Yeah. I don't, I, I can't, I don't know, I could have spoken to him about it, I'm not, I had so many conversations I probably would have talked about it, yes.

Do you, do you, do you ever recall saying to Mr Watkins something to the effect that there was considerable uncertainty about the outcome of the appeal?---Yes, yes.

If that's a convenient time?

THE COMMISSIONER: Yes. We'll adjourn for 15 minutes.

SHORT ADJOURNMENT

[11.18am]

THE COMMISSIONER: Yes, Mr Alexis.

10 MR ALEXIS: Thank you, Commissioner. Mr Ferguson, could I ask you please to look at page 37 behind tab 7 of Exhibit 1. And we see that on 4 February you emailed Ms Connolly and provided her with details of Council's resolution of 22 December?---Yes.

And could I ask you to explain to us why you conveyed to her in early February those details, what was the purpose or point of doing so?---She requested them.

20 And was that, as you understood it, because she was continuing to work on the Memorandum of Understanding to which we've already referred?---Yes, or other documents, yes.

THE COMMISSIONER: Sorry, Mr Alexis.

MR ALEXIS: Yes.

30 THE COMMISSIONER: First to the proposed MOU in the second dot point. What did that refer to?---It didn't, Commissioner, it didn't refer to the actual document, we didn't annex the document to the mayoral minute, what was included in the mayoral minute were the issues, issues from the Memorandum of Understanding which the Council agreed to and we put that in there but generally to endorse a process to actually get an MOU.

But, Mr Ferguson, do you see in your email after you have set out in quotation marks the terms of the resolution that Council had adopted back on 22 December and you'll see the quotation marks towards the top of the email and at the end of the last bullet point, do you see that?---Could you be more specific, sorry, just the words?

40 Yes, of course. Your email to Ms Connolly was seeking to quote verbatim the terms of Council's resolution that was made on 22 December?---Okay, yes.

And we see that by the quotation marks at the top and the bottom of the email which contains the terms of the resolution, do you see that?---Yes.

And then at the bottom of the page you say, "I trust this assists your negotiations." And what I'm seeking to understand is whether or not your reference to negotiations relates to the progressing of the draft MOU

referred to in the resolution or whether it relates to something else?---I don't know.

Ms Connolly, as you understood it, was tasked to work up the draft Memorandum of Understanding?---Probably, yes, probably would be the MOU.

10 You knew that Ms Connolly wasn't negotiating with Mr Linz or Eco Villages or involved at that level, didn't you?---Yes. There has been some dialogue about negotiations with Treasury and others.

I see. And did you understand that she, Ms Connolly, had something to do with the dealings with Treasury or not?---It wasn't clear.

And from whom did you obtain that understanding?---Ms Connolly.

20 You told me yesterday that after the Council resolution on 22 December the draft Memorandum of Understanding as it then was had not really been progressed and had not been finalised or executed before Currawong was purchased. Can I ask whether after 4 February and after you sent this email you were involved at all in reviewing or discussing further drafts of the MOU?---No.

Now, the terms of the resolution which you set out in the email commences by reference to it being subject to the New South Wales Government endorsing the proposition to create a State Park, do you see that?---Yes.

30 And are you aware after 4 February through until 15 March whether the Government provided any such endorsement?---No, not specifically.

So you didn't become aware as to whether or not the opening words of Council's resolution on 22 December was satisfied before you came to learn that contracts for the purchase of Currawong had been exchanged?---I was aware before the contracts were exchanged of negotiations.

THE COMMISSIONER: What negotiations?---I just need to clarify the question, sorry. I just need to - - -

40 MR ALEXIS: Well, my question directed attention to whether you became aware at all before contracts were exchanged as to whether – and I'm quoting from the terms of the resolution – the New South Wales Government had endorsed the proposal to create a State Park at North Pittwater. Were you aware of that or not?---The Government hadn't at that stage, no, except in principle, there had been discussion about that for a number of years.

But it would have been obvious to you from the resolution passed at the 22 December at which you weren't at but no doubt subsequently read the detail

of that the resolution of Council was predicated on the government endorsing the proposal and it was in consequence of that endorsement that the Council resolution then would facilitate the endorsement of the general principles of the MOU and the underlying transfer and gifting of land.--- Yes, but the government, the Minister and the Director General and the CEO had always supported the concept of the creation of a state park.

10 Well, that may be so but the position is clear isn't it that you as the Council representative had no idea one way or the other whether or not the NSW Government had provided any such endorsement?---No.

THE COMMISSIONER: If one reads the resolution, Mr Ferguson, the inference is that the Council by the date of the resolution was not satisfied that the NSW Government had endorsed the proposal.---I can see your reading but there was - - -

Yes.- - -?---general belief there was a commitment to the creation of a state park.

20 But the Council was wanting something formal wasn't it?---Yes.

Something had to happen after 22 December 2010 in relation to some act by the NSW Government which would satisfy that conditioned precedent and it never happened. Is that right?---The part, not all of it was but the government commenced negotiations, commenced acquisition action.

I know that.---And that, that took over - - -

30 But as far as you are aware the Government did not take steps, I'll withdraw that. The Government did not endorse the proposal by anything that it did after 22 December 2010?---I did not receive anything in writing but I was aware there was discussions and agreement to proceed with the acquisition, with negotiations, with the negotiation or acquisition of Currawong.

MR ALEXIS: Now from whom did you receive that information?---(NO AUDIBLE REPLY)

40 Sorry, are you looking at something there Mr - - -?---Am I allowed to look at my notes, my - - -

I'm sorry, just explain to me, what have you, have you got a device of some sort in the witness box have you?---Yes, an iPad.

What is it, an iPad?---Yes, just in terms of my contemporaneous notes? No?

THE COMMISSIONER: You're not allowed to do that.

THE WITNESS: Oh, okay, sorry.

THE COMMISSIONER: And you're doing that unbeknown to anybody else. You're supposed to answer the question to the best of your ability by reference to your memory. Do you mind handing your notes to Mr Alexis please.

MR ALEXIS: Now Mr Ferguson I think the question before you is, from whom did you get that information and the subject matter of my question related to the agreement or understanding about the state park being
10 endorsed?---The, it would have been Mr Watkins.

Now can you tell me when approximately he communicated that to you and what he said?---I received a communication from a, following a phone call to the Minister's office initially, I was aware that negotiations, there was a submission going to the Premier's Department and then for some time after that I was advised by Mr Watkins that he had approval to proceed.

THE COMMISSIONER: Mr Ferguson, sorry Mr Alexis. Mr Ferguson
20 you're perfectly at liberty to call for documents to refresh your memory but you are not at liberty to refer to private notes you made from which you, from which you rely to give your evidence.---Okay.

MR ALEXIS: Now Mr Ferguson we know from documents now available to us that a briefing minute went up from Mr Watkins' office to Minister Kelly on or around 8 February 2011. Now in relation to that document and your knowledge at that point in time were you involved in any way in the preparation of the document that went up to the Minister in relation to the purchase of Currawong?---No.

30 Did Mr Watkins discuss the content of the Ministerial briefing document with you at all?---No.

And were you aware of what the terms of the written communications were between Mr Watkins and Minister Kelly in relation to the prospective purchasing of Currawong?---No.

You told us, I think, that after he had indicated that a document had gone off to the Minister that he'd received some response. Could you just step us through what it was that occurred in that respect and what he said to you?
40 ---Essentially he indicated that he had approval from the Premier to proceed and he was going to make contact with Mr Linz.

And did he tell you in that, and I assume this was a telephone conversation?
---Yes.

Thank you. Did he tell you what the form of that approval from the Premier was?---No.

Whether it was writing or verbal or some other form?---No, I'd assumed it was in writing.

He then came back to you did he after he'd make contact with Mr Linz?
---Yes.

10 And what did he tell you?---He told me, I think it was 1 March, 28
February, around that period that he'd put a proposal to Mr Linz and Mr
Linz rejected. He said Mr Linz indicated to him that the site owed him \$14
million and if he wanted to buy it he'd need to get, have \$20 million. That
he was quite gung-ho, Mr Linz was gung-ho in his belief that the
application, his appeal was going to be approved by the court and on that
basis he wasn't interested in selling the land at this stage to the government.
Mr Watkins indicated to him that if he, if he didn't sell the land, sell the
land there was still a notion that the government would undertake a
compulsory acquisition at some stage and he asked me at that time whether
or not he thought – whether I thought the Liberal Party would be, if they
were to form government would be interested in, or support a compulsory
20 acquisition of the site. But he indicated also that there'd be no compulsory
acquisition of the site undertaken while the court proceedings were
incomplete.

Now did he tell you what he'd offered for the site?---I'm sorry, yes, \$11 to
\$12 million. He didn't, there was no, it was \$11 to \$12 million, he didn't
say \$11.5 or \$11.6 or \$12 million.

30 All right. Thank you. Now was there any further communication with Mr
Watkins on the subject of the Government purchasing Currawong after that
conversation?---Yes. Again on 10th and that, is that, 10 March Mr Watkins
rang me at about 6.00pm, just after 6.00pm, it was a Thursday evening and
said I've done the deal I've got agreement to, by, for the acquisition of
Currawong for \$12.2 million subject to the Council agreeing to accept its,
its own legal costs and Linz accepting to agree, agreeing to accept his own
legal costs and if we are to proceed we need to discuss the, the terms of how
we could move forward. And he indicated that what he would like from me
to firm his position was a letter that set out the Council's position clearly for
his benefit in finalising the sale prior to the exchange of contract which he
expected to the occur on 14, 15 March.

40 Now, this conversation occurred during the early evening on the day after
you'd been in the Land and Environment Court - - -?---Yes.

- - - with respect to the hearing of the matters that we went through before
morning tea?---To, yeah, two days, one or two days after the Land and
Environment Court, yes.

And did the judge who dealt with that application make orders for costs, can
you tell us?---The, the Council on that occasion received costs for the initial

works associated with the, the appeal process and the, and the other purpose of the meeting of the, of the court hearing on the 8th was to set a date which we discussed earlier.

So insofar as Mr Watkins was speaking to you on the early evening of 10 March and was saying that each party in the litigation had to pay their own costs, that meant to you no doubt that Council would have to give up the benefit of their order for costs that it had obtained a day or say before?
---Yes, that was in, that was only in respect of part of the case. That wasn't,
10 that wasn't a total order as to costs.

Now, did you understand from at least that point in time that you needed to be able to confirm that Council would be prepared to have the litigation brought to an end without seeking any costs and it was that point that stood between the deal progressing to an exchange?---I understood that, yes.

And what did you then do in that respect in order to achieve it?---I, I, I took advice from our lawyers, from our lawyers and I spoke to our Director of Planning who was in charge of the case to ascertain the issues involved and
20 to make an assessment. I also discussed the matter with the Mayor the following day to make a determination but the, the, matters that come to hand with me is that in the Land and Environment Court the likelihood of a, of a costs order is quite remote in respect of these type of appeals and it was likely in any event that the Council would have to pay its own costs which could be quite substantial and at the present time the, the matters in my head was at the present time there was, there was potential litigation of \$700,000 and no Currawong or the acquisition of Currawong and a smaller legal, legal bill so to me it was, wasn't a difficult decision.

30 And having obtained that advice did you then have some communications with Mr Linz to seek to resolve that aspect of the matter?---Mr Linz rang me the next day on 11 March and we discussed the, the wording of a letter between the two, two of us at parties that we could agree to to enable the discontinuance of proceedings in the Land and Environment Court that would occur on 22 March and a range of other ancillary related issues to when we, when the, the, the matter would be, how the matter would be discontinued.

40 And in that respect did you and Mr Linz exchange some without prejudice email communications to try and resolve the wording of the letter?---Yes, and our lawyers were involved in that as well.

Of course. Now, if you turn to page 77 of Exhibit 1 which is the collection of documents behind tab 15, page 77, Mr Ferguson, is that a copy of the letter that ultimately you signed and sent to Mr Linz in a result of those discussions and those without prejudice emails?---Yes.

And was that a letter sent to Mr Linz on the date of the letter, 14 March as best you recall?---Yes, it would have been emailed to him.

Now - - -?---There was - - -

I'm sorry?---There were, there were a couple versions of the letter to get the letter mutually agreed but, yes.

10 All right. Thank you. Now, can you tell me what communications you were having with Mr Watkins while all this was going on?---On the 10th of, on the evening of 10 March Mr Watkins talked through the, in addition the, the notion of me preparing a letter for him but it was on the terms of further discussion, I don't think there was any further discussion until the 14th, 'til Monday the 14th to the best of my knowledge to - - -

All right. And should we understand that you had a conversation with Mr Watkins at some stage during the 14th?---Yeah. Were the contracts, the contracts were exchanged the 15th or the 14th? The 14th, yes, definitely the 15th.

20

Tuesday the 15th?---Tuesday the 15th, sorry, yes. On Monday the 14th I, I submitted a letter to Mr Watkins and he rang me and said, look, I don't think the letter's strong enough from the government's perspective in terms of I'd indicated that we agreed in principle to a number of things and he was after a stronger wording from the Council and stronger support to vindicate his position with government so I said I'd review the letter, I discussed it with the Mayor, we talked through our delegation and what we think, thought was appropriate and I modified the letter to Mr Watkins and submitted it on the morning of the 15th from memory.

30

And if you turn to page 73 within that material behind tab 15 do we see there the letter to which you're referring?---Yes.

And can I just ask you to explain to us what you and Mr Watkins discussed which led to the draft letter sent on the 14th and ultimately this further letter at pages 73 and 74?---The, the principal change was the, midway down, the dot point, one, two, the, one, two, three, four dot points there, the, the letter, the 14th letter had agree in principle.

40

So what was removed from the draft to the final at page 73 was in the fourth dot point the points "in principle" were removed between the words "agree to Governor Phillip Park"?---Yes, and that was in respect of each of the three dot points above it. The only one that's remained was the agree in principle to McKay's Reserve because, as McKay Reserve stayed the same because there wasn't a specific resolution.

Now, can you tell us please what was discussed with Mr Watkins that led to these letters being prepared and discussed in the first place?---Well, we

didn't have the MOU, the MOU had not been completed. There had been little dialogue on it and there was a need because of the impending contract exchange for the government to have a clear position set out from the Council in writing and so I - - -

Is that what Mr Watkins, he said to you?---That's what he asked, he asked that the letter - - -

10 And so does, is, should we understand the letter at pages 73 and 74 to be a written document to stand in lieu of the Memorandum of Understanding which to that point was in draft?---That's correct.

THE COMMISSIONER: Mr Ferguson, in writing this letter were you entitled, were you authorised by the Council to go beyond the resolution which is recorded at page 37?---Yes.

20 Who authorised you?---The resolution authorised me and delegated myself and the Mayor to pursue negotiations with the Crown with a view and execute all necessary documents with a view to, to finalising the matter, the second part of the resolution (not transcribable)

That was only subject to the New South Wales government doing something after 22 December in relation to endorsing the proposal and I understood you to say they had done nothing?---The, the acquisition of Currawong was a major step and the principal step in the creation of the State Park.

You were authorised to negotiate in accordance with the general principles and proposed MOU?---Yes.

30 And did you regard yourself as authorised to enter into a binding agreement without any further authority?---Yes.

And do you say that you did enter into a binding agreement?---No.

Do you say the letter of 15 March, 2011 constitutes a binding agreement? ---It sets an agreement to establish as part of the proposal a - - -

40 Would you mind answering my question?---It's not a binding agreement, no.

Did you represent that it was at all to Mr Watkins?---I was asked to present a letter and I presented that to Mr Watkins.

Do you mind answering my question?---No, I didn't.

Yes, thank you.

MR ALEXIS: Now, did you come to learn after sending the letter at 73 and 74 to Mr Watkins that contracts had subsequently been exchanged?---Yes.

And how did you come to learn of that?---Mr Watkins – I would've rang Mr Watkins and Mr Watkins would've rang me.

Now, finally, can I just seek to understand a couple of things in relation to the land referred to in your bullet point at, references at page 73. Now, has the Newport land to which we've been referring, lots and 5 and 6, DP25340
10 has that, since contracts were exchanged on 15 March, been transferred to the New South Wales Government?---No.

THE COMMISSIONER: Has the rezoning been changed?---No.

MR ALEXIS: And has the land, which I think we can refer to as the Great Mackerel Beach Reserve, been transferred to the New South Wales Government?---No.

Has the property there referred to as the Pittwater Park including the public
20 wharf been transferred or otherwise amalgamated with the Currawong site?
---No.

Has the Governor Phillip Park been transferred or arranged so as to be incorporated into a State Park?---No.

Has the proposed State Park been created?---The Currawong, the purchase of Currawong and the creation of the State Park has been – the State Park has been created and dedicated as a State Park and the Council has been
30 appointed as the, as the trustee.

And has the property referred to in the last bullet point at page 73 the McKay Reserve at Palm Beach has that been transferred?---No.

THE COMMISSIONER: Mr Ferguson, has the Council assumed obligations to transfer the lots referred to in the first two documents?---Yes, the Council on 21 March endorsed - - -

Has it entered into a binding contract with the Government?---No.

40 Has it executed a Deed of Gift in relation to this land?---No.

All that stands is its resolution?---Yes.

And does that apply to Pittwater Park?---Yes.

And to Governor Phillip Park?---Yes.

So nothing has been done?---No.

And technically the Council is free to refuse to transfer this land?

---Technically, potentially, yes.

MR ALEXIS: Now, Mr Ferguson, you recall earlier today I took you to the provisions of the draft Memorandum of Understanding and I drew attention to the timing provision of 56 days from receipt of valuer's reports or second opinions, and if you need to refresh yourself go back to page 27 of Exhibit 1. And on the subject of timing, and when you were speaking with Mr
10 Watkins prior to exchange of contracts on 15 March which led to the work that was done to prepare this letter at pages 73 and 74 was there any discussion with him about timing, namely, the timing of the proposal or the timing of the implementation of the proposal to transfer the lands set out in the bullet points?---Not in detail, no.

At all?---The, the detail, the details around Governor Phillip Park, Pittwater Park, McKay Reserve, yes, that was discussed in the letter leading up to the 15th.

20 But we see nothing in the letter, Mr Ferguson, which gives us any hint as to proposed timing, do we?---No.

And my question is whether or not that detail, detail concerning timing as to the implementation of the proposal was discussed?---No.

So if there was any suggestion that there would be a transfer of lands including, importantly, the Newport land so that it could be sold and proceeds realised and all brought to account by the end of the financial year that ended yesterday I gather you would reject that suggestion?---Well, it's
30 impossible now, but one of the issues was that this, the, Mr Watkins, basically everything sort of was put on hold, nothing is, I've had one meeting with Mr Harding and Ms Connolly and the Council's assumed trusteeship and working on that, but at this stage there's been nothing coming from the LPMA to actually how we actually take it forward.

But, Mr Ferguson, if you could attend to my question. If the suggestion was made that the implementation of the proposed arrangements set out in your letter of 15 March was to take place shortly thereafter so that the arrangements were in place, the Newport land transferred, perhaps sold and
40 the proceeds realised by the end of the financial year ending 30 June, 2011 and that that suggestion came from you I gather you would reject that?---
Yes.

Thank you, Mr Ferguson.

MR BRANSON: No questions at all.

THE COMMISSIONER: Mr Curtin.

MR CURTIN: Mr Ferguson, my name is Curtin and I appear for Mr Watkins. Can I ask you, a couple of moments ago you gave an answer something to the effect that something had happened to Mr Watkins and the only thing that had happened concerning Currawong and the lands set out in your letter to Mr Watkins of 15 March was the trusteeship of Council?---In the creation of the State Park.

10 Thank you. And you were also asked a number of questions about whether these various pieces of land in your letter to Mr Watkins of 15 March had been transferred, and I think your answer was no to all of those pieces of land?---Yes.

Why haven't they been transferred?---Because there's been no dialogue to any great degree over that part of the, part of the arrangement since the, since the election.

20 THE COMMISSIONER: Is that because you've taken no steps to implement the dialogue or because there is somebody in the government who is not interested in dialogue?---I think both parties are waiting to see the outcome of this, the findings of this inquiry.

I'm not, well I'm not - - -?---Would be one of the - - -

30 Is it the case – I accept – I'll withdraw that. The Council can act on it's own largely to transfer the land can't it? It requires a modicum of co-operation from the state but really, the steps have to be taken by the Council?---We've had a, we've had a meeting in the middle of April with the General Manager of Crown Lands and Miss Connelly and talked through the background and some of the issues and the on-going operation of Currawong and all those things are actually all taking place so there's a lot of work taking place, the preparation of a management plan for the site. Then the notion of the other lands, it's a matter of finalising the status of what the Council agreed to and what the Crown Lands, Crown Lands office wishes to pursue bearing in mind they've had a restructure as well. So there's been a range of considerations for them to consider as well prior to finalising everything. So I think it's just, there's no resolve from the Council it's just a matter of working and making sure we've got an appropriate arrangement in place with the government.

40 And I take it, one of the steps that has to be taken is the re-zoning of the Newport land?---Not necessarily, no. The Council has four options to transfer the land to the Crown and one of those is a re-zoning and a public hearing process under Section 45 of the Local Government Act but other options that have been canvassed and probably more appropriate for the Newport land was that the government may well acquire the land under section 135 of the just terms from the Council with the Council's consent, alternatively seek under section 138 of the Crown Lands Act the power to

deed the notion of a direction transfer to the Government and then the Government can rezone the land itself.

So there are a number of fairly complex matters that still have to be resolved?---Yes. And the conditions under which those - - -

And the conditions?---Yes.

10 Room for disagreement still?---The Council, I suppose there's always room for disagreement, yes.

Yes, Mr Curtin.

MR CURTIN: In terms of the transfer of – I withdraw that. Do you have page 73 of Exhibit 1 which is behind tab 15 in front of you?---Ah hmm.

20 Firstly, you've told the Commissioner that there was a similar letter dated 14 March which in relation to the first four dot points instead of the words "agree to the transfer" and the words "agree in principle to the transfer." Is that right?---Yes.

And Mr Watkins told you that that was not sufficient for him having those four agreements in principle?---Yes.

And just putting aside McKay Reserve for the moment?---Yes.

30 And what he conveyed to you in substance after your 14 March, 2011 letter was he wasn't interested in what the Council might do with those four pieces of land, but what the Council would do with them, is that a fair description of what he put to you?---Yes, he was, he wanted a firmer position, in his words, a firmer position.

In substance what he wanted for these lands in the first four dot points was not agreement in principle, but agreements, is that correct?---Yes.

40 And I don't mean by the word "agreements" what we may understand to be legally binding obligations under a Contract for Sale, for example, but he wanted something in writing from you as the General Manager of Pittwater Council of what it would do if the Government bought Currawong?---Yes.

And it wanted something in writing from you, well, as Mr Watkins sought this, what you've called the "firmer letter" from you so that he could rely upon the Council's stated intentions if he was to proceed with the purchase of Currawong?---Yes.

And in answer, I think, to the Commissioner's question, I think the question was to the effect that – sorry, to put it in context you were asked a series of questions about whether these various lands had been transferred – answer,

“No.” You were asked whether there was a contract between Council and Government to transfer – answer, “No.” Or some document formalising a gift of the land – answer, “No.” Question that, I think, was to the effect that there was only a resolution of Council that it would transfer the land – answer, “Yes.” And then a question was put to you, I think, to the effect that Council, or you were asked Council can technically refuse to transfer. And I think your answer was, “Technically, yes.” Do you remember those questions and answers?---Yes.

10 What do you mean by the word “technically”?---I mean if there’s no, there’s no deed to commence transfer of these lots so if the Council had a change of position which it hasn’t that the issue of whether or not the Council, the Council has entered into a binding agreement to the transfer of these lots to take place.

So by “technically” you’re referring to something in the nature of a contract?---Yes.

20 THE COMMISSIONER: Binding legal obligation, is that right?---Yes.

MR CURTIN: Are you legally trained - - -?---No, I’m not.

Can I ask you whether you’ve ever heard of a legal doctrine of estoppel? ---Yes.

Have you ever heard of misleading and deceptive conduct?---Yes.

30 And by the word “technically” in those questions and answers did you, were you only thinking in terms of a contract, whether in writing, I think as I put it, or as the Commissioner put it, binding legal obligation or did you mean to include every potential legal remedy other than contracts or - - -?---Could you clarify the question, I’m just not - - -

THE COMMISSIONER: Mr Curtin, if it helps I do not understand, I was inquiring as to Mr Ferguson’s state of mind.

MR CURTIN: Oh (not transcribable)

40 THE COMMISSIONER: And I did understand his answer to be based on simply his understanding as to whether there was a legally binding agreement or not so nothing in what he says precludes you from making any argument based on the legal doctrines to which you refer.

MR CURTIN: Thank you, Commissioner.

Early today I think Counsel Assisting asked you a question about whether you saw the proposed arrangement between Council and the government as being a commercial type arrangement or, and I just forget his exact words

but something of the sort of a cooperative, a joint cooperative exercise to reach a common goal type arrangement and I think your answer was a bit of both. Do you remember those - - -?---Yes.

- - - questions? And does Council from time to time transfer land to the State Government?---I can't recall any recent examples.

Any examples at all in the past?---I can't recall, I, I don't know, sorry.

10 All right. If you still have that letter at page 73 in front of you, Mr Ferguson, the first dot point is the land at Newport to which you were properly asked some questions about valuations?---Yes.

And the, the piece of land in the second dot point was a piece of land contiguous with lots 5 and 6 on the water side of those blocks, is that right? ---No, the second - - -

I'm sorry?--- - - - the second dot point sorry, no.

20 Thank you, I'm sorry. If and when, I withdraw that. As far as you understand the attitude of Council, Council intends to transfer all the land referred to on page 73 including McKay Reserve?---Yes.

And I think you've mentioned a Council meeting on 21 March which you'll find at tab 24 of that folder and that was the meeting to which you referred in saying the Council still intends to perform what it says in this letter of 15 March?---That's correct. If I could just alter my previous questions to you.

30 Sure?---There has been some discussion with LPMA about the notion of Pittwater Park and Governor Phillip Park so there has been some discussion with that, it's purely at an officer level and it's been at the request of LPMA.

And the Commissioner I think asked you about future transfers of these lands, whether further matters need to be discussed and whether there was room for disagreement and I think your answer was to the effect well, there's always room for disagreement. But about what do you think there might be or what potential areas might there be room for disagreement? ---If the Crown were to put a 10-storey flat building contrary to our LEP, things like that.

40

Well, any, so if the Crown wanted to develop the land contrary to the Pittwater - - -?---Yes.

- - - LEP for example?---Yes.

Anything else - of significance I mean?---There's nothing of significance. We, we have no matters of significance.

THE COMMISSIONER: About rezoning - - -?---Once - - -

- - - of the Newport land?---The, it gets back to the options by the, it doesn't, it doesn't require rezoning to transfer unless you do it under the Local Government Act. If you do it under the Local Government Act you have to do that unless you're doing it under 35(4) and it takes you into a Crown Reserve so our expectation is that we'd transfer the land and the Crown, the Minister has the power to rezone land following a process and the Crown, the Crown Lands Act sets out a process for, I think for which the
10 Crown would need to follow.

MR CURTIN: And in terms of rezoning, if you turn please to page, to tab 23 of Exhibit 1 and if you go to page 114 in the bottom right-hand corner? ---Sorry, just can you, could you just say that, Exhibit 1 sorry, is it?

That's the folder with the 30 or so tabs in it?---And which page are you after, sorry?

Page 114 - - -?---Okay.
20

- - - in the bottom right-hand corner?---Yes. That's the Council report?

I'm sorry?---The Council report.

Yes. You'll see at page 108 the cover page being Council minutes and - - -? ---Okay.

At page 11 the decision that the status report regarding Currawong be noted and the forward path contained with this, within this minute being
30 endorsed?---Yes.

But can I take you to page 114. First of all, can I ask you, who drafted the confidential mayoral minute?---It was a combination of the Director of Urban Environmental Assets and the Property Officer, the Principal Property Officer.

And are either of those two officers in the ordinary course involved in rezoning decisions or - - -?---No.

40 If you go to page 114 in the very last paragraph you will see the document says that the inclusion of Beaconsfield Reserve, that's what we've been calling the Newport property?---Yes.

So the, the inclusion of the Newport property as part of the acquisition strategy for Currawong is consistent with Council's strategic property rationalisation programme. Now, can I ask you what, what is Council's strategic property rationalisation programme in short terms?---It's a list of all those low value net, low community net value assets with a view to

converting those to cash to enable them to be, to be sold with a view to acquiring other high order community assets, for instance, the Newport property is .3 of a hectare, is contributed to the state government and we acquire 20 hectares so they were highly valuable (not transcribable)

So by assets you either mean or include land?---Yes.

And Council and by assets and/or land owned by Council?---Yes.

10 And so Council looked at properties such as the Newport properties – not in monetary terms – but valued them in terms of their value as a community asset would you describe them?---Yeah, that’s correct, yes.

And do I take it – and tell me if you don’t know this – but the Newport properties were ranked as of a lower order net community benefit?---That’s correct, yes.

20 And if you look at the bottom, the last paragraph on page 114 on the third last nine, Council officers with reference to the rationalisation program said that these Newport lands had very low community utilisation?---That’s correct.

And the reason for that included at least that because of the nature of the blocks where they were situated being in a sort of a battleaxe configuration et cetera only really served as a, well, functioned as an expansion of the open space for the adjoining properties?---Yes.

30 And so in terms of rezoning to residential 2A, are those facts set out in that last paragraph for or against a zoning or rezoning to residential 2A?
---They’re in favour of.

40 And Council has, have there been any discussions between you, councillors or relevant Council officers about what Council’s attitude might be to rezoning to, of the Newport land to residential 2A?---Yes, it was, there’s been definite discussions commencing in October after the first meeting with the LPMA, again in December there’s been both informal briefings of the Council as well as resolutions of this nature. The Council is very clear that there’s an expectation that this site will be transferred to the Crown and a development of a residential nature will occur on the site as, subject to all the satisfactory processes.

At whichever level there would need to be a relevant application et cetera but so far as Council’s attitude is concerned at this preliminary stage Council is in favour of rezoning to allow some residential development?
---Yes.

THE COMMISSIONER: Have you finished with that topic, Mr Curtin?

MR CURTIN: Yes, I think so.

THE COMMISSIONER: Mr Ferguson, can you go back to page 114 please. I just want to ask you who, the persons who drafted this document that we're looking at, did they receive instructions from you?---Yes, and unfortunately I had an overseas trip for 10 days planned so I, but I had an involvement in this but I didn't have a final say, I left on 12 December.

And you returned?---The 23rd.

10

And did you read it once you'd returned?---Yes, to a, to a, yes.

And when did you read it? Shortly after you returned?---Yes.

Can I just ask you about the paragraph immediately below the dot points at the top and the paragraph, the paragraph that follows that. Can you just read those two paragraphs, please, to yourself?---Yes.

20

Does this represent your instructions to the drafters of this document?---Not precisely, well, it was their view, their view of it.

Where did they get their view from?---From their discussions and view of the MOU.

Their discussions with whom?---With, the property people were talking to LPMA as well. Our, our Principal Property Officer was in discussions with the LPMA.

30

Who in the LPMA, do you know?---Bronwyn Connolly and perhaps Greg Foster.

And what is written here, is that, is that in any inconsistent with your state of mind at the time?---It's probably consistent, yes.

40

And what was this minute used for? How, how was it brought before Council?---The, we, we became aware that the, there was, the government needed to proceed for, proceed with the acquisition of Currawong because of the settlement date due for Eco Villages was 26 November and then we expected a settlement to occur and the property to come into private ownership and what the Council was doing was ensuring that, that we had requisite authority to participate with the LPMA to achieve any, any outcome that was necessary.

And this was endorsed, this, this report was endorsed at the meeting of the Council on 20 December?---Yes.

Yes, thank you. Thank you.

MR CURTIN: And, I'm sorry, Commissioner, endorsed on 20 December as you've answered the Commissioner and tell me whether I'm wrong, Mr Ferguson, if you like that endorsement was reaffirmed on, by Council on 21 March, 2011?---Yeah, yes.

And from something you said to the Commissioner a moment ago at some point in time you became aware that settlement of the sale from Unions New South Wales to Eco Villages was supposed to take place I think in November 2010?---Yes.

10

And so various negotiations and talks between you and Mr Watkins and others took place prior to that time against an expectation that Eco Villages would become the owner the land in November 2010?---Yes.

And then Council of course becomes aware of a change in ownership of property on the settlement of conveyance transactions?---Yes.

The purchasers lodged some documents with Council, is that right?---Yes.

20 And Council officers were keeping an eye out for such documents from Eco Villages. Is that right?---Yes.

And either through that mechanism or press reports perhaps you became aware that settlement did not occur in November 2010 and if you don't know can you assume that it occurred on 28 January, 2011?---Yes.

And the Council's – can I call it the big picture for Council was that the Currawong site be placed into public ownership, is that fair to say?
---Absolutely, yes.

30

And if Eco Villages – I withdraw that. To achieve that outcome in this particular case there needed to be a large number of pieces falling into place, do you agree?---(NO AUDIBLE REPLY)

The first, as you probably knew, for political reasons the Government didn't want to have any negotiations with Unions New South Wales and wanted to wait until Eco Villages owned the land?---Yes.

40 And at that time there was a Land and Environment Court appeal brought by Eco Villages?---Yes.

And correct me if my understanding is wrong, up until the hearing in the Land and Environment Court in either February or March the Council had spent about \$230,000 in legal fees?---Approximately, yes. In legal and consultancy.

Legal and consultancy, thank you. And how an estimation of a further \$700,000 in legal and consultant's fees if the Land and Environment Court

proceedings continued?---Not quite. Our estimate was around the 700,000 including some of that 200 so probably an extra five to six.

And the amended plan that Eco Villages had submitted, I think, at the end of December 2010 if approved by the Court or somebody else was in the nature of a commercial development of the Currawong site?---Yes.

With a hearing date for June 2011?---Yes.

- 10 After 28 January, 2011 was it correct to say that you'd been advised by your lawyers and consultants that they would have to start working hard on the Council's case in order to be prepared for the hearing in June 2011 or was there another date when you were told that?---There was, there was a list of 18 people that were involved in that case, it was a fairly substantial project on behalf of the Council including consultants and lawyers and the Council staff.

THE COMMISSIONER: So a lot of work had to be done, - - -?---Yes.

- 20 - - - is that what you're saying?---That's correct, yes.

MR CURTIN: And if the - I think you're aware that something like 72 per cent of the Currawong property had a, was it 9(b) zoning?---9(b), yes.

Which under the Pittwater LEP allowed the owner of the land to give a notice to the Minister as a Corporation Sole, I think to Council and the RTA for compulsory purchase?---Yes. The Minister was the acquisition authority on the 9(b) zone.

- 30 And the Government broadly speaking also had various powers of compulsory acquisition itself under the Just Terms legislation?---Yes.

So that both the Government and the owner of land could decide that the Government was going to buy it?---Yes.

- 40 And under the - tell me if you're not in a position to say, but under a Just Terms - I just forget the name of the Act, but the Just Terms Compensation the parties could attempt to agree on a value and if not there would be a court hearing to determine a proper value of land acquired by the Government?---Yes, there was some, there was - in terms of the, in terms of the Just Terms acquisition there was discussion around the acquisition of the whole site under Just Terms. So you refer to just the 9(b) or the whole site, sorry? Sorry, I'm confused.

Well, - - -

THE COMMISSIONER: Why don't you lead the witness, Mr Curtin.

MR CURTIN: Thank you.

THE COMMISSIONER: Just put the proposition that you're out (not transcribable).

MR CURTIN: With the part of the site zoned 9(b) the owner of the property could force the Government to buy it?---Yes.

10 With the remaining of the land that the owner could not force the Government to buy it but the Government could decide to buy it?---If it was a requisite for a public purpose, I think words to that effect.

So far as you understood both Council and the Government through Mr Watkins and other LPMA officers also thought it was a good idea for Currawong to become publicly owned?---Yes, absolutely.

20 And in terms of the purchase price the Government paid or was negotiating to pay the time after 28 January, 2011 when Eco Villages bought the property and before any substantial work had taken place by Council and Eco Villages for the Land and Environment Court proceedings was the golden moment, would you agree, to get the best price possible out of the Eco Villages, that is, the best price for the Government?---Yes.

But to achieve this outcome, if you like, it's somewhat like a jigsaw puzzle, the Government needed to buy it, Council needed to transfer various lands, or at least agree to, correct?---Yes.

30 One had to reach an agreement on price and other terms with the vendor, is that right?---Yes.

And then after the purchase there might be – then there was a list of things to do including actually transferring the various lands Council agree, correct?---Yes.

And you've been taken very thoroughly and properly by Counsel Assisting through the valuations of the Newport land and I think you mentioned you had a fair valuation for the McKay Reserve?---Part of the McKay Reserve.

40 Part of it. And firstly, can I ask you which part?---It's, it's described as 28 Ralston Road but it's really on Barrenjoey Road of Palm Beach which is four blocks situate a little bit, it's near the North Palm Beach Shopping Village.

But why only part of McKay Reserve?---Because that land had a, had a, the, the balance of McKay Reserve is very steep and vegetated. The land on the frontage was something that the Council also had identified that may look to be alienated and sold at some time in the future as well for, for a public benefit.

Is the part of McKay Reserve that you had valued those lots that appear in the last dot point on page 73, that is your letter to Mr Watkins of 15 March?
---Where - - -

Behind tab 15, Mr Ferguson?---What page is it, sorry?

73, 7-3?---I couldn't be sure, I'm sorry.

10 THE COMMISSIONER: But the proposal here is for inclusion in the State Park you wouldn't expect the lots that are going to be sold to private purchasers as being part of that would you? It's the steep part that's going to be in the state which is unusable, I presume it's that that's going to be in the State Park?---Commissioner, one of the notions was that the land fronting Barrenjoey Road may well, would, all the land would be put into the State Park and the land fronting Barrenjoey Road may be able to be developed for additional parking and the funds used for the State Park.

20 I see?---So whether that's to assist with improved parking because if we're going to expand to approve Currawong it should require with it a commensurate increase in parking on the mainland so we were contemplating the future development of the State Park within that.

Well, what were you, what were you, what part of McKay Reserve were you contemplating transferring to the state?---Al., all of McKay Reserve.

The whole reserve?---Yes.

30 MR CURTIN: And was it the non-steep part that you had valued?---Yes.

And do you recall what the basis of valuation was for that part of McKay Reserve?---It was a, it was some type of residential development.

And do you remember what the valuation figure was?---A bit over \$2 million.

And is that a valuation that you would have somewhere in the Council offices that you could provide the Commission?---Yes.

40 All right. And was that by an independent valuer?---Yes.

Do you remember the name of the valuer?---BEM or REM, Mr Eccleston.

Now, I think Pittwater Park and Governor Phillip Park, where your letter says that those two parks would be included in the proposed State Park, does that letter transfer in ownership from the Council to the government?
---No.

No. And if, I'm just quickly returning to the questions about these various properties not being transferred, has the Council approached the LPMA and said, or whatever its new reincarnation is, come on, we, we need to transfer these to you or have you been waiting for them to write to you?---On the Newport site? Are you talking about the Newport lands or all of the lands?

10 All of the lands?---As I mentioned there was a, there was a meeting with LPM, with Mr Harding and Ms Connolly about Currawong particularly and about that land, the, the various lands but there was no, there is no concrete way forward I think as everything is in some respects put in a holding pattern but the Council isn't in any respect trying to walk away or trying to resile from anything it's committed to.

Yes, I understand that but has, has the government been chasing Council to say something to the effect of please give us the lands you promised?---No.

And have you been chasing the government saying can we please give you the lands we promised?---No.

20 THE COMMISSIONER: I'm not sure what you're waiting for. Can you tell me?---I think there's just been, there's, there's be a reorganisation of LP, of LPMA, there's been a change of government, there's been a change in, a change in the level of awareness and it's just a matter of trying to get organised to, to make the advancement, agree on the final, the final matters.

30 MR CURTIN: Well, what's hold up getting organised? Don't you have to speak to each other to say let's get organised and have a meeting and - is that what's holding it up or is this, the fact that this inquiry is on, is that holding it up or is something else?---The, the nature of the inquiry would, is, is holding the matter up, I think.

THE COMMISSIONER: Why is that?---Well, whether, whether or not the findings of the inquiry have any impact on the, the agreement or otherwise or - - -

Well, you just can read the summons to see that they can't.

40 MR CURTIN: Could I just ask you, you mentioned when Counsel Assisting took you to this morning, you gave some evidence about some "property people" at Council had valued the Newport land at between fifteen hundred and \$2,000 per square metre. When you say "property people" who are they or what were their roles at Council?---The principal Property Officer who's in charge of the management of our leases and matters where the Council is involved in any acquisitions or sale of property.

Does he have any property valuation expertise or experience?---He doesn't have any, he doesn't have any, I don't think, I don't believe he has any valuation qualifications.

Does he have some experience at Council with valuing property either by looking at Council databases or something else?---He's got a general knowledge, yes.

10 THE COMMISSIONER: Mr Curtin, I'm just concerned about other witnesses who are arranged for this afternoon, can you just tell me how long you'll be please?

MR CURTIN: I would think something in the order of 10 or 15 minutes.

THE COMMISSIONER: Thank you. And other than Ms Fisher are there any other Counsel who would like to question Mr Ferguson? How long will you be, Ms Fisher?

20 MS FISHER: I would estimate about 15 minutes.

THE COMMISSIONER: Yes, thank you. We'll adjourn until 2.00pm.

LUNCHEON ADJOURNMENT

[12.58pm]