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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 MONDAY 4 JULY 2011

AT 2.25PM

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

THE COMMISSIONER: Mr Alexis.

MR ALEXIS: Thank you, Commissioner.

<MARK TREVOR MATCHETT, on former oath [2.25pm]

10 MR ALEXIS: Mr Matchett, I'd like to show you Exhibit 20 in this inquiry which you'll see is a copy of a valuation report from Knight Frank Valuations concerning the Currawong site dated 9 December, 2010. Do you see that?---Yes.

Now, do you recall seeing this valuation before drafting the minute to Minister Kelly and the letter which accompanied the minute prior to 8 or 9 February, 2011?---No, I don't.

20 Do you recall speaking with Mr Watkins about this valuation and report and about the content of it or not?---No, not that I can recall.

Do you, do you recall him telling you that he got a valuation of Currawong from Mr Ferguson of Pittwater Council?---That was, I believe that was later.

And when you say later should we understand after you returned from leave in or about 22 March, 2011?---Well, I think that was the first time I saw this valuation.

30 And if I could show you please Exhibit 17 and you'll see, Mr Matchett, that there is an email from Mr Ferguson to Mr Watkins - - -?---Yes.

- - - attaching what's described as a copy of the valuation for Currawong - - -?---Yes.

- - - and then Ms Hopkins appears to have passed that on to you under cover of her email of 22 March at 8.38am. Do you see that?---Yes, I do.

And so is that the first time you saw the valuation report - - -?---Yes, I believe so.

40 - - - dated 9 September, 2010?---I believe so.

And just while you have Exhibit 17 in front can you tell us whether you discussed with Mr Watkins the receipt of that valuation by email from Mr Ferguson on 22 March?---No, all I was doing on 22 March was assisting in putting documentation together for the IAG, IAG inquiry.

I see. All right. Thank you. That particular exhibit can be returned. Now, before lunch, Mr Matchett, I was showing you Exhibit 16. Do you still have that with you?---Yes.

Thank you. And I was asking you questions about your receipt of a statement from Mr Watkins - - -?---Yes.

- - - and what you did in relation to that. Do you recall that?---Yes, I do.

10 Could I show you this document, please, with a copy for you, Commissioner. And, Mr Matchett, is this a copy of an email that you sent to Mr Watkins on 22 March, it seems quite early that day? Do you see, do you see (not transcribable)?---Yeah, it appears so.

So do you recall on your first day back from leave looking at the statement that he provided to you and reviewing it and sending it back by email by, just after 7.00am?---Yes, it appears that way.

20 And should we understand that as you worked through and read Mr Watkins' draft statement you made amendments on the computer and used the tracking facility available to identify by underlying, underlining the lines running vertically in the margin where those changes had been made? ---Yes.

And I think it's fair to say, isn't it, Mr Matchett, that as one leafs through each page there are various amendments made to the statement all the way through until the last page and in that respect you'll see that in relation the Manly Daily newspaper you've correct manly lower case m to Manly with a capital M?---Yes.

30 And so that tells us, does it, does it, does it, that you worked through the statement and worked through right until the end of it?---Yes, that would appear that way.

Thank you. Now, can I ask you firstly to look at the third page of the draft statement. I regret the pages are not numbered, but the third page commences with the bullet point, "During the extended acquisition period." Do you see that?---Yes.

40 And in the next bulleted paragraph do you see the sentence commencing, "However, LPMA in line with the executive decision of Government has reflected through the direction from the Minister for Lands in the Briefing Note of October- - -?---Yes.

- - -carried on due diligence for the purchase of Currawong once the transfer had been effected." Do you see that?---Yes.

And should we understand that what you were there, let me withdraw that, I'm sorry. Should we understand that when you read this you understood that Mr Watkins was referring to the period after the sale from Unions New South Wales to Eco Villages had been completed up to the time when contracts for the purchase had been exchanged?---It could have been any, any period, I just took it on face value that due diligence had been, had been carried out.

10 But when you read this statement on the morning of 22 March, appreciating that you left on leave I think you told us at about 3 o'clock on Thursday, 10 March- - -?---Yes.

- - -but up to that point in time can you tell us what due diligence you understood had been carried on for the purchase of Currawong once Eco Villages had purchased it?---I wasn't aware of any.

THE COMMISSIONER: Sorry, I beg your pardon?---I wasn't aware of any.

20 MR ALEXIS: So can I ask why you didn't underline the word due diligence and perhaps put a question mark in brackets because when you read this statement you weren't aware that any due diligence had been carried on at all?---I took Mr Watkins on his word.

If you come back to the previous page you'll see in the middle of that page you've added in some question marks surrounding the Friends of Currawong meeting with the Minister for Lands on several occasions. Do you see that?---Yes.

30 So you weren't backwards in identifying subject matters that were questionable, were you, when you looked at this document?---Oh, no, correct.

So can I ask why it was that when you read the reference to the carrying on of due diligence you didn't raise any question about it?---Well, the Friends of Currawong reference was, I mean, I put most recently because I didn't know which, what the dates were.

40 Do you see further down the page after the due diligence reference I've taken you to, that there is reference to the Minister for Land, Lands, I'm sorry, writing to the Premier- - -?---Yes.

- - -on 9 February, 2011? Do you see that?---Yes.

And when you read that you would have known what that was a reference to because you had a significant hand in drafting the letter?---Yes.

And if you come down to the next bulleted paragraph you'll see reference to the Chief Executive having standing meetings with the Minister on each Monday and I think you've told us a little about that today?---Yes.

And then in the next paragraph do you see that it refers to the Premier's reply to the Minister for Lands on 25 February?---Yes.

And no doubt you knew exactly what that was because you'd seen the Premier's letter at least by 28 February- - -?---That's right.

10

- - -under cover of those internal documents that I took you to earlier?
---Yes.

And then over the page may we understand that you read the second bulleted paragraph about it being clear that the approval from the Premier was in direct reply to the Minister's request?---Yes.

And you understood that to be the case didn't you?---Yes.

20

And then in the next paragraph did you read, "On receipt of this letter the Minister wrote to the Chief Executive of the LPMA," and there's then a reference to attachment F referring to his specific approvals of October as well as his letter to the Premier and her reply?---Yes.

Now when you read that did you pause and ask yourself what that was a reference to?---Yes, I probably did.

30

And, and can you explain to us how you answered that question that was in your mind?---Well, some time not too long after reviewing this I became aware of the letter of, from the Minister to the Chief Executive.

Because when you wrote, read the draft statement you didn't have what was there described as attachment F available to you?---I don't believe so.

And you obtained the documents which would form the attachments to this statement during the course of that day, did you?---Yes, not long after, after this.

40

And should the Commissioner understand that after the exercise of going through this statement and making the amendments you saw the letter which is the letter behind tab 10?---Yes, correct.

And can you tell me please how it was that you came to see that letter on the morning of 22 March?---I'm not, I'm not aware, I'm not sure who gave it to me, who gave me a copy of the letter but it was in a bunch of documents that were either forming back of the attachments to this submission or forming part of the list of documents that was being provided to the Internal Audit Bureau.

Now, was this before you responded by your email at 7.04am or did you get these documents afterwards?---I, I can't recall.

But if it be the case that you obtained these documents after you sent this email back to Mr Watkins at 7.04am you well understood from reading the draft statement that he was relying upon a letter, the form of which you hadn't seen and you subsequently then saw?---Correct.

10 Now, when you sent the email, if I could just go back to the terms of the email you sent to Mr Watkins?---Yes.

When you sent the email you said, "I have some additional comments that I'd prefer to talk through with you when you have a chance." Do you see that?---Yes.

20 So we should understand that in addition to the track changes that you'd noted throughout the statement there were some additional matters that you spoke to Mr Watkins about?---I don't recall it but I'd written it there, yes.

Well, what did you, what were the matters that you wanted to speak with him about which you didn't advise by way of track changes?---I can't recall.

Can I just come, take you back to the statement and do you see in the draft statement three pages from the end there's a page which has got the word "Summary" written on it about a third of the way down?---Yes.

30 And should we understand that when you read this you had available to you the terms of reference that were conveyed to you by Exhibit 16?---Yes.

And so you understood that with respect to TOR, (a) and (b) those three paragraphs in summary were responding to the questions about Mr Watkins' Authority?---Yes.

And when you came to paragraph number 3 you were able to read in terms, weren't you, what Mr Watkins was saying that the Minister for Lands gave authorisation to, and you see the words quoted there.---Ah hmm.

40 And when you read that you knew those words didn't come from the Premier's approval, didn't you?---That's right.

And you knew that they were not words that were referred to in the letter of 9 February that you had a significant hand in drafting.---Yes.

So you must have understood that there was a further letter or document from the Minister of Lands which at least purported to give authorisation in the terms quoted in Mr Watkins' draft statement. Is that so?---Correct.

So when you emailed your tracked changes back to Mr Watkins and you spoke to him and had some additional comments did you raise with him this letter which was described as an authorisation by the Minister in the terms quoted in that paragraph that I just referred you to and asked him what all that was about?---Look, I don't recall asking him that.

THE COMMISSIONER: It's not very long ago Mr Matchett.---I, can't recall what it was that prompted me to write that in the email that I wanted to talk through some additional information with him.

10

MR ALEXIS: But Mr Matchett you were significant draftsman of the letter that went from the Minister up to the Premier that procured the Premier's response. Correct?---Yes, on Mr Watkins advice.

And when you read this statement you knew that there was an additional letter apparently from the Minister for Lands giving further authorisation to that of the Premier's letter?---Yes.

20 And you knew that according to this statement Mr Watkins was going to rely upon that letter in relation to the IAB inquiry that was then under way?--Yes.

And you knew that before you went on leave you'd never seen any such document in the terms quoted by Mr Watkins in his draft statement.---That's right.

30 Well, surely to goodness that was the very thing that you spoke to Mr Watkins about after you sent him the track changes to this statement at 7.04am on 22 March.---It may well have been but I don't recall that I have absolutely no, I had no doubt at the time that the authorisation that he was referring to was an authentic document.

THE COMMISSIONER: How could it come in without you seeing it?---In, it's not unusual for Mr Watkins to meet with the Minister and have with him a letter or authorisation of some sort that requires a signature or approval by the Minister and for that process to be completed without it being registered in a TRIM system, a record management system or some other form of records. Now, I assumed in this case that that was one such situation.

40 Is that an appropriate way of doing business?---It's an ideal way of doing business.

MR ALEXIS: I'm sorry, Commissioner. Mr Matchett, have I understood you correctly that when you read the reference to this letter in this draft statement you thought and accepted that that letter which you now know to be the letter behind tab 10 was a genuine document.---Yes, because it was referred to a number of times in the summary document and it was being used as a fairly major argument if you like for Mr Watkins having the

authority to proceed with the purchase and on that basis alone I trusted it to be a genuine document.

But by the time you were reviewing his statement did you come to realise at least that there might be somewhat of a defect in the Premier's authority because it didn't refer to the execution of any documents to affect the purchase?---No, I don't think that crossed my mind.

10 Didn't you realise from what Mr Watkins quoted in his summary response to Terms of Reference A and B that it was significant that the authorisation from the Minister included the execution of relevant papers and the letter from the Premier did not?---No, I just saw the letter from the Minister being a further, further level of authorisation.

THE COMMISSIONER: Well, I don't understand this, Mr Matchett. Perhaps you can just explain it to me. I understand your evidence to be that on receipt of the Premier's letter of 25 February you believed that she had authorised Mr Watkins to negotiate and then execute a contract?---Yes.

20 So you at that stage understood clearly that the authority had come from the Premier?---Yes.

And that was relevant because it hadn't gone to, to, to Cabinet or a Budget Committee meeting?---(not transcribable)

So it was important that the authority had come from the Premier and not the Minister. Is that right?---It is important, yes.

30 So you were under no misunderstanding about the source of the authority, it was as you believed it, at least on 25 February, the premier?---Correct.

40 Didn't it occur to you that this summary at least in paragraph 3 changes the slant? Suddenly we've got the Minister specifically, to quote the word used, giving the authority. Didn't you wonder why, why would, how did this come about and why was it necessary to refer to the Minister when the Premier had given the authority?---Yes. I did, I did wonder, but I again took it on face value that Mr Watkins had stated this so it must have been, it must have been negotiated between himself and the minister and then to be an extra level of authority that they required.

But it wasn't a, well, it was an extra level perhaps but it was a lower level, wasn't it?---I wasn't aware of the reasons for it. I suppose I assumed that there was some requirement under the, under the legislation for the Minister to be able to delegate that to him.

It didn't make you curious so that you asked Mr Watkins what's this all about?---Commissioner, I probably was curious, but you need to understand, I'd returned to work after quite a considerable, oh, well, two

weeks, I ah, I'd been through a fairly major operation, I'd had, I was still on painkilling tablets, I was on crutches with my leg in plaster and I was trying to catch up on a significant amount of back work as well as dealing with the situation where my immediate boss had been stood aside and was being investigated. There was a lot happening and if I missed something, I missed something, but I took it on absolute face value that what was being purported to be represented in this document was in fact in existence.

10 MR ALEXIS: Now, you told us, Mr Matchett, that during the morning of the 22nd you were shown the document behind tab 10 or at least shown a copy of it. Is that so?---Yes.

Who gave you that document or a copy of it?---I don't recall.

Can you look at the document, please, behind tab 19 at page 89?---Yes.

And do you recall being involved with Mr Costello and Mr Watkins and his PA, Ms Hopkins- - -?---Yes.

20 - - -in the preparation of this index document at page 89?---That's right.

And can you just recall to mind and tell us what was going on during the morning of the 22nd in relation to the preparation of the index and the documents referred to in it?---Ah, there was, well, the exercise was to pull together as many of these documents or as many documents as we could find that related to the, the Internal Audit Bureau investigation and to support the summary document obviously. There were documents being provided from a file, there were documents being provided from emails and there were documents being handed across the table we were sitting at, Mr
30 Watkins' board table, and documents were coming in from all over the place.

And who was sitting around Mr Watkins' board table while this was going on?---I think myself, Bob Costello and Mr Watkins.

And can you recall what Ms Hopkins was doing in relation to this exercise?
---She was providing copies of the various documents for collation into a number of different sets and - - -

40 And was that the - I'm sorry?---And I think she may have been updating the index sheet as other documents were coming in.

And you'll just by reference to the index sheet at page 89 that the document identified at page 9 is the approval from the Minister with the date 28 February, 2011?---Yes.

So was it when you were sitting around Mr Watkins' board table that you saw the letter behind tab 10 for the first time?---I can't say for sure. It could have been.

And when you saw the letter and you saw its content and you saw the date of it and you knew that you'd never seen that before you went on leave did you ask a question of Mr Watkins or Mr Costello about that?---I don't recall asking a question about it. I may have commented on it but I don't recall asking a question about it.

10

Well, what was your comment?---I think it was just along the lines of it's fortunate that you have that letter.

And wasn't it a curious letter that its terms and its date would indicate that it was available before the contract was exchanged shortly after you went on leave yet you'd never seen it before?---Curious but not, not something that I thought was totally out of the question.

20 But did you ask a question where did this come from or I haven't seen this before - - -?---No.

- - - when you saying that it was fortunate that they had it?---No, I didn't.

Did - - -

THE COMMISSIONER: Mr Alexis, I beg your pardon, are you going to tender this email of 22 March and the attachment?

30 MR ALEXIS: Yes, thank you, Commissioner.

THE COMMISSIONER: That will be, the email from Mr Matchett to Mr Watkins on 22 March, 2011 at 7.04am with the draft statement by Mr Watkins attached is Exhibit 29.

**#EXHIBIT 29 - EMAIL FROM MR MATCHETT TO MR WATKINS
DATED 22 MARCH 2011**

40 MR ALEXIS: Now, Mr Matchett, while you were at the boardroom table with Mr Watkins and Mr Costello as you've told us where documents were being assembled with respect to the index at page 89 - - -?---Yes.

Did either Mr Watkins or Mr Costello tell you that the letter dated 28 February behind tab 10 was actually obtained from the Minister on 18 March, that is after the contract had been exchanged?---No, they did not.

And should we understand from your evidence that the first time that you found out that the letter in fact had been backdated and in fact signed by the Minister on 18 March was when Mr Watkins met, met you at the old toll booths on the Pacific Highway on 4 June?---Yes, that's right.

Are you sure about that?---To the best of my knowledge it is, yes.

10 And I gather being told that by Mr Watkins during this meeting on the roadside caused you to become very concerned about what it was that you might be asked by the Commission investigators during your interview the following Monday?---Particularly yes, in, in light of the fact that we'd met.

But do you recall telling the Commission investigators when it was that you learned that the letter of 28 February had in fact been backdated?---Yes, I do.

And do you recall what it was that you told them in that respect?---Ah, yes.

20 What was that?---That I'd only just realised now.

Now, can I ask you to also- -?---And you, you can appreciate the answer and the reason for it.

Well, you'll have to explain that to me, Mr Matchett?---By ah, by admitting that I knew about the letter earlier I was basically putting Mr Watkins in a precarious situation and I was avoiding doing that.

30 Now, Mr Matchett, can I ask you to look at another document, please. And can you come to the material behind tab 22?---Yes.

And just passing over Mr Costello's email to Mr O'Reilly of 25 March, 2011, do you see the document attached at 105 to 107- -?---Yes.

- - -dealing with subjects of delegation and funding models?---Yes.

Now, do you recall being involved in any way in the preparation of that document?---No, I was not.

40 And can you tell me when the first time was that you saw Mr Costello's email to Mr O'Reilly of 25 March with the attachment at 105 and 106? ---No, I don't recall the exact time I remember seeing this. It's not a familiar document for me.

Now, after your return from leave and the events that we've stepped through on 22 March, were you involved in any way with arrangements to complete the purchase of the Currawong site in relation particularly to the funding of the balance of the purchase price?---No, I was not.

Did Mr Watkins speak to you at all during the period after you returned from leave as to how he was going to arrange for the balance of the purchase price to be funded?---No.

Did Mr Costello speak to you about that subject?---No.

Thank you, Mr Matchett.

THE COMMISSIONER: Mr Branson?

10

MR BRANSON: No questions, thank you, Commissioner.

THE COMMISSIONER: Mr Curtin?

MR CURTIN: Mr Matchett, my name is Curtin and I appear for Mr Watkins. Can I ask you whether in 2010 Mr Foster told you that he, or whether he had investigated the Pittwater Council's blocks of land at Newport that it proposed to transfer as part of the Currawong arrangement? ---He could have told me that, yes.

20

Did he tell you- - -

THE COMMISSIONER: Sorry, were you going to say something?---Look, I know that he was investigating a range of properties that Pittwater Council had put up as possible parcels of land that could be used to offset the cost of Currawong, and that included the two parcels at Newport but included other parcels including part of a police station site at Mona Vale and, and some other, some other sites.

30 How did you know that?---Sorry?

How did you know that?---Because that was part of the discussion with Pittwater Council sometime earlier.

I'm, I'm just trying to find out how you knew that Mr Foster was doing all these things?---Because at the end of the meeting with the Pittwater Council representatives we called Mr Foster into the meeting and he was advised of the need to look at a number of different parcels and he then had further discussions I understand with staff from Pittwater Council.

40

How do you understand that?---Because I, well I assumed he had meetings with other.

Have you ever seen any document that Mr Foster produced?---Not related to that, no.

MR CURTIN: The meeting you spoke of in which Mr Foster came in part way through - - -?---Yes.

- - -and you, if I understood you and correct me if I'm wrong, it was at that meeting there was some discussion of Mr Foster making some inquiries about the Council's land.---Yes.

THE COMMISSIONER: When was this meeting?---I haven't got the exact date.

Approximately?---I think it was October.

10 MR CURTIN: Was it 1 October?---It could have been the 1st.

And was there discussion about what type of investigations or inquiries Mr Foster would make?---There could have been, yes.

Do you remember?---Well, it was implied or it was stated that he would need to look at the need for the land to be used as Crown Land and what value it would have as Crown Land.

20 THE COMMISSIONER: You say it was implied or stated, I mean, correct me if I'm wrong Mr Matchett but I do get the impression that you are very uncertain about this and that you are not quite sure what was said.---Well, I'm not sure of the exact words but that was the, the concept if you like was that Mr Foster would go off and do further investigation looking at the need for the land and its value.

What set me off on that train was your use of the word implied.---Yes.

30 Which to me means that nothing was said directly about that.---Okay. My recollection is that there was agreement at the meeting that there would be a number of parcel of lands investigated further and that Mr Foster would undertake to do that.

MR CURTIN: And at that time Mr Foster was the manager of strategic disposals and projects within the Crown Lands division of the was it the Department of Primary Industries at the time?---No, it was Land and Property Management Authority.

Okay.---And I think that title is correct.

40 Right. And the, tell if you don't know this, please don't make an assumption Mr Matchett, but the LPMA in terms of property values, I use that term very broadly, had access to a number of databases.---Yes, correct.

And one of the databases was or would reveal sale prices of various properties.---Correct.

And so one could by, for example, picking addresses or lot numbers identify recent sales near a target piece of land.---That's right.

And another database was Valuer General's valuations of the land component of - - ?---Yes.

- - -which local council would use to fix their rates.---Correct.

10 And were there any other databases that you're aware of available to the LPMA about or touching and concerning value?---There's commercial databases that they would have available to them, things such as RP Data which is a commercially recognised database of property values but most of that data is derived from Land and Property Information data anyway.

And did Mr Foster, if I just go back a step. One of the parcels of land that Council had identified as a parcel it was contemplating transferring to the Crown as part of the Currawong arrangement - - ?---Mmm.

- - - were, were two blocks of land that at - in Newport?---Yes.

20 Thank you very much. In Beaconsfield Street, Newport?---Yes.

And did Mr Foster tell you some time after 1 October that he had investigated those two blocks of land and held the opinion that if rezoned from open space to residential they would worth about \$2.5 million each as unimproved land?---I don't recall that, no. He could have but I don't recall those words.

And do you still have, do you have Exhibit 1 - - ?---Yes.

30 - - - before you? Can I just ask you please to turn to tab 2 and you'll recognise this as the Briefing Note dated 8 October, 2010?---Yes.

And can I ask you to turn to page 5?---Yes.

And I just want to ask you some questions about paragraphs 3.5, 3.6 and 3.7?---Yes.

40 Now, in 3.5 about in the fourth line there's the sentence, "Council has also indicated it would do this by way of a gift to the state of excess Council land adjoining waterfront Crown Land at Newport"?---Yes.

Do you see that?---Yes, I do.

"Valued at approximately \$5 to \$7 million" and you'll see there's a full stop and the note goes on to say, "Would also sell the Council land adjoining the Currawong site to the State at a significantly reduced rate"?---Yes.

And so in those two portions the land adjoining waterfront Crown Land at Newport is in this paragraph called the gift and sale land is the land adjoining the Currawong site, do you see that?---Yes, I do.

And then after the words “significantly reduced rate” you see the words, well, there’s a comma and then “with the aim this sale and the gifted land providing 50 per cent.” You see that?---Yes.

10 Did you or do you read that to mean that the sale of the Newport land and the value of the gifted land would together provide 50 per cent of the approximately \$12 million?---It was what I believed to the initial arrangement.

And so as you read it or as you said you believed the arrangement, the Newport land added to the value of the land adjoining Currawong would provide about \$6 million in value, value/money?---Yes. I don’t know that a dollar figure had been put on it at that stage, but it was intended it would be commensurate with 50 per cent of the value.

20 All right. And then in 3.6- - -

THE COMMISSIONER: Sorry, Mr Curtin. It’s important to know I think whether Mr Matchett thought that it was value or money. They’re two different things which you have put together. So I would ask him myself but I will leave it to you to do.

MR CURTIN: Thank you. The land identified in paragraph 3.5 as the gift, being the Crown Land at Newport- - -?---Yes.

30 - - -is you’ll see at one point valued at \$5 to \$7 million. Do you see that in - - -?---Sorry, could you just run that by me again?

In the fifth line of paragraph 3.5- - -?---Yep.

- - -“Gift to the State of excess Council land adjoining waterfront Crown Land at Newport valued at approximately \$5 to \$7 million.”?---Yes.

40 And then if I can just take you to the first line of 3.6 where it says, “It’s proposed the gifted Council land would be the subject of private treaty sales at a later date to provide funds for the State Park.”?---Yes.

And so did you read this to mean the, the Newport land valued at \$5 to \$7 million would be the subject of later private treaty sales to provide funds or cash?---Yes.

And if we go back to 3.5 after the \$5 to \$7 million there’s the sentence, “It would”, quote, “It would also sell Council land adjoining the Currawong site to the State at a significantly reduced rate.”?---Yes.

And did you understand that that piece of land, that is adjoining Currawong, would be sold to the Crown at a reduced rate but then held by the Crown thereafter, that is, not sold by the Crown?---That's correct. It would become part of the State Park.

Right. But in, in general terms that land adjoining the Currawong site had some form of monetary value?---Yes.

10 And this final sentence in paragraph 3.5, you'll see the third last line, quote, "With the aim this sale", meaning the future sale by the Crown of Newport land, "And the (value of the gifted land) would provide 50 per cent of approximately \$12 million."---Yes.

THE COMMISSIONER: Well, it wouldn't be the value of the gifted land, it would be the value of the gifted land less the amount the State paid for it? ---That's right.

20 MR CURTIN: And so in terms of the Commissioner's questions, if it's being bought for a significantly reduced value, that the dollar value would be between that reduced value and, well, whatever, whatever the reduced rate was?---That's right.

And then in 3.6 after the first sentence you'll see the words, "In the interim it is proposed that funds for purchase would be made available from existing Reserve Trust funding and from SRDF funds through the Corporation Sole."?---Yes.

30 And did you take the words, "In the interim", where it says, "In the interim it is proposed that funds for the purchase", did that convey to you that it is proposed that funds to complete the purchase would be needed, that's the interim measure?---Yes, of course.

And then clause 3.7, I'll withdraw that. Just before we come to 3.7, did this convey to you that the full purchase price would have to be paid at an earlier point in time than for example funds coming available from the sale of the Newport land?---Well, I don't think it's said there, but there would need, I suppose, to be some reconciliation of the, of the, of the financial purchases made within a financial year.

40 And 3.7, "The LPMA balance of financial contribution to the purchase will be funded by sale of Crown Land."---Yes.

Putting all those items together, and on the assumption they were achievable, they had the, or didn't they amount to a proposal under which there would be no call on the State Government Budget?

THE COMMISSIONER: Yes. I won't allow that question on the ground that I do not think that Mr Matchett is qualified to answer it. There will be witnesses called who would be able to deal with that.

MR CURTIN: Could I ask you this, Mr Matchett. Keeping in mind those, those arrangement as described in those paragraphs of the Briefing Note- - -?---Yes.

10 - - -and could I ask you then to look at the Briefing Note behind tab 8?
---Yes.

Putting aside what you see in the document at tab 8 and what's said about the Friends of Currawong pledging up to \$2 million- - -?---Yes.

- - -was there any other difference of substance between the arrangements in paragraphs 3.5 to 3.7 of the October 2010 Briefing Note and the arrangements in this Briefing Note of 8 February, 2011?

20 THE COMMISSIONER: Well, doesn't that speak for itself?

MR CURTIN: Ah - - -

THE COMMISSIONER: Aren't we qualified to make that assessment?

MR CURTIN: Well, what I have in mind is some questions were asked by Counsel Assisting about some words which appear in the letter to the Premier.

30 THE COMMISSIONER: All right. Well, proceed then. I'm not sure if I, I don't understand but, I mean, if you are telling me that it's somehow differently relevant then I will for the time being accept that.

MR CURTIN: Do you remember, Mr Matchett?---I, I think what you may be referring to is this introduces the, the possibility of using the Sydney Regional Development Fund funding for purchase of part of the site.

When you say this refers to are you talking about the February 2011 or the October 2010?---The February 2011 at 3.2.3.

40 THE COMMISSIONER: I think that was mentioned before (not transcribable)

MR CURTIN: If you look at handwritten additions in 3.6 on page 5 you'll see the - - -

THE COMMISSIONER: Mr Curtin, I really don't, have no objection to you leading the witness if you want to on this issue.

MR CURTIN: In substance, Mr Matchett, putting aside the possible contribution of \$2 million from the Friends of Currawong - - -?---Yes.

- - - the general proposal in paragraphs 3.5, 3.6 and 3.7 in the October briefing note was the same in the February, 8 February, 2011 briefing note? ---Yes.

You were asked a question whether Currawong was on a strategic plan? ---Yes.

10

And the strategic plan is generated at a point in time looking forward and identifying lands that somebody thought the Crown should buy. Is that right?---Yes.

But sometimes, is it correct to say, land becomes available because the vendor places it on the market, well, suddenly as it were?---Sure.

And putting aside Currawong are you, and please tell, I don't want you to make any assumptions and only answer if you know this - - -?---Mmm.

20

- - - from time to time land would, I'll just call it suddenly come on the market and the LPMA as part of its Crown Land sales and accrual process might buy it or try, try to buy it?---Yes.

Is that right?---Yes, yes.

THE COMMISSIONER: Even though it's not on the plan.

MR CURTIN: Even though it's not on the plan?---Yes.

30

THE COMMISSIONER: Is that right?---Well, yes, I mean, Newcastle Post Office I guess is an example.

Well, that's an odd situation, I'm not sure if it's, it's a standard example, it isn't is it?---Sure. Well, it came on the market unexpectedly.

There's no questions about its purchase.

MR CURTIN: You were asked some questions - - -

40

THE COMMISSIONER: That is so, isn't it? You were aware of that? ---I'm aware that papers were called for, investigation of this.

Yes, yes?---Yes.

MR CURTIN: Well, what I'm asking you, Mr Matchett, is whether in addition to the strategic plan there was if you like flexibility in LPMA to buy or make a bid for land that wasn't on the plan?---I would expect so, yes.

THE COMMISSIONER: It all depends on the authority given to the person who buys I take it?---Of course.

And one of the mean of gauging whether authority exists is looking to see whether the land is on a plan. It doesn't mean that you, there's necessarily no authority that's not on the plan but it's one of the factors one takes into account?---It's one of the factors, yes.

10 MR CURTIN: You were asked some questions - I'm sorry, Commissioner.

THE COMMISSIONER: No, no, I'm finished, thank you.

MR CURTIN: You were asked some questions about you being told there were no more Budget Committee meetings for the year?---Yes.

And my note is I think that you were told this at a meeting, the Commissioner asked you which individual and you couldn't remember who it was but gave three alternatives?---Yes.

20 But do you have a recollection of being told this at a meeting?---To the best of my knowledge, yet.

And the three alternatives you gave were Mr O'Brien, Mr Fenn or a lady whose name I think was Lewis?---Lee Ellen Lewis, yes.

And when you told the Commissioner it might have been one of those three do you intend to convey that it was somebody at that meeting and those three were there but you can't now recall which of the three said those words?---That's correct.

30 They're those, they're my questions, thank you.

THE COMMISSIONER: Thank you, Mr Curtin. Mr Dunne.

MR DUNNE: Mr Matchett, my name is Dunne and I'm representing Mr Costello?---Yes.

Do you have before you Exhibit 1, the bundle of documents?---Yes.

40 If I could ask you to have a look behind tab 19?---Yes.

That's an index of documents and I, you've given evidence before the Commission that you were involved in the preparation of the documents that are - - -

THE COMMISSIONER: Of the, of the document at page 19.

MR DUNNE: Listed in index on page 19, sorry, under tab 19, page 89.

THE COMMISSIONER: Sorry, the question's not clear to me, Mr Dunne. Which documents are you, are you asking Mr Matchett whether he was involved in the document, the preparation of the document at page 89?

THE WITNESS: Yes.

MR DUNNE: You were involved in the preparation of the document at page 89 - - -?---Yes.

10 - - - you've told his Honour. And were you involved in the process of collecting the documents that are listed?---Yes.

You have given evidence that you were sitting at Mr Watkins' board table? ---Yes.

And had a discussion with, also present was Mr Costello and Mr Watkins, is that correct?---Yes.

20 And that's, that's your recollection?---And, and Lexie Hopkins was there.

And Lexie Hopkins?---Yeah.

Are you sure that that's an accurate recollection of your involvement at that, on 22 March in relation to the collection of those documents?---Yes, to the best of my knowledge.

Can I suggest to you that at some stage early on 22 March you met with Mr Costello in Ms Hopkins' office and present were you and Ms Hopkins.

30 THE COMMISSIONER: And Mr Costello.

MR DUNNE: And Mr Costello, not Mr Watkins?---Right.

Does that accord with your - - -?---Well, it, it's possible, yes.

And that, before I ask that question if I could ask you to have a look behind tab 15, pages 68 to 78 and if I could ask you just to look at those documents?---Yes.

40 Can I suggest to you that at the meeting to which I referred in Ms Hopkins' office between Mr Costello, yourself and Ms Hopkins, Mr Costello gave you a bundle of documents which comprised the documents behind tab 15 and said words to the effect that Mr Costello had the job of preparing documents to provide to IAB but that seeing as you knew more about that than he did could you please collect the rest of the documents. Would you agree or disagree with that?---I don't recall that.

It's possible?---Yes, I suppose it is possible

If I could assist you perhaps by, and I refer to pages 179 to 180 of the transcript, your Honour, Miss Hopkins has given evidence that the that the index behind tab 19 was dictated to her by Mr Hopkins, by Mr Costello.
---Right.

And there's no mention in her evidence that there was anyone else present at that time.---Yes.

10 And what I'm suggesting to you is - - -

THE COMMISSIONER: She wasn't asked.

MR DUNNE: No, your Honour, let's correct it.

What I'm suggesting to you is early on 22 March you had a meeting with Mr Costello where he asked you to collect additional documents to the documents that he gave you which are found behind tab 15. Would you agree with that?---He, no, he could have.

20 He could have.---He could have. But given that I was on crutches and having difficulty getting around I find it surprising.

Yes, no, no. I don't offer that as a criticism I think you've told His Honour a number of reasons why you may have missed something. Is that correct?
---Yes.

30 And could I also suggest to you that later that morning as you passed Mr Costello in one of the hallways in LPMA corridors you said words to the effect, that you'd found some additional documents?---It's possible.

Did you have a, do you recall whether you had a meeting with Mr Watkins just you and he to discuss the documents that were provided to the IAB on 22 March before you provided the further documentation to Mr Costello?
---I don't believe so.

Yes, thank you.

THE COMMISSIONER: Yes, thank you. Miss Fisher?

40 MS FISHER: Yes, thank you.

Mr Matchett, my name is Fisher, I'm the barrister for Pittwater Council.
---Yes.

This afternoon you've been asked some questions about the document at page 5 of Exhibit 1 that's in front of you. If you could turn to page 5.
---Page 5, tab 5?

Page 5 it's tab 2 I think.---Yes.

Once again, I'd like to draw your attention to paragraph 3.5.---Yes.

You've already been taken to the sentence that begins, it would also sell Council land adjoining the Currawong site.---Yes.

It is your understanding that Council was going to transfer to the Crown the land adjoining the Currawong site or sell it?---(NO AUDIBLE REPLY)

10

THE COMMISSIONER: Or both. You mean the transfer, you mean donate?

THE WITNESS: It was, it was - - -

THE COMMISSIONER: Just a minute. I'm not sure, the question is not clear.

20

MS FISHER: I appreciate that. Was your understanding that Council was going to transfer that land to the Crown and not expect any cash from the Crown in return or was it going to sell it to the Crown expecting cash in return from the Crown?---My expectation was that it would be transferred to the Crown at a nominal cost.

THE COMMISSIONER: Well, it says, the words used are, "Would also sell Council land adjoining the Currawong site at a significantly reduced rate."?---Yes.

30

Did you understand it to mean anything else but that?---No.

MS FISHER: Mr Matchett, you gave some evidence that you did not ever see the draft of the MOU. You understand the document I'm referring to? ---Yes.

Was it your understanding that it was Ms Connolly that had carriage of drafting, negotiating and finalising the MOU with Pittwater Council?
---Ah, it was, yes, it was my understanding that it was Ms Connolly's area, her office was involved in the negotiations.

40

Thank you. Are you also aware that there was a delay in getting the draft MOU to Council in the period between October and December 2010?---No, I'm not aware of that.

Thank you. And is the Commissioner to understand that Ms Connolly was a senior staff member of Crown Lands at that time?---That's a question for me?

That's a question for you. Is the Commissioner to understand that?---Yes.

Thank you. And she remained a senior officer of Crown Lands say in April 2011?---Yes.

Thank you. Commissioner, I'm about to take the witness to a document. I just want to indicate to you that it's a document that's in Exhibit 8C, which is one of the volumes that was attached to the IAB Report.

THE COMMISSIONER: Thank you.

10

MS FISHER: But that is a very unwieldy volume and I actually have extracted the document if that's a more convenient course, Commissioner?

THE COMMISSIONER: Yes, thank you. Do you have copies for everyone?

MS FISHER: Yes. Now, Mr Matchett, you've given some evidence that you were involved in the drafting of a briefing note in February, 2011?
---Yes.

20

And you sought the assistance of Ms Connolly in the drafting of that note?
---Yes.

If you look at the document that you have in front of you, you'll see that the bottom section is an email from Mr Ferguson of Pittwater Council to Ms Connolly?---Yes.

And it provides Ms Connolly with Council's resolution of 22 December?
---Yes.

30

MR ALEXIS: Can I just note, Commissioner, that that email, and I appreciate the document that's been circulated adds something to what's in Exhibit 1, but the below email is at page 37 behind tab 7.

THE COMMISSIONER: Thank you.

MS FISHER: And then you'll see that that email was sent at 12 minutes past 4.00 on February 4, Friday February 4, and then at 4.24 Ms Connolly forwards you that email?---Yes.

40

So is the Commissioner to understand that as of 4 February, you knew what Council's resolution of 22 December, 2010 was in relation to Currawong?
---Yes, it would appear that way.

Thank you. And on, you've just given us some evidence about the events of 22 March, 2011, and that you were pulling together some documents for the IAB investigation. Is that correct?---Yes, assisting.

Assisting in that process. Thank you. If you turn to page 73 of Exhibit 1 which is in front of you- -?---Yes.

- - -was this one of the documents you saw during that process?---I believe so.

And you'll see that that's a letter from Mr Ferguson of Pittwater Council to Mr Watkins dated 15 March, 2011?---Yes.

10 Did you cause that document to be sent to Ms Connolly on 22 March, 2011?
---(NO AUDIBLE REPLY)

THE COMMISSIONER: If you've got a document that establishes that, why don't you put it to the witness?

MS FISHER: What there is in Exhibit 8C, Commissioner, that big bundle of documents, is an email to Ms Connolly saying here is, here is the Pittwater letter, but there's no letter actually attached to that actual- - -

20 THE COMMISSIONER: I'm really not sure what the relevance of all this is, Ms Fisher.

MS FISHER: Thank you, Commissioner. I'll just leave it. Thank you, Mr Matchett?---Thank you.

THE COMMISSIONER: Ms McGlinchey, I think that you're the last, I don't think anyone else wants to question Mr Matchett.

30 MS McGLINCHEY: Commissioner, I have no questions.

THE COMMISSIONER: Fine. Mr Alexis?

MR ALEXIS: Nothing further, thank you, Commissioner.

THE COMMISSIONER: Thank you, Mr Matchett. You are excused.

THE WITNESS EXCUSED

[3.42pm]

40 MS McGLINCHEY: Commissioner, I couldn't hear. Is Mr Matchett excused?

THE COMMISSIONER: Yes.

MR ALEXIS: Commissioner, can I now call Mr Graham Harding.

THE COMMISSIONER: Is Mr Harding represented? Have you got, are you legally represented, Mr Harding?

MR HARDING: No, I'm not, Commissioner.

THE COMMISSIONER: Please sit down. Mr Harding, there is an order that I may make which in summary protects you from having your evidence used against you in civil or criminal proceedings or in any disciplinary proceedings. Do you wish me to make an order of that kind?

10

MR HARDING: Yes, please, Commissioner.

THE COMMISSIONER: That does not protect you of course if you give false or misleading evidence to this, to this Commission, but it does protect you otherwise against the use of your evidence as I have explained. Do you understand that?

MR HARDING: Yes, Commissioner.

20 THE COMMISSIONER: Yes. Pursuant to section 38 of the Independent Commission Against Corruption Act, I declare that all answers given by Mr Harding and all documents produced by him during the course of his evidence at this public inquiry are to be regarded as having been given or produced on objection and accordingly there is no need for him to make objection in respect of any particular answer given or document produced.

30 **PURSUANT TO SECTION 38 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT, I DECLARE THAT ALL ANSWERS GIVEN BY MR HARDING AND ALL DOCUMENTS PRODUCED BY HIM DURING THE COURSE OF HIS EVIDENCE AT THIS PUBLIC INQUIRY ARE TO BE REGARDED AS HAVING BEEN GIVEN OR PRODUCED ON OBJECTION AND ACCORDINGLY THERE IS NO NEED FOR HIM TO MAKE OBJECTION IN RESPECT OF ANY PARTICULAR ANSWER GIVEN OR DOCUMENT PRODUCED.**

40 THE COMMISSIONER: Now, that order protects you in the way I've explained, Mr Harding. Do you wish to give your evidence under oath or do you wish to affirm the truth of your evidence?

MR HARDING: Under oath, Commissioner.

THE COMMISSIONER: Would you swear Mr Harding in, please.

THE COMMISSIONER: Mr Alexis?

MR ALEXIS: Thank you, Commissioner. Sir, is your full name Graham Harding?---Graham William Harding.

10 Thank you. And is it the case that you have provided to the Commission a written Statement of Evidence dated 23 June, 2011?---Yes.

Thank you. Can I show you a copy of your statement together with a copy for you, Commissioner. And, Mr Harding, is the content of that statement true and correct?---It is.

Thank you. Now, before proceeding can I tender that statement, Commissioner?

20 THE COMMISSIONER: Yes. Mr Harding's statement is Exhibit 30.

#EXHIBIT 30 - STATEMENT OF MR HARDING

MR ALEXIS: Thank you. Now, Mr Harding, should we understand that you are the general manager of the New South Wales Crown Lands Division which before April this year was a division within the LPMA? ---Correct.

30 And you are I think based in Newcastle. Is that so?---That is right.

And prior to the election in March of this year the Crown Lands Division, as I say, was a division of LPMA but it's since changed to become a division of the Department of Primary Industries. Is that right?---That's is right.

Thank you. Now, did you in your position as general manager of the Crown Land Division report directly to someone? And I'm speaking of the period before the March 2011 election?---I reported to Warwick Watkins.

40 And was that the position since at least the 2003 election?---Correct.

Now, Ms Bronwyn Connolly we've heard a little about during this inquiry. She, should we understand, the director of the south region of the Crown Lands Division?---That's right.

And she had a reporting line to you. Is that right?---Correct.

Now, if I can just go to some parts of your statement, please, Mr Harding. Paragraph 5 you tell us that the Crown Lands Division managed or had a management role of Crown Land throughout New South Wales. Is that so?
---Correct.

And can you just explain to us what that, what that means in terms of Crown Land providing a revenue stream as well as money being realised through the sale of Crown Land. How does the management operate under your care?---The- - -

10

THE COMMISSIONER: Do you understand the question?---Yes, and I'll, I'll answer it in terms of the legislation. The Crown Lands Act provides for Crown Land to be sold, leased or licensed. It can also be reserved in the public interest, so it's just another money-making function.

MR ALEXIS: All right. Now, in paragraph 6 you refer to five accounts relative to the management of Crown Lands. Firstly, Mr Harding, by referring to each as accounts, are we talking about bank accounts or are we talking about something a little more than just that?---Bank accounts.

20

And so in paragraph 6 we have five separate bank accounts that relate to the operations of each of the entities or divisions that are referred to in that paragraph. Is that correct?---That's right.

And so for example we see if we look at page 3 that there is a separate bank account for the Crown Leaseholds Entity, which I think you refer to throughout your statement as the CLE. Is that right?---That's at item 4?

Item 4, yes?---Mmm.

30

Now, can I just check, in item 4 you've said there that the CLE account into which moneys are debited from leases, licenses, royalties et cetera. Do you mean credited?---That's right.

And so the bank account for the CLE is the account into which income from Crown Land is received. Is that so?---That's right.

And do you see some lines down but still within subparagraph 4, Mr Harding, you (not transcribable) there to receiving some advice from Mr Costello? Do you see that?---I see that.

40

And is this advice that he's given you verbally or is it set out in some document or how should be understand the advice was given?---It's advice Mr Costello has given me repeatedly over the years.

Is that - - -

THE COMMISSIONER: Orally?---That's right.

MR ALEXIS: Through the spoken word?---Yes.

Yes. And he has reiterated on a number of occasions has he that the CLE account is sacrosanct. Is that right?---It's a Treasury account, monies all remitted to Treasury.

10 THE COMMISSIONER: What do you mean by sacrosanct in this context?---I made it in the context of the way Mr Costello raised the matter with me. He mightn't have used those words but they were things that were not available for the division to use in any way.

All those funds had to go to Treasury, is that what you're saying?---Correct.

MR ALEXIS: And Mr Harding, is it your understanding that within the State Budget receipts from the Crown Lands, the CLE account are budgeted for and the account is sacrosanct because the monies are remitted from that fund to Treasury to meet that budgetary target?---It goes into the consolidated revenue of the State.

20

But do you have an understanding as to whether or not monies remitted from the CLE account are provided for in the budget or is that not a level (not transcribable) that you're aware of?---There's an expect, Treasury has an expectation to receive those funds going forward.

And that's why you understood from Mr Costello that deals with that account were sacrosanct.---That's right.

30 All right. Thank you. Now can I come directly then to Currawong and should we understand that your involvement first commenced in early October 2010?---That's right.

And I'll have Exhibit 1 shown to you Mr Harding which is a bundle of documents and if you could look at page 1 behind tab 1 is the receipt of the email at the top of page 1 you'll see Ms Connolly is sending on what she had received for your information on 29 September 2010. Do you see that? ---That's right.

40 And does that represent the first footprint of yours in relation to your involvement with the Currawong matter?---It must have been – no I don't recall the email.

In any event, Mr Harding, could you turn through to page 3A and I think this is Annexure A to your statement an email that was passed onto you by Ms Connolly which attached in the string of emails the email from Mr Watkins relating to a meeting that had occurred with Pittwater Council. Do you see that?---The way I read that, that was, that was an email that original

came from Warwick Watkins to Mr Fenn with carbon copies to Matchett, Harding and Foster.

Yes. And you then received it again, albeit via Ms Connolly it seems at the top of the page.---That's right.

Now were you at the meeting with Pittwater Council that Mr Watkins refers to in that email?---No.

10 So this was being received by you I think for your information. Is that how we should understand it?---That's right.

Thank you. Now in paragraph 8 of your statement, you tell us in page 4 that you were involved in a teleconference involving Ms Connolly, Mr Foster and Mr Watkins.---Correct.

And you were at the Parramatta office for that occasion were you?---That's right.

20 Now did that teleconference provide you and the others with a briefing about what had been discussed and agreed at the meeting with Council a week or so before?---The teleconference from Mr Watkins briefed us on a negotiated outcome with Pittwater Council.

And was that because he, Mr Watkins, wanted an urgent briefing document prepared for the Minister to reflect what had been agreed with the Council. ---Correct.

30 And we see in paragraph 9 I think you've recorded there, that request. Is that so?---Correct.

And there was then preparation of a draft briefing minute which I think we see behind tab 2 of Exhibit 1. If you could look at that please. Now in paragraph 9 you tell us that the briefing document was prepared by Mr Foster, amended by Ms Connolly and then sent to Mr Matchett. Do you see that?---Yes.

40 Now were you involved in all in the drafting of the briefing note or its preparation?---No, only moving forward to Mr Matchett.

But did you review the briefing note before it was sent to Mr Matchett and of course, the Chief Executive?---That's right.

And when you reviewed the document did it reflect what had been discussed during the teleconference on 6 October during which Mr Watkins gave the briefing.---Yes, to the best of our knowledge.

Thank you. Now in so far as the briefing note on page 5 of Exhibit 1 Mr Harding refers to Crown Land, could I direct your attention to paragraph 3.7, do you see that on page 5?---Is that my page 5.

It's page 5, I'm sorry Mr Harding, in Exhibit 1 which is the folder.---Tab 2.

Tab 2.---Tab 2 sorry. At page 2 of the submission.

10 Page 2 of the submission sir, you'll see paragraph 3.7 refers to LPMA balance of financial contribution to the purchase will be funded by the sale of Crown Land. Do you see that?---Yes, I note that.

Now, between the briefing teleconference and the preparation of this briefing document did you give any consideration how the LPMA might fund some contribution to the acquisition of Currawong from the sale of Crown Land?---No, I did not.

20 Did Mr Watkins ask you to look at the plan, the plans that were then in existence with respect to prospective sales of Crown Land to see whether or not anticipated funds to be realised might be sufficient to assist in the purchase of Currawong?---I don't recall him requesting that.

Do you recall yourself looking at that issue having regard to what documents were available to you at the time in relation to the Crown Lands program of sales from October 2010?---No.

30 And, Mr Harding, could you just assist me with this: is there a strategic plan or otherwise some planning tool which relates to the Crown Land Division plans for the sale of Crown Land?---Treasury normally sets a target each financial year and it's up to us to meet that target.

And in terms of working towards achieving that target is there a strategic planning document which identifies particular land which is to be sold during a particular financial year so as to achieve that target?---That is right.

40 So after Mr Watkins gave you the briefing during the telephone teleconference on 6 October and you came to review the minute at pages 4, 5 and 6 before sending it on to Mr Matchett and the Chief Executive, did you undertake any analysis at all about whether or not there might be Crown Land available for sale to fund the possible acquisition of Currawong?---No, I did not.

Thank you. Do you see also, Mr Harding, in paragraph 3.6, again back to page 5, if you could just pass over the first sentence which relates to the gifted Council land and come to the next sentence which commences "In the interim," do you see that?---(NO AUDIBLE REPLY)

And if you just follow, follow that through with me you'll see that it says, "In the interim it is proposed that funds for the purchase would be made available from existing reserve trust funding," do you see that?---Yes.

Now, the Crown Lands Reserve Trust was one of the five accounts referred to in paragraph 6 of your statement. Is that so?---Yes.

So you were the manager of that account as well should we understand?---In conjunction with Mr Watkins and Mr Costello.

10

Of course. Now, did you give any consideration to the availability of funds from the reserve trust after the briefing teleconference on 6 October and your review of the minute before it was sent to Mr Matchett and his Chief Executive?---No, I did not.

Were you asked to by Mr Watkins to see whether or not there might be sources of funding available from the reserve trust?---I don't recollect that direction.

20

Finally in relation to this document at page 5, Mr Harding, you'll see in paragraph 3.5 about halfway through that paragraph a reference to some excess Council land adjoining waterfront Crown Land at Newport valued at approximately \$5 to \$7 million. Do you see that?---Yes.

Now, was the value of that land something that was spoken of during the teleconference with Mr Watkins on 6 October?---That's right.

And did you understand then what that range of approximate value was based on?---No.

30

Were you given to understand that it was the result of a valuation that had actually been done?---No.

Were you given to understand anything as to where that figure came from? ---No, just the figures were provided by Mr Watkins.

All right. Now, in paragraph 10 of your statement, Mr Harding, you tell us that a further teleconference had been scheduled for 22 October but your recollection indicates that that conference never occurred. Is that so?

40

---That's right.

And I think you're annexure B to your statement collects some emails which related to the teleconference being arranged but your recollection is that that never actually occurred. Is that so?---That's correct, yes.

So should we understand that apart from the teleconference with Mr Watkins on 6 October before you reviewed the Briefing Minute to the

Minister you had no other conference or discussion with Mr Watkins about the purchase of Currawong?---No meetings, no conferences.

And what about telephone conversations?---Not to my memory.

So in relation to the subject of Currawong the Commissioner should understand that apart from the teleconference that occurred on 6 October, 2010 you were not consulted further by or with Mr Watkins?---No.

10 Now, in paragraph 12, Mr Harding, you tell us that you received an email from Mr Foster on 3 November and I think we can find that behind tab 4 of Exhibit 1 at page 9 and page 10. Is that right?---(NO AUDIBLE REPLY)

It's otherwise annexure C to your statement I think?---Yes, I have that.

And should we understand that by early November 2010 you came to understand that Minister Kelly's Chief of Staff had requested a draft submission to go up to Cabinet and that you, that perhaps more accurately Ms Connolly had been tasked with the job of having that document worked up?---Yes, that's my understanding.
20

And could I just ask you to look at your email on page 9 of Exhibit 1, although you might find it more convenient to look at your annexure C, but do you see your email to Mr Foster, Ms Connolly, Mr Costello and others of 4 November at 8.25 after referring in the opening paragraph to the need for Cabinet or Budget Committee of Cabinet approval, do you see two lines down you've said, "I have no idea about where the money will come from and how that would be substantiated in the submission," do you see that?
---Yes.
30

Now, Mr Harding, does that reflect your state of knowledge as at 4 November, that is to say after you'd reviewed the Minister's Briefing document by 8 October?---I was concerned about the capacity of funds being made available.

But does it reflect your state of knowledge that as at 4 November you had no idea where the money was coming from?---There was no clear indication to me.

40 Well, was there any indication?---No.

And I think you've told us that after the teleconference on 6 October you'd had no further discussions with Mr Watkins about funding. Is that so?
---That's right.

What about with Mr Costello? I see this email was copied to him?---That's right.

Did this prompt any dialogue between you and Mr Costello about your question and, and answer as to how it was going to be funded?---I can't recall any response from Mr Costello.

So you don't recall speaking with Mr Costello after this email and him telling you that the Crown Leasehold Entity Account might be utilised?
---No.

10 Or that moneys from the Reserve Trust Account might be utilised?---No.
All right.

THE COMMISSIONER: So your answer is not?---No.

MR ALEXIS: Can I ask you to look at Mr Foster's email at the top of page 9 and you'll see that after the email that you sent had been circulated Mr Foster responds by telling you that South Region to manage the project with assistance of strategic projects policy as required, now can you just assist us by what he was telling you there and I mean by that perhaps
20 beyond what we see literally on the page?---I think there was some discussion going on within the organisation about who was going to have the responsibility of taking this project forward.

And that responsibility it seems did not include yourself?---South Region reports to me on strategic projects and policy (not transcribable) reporting on, in some, some parts of the work did, it reported to the Chief Executive Warwick Watkins and other parts it reported to me.

30 So did Mr Foster's email at the top of page 9 tell you that you were not to be involved directly any further?---It doesn't tell me that, no.

Does it tell you that you would be involved indirectly through ordinary reporting lines?---That's right.

Now, were you reported to regularly after 4 November as to the progress of the purchase of Currawong?---After my email of 4 November I received some anecdotal notes occasionally or sometimes I was copied into emails but generally it was very peripheral.

40 Now did you come to understand that during the month of November Ms Connolly was working up a submission to go to Cabinet or a Budget Committee of Cabinet?---Yes.

And do we see in paragraph 13 of your statement that you refer us to an email of 29 November that you received from Mr Matchett on that subject?
---I do.

And I think that's attachment D to your, your statement?--- Yes.

And you would have seen no doubt Mr Harding in that email that Mr Matchett was telling you that he needed a draft Minute by first thing tomorrow, that's 30 November, and he will complete it if necessary himself. Do you see that?---Yes.

Now, can you recall to mind why by the end of November there appears at least on the face of the email to be some urgency about the need for a submission to Cabinet?---No, I do not.

10

Do you recall any discussion either with Ms Connolly or Mr Matchett or Mr, or anyone else involved as to what the need for or what the urgency for a Cabinet Submission was by the end of November?---No, I do not.

Did you ever see the Cabinet Submission?---From memory, no.

Can I ask you to look, please, at the document from page 13 of Exhibit 1 behind tab 5?---Sorry, what were those numbers again?

20 Yes. Page 13 behind tab 5. And do you recognise this as Ms Connolly's email to Mr Matchett that was copied to you- - -?---Yes.

- - -regarding the Currawong Cabinet Submission?---Yes.

And it says to Mr Matchett, copy to you, "Please find attached the draft submission."?---That's right.

30 And if you look over the page at 14 and following, just turn through the pages if you don't mind, do you see that it appears at least from the email that at the end of November you were copied in on the draft submission to Cabinet?---I see that but I don't, I don't actually recall it.

You don't recall looking at the draft that Ms Connolly seems to have prepared and- - -?---I could have, but I don't recall it.

I see?---I don't specifically remember reading it.

40 I see. Are you able to assist us in understanding how the draft submission was progressed after it was sent as a draft on 30 November?---No, I do not know that.

Commissioner, I see the time. I was hoping to finish Mr Harding today.

MR CURTIN: I've got nothing.

MR ALEXIS: I understand he's down from Newcastle.

THE COMMISSIONER: Let's proceed.

MR ALEXIS: Thank you, Commissioner. Now, Mr Harding, can I just ask you to look please at the draft submission on page 16. Now- -?---Sorry, page 16? Yeah, part the Cabinet Minute.

Yes. If I could just ask you to look, please, at round about 4.1.9. And do you see about halfway through that paragraph the language from that earlier Briefing Minute seems to be repeated here? And you see it says, “In the interim it’s proposed that the funds will be, for the purpose made available from existing Reserve Trust funding”, and there’s a reference to the SRDF. Do you see that?---Yes.

Now, did you have any understanding at about the time of this draft submission, which is the end of November, or throughout the month of December as to whether or not Reserve Trust funding would be able to make a contribution for the purchase of Currawong?---In terms of Reserve Trust funding, there is the Crown Lands Reserve Trust and there’s also the Public Reserves Management Fund, so there’s two reserve funding bank accounts.

But Mr Harding, at the time this draft submission was prepared did you have any idea that the Reserve Trust funding as it’s referred to in paragraph 4.1.9 of the draft submission was something that was going to be looked to as a source of funding to purchase Currawong?---No. It was not clear to me at that stage where the funding was going to be targeted.

Could I ask you to look, please, at page 18 of the draft submission. And could I invite you to look at paragraph 9.1 and 9.20 under Financial Impact. And can I ask you to note in 9.1 a reference to the anticipated cost of the preparation of a Plan of Management of quarter of a million dollars, and in 9.2 anticipated staffing costs of, in the vicinity of \$160,000. Do you see that?---Yes.

Now, at the time of this draft submission, did you have any knowledge at all as to those costs being anticipated costs in relation to how it’s described there on page 18?---They’re reasonable costs to do a Plan of Management of the size and scale originally planned.

But this would be cost incurred within your division of which you’re the manager. Is that so?---The most, the most common way to prepare Plans of Management was to secure funding from the Public Reserves Management Fund. Occasionally funds were also used from the Crown Lands Reserve Trust, so it could have come from either of those sources.

Right. But were you aware of any of this as at the time of this draft submission at the end of November/early December?---I cannot recall that.

Do you recall Mr Watkins ever raising with you those sorts of anticipated costs?---No, I don't.

Now, just while I have you in Exhibit 1, could you look at the document behind tab 6, please. And do you recall ever seeing the document which is there reproduced as a draft, being a Memorandum of Understanding between the Minister for Lands and Pittwater Council?---I do not recall it.

10 And do you recall ever being shown that document and asked to review it?
---No, I do not recall that.

Right. Now, in paragraph 14 you tell us, paragraph 14 of your statement, Mr Harding, you tell us that in early February you were involved in some email correspondence with Ms Connolly relating to a further Briefing Note. Do you see that?---Yes.

Could I ask you to look behind tab 7, please, page 38?---38?

20 38. And do you recall being copied, I withdraw that, I'm sorry. Do you recall receiving the email at the top of the page from Ms Connolly with the draft briefing note attached at pages 39 and 40 on the morning of 7 February, 2011?---I don't recall it.

Do you recall being involved at all in reviewing the further briefing note to the Minister in relation to the possible purchase of Currawong?---On page 39 and 40.

Yes.---No, I don't recall reviewing that.

30 Now in or around early February 2011 were you spoken to at all by Mr Watkins or Mr Matchett or anyone from LPMA staff about how any purchase of Currawong might be funded from within the Crown Lands division?---No, I don't recall any such discussions.

Do you recall looking at internal strategic plans or other documents available to you and considering what properties might be sold, what Crown Land might be sold for the purpose of funding in part the purchase of Currawong?---No, I don't.

40 And was this the position in February right up until the middle of March when we now understand contracts for the purchase of Currawong were exchanged?---I was on leave from 28 February through to 28 March.

Thank you. So up until the day before you went on leave you were not involved in any discussions, meetings, conversations about that subject matter. Is that so?---That's my recollection.

Now in paragraph 16 you tell us that you had been largely excluded from the funding arrangements, they were dealt with by the corporate finance and the Chief Executive's Office. Do you see that?---Yes, I do.

Now did you come to learn that after you returned from leave on 28 March?---(NO AUDIBLE REPLY)

THE COMMISSIONER: Come to learn what?

10 MR ALEXIS: I'm sorry.

THE COMMISSIONER: Come to learn what?

MR ALEXIS: I'm sorry. Come to learn, that it's a fair qualification, come to learn that the funding arrangements had been dealt with by Corporate Finance and the Chief Executive's office?---No I can't recall that.

20 And can I ask you what you intended to convey in the statement when you said you were largely excluded from the funding arrangements?---The way their funding within LPMA worked, they would shift the decisions to the best of my knowledge, between Mr Watkins and Mr Costello.

And when you refer to Corporate Finance do you mean Mr Costello?
---That's right.

THE COMMISSIONER: Is that generally Mr Harding or just with regard to Currawong?---Generally for Crown Lands.

30 MR ALEXIS: Now if property was to be acquired by the LPMA would you ordinarily be involved in discussions about how the acquisition is to be funded if it was to be funded out of the Crown Leaseholds Entity Fund?
---Not necessarily.

40 Well, when you tell us in paragraph 16 that you've been largely excluded from the funding arrangements does that mean that you would ordinarily be included in those funding arrangements or not?---My main responsibility within Crown Lands division was to look after the recurrent budget income from Treasury to manage expenses of running the division, there was also involvement in the land development working account which is your Crown Lands sales program and involvement in the Crown Lands Reserve Trust.

THE COMMISSIONER: As I understand your evidence there was nothing unusual about you being excluded from the funding arrangements in relation to Currawong, is that right?---That's right.

MR ALEXIS: And finally, Mr Harding, when you returned from leave were you involved in any conversations with Mr Costello about the funding of the balance of the purchase price of Currawong, contracts having been

exchanged while you were on leave on 15 March?---I can't recall any such discussions.

What about with Mr Watkins? Did you speak with him about the subject of how the balance of the funding was to be obtained?---No, I cannot recall that.

All right. Thank you, Mr Harding.

10 THE COMMISSIONER: Mr Gerathy, I take it you have no - - -

MR GERATHY: No, no.

THE COMMISSIONER: Mr Curtin?

MR CURTIN: Mr Harding, my name is Curtin and I appear for Mr Watkins.

20 Can I ask you in that folder, Exhibit 1, if you turn to tab 4, page 9 and you'll see at the bottom of the page an email from Mr Foster to yourself and Ms Connolly on 3 November at 3.46pm?---Yes.

Do you see that?---Yes.

And you, you'll notice in the usual way of emails that, that email at the bottom is followed in time by your email to Mr Foster on 4 November at 8.25. You see that?---And to others.

30 And to others, thank you. And was your email on the 4th to Mr Foster and others addressing or intended to address the matters raised in the email below, that is from Mr Foster to yourself and others on 3 November?
---There are two, two items in my email. One's about the process and the matter of taking this forward in a proper way. The second issue is my concern, as I was aware that the Chief Executive had negotiated a TCorp loan of \$15 million for use on state parks. I was concerned that if the money was coming from that source of funds this would leave a very large hole in the urgent capital requirements of the other state parks.

40 In Mr Foster's email to you on 3 November after referring to the meeting, on the top of page 10 you'll see there was discussion of a compulsory acquisition. Do you see that the top of page 10?---I see that.

So in the email which you received Mr Foster informed you at the bottom of page 9 that the Friends of Currawong were seeking for the State Government to buy the site and then at the top of page 10 there was discussion of a compulsory acquisition. Do you see that?---Yes.

Two different ways of the property finding its way into the State Government's hands?---Mmm.

Is that right?---That's right.

And then in your email on 4 November after the word "colleagues" you say well, "if acquisition is the path", you see those words?---Yes.

10 And what you intended to convey by the words if acquisition, "if acquisition is the path," is to distinguish compulsory acquisition from, if you like, a private treaty purchase. Is that right?---I think that's an error in my drafting of that email. I've - - -

THE COMMISSIONER: I beg your pardon?---Sorry, Commissioner, I think that is an error in the way I've drafted that email. I, I actually meant if acquisition, I should have said irregardless whether it's acquisition or sale there's a path to go through.

20 Well, what other, assume for the moment the proper - I'm sorry, assume for the moment you meant to say if acquisition or sale - - -

Or purchase.

MR CURTIN: Or purchase. Thank you. There's no other mechanism mentioned in the email from Mr Foster to yourself on the 3rd, is there? --- (NO AUDIBLE REPLY)

THE COMMISSIONER: I'm not sure if I understand that, Mr Curtin.

30 MR CURTIN: I'll - - -

THE COMMISSIONER: There is only one mechanism mentioned, but as I understand Mr Harding's evidence, he intended that mechanism would be appropriate, be it an acquisition or be it a purchase?

40 MR CURTIN: Yeah. Can I, can I phrase it this way, Mr Harding, in Mr Foster's email to you on the 3rd he talks about a purchase and an acquisition, a compulsory acquisition. Correct?---The Friends of Currawong talk about purchase.

By the State Government?---Yes.

And then compulsory acquisition by the State Government is mentioned. Correct?---The two process, yeah.

Yeah. And after the word colleagues, you'll see the words, "If acquisition is the (not transcribable) I understand that would need to go as an ex-co-

minute.” Can you tell the Commissioner what your understanding of an ex-co-minute is?---It would be a Minute to Cabinet.

And you’ll see the next line, “This would need a well-reasoned argument.” Do you see that?---Yes.

10 Isn’t it correct to say that those first three lines after the word colleagues is you talking about compulsory acquisition alone?---No. As I tried to say before, whether the Government wanted to pursue it by acquisition or private treaty sale, that is relevant. The Cabinet Minute and a well-reasoned argument for pursuing the acquisition or purchase of Currawong.

You told the Commissioner that Crown Lands had a target, a revenue target or an income target for sales each year- -?---Yes

- - -usually set by Treasury?---That’s right.

20 And did you from time to time find yourself at least as a, from time to time did you find yourself in a position where you were anticipating not being able to meet a Treasury target?---It’s always been very difficult but I, my memory of the history is that we’ve, we’ve always achieved our target.

And with these difficulties that you would experience from time to time, did you address them by making adjustments to your anticipated sales program, for example bringing forward sales at an earlier point in time or, or nominating other properties for sale where, where they had not earlier been nominated?---Yes, there had to be, as you, as you work through each project and if problems arose you used to have to do adjustments and bring other matters forward, other sites forward.

30 Or, or nominate fresh sites. Is, is that correct?---Yes.

And if Treasury would set the target, do I understand that it was then up to either you or your section to, to meet the target? That is, it was left to you to do whatever it is you had to do to meet Treasury’s target?---Yes. I didn’t meet with Treasury, that was not part of my responsibilities. Our target was provided for us and we would, we would endeavour to achieve it.

40 And on occasion land would be purchased as well as sold. Is that right? ----(NO AUDIBLE REPLY)

By your, your section, your department?---Buying land, it was something that had happened over the last few years. It generally hasn’t been the custom and practice before, before that.

But in the last few years your department has purchased land as well as sold it?---That’s right.

And would that be, those purchases were paid for with funds out of one of the accounts you've told the Commissioner about?---That's to my knowledge.

And to your knowledge were those funds going out for purchases offset against the income coming in for the purposes of Treasury's targets?---I'm familiar that was some of the arrangements that the Chief Executive tried to achieve, selling land in order to purchase other land.

10 And had that taken place earlier, that is before March 2011?---I am familiar that, oh, sorry, two sites come to mind. There's Newcastle Post Office in the middle of 2010 which I had some involvement in and I'm familiar that several years ago, I'm not quite sure whether it was three, four or five, the Priory was purchased which is in the Hunters Hill/Gladesville area.

And you were asked some questions about your understanding of the arrangements with Treasury that there'd be I think regular remittances from the CLE account to Treasury. Do you remember being asked those questions?---Ah hmm, yes.

20

And those remittances were worked out according to some formula, maybe income less expenses, something along those lines. Is, is that right?---Only the Land Development Working Account was one in which we could take into account the expenses of selling land.

Right?---In terms of the Crown Entity, to the best of my understanding the lot went back on some sort of regular basis. I don't think there was a formula but it was something negotiated between Corporate Finance and Treasury.

30

And in your role as the general manager of the Crown Lands Division did you see it as part of your function that if you became aware of a proposal about which some, you had some concerns about that you would go to a relevant person to express your concerns?

THE COMMISSIONER: You mean a superior?

MR CURTIN: Your superior, thank you?---Yes. Whenever I had concerns within the division on any issue I would go to my Chief Executive.

40

And you would take them to various document, perhaps if we just, if I can just take you to the draft Cabinet minute behind tab 5 and if I can just take you to tab 5 page 13 of that bundle and you'll see, Mr Harding, that your name is on the email recipient list, can you see that?---Yes, in the email by Bronwyn Connolly?

Yes?---Yes.

And Bronwyn Connolly reported directly to you. Is that right?---That's right.

Her reporting line was to you?---That's right.

And by that expression do you mean, do you intend to convey that she was working under your supervision?---In the structure of the organisation, yes, she reported to me.

- 10 Yeah. And in the ordinary course you would read the emails sent to you by Ms Connolly?---In the ordinary course, yes, that's correct.

And in the ordinary course would you have read this email?---I more than likely would have.

And if you had read the email would you have read or most likely have read the attachment, being the draft Cabinet Minute?---I could have read it but I do not recall it.

- 20 In the ordinary course would you ignore an attachment to an email sent by your junior officer to yourself concerning a Cabinet Minute?---You know that, you note that the email was forward to Mark Matchett. I was cc'd in.

But it still was sent to you?---As an, as a, as a carbon copy.

Yeah. Your junior officer who reports to you had sent to you as well as Mr Matchett an email which attached a potentially important document. Would you agree?---That's right.

- 30 And because if, if only because it was a proposed Cabinet minute you would have read it wouldn't you?---I'll answer that question in this way: this, this document was to Mr Mark Matchett. In terms of my involvement which you might have gleaned from my previous answers was that I was not involved in meetings either with Pittwater Council or in the Minister's office to really understand the nature of this project. It was not uncommon for the Chief Executive's office to deal directly with my staff.

Did you read the attachment to this email?---I cannot remember.

- 40 Can you think of any reason why you would not read an attachment - - -

THE COMMISSIONER: Well, he's explained it, he's explained that, Mr Curtin.

MR CURTIN: May it please.

You did I think see the document, if you go to tab 7 please, Mr Harding, page 38, page 38's the email and I think I'm correct in saying pages 39 and 40 are the draft Briefing Note. Do you see that?---Yes.

And you, you did read the draft Briefing Note?---No, I cannot recall that.

All right. Can I ask you to turn to tab 2 and tell me whether you read pages 4, 5 and 6.

10 THE COMMISSIONER: At what stage?

MR CURTIN: In or about October, in or about October 2010?---Yes.

And do you remember when you read this Briefing Note or do you remember a date or meeting or - - -?---No. I'd affixed the date as 8 October.

And did you, when you read this Briefing Note speak to any superior officer and say there are some matters in this Briefing Note which are of concern to me?---This Briefing Note was prepared at the direction of the Chief
20 Executive after he had told that he, he had negotiated the arrangements for the purchase of Currawong.

THE COMMISSIONER: And therefore? How does that answer Mr Curtin's question is what I'm trying to find out?---Okay. Could I ask for that question again please.

MR CURTIN: This - if I heard you correctly you read this Briefing Note on or about 8 October, 2010?---Correct.

30 And when you read that Briefing Note did you say to any superior officer I have some concerns about something in this Briefing Note?---No, I can't recall talking to any senior officer about it.

And is that because, that is you did not say anything to any superior officer in terms of concern because within your area of responsibility or so far as the matters in this Briefing Note touched on your areas of responsibility, nothing raised a concern?---This document was prepared for the Chief Executive very urgently because he was seeking to get the Minister's agreement to progress negotiations. So this was an in principle first draft of
40 a design to purchase Currawong.

And what I'm asking you in that context, this being an, in your words, an in principle design, did you go to any superior officer and say look, so far as my area of responsibility is concerned I have a concern?

THE COMMISSIONER: He's already said no, Mr Curtin.

MR CURTIN: And is - you didn't raise any concern I suggest to you, Mr Harding, because the plans set out in this document, particularly the funding or the LPMA balance of financial contribution will be funded by the sale of Crown Land did not raise any concern in your mind, isn't that correct?---I did not have an understanding whether that was going to be from the sale within the existing forward targets from Treasurer or it was going to be an additional amount.

10 And did that make any difference?---Yes, I believe it would have.

And what's the difference?---The difference is that in June 2010 there'd already been a, a direction given to increase the sales programme by \$6 million to fund another purchase.

THE COMMISSIONER: And therefore?---Therefore if additional fundings had to be found it would have been extraordinarily difficult.

MR CURTIN: To do what? Sell more land? In addition to the - - -?---10 plus six.

20 Right.

THE COMMISSIONER: I beg your pardon?---Sorry?

Sorry, I didn't hear you?---Oh, sorry, Commissioner. \$10 million was the original forward target set by Treasury and that was increased by \$6 million to fund another purchase, not Currawong.

30 Yes. So are you saying that if you then had to fund Currawong on top of the 6 million, \$16 million it would make life very difficult for you?---Yes.

Is that what you're saying?---Yes, that's right.

MR CURTIN: You didn't raise that with any superior officer, bring to their attention there might be a difficulty if, if what is meant is extra funding? ---No.

MR ALEXIS: I should object to that question in fairness to Mr Harding - - -

40 THE COMMISSIONER: Yes.

MR ALEXIS: - - - having regard to the content of his email of 4 November at page 9.

THE COMMISSIONER: That continually has been in my mind, Mr Curtin.

MR CURTIN: I do apologise.

MR ALEXIS: Perhaps my learned friend might want to read the next sentence after the one where Mr Harding tells us that he had no idea then about where the money was coming from. The one about keeping promises and things.

MR CURTIN: If you just turn to page 9 behind tab 4, Mr Harding. And you do mention a concern if the \$15 million is to come from anticipated PRMF loan, is that loan connected with the sales program that you've
10 mentioned and the Treasury targets?---No. This was the loan the agency negotiated from Treasury Corp, it's a loan of \$15 million for urgent works on state parks, existing state parks.

Mr Harding, is it your present understanding is that Pittwater Council have agreed to transfer to – I'll just grab the LPMA – two blocks of land at Newport and that has not taken place as yet?---No, no it hasn't, it could be quite some time before it takes place.

And are you in charge of that transfer?---I, I've been asked to progress –
20 after the Government decided to purchase Currawong, the current Government, I was asked to take forward the package of negotiations with Council.

And has that occurred?---I've had one meeting with the General Manager of Pittwater Council and a couple of his Directors and in the room also was two of my senior staff.

But other than this one meeting was is it that Newport – the Newport land hasn't been transferred to the Government?---The deal as far as I know is
30 that before the land is transferred Council had to go through an LEP process to convert it to residential land. At that point of time it would be transferred to Crown lands and the land would be sold.

And have you chased up Council for this rezoning?---I've spoken to the General Manager of Council about it, I haven't chased it up, it's in the hands of one of my senior project officers, I haven't got a recent report from him.

Yes, thank you, Commissioner.
40

MR DUNNE: Mr Harding, my name is Dunne, I represent Mr Costello. Do you have with you a copy of your statement in the witness box? If I could take you to page 3 of your statement. And at the top is the continuation of paragraph 6. If I could take you to (iv) commencing "The Crown leaseholds entity"?---Yes.

About midway through that paragraph the statement says, "Over the years I've been advised by the LPMA Chief Financial Officer Bob Costello that this account is sacra sent." Is that correct?---That's right.

When you say "over the years" does that mean not recently?---Well, in terms of my working life with Mr Costello which might be five or six years it is my memory he repeatedly reminded me that this was a Treasury fund.

10 Sure. Since 1 July, 2010 has Mr Costello reinforced that?---I can't remember that.

And so you're unaware of any changes that may have occurred for the operation of the CLE account that took place on 1 July, 2010?---Well, I cannot recall.

Thank you. No further questions, your Honour.

THE COMMISSIONER: Ms Fisher.

20 MS FISHER: Thank you, Commissioner. Mr Harding, my name is Fisher, I'm the barrister for Pittwater Council. Commissioner, I have a document here that's been extracted from Exhibit 8C for convenience.

THE COMMISSIONER: Is it in the bundle? Is it in Exhibit 1?

30 MS FISHER: No, it's not, Commissioner. Mr Harding, you'll see if you read from the bottom up this is an email to you of 11 October from Mr Matchett also sent to Ms Connolly and Mr Foster and you'll see it says, "Currawong brief FYI note additional comments by WW and Minister." Is it your recollection that that attached the 8 October Briefing Note?

THE COMMISSIONER: Just show him the Briefing Note. Do you know the Briefing Note to which Counsel is referring?

MS FISHER: If you look at page 4 of Exhibit 1 in front of you. ---Sorry, what was that again?

If you look at page 4, at Exhibit 1?---Yes.

40 Is it your recollection that that email from Mr Matchett attached the document that's at page 4, 5 and 6 in Exhibit 1?---No, I can't remember that.

Then you'll see as we work our way up there's an email from Mr Foster to you and Ms Connolly dated 12 October, "We need to decide how we progress this and who should be the carriage officer." And then you'll see also the last line of that email, "Have had Dwayne Schultz mock up a very preliminary draft format for the MOU attached."

THE COMMISSIONER: What's your question?

MS FISHER: Do you recall receiving the MOU?

THE COMMISSIONER: I really have – what is the relevance of this and what interest does the Pittwater Council have in this?

10 MS FISHER: I'm sorry, Commissioner, I understood that it was germane to your inquiry as to why the MOU was not signed.

THE COMMISSIONER: I see. If it's relevant to that it is certainly relevant. Proceed.

MS FISHER: Thank you, Commissioner. And you will then see there's some emails deciding who will have carriage, and as I understand the emails you decide that Ms Connolly will have carriage, is that correct?---Yes, I, I'm just trying to recap on your question please. You asked - - -

20 THE COMMISSIONER: I think you're being asked whether by 12 October Ms Connolly was telling you that she should have carriage of the State Park issue, Pittwater State Park?---That's right.

MS FISHER: I'm going to show you another document and I indicate again this comes out of Exhibit 8C. Now, Mr Harding, this is an email from Mr Foster to Ms Connolly attaching the MOU. I'm not suggesting that you received it, and it says, "Bronwyn, for your review and sent on to Council." Were you aware that this MOU was not forwarded to Council until 6
30 December?---No, I have no knowledge of that.

Thank you. I'll show you another document and again, this comes out of Exhibit 8C.

THE COMMISSIONER: Ms Fisher, I think that it's desirable that you identify the documents that you put so that when we're looking at Exhibit 8C we can see which of the documents you mean.

MS FISHER: I'm sorry, again, Commissioner?

40 THE COMMISSIONER: I beg your pardon. It is desirable that you identify the documents to which you are referring so that we can find them in Exhibit 8C when the time comes.

MS FISHER: Yes, Commissioner.

THE COMMISSIONER: And I don't think that you have. Well, the previous document to which Ms Fisher referred was an email from Mr Foster to Ms Connolly dated 22 October, 2010 at 10.26am.

MS FISHER: Thank you, Commissioner.

THE COMMISSIONER: Now you are referring to a new document which is a, an email from Ms Connolly to Mr Harding of 6 October, 2010 at 10.27am. You may now proceed, Ms Fisher.

MS FISHER: Thank you, Commissioner. Commissioner, I indicate that a version of this email can be found at page 3A of the Exhibit 1.

10

THE COMMISSIONER: Yes.

MS FISHER: And Mr Harding, you were taken to page, the version of this which is at page 3A earlier by Counsel Assisting, Mr Alexis, but you will see that in addition to what's at page 3A there's an exchange between you and Ms Connolly on 6 October, you simply have typed "need some more education." Is the Commissioner, who is the Commissioner to understand needs some more education?---I think that's, my memory is not clear on this but I think there were issues in respect of operational practice and process between myself and Mr Watkins.

20

THE COMMISSIONER: In relation to what, Mr Harding?---The way the organisation generally ran, the relationships, lines of accountability, et cetera.

Well, what were you criticising Mr Watkins about in this email? You would have to read Mr Watkins' email to Mr Fenn because your email is in response to that so what was it that you were complaining about implicitly? ---To the best, the best of my ability I was expressing some frustration with Ms Connolly about the way the organisation ran. It was the, most probably the substance of the letter from Warwick to Stephen is not all that relevant.

30

I don't think we're getting very far, Ms Fisher.

MS FISHER: No. My concern was to see if that cryptic comment had anything to do with Pittwater Council, Commissioner, so - - -

THE COMMISSIONER: I don't take it as that.

MS FISHER: No. Thank you, Mr Harding. I'm going to show you one more document. Commissioner, I indicate that I showed this document to Counsel Assisting late last week. Mr Harding, in your answer to questions that were posed to you by Mr Curtin you referred to a meeting that you had had with officers of Pittwater Council. Can you just look at the front page of the document that I've given you. You'll see that that's an email from Mr Davis of Pittwater Council dated May 2, 2011 at 5.28pm and - - -? ---Yes.

40

- - - he attaches notes of a meeting that you appear to have had on 21 April?
---Correct.

Is that the meeting to which you were referring when you answered Mr Curtin's questions?---Well, I've only had one meeting with Pittwater Council since the election and this would be it.

10 Thank you. And he says he attaches the notes for your review and amendment. Do you recall reviewing the notes?---No. I recall receiving this correspondence and since then we have been preoccupied with both this inquiry and the challenges that the new government is putting on the division at the moment.

Thank you?---It has not been actioned.

20 Also in answer to Mr Curtin's questions you referred to a deal, that there was a deal that the land had to be transferred, that the land to be transferred had to be rezoned. Do I have that correct? Is that what you said?---That was my understanding of what the negotiated outcome was.

Okay. Who's the deal with?---This was the arrangement between Mr Watkins and Pittwater Council.

THE COMMISSIONER: Where did you get that understanding from?---To the best of my knowledge it came from Mr Watkins.

Yes, Ms Fisher.

30 MS FISHER: I have no further questions.

THE COMMISSIONER: Are you tendering this document?

MS FISHER: I would like to tender that document, thank you, Commissioner.

THE COMMISSIONER: Yes. The email from Ms Connolly to Mr Davis of 3 May, 2011 at 9.05am with draft notes attached is Exhibit 31.

40 **#EXHIBIT 31 - EMAIL FROM MS CONNELLY TO MR DAVIS
DATED 3 MAY WITH DRAFT NOTES ATTACHED**

THE COMMISSIONER: Mr Alexis, I think you are the last man standing.

MR ALEXIS: (not transcribable) Commissioner. Mr Harding, I have two questions if I may. Firstly, attention was drawn to a direction that was given I think you told us in June 2010 to raise a further \$6 million in the CLE

Fund for the purpose of funding another purchase. Do you remember telling us that?---It was from the Land Sales Programme, that's not the CLE.

I'm sorry?---Mmm.

And was the other purchase that you referred to the Newcastle Post Office?
---Yes.

10 And is it your understanding that that was funded in July 2010, that is to say in the financial year that just finished last Thursday?---I can't, it's my understanding that it happened in the last financial year, yes.

And finally, Mr Harding, could I take you back to the email that has led to quite a number of questions I regret to say on page 9 behind tab 4 and could I ask you to look at your email to Mr Foster and others in the middle of that page and could I ask you to find the sentence commencing "We can't keep on promising this good initiatives," do you have that?---Yes.

20 And further in that sentence just after the reference to Predictable income flow with a capital P you referred to the GEB will be - - -

THE COMMISSIONER: GBE.

MR ALEXIS: "GBE will be busted in the first year." What's the GBE?
---The LPMA had been carrying out a very long negotiation process with Treasury to establish the division as a Government business enterprise to take it off budget.

30 THE COMMISSIONER: What does GBE stand for?---Sorry, sorry, Commissioner, Government, Government Business Enterprise.

Thank you.

MR ALEXIS: Yes, thank you.

THE COMMISSIONER: Yes, thank you, Mr Harding, you're excused from giving evidence and the Commission will adjourn till 10.00am tomorrow morning.

40

<THE WITNESS EXCUSED

[5.10pm]

MR ALEXIS: But before you adjourn, Commissioner, can I announce for the benefit of the profession that we have some further statements available for collection after you adjourn from Treasury officials.

THE COMMISSIONER: Yes.

MR ALEXIS: And can I also indicate that I wasn't proposing to call Mr Greg Foster - his statement, I understand, has been circulated, but if any party wishes me to make Mr Foster available and call him then I'm happy to do so in light of some evidence concerning his involvement today. Thank you.

THE COMMISSIONER: Yes, thank you.

10

AT 5.11 THE MATTER WAS ADJOURNED ACCORDINGLY

[5.11pm]