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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE DAVID IPP AO QC

PUBLIC HEARING

OPERATION NAPIER

Reference: Operation E11/0475

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON TUESDAY 5 JULY 2011

AT 10.10AM

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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. Yesterday afternoon I indicated I was proposing to tender the statement of Mr Greg Foster, could I deal with that now, Commissioner.

THE COMMISSIONER: Yes.

10 MR ALEXIS: His statement has been circulated to all parties and is dated 20 June, 2011.

THE COMMISSIONER: Does that mean that Mr Foster will not be called?

MR ALEXIS: Well, there's been a request for any interested party to indicate to me whether he is required and I think some parties are still considering their position and if it's indicated that he's required then I will endeavour to call him and, of course, make him available.

20 MR BRANSON: Not by us.

THE COMMISSIONER: He's not required?

MR BRANSON: No, thank you, Commissioner.

THE COMMISSIONER: Well, I suppose, Mr Curtin and Mr Dunne, you are the two people most interested potentially. Will you be able to let Mr Alexis know by lunchtime?

30 MR CURTIN: I think by 2 o'clock.

THE COMMISSIONER: Yes. Mr Dunne. Yes, thank you. The statement of Mr Foster will be Exhibit 32.

#EXHIBIT 32 - STATEMENT OF MR GREG FOSTER

40 MR ALEXIS: Thank you, Commissioner. Commissioner, while we have Exhibit 32 could I just draw attention to a couple of matters. We heard from Mr Harding yesterday afternoon who was the Manager of the Crown Lands division. You'll see, Commissioner, in paragraph 3 that Mr Foster is the Manager of the Strategic Disposals and Projects within the Crown Lands division. In paragraph 6 he deals with his attendance at, what he describes as, a strategic lands meeting at Pittwater Council and then relevantly on page 3 of his statement, paragraph 9 he tells that while he was relieving in the position of Director, Strategic Policy and Projects on 1 October, 2010 he was asked by the Chief Executive Mr Watkins to attend a meeting with Mr

Matchett, Mr Ferguson who was the General Manager of Council, a couple of Council officers.

And he then provides some detail about that meeting at which we have heard a lot so far in this inquiry and we have the benefit of contemporaneous email communications concerning that. I should draw attention, Commissioner, to what Mr Foster says in paragraph 11 about making some notes and you'll see attached to his statement some handwritten notes which comprise one page. And it seems to us that when one looks at those notes and looks at the contemporaneous emails that the content is largely similar, if not precisely so, and that may be an area which might be explored if other parties see things differently.

Could I also draw attention to paragraph 12, Commissioner, on page 4. You'll see that he refers to some previous investigations and that he was aware that each of the Council blocks at Newport if rezoned from open space to residential would be worth about \$2.5 million each as unimproved land and just continuing before taking you to the documents supporting that, Commissioner, he says that the Council officers had suggested that rezoning was most likely to be supported by Council. At the end of the meeting the CEO indicated he was happy for the acquisition to occur and he would need to consult the Minister on it.

Can I invite you, Commissioner, to look at the first series of documents attached to Mr Foster's statement. You'll firstly come to what appears to be a plan of the area adjacent to Beaconsfield Street and you'll see the shaded darker land indicating the Council land with the battleaxe means of access to Beaconsfield Street. If you turn the page you'll that there's a printout from, what's described as, ValNet Property Details, and with respect to lot 5 and lot 6 and with another lot, lot 155 of DP752046 and that's the Crown land between the Council land and the foreshore. The ValNet valuation indicated \$967,000. There is also detail exposed from the ValNet inquiry on the following pages relating to the other parcels of land but importantly the Newport land as we've referred to it seems to be the subject of that inquiry of that ValNet search as I've indicated.

The other matter I should draw attention to, Commissioner, is in paragraph 13 of Mr Foster's statement where he refers to his involvement in the preparation of the Briefing Note to the Minister which came to be dated 8 October, 2010, that's in paragraph 13 and finally can I draw attention to what he says in paragraph 14 and if I could ask you, Commissioner, to locate about halfway through that paragraph the reference to the CEO, Mr Watkins, indicating to him, he says in passing, that "his programme should make additional sales for the year to cover the balance of the cost of the Currawong purchase if progressed. At a later date I was advised in passing by my director that I would be required to increase my target to \$25 million for the 2011/12 year to cover the purchase cost of Currawong." Those are the matters I wanted to just draw attention to at this stage - - -

THE COMMISSIONER: (not transcribable)

MR ALEXIS: - - - Commissioner, and - - -

THE COMMISSIONER: Yes, all right.

MR ALEXIS: Commissioner, can I now call Mr Carl Malmberg.

10 MR BRANSON: While he's coming into the box can I confirm,
Commissioner, we do not require Ms Pettersson? I'd said something on the
record when some documents were tendered that - - -

MR ALEXIS: Thank you, Mr Branson.

MR BRANSON: Thank you, can I apologise to my learned friend to taking
so long.

20 THE COMMISSIONER: Mr Malmberg, you are not legally represented are
you?

MR MALMBERG: No, I'm not, your Honour.

THE COMMISSIONER: Please sit down. Have you been sitting in the
inquiry at other times?

MR MALMBERG: I have come here on one or two days to acquaint
myself.

30 THE COMMISSIONER: So you've heard the order that I made for
witnesses.

MR MALMBERG: Yes, I have, Commissioner.

THE COMMISSIONER: And you understand what that order does.

MR MALMBERG: I do now.

40 THE COMMISSIONER: And would you like me to make such an order for
you?

MR MALMBERG: Yes, please.

THE COMMISSIONER: I will. Pursuant to section 38 of the Independent
Commission Against Corruption Act, I declare that all answers given by
Mr Malmberg and all documents and things 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.

10 **PURSUANT TO SECTION 38 OF THE INDEPENDENT
COMMISSION AGAINST CORRUPTION ACT, I DECLARE THAT
ALL ANSWERS GIVEN BY MR MALMBERG AND ALL
DOCUMENTS AND THINGS 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.**

THE COMMISSIONER: Mr Malmberg, would you like to give your evidence under oath or would you rather affirm the truth of your evidence?

20 MR MALMBERG: Under affirmation, Commissioner.

<CARL ANDERS STEPHEN MALMBERG, affirmed [10.18am]

THE COMMISSIONER: Mr Alexis.

THE WITNESS: Commissioner, if I may, sorry to interrupt, I did wish to seek two amendments to my statement.

10 THE COMMISSIONER: I am sure Mr Alexis will deal with that?---Thank you.

MR ALEXIS: Sir, is your full name Carl Malmberg?---Carl Anders Stephen Malmberg.

Thank you. And, sir, you are the Director of the Office of Strategic Lands, is that so?---Yes.

And you've held that position since April 2010?---That's right.

20 And before the recent election in March the Office of Strategic Lands or the OSL if we can use that acronym was part of the LPMA, is that so?---That's right.

And your reporting line as Director of OSL was directly to Mr Watkins? ---That's correct.

Now, in this matter you prepared a statement of evidence is that so?---Yes.

30 And could I show you please your statement together with the annexures referred to in it with a copy for you, Commissioner?---Thank you.

Now, I understand there are two amendments that you wish to make to your statement. Could I deal with them immediately. Firstly is it the case that you wish to correct something in paragraph 28 on page 7?---Yes, that's correct.

And is the reference to the acronym TOES supposed to be Treasury Online Entry System - - -?---That's correct.

40 - - - in lieu of what you've recorded there in paragraph 28 Treasury Operating and Expenditure Statement?---It is. The TOES is effectively our budget and I perhaps subliminally think of it as an operating and expenditure statement.

Now, if you go to the amendment to be made in paragraph 38?---Yes, the second sentence gives the impression that there was a further phone call after the initial email as per the statement, I'm quite confident that there was

no second phone call and that statement needs to be attributed back to the original phone call prior to the initial email.

Could I seek to correct it this way and can you tell me whether this captures the correction you wish to make?---Certainly.

10 And I'll just read the relevant sentence and correct it as I go through. "I recall that Watkins spoke with me by telephone" insert "prior to" cross out "after" the initial email, insert comma, "he advised me" cross out "to advise", "he advised me that additional funding might be required up to one-third of the purchase price."?---Yes.

Does that capture the correction you wish to make?---Yes, it does, thank you.

Mr Malmberg, apart from those corrections is your statement of evidence otherwise true and correct?---I believe so.

20 Thank you, Mr Malmberg. I tender the statement together with the annexures, Commissioner.

THE COMMISSIONER: Yes. Mr Malmberg's statement will be Exhibit 33.

#EXHIBIT 33 - STATEMENT OF MR MALMBERG

30 MR ALEXIS: Now, Mr Malmberg, can I try and draw some threads together about how we should understand the relationship between the OSL and the Corporation Sole as representing the Minister and the Sydney Regional Development Fund?---Yes.

Should we understand that the Office of Strategic Lands of which you're the Director represents, in an operational sense, the Corporation Sole known as the Minister administering the Environmental Planning and Assessment Act?---Yes.

40 And it also represents, again, operationally the underlying Sydney Regional Development Fund or the SRDF?---Yes.

And can you explain to us what the OSL does in terms of the identification of lands that might be the subject of acquisition or otherwise the use of SRDF funding?---Yes. The Office of Strategic Lands operates for the Corporation Sole in acquiring land predominantly that is identified in the planning instrument as being required to be acquired by the Corporation Sole. The planning instruments may be a local environment plan or a state environmental planning policy. The Office may also operate on behalf of

Corporation Sole to acquire land that Government has as an objective to acquire, for example, transport corridors, other open space, foreshore lands, special use lands.

Now, does this relate, as the name of the SRDF would suggest, to the Sydney region only?---It operates the – the Regional Development Fund operates within the Sydney region development area which is also provided for in the Act to be established. The Sydney region development area includes 43 Local Government areas extending from Gosford and Wyong in the north to Wollondilly in the house and then west to the Blue Mountains.

Now, in paragraph 7 of your statement, Mr Malmberg, you tell us about the statutory foundation for the Corporate Sole, is that right?---Yes, that's correct.

And we should understand from paragraph 8 and paragraph 9 the powers and responsibilities of the Corporation Sole and, as I think you've just indicated, the functions that are conferred or imposed by relevant planning instruments?---That's correct.

Now, in paragraph 13 you tell us about the SRDF and the creation of that fund by force of section 130 of the Environment Planning and Assessment Act, is that so?---That's right.

And should we understand based on section 130, subsection 3 of the Environment Planning and Assessment Act that the SRDF is available for use in relation to acquisition or development of any land within the development area?---Yes, I believe that's the case without seeing it again.

And development area is the area that you've just described?---That's right.
Wider Sydney?---Okay.

Now, in paragraph 17 of your statement you tell us about the type of land which might lead to acquisition by funds from the SRDF, that is to say, land reserved open space, do you see that?---Yes, I can.

And should we understand that the SRDF fund is available for acquisition purposes of land so zoned under the relevant environment planning instrument?---In this case, yes, the land reserved for country open space.

And so when we come to consider the Currawong on the Pittwater should we understand that the Pittwater LEP identifies part of the Currawong site as land that could be acquired by the Corporate Sole using the SRDF?
---Yes, that's right.

And you've looked, I gather, at the Pittwater LEP and you've satisfied yourself that there is that essential linkage between the nature of part of that

site which is reserved open space and the potential availability of SRDF funding to acquire that part?---Certainly three of the four lots were reserved for country open space and the Pittwater LEP, the Local Environment Plan, made provision for, in their definition, the Corporation, Corporation Sole to be the acquisition authority for those lands.

10 And in your statement you refer quite often to the expression “acquisitional liability” and I think that’s intended to identify the planning instrument basis upon which the Corporate Sole may, if it decides, acquire land by reason of that acquisitional liability provided for in the relevant planning instrument. Have I got that right?---Yes, that’s right.

All right. Now, I think in the events that occurred with respect to Currawong the Corporate Sole using SRDF funding did not acquire that part of Currawong that was zoned open space, is that so?---No, it has not directly acquired those lands.

20 Well, it hasn’t indirectly acquired those lands, has it?---No, it has not acquired them.

So if we understand, and you might tell me that I’m being a little too strict about this, and I’ll be happy for you to do so, but we should understand that the Corporate Sole using SRDF funding did not exercise rights arising from an acquisitional liability in the Pittwater LEP to acquire the Currawong or part of the Currawong site?---It has not acquired the site. The provision of funds towards the acquisition of Currawong I believe is consistent with the intention of the Corporation Sole and the LEP and consistent with the funds purposes in, in purchasing of, or acquiring of open space.

30 But the point I think you’re making is that the Corporate Sole made a grant from the SRDF to the Crown Lands Entity or Crown Leasehold Entity to be precise which that entity then utilised for the purchase of Currawong? ---Yes.

In other words the Corporate Sole didn’t pursuant to any acquisitional liability arising out of the LEP itself acquire the open space at Currawong? ---It did not acquire the land, no.

40 And that’s normally what happens isn’t it?---The usual practice - - -

THE COMMISSIONER: What is normal is - - -

MR ALEXIS: I’m sorry, let me be more precise. Mr Malmberg, what ordinarily happens is that the Corporate Sole using SRDF funding will directly acquire, that is to say the Corporate Sole will become the registered proprietor of the open space so zoned land as its - well, pursuant to its acquisitional liability?---It does that as part of a process whereby it acquires

the land, manages it for a short period of time and hands it on to the most suitable end agency for its final uses and ownership.

THE COMMISSIONER: That's the ordinary practice?---The ordinary practice, yes, Commissioner.

MR ALEXIS: And so in the circumstances that we have here where a request was made for a grant and that grant was accepted and the Corporate Sole paid pursuant to that approved grant of \$4.2 million to the Crown
10 Leaseholds Entity, in that sense it was unusual?---The grant was, yes.

Well, in your time since being the Director of, of the OSL since April 2010 have you ever seen that occur apart from Currawong?---Not in that form. We regularly acquire land and transfer the grant of the land or the land as a grant to the agency and the initial proposal as it was put to me was that the Corporation Sole and the SRDF would acquire the lands which it had an acquisition obligation for and then it was expected to transfer them as a grant of land to the Crown Lands Entity.

20 But can you recall to mind a circumstance prior to Currawong where the Corporate Sole didn't acquire and then transfer to the relevant agency but in lieu thereof made a cash grant of money?---No, sorry, I thought I'd made that clear, no.

No?---No.

And how long have you been involved in the work of the OSL?---I first joined in 2008, I think in September or August 2008. I was then a Director of Open Space and Transitional Lands with the responsibility more towards
30 the property management side of the organisation. In I think September 2009 part of the OSL was transferred from the Department, the then Department of Planning to LPMA and that was predominantly the property management side. In April 2010 the full OSL was transferred across to LPMA and since the election has returned to Department of Planning and Infrastructure so that's my full extent of involvement with OSL.

Thank you. Now, you tell us in paragraph 22 and following about the OSL Business Plan which is a fairly weighty document forming annexure A to your statement and projects forward from 2009 to 2023. Is that so?---That's
40 correct.

And the annual programme of land acquisition with a component relating specifically to open space acquisition is the spreadsheet that forms annexure B to your statement. Is that right?---That is the spreadsheet at the time.

Yes. And that relates to the 2010/2011 financial year, is that so?---That spreadsheet is a spreadsheet that would probably have been prepared in about 2007 in preparation, 2008 perhaps, I imagine, in preparation of the

Business Plan. I don't know that it would directly relate to the 2009 ah, 2010/11 year.

THE COMMISSIONER: Your statement says that.

MR ALEXIS: Could I just ask you to look, Mr Malmberg, at paragraph 27 where you describe the spreadsheet which is annexure B as the OSL acquisition programme for the period 2010/11?---Yes. I don't believe that's attached to the Business Plan.

10

No, it's a separate document?---Yes.

It's attachment B?---Yes.

Now, is the point that you wish to make in referring to both the Business Performance Plan Annexure A and the spreadsheet being annexure B that Currawong was not on any open space acquisition programme prior to the events of March 2011?---That's correct that it's not on the, was not part of the land acquisition programme, no.

20

And I think you make that clear in paragraph 29 of your statement. Is that right?---That's correct.

Now, could I just ask you some questions concerning procedure. Should we understand that business plans will be prepared for each acquisition programme and that those plans essentially are directed to assessing issues of liability and issues surrounding cash flow?---That is the intention.

30

And may we understand that in managing the SRDF one needs to forward plan as best one can to ensure that when acquisitions occur there is funding available to meet acquisitional liabilities?---That is correct.

Now, can I come to the subject of financial delegations which I think you deal with in paragraph 31 and following and you refer I think to Mr Watkins having a, an SRDF financial delegation up to \$50 million, do you see that in paragraph 32?---I do.

40

And you describe that as one for land for acquisition, do you see that?
---Yes.

And you refer to your own financial delegation for land acquisition being up to \$10 million. Do you see that?---Yes.

Now, if we go to annexure C to your statement which you'll find commencing at page 133 in the bottom right-hand corner?---Yes.

And if we in particular go to page 136, I think everyone has the benefit of pagination but me, Mr Malmberg. Now, we come to the schedule I think which informs the nature of the delegation, is that so?---Yes.

And level 1 I think we should understand as being that the Chief Executive?
---That's correct.

10 And when you were speaking about a financial delegation for the acquisition of land we should understand the terms of that delegation set out on page 136 in the box under the heading "1. Acquisition of Land." Is that right?---That's correct.

And if we just look at the terms we see that it relates to acquisition of land by the Corporation pursuant to the Land Acquisition (Just Terms Compensation) Act, see that firstly?---Yes, I do.

And Currawong doesn't fall into that category, does it?---No.

20 And then we see "And provisions of an environmental planning instrument or in accordance with an acquisition program approved by the Corporation." Do you see that?---I do.

Now, Currawong didn't fall within the acquisition program approved by the Corporation, did it?---No, it didn't.

So it was available only based on the provisions of the EPI which, I gather, related only to those parts of Currawong that were reserved open space?
---Yes.

30 So if Mr Watkins wanted to exercise the land acquisition financial delegation that we see at page 136, and leaving aside the limit of that delegation at \$50 million it could only be exercised for the purpose of acquiring land, and I intend to include in that the arrangements for the grant that I'll come to, but nonetheless, limited to the part of the subject land reserved open space?---Yes, yes, it, it could be that the acquisition could be approved by the Corporation.

40 And if the subject land contained a variety of parcels that had different zoning would your understanding of the funding from the SRDF based on the acquisitional liability to be limited to only that part that is covered by that liability arising under the LEP?---Sorry, could you repeat the question?

Of course. If a parcel of land in respect of which there was acquisitional liability arising under a relevant LEP comprised a number of parcels which were the subject of different zonings would the SRDF funding relate only to the acquisition of that land of which is zoned open space?---It would unless it was approved by the Corporation.

And in what circumstances would the Corporation approve the use of SRDF money to acquire land that was not zoned open space and therefore the Corporate Sole had no acquisitional liability?---In the interests of desirable Government outcomes and objectives for the public, in the public interest.

And where do we see that referred to in section 130 of the Environmental Planning and Assessment Act?---I believe it's within the powers of Corporation Sole.

10 And where do we find those powers expressed?---In the EP and A Act.

All right. Now, can I come to your involvement in the acquisition via the OSL of Currawong and you deal with that subject, I think, from paragraph 34 of your statement, is that right?---I'll have a look.

Can you tell us there, Mr Malmberg, that it was in late 2010 that you had a discussion with Mr Watkins, he stated that he wanted the LPMA to purchase the Currawong site and establish a State Park, do you see that?---Yes, I see that.

20

And he asked you if the SRDF could play a role, do you see that?---Yes.

And you tell us in paragraph 35 that you told Mr Watkins that you thought the SRDF has an acquisitional obligation, do you see that?---Yes, I do.

And did your discussion then focus on the provisions of the Pittwater LEP that triggered that acquisitional liability or should we understand what follows in paragraph 35 to be a reflection of what you thought at the time? ---That's a reflection of what I knew and provided in the statement, it's not a reflection of the conversation as I recall it.

30

I just wanted to get that clear?---Yes, yes.

So after you said to Mr Watkins that you thought the SRDF has an acquisitional obligation did further communications with Mr Watkins occur on that subject?---Not that I recall, no.

And can you recall when you put this conversation in late 2010 whether you were aware that Mr Watkins was going to see Minister Kelly on about 8 October with a Briefing Note relating to the possibility acquisition of Currawong?---No, I don't think so.

40

So when you had this conversation with Mr Watkins did you understand from what he said to you that he'd seen the Minister and was seeking to try and progress the opportunity to purchase Currawong in that context or not? ---I really can't recall, it was a fairly, the conversation as I recall in relation to Currawong was a fairly incidental one in relation to, in regards to our overall conversation I think at that time.

I'll show you Exhibit 1 in this inquiry, Mr Malmberg, and I'd ask you to go to the document behind tab 2. And you'll see, Mr Malmberg, that there is a three page briefing document ending on page 6 of the exhibit with Mr Watkins' signature and that of Minister Kelly containing an endorsement approving to proceed to negotiations, do you see that?---Yes, I do.

Thank you. Now, did you see this document before you spoke with Mr Watkins in late 2010?---No, I don't believe so.

10

Have you ever seen this document after speaking with Mr Watkins in late 2010 up to the time that you understood contracts for Currawong had been exchanged?---No, I don't believe I did.

THE COMMISSIONER: When you refer to late 2010 you're referring to the discussion mentioned in paragraph 34, Mr Alexis, of Mr Malmberg's statement.

MR ALEXIS: I am. Yes, I am.

20

THE COMMISSIONER: Do you understand that, Mr Malmberg?---Yes, I do.

MR ALEXIS: And if you could just look please at page 5 behind tab 2 of Exhibit 1, if I could ask you to focus on paragraph 3.6 and particularly the handwriting there which follows the sentence, "In the interim it is proposed that funds for purchase would be made available from (not transcribable) trust funding - - -?---Excuse me. Sorry, I've had a heavy cold.

30

No, no, that's all right. And then you see the handwriting, "And from SRDF funds through the Planning Minister, Corporate Sole." Do you see that?---Yes, I do.

Now, do you recall having any conversations at all with Mr Watkins prior to 8 October, 2010 about SRDF moneys being used for the purchase of the Currawong site?---No, I come back to the statement. My recollection is that in late 2010 he made that mention of wishing to purchase, asked me if the SRDF could play a role, I thought at that stage SRDF had an acquisitional obligation and I may have, I may have said that, you know, funds could be applied, but that's about the extent of my recall with the conversation.

40

Thank you. Now, in paragraph 36 you tell us that your first final direction that you received regarding the acquisition of Currawong was on 11 March, 2011 and you refer us there to an email which I think we find in annexure D on page 159, is that right?---I see the statement. Just a moment, I'm finding tab D.

If you just come through to page 159.

THE COMMISSIONER: Of your statement?---Yes, I see it, yes. And, yes, it continues on, that's right.

MR ALEXIS: And perhaps starting at 160 - - -?---Yes.

- - - we have an email from Mr Watkins to Mr Linz of 10 March which refers in the opening line to a verbal contract today and you see in the next paragraph reference to the \$12.2 million purchase price?---Yes, I see that.

10

And then in the email to you from Mr Watkins back on page 159 he sends you that communication, that is the one between he and Mr Linz on Friday the 11th at about 9.13am and advises you about the Currawong purchase? ---Yes.

And tells you that he wants to take the 10 per cent deposit from the Planning Corp Sole. Do you see that?---Yes, I do.

Now, you then responded I think at the top of page 159 of your statement, annexure D, is that right?---That was an email I sent on, I forwarded Mr Watkins' email to the accountant in OSL.

20

Sorry, when I say responded I meant responded to his email by sending it not to Mr Watkins but - - -?---Yes, but later on I do respond in an email to say that, yes, we would make that (not transcribable)

Yes, I'll come back to that. You responded to Mr Ng, N-G, is that right? ---Yes, that's right.

He worked in Corporate Finance did he?---He was a, a Corporate Finance employee placed within the OSL to provide financial and management accounting services.

30

And can I ask you to tell us what you meant when you told him that "we will need some form of valuation information"?---Yes. I, I was advising him that we would be seeking to get some form of valuation information. It's kind of a process advice more than anything else.

All right. And was that valuation in the form of an external valuation from a registered valuer?---That was my intention, yes.

40

Now, in the next paragraph you tell Mr Ng "Corporate Sole's total financial expenditure out of the 12.2 purchase will be about 30 per cent, say about 4 million and the deposit will be taken from that approximate 4 million purchase price." Do you see that?---Yes, I do.

Now, can you explain to us why shortly after receiving the email from Mr Watkins you communicated the reference there to 30 per cent of the

12.2, about 4 million? Where does the 30 per cent come from?---The 30 per cent comes from the, a reference that was made, I think, during the phone call, the initial phone call. It was part of the request to amend the previous statements, paragraph 38, where in the initial phone call advising me of the government's intention to purchase the Currawong estate and the role for SRDF Mr Watkins advised me that up to a third of the purchase funds might be required. I then emailed Mr Ng, in hindsight the word "will" perhaps should have been might or may but in the scheme of things - - -

10 So we should understand that the 30 per cent came from Mr Watkins. Is that right?---Yes.

And did you understand that that figure of 30 per cent related to the open space component of the Currawong land?---It really had to be determined at that stage as to how the contribution of the SRDF towards the acquisition of Currawong would be finalised I felt.

20 Now, can I bring you back to paragraph 37 of your statement and you tell us there that after the reference to your email to Mr Ng that your mindset was that the primary issue was to ensure that the OSL complied with the direction of Mr Watkins and secondly that valuation information be obtained?---Yes, that's right.

And may we understand that you understood at least from either the email that Mr Watkins had forwarded to you or from something Mr Watkins said that it was proposed to exchange contracts the following Tuesday, this is occurring of course on the Friday?---Yes.

30 So there was some time imperative about all this?---Yes.

And did you expect to obtain valuation evidence before the Tuesday?---I wasn't sure that we would be able to, I did later seek advice in valuation for the exchange but it was my opinion that whether the SRDF purchased or acquired the lands for which it had the obligation to acquire or contributed towards the purchase of, of additional land that the main reason for valuation in our sense would be that we would be able to account for it in, in the SRDF accounts and account appropriately for it. So the valuation, given that at 11 March it was a negotiated price and a market price my interest was ensuring that the SRDF accounts would then be kept accurately.

40 Now, I think you told Mr Watkins as we see in paragraph 39 that you would organise the 10 per cent deposit and we see evidence of that I think in your email which is annexure E at page 161, is that right?---Yes, that's right.

Now, did something happen after that which meant that in fact the deposit wasn't paid from SRDF funds?---Yes. I think later in the process and the statement deals with that, I can't remember the exact details of it but they're in the statement through emails, I was informed that the Crown Lands Entity

would now be the sole purchaser rather than there being two purchasing entities and Corporation Sole having to then transfer the land - for the purpose of streamlining the acquisition that the Crown Lands Entity would be the single acquirer and it would be paying the deposit and it was, it was then a grant was proposed as the means of SRDF contribution to the public outcome.

10 Now, in paragraph 41 of your statement, Mr Malmberg, you tell us that you conducted some inquiries to confirm the real property information over which there was an acquisitional clause for the Corporation Sole, do you see that?---Yes, I do.

And that I think takes us to your email of 11 March just after noon which is annexure G at page 165, is that right?---I'm just having a look now. Yes, that's where I provided the details of the lots over which the Corporation Sole had a, an acquisitional responsibility or liability.

20 And that related to the open space land - - -?---Yes, the land reserved for - land is - - -

- - - as zoned under that LEP?---Yeah, the land zoned as reserved for country open space.

So by about 12.20 on Friday the 11th you'd searched the relevant parcels and checked them against the provisions of the Pittwater LEP to satisfy yourself that an acquisitional liability existed?---That's correct.

30 And do we then see that you asked the question "has there been any valuation of the four lots for purchase", do you see that?---Yes, I do.

And then you refer to your land management database have lot 1 and lots, sorry, one lot and two lots, 2004 and 2006, estimated acquisition total three lots valued at \$1.3 million, do you see that?---That's correct.

So was that historic information that was available to you but come 11 March was somewhat out of date hence the question have - - -?---Yes.

40 - - - there been any valuations for the four lots for purchase?---That's correct. The, the land management database had them as estimated acquisition totals. I was not able to determine whether they were the result of a professional evaluation for value and additionally they were in, in the scheme of property in Sydney quite old valuations.

Now, did you get a reply to this email?---No, I don't believe so. In the sense of valuations, is that what you're asking?

Yes?---Sorry, I wasn't clear. No.

Paragraph 41 of your statement, last line tell us, "I did not receive a response to the inquiry."?---No.

And I just wanted to get clear with you, Mr Malmberg, that on 11 March, 2011 having asked the question about valuation you got no response either that day or before the contract was exchanged on 15 March, is that so?
---That's correct.

10 And can I just add to that and ask you to confirm that you never received any valuation of the land the subject of the acquisition liability prior to the SRDF paying the grant of \$4.2 million plus GST, is that so?---Yes, that's correct and I refer back to the statement at paragraph 37 where the market price, as I understood it, had been negotiated and my view and opinion was that we could obtain adequate valuation information to make sure our accounts were accurate at a later date.

You never received any valuation prior to the transaction being completed on about 6 April?---That's correct.

20 Is that so?---That's correct.

And since completion have you received any valuation?---I have prepared for a valuation but I have not instigated it. I've instructed the valuation services.

Now, can I ask you to be shown Exhibit 20. Now, Mr Malmberg, Exhibit 20 is a copy of a valuation that Pittwater Council obtained for the Currawong site. You'll see the date on the front 9 December, 2010, do you see that?---Yes, I do.

30 Thank you. And could I ask you please to just open the valuation to the Executive Summary and can I just ask you to note the date of inspection, the valuation date and the market value range of 10 to \$11.5 million in the summary, do you see that?---Yes, I see that.

And would you be good enough to come through please to page 25 of the valuation. You'll see the page numbering in the bottom right-hand corner, do you have that?---Sorry, there's one on the top left too, top right. Yes, I see that now.

40 Follow the pagination in the bottom right-hand corner?---Yes, yes.

And that should be the commencement of section 8 dealing with Valuation Rationale, do you see that?---Yes, I do.

Thank you. And if you turn the page you'll see at the bottom of page 26 of the valuation the valuer after referring, I think, to some comparables sets out some calculations, do you see that?---Yes, I see the paragraphs there.

Thank you. And you'll see that the valuer says, "We assess the average value of a lot on the subject property to be in the range of 850,000 to 950,000, do you see that?---Yes, I do.

And if you turn the page you'll see that in the calculation the valuer has looked at gross realisation assuming 16 lots at 850 to 950?---Yes, I do.

10 And there's a reference to nine cabins of between 200 to 250, do you see that?---Yes, I do.

Just coming back to the bottom of page 26 do you see that the valuer says, "We have attributed a relatively nominal amount of 500,000 to the land reserved 9B country open space due to its steep unstable topography and little potential for economic utilisation." Do you see that?---Yes, I do.

20 And if you come over the page you'll see that in the calculation after sales, costs and development costs and holding costs are brought to account there's a reference to a value of the residential zone property of between 9.6 million and 11 million, do you see that?---Yes, I do.

And then underneath that there's the value of the escarpment land at half a million dollars and that relates, it seems, to the land that's reserved open space, you see that reference I just took you to on page 26?---Value of escarpment land at 500,000 and - - -

If you just come back to page 26 you'll see that the valuer is referring to matters - - -?---Yes, a relatively nominal amount of 500,000.

30 Which is the open space zone land, do you see that?---Yes, I do.

And in the result one sees that the valuer's market value is a range of 11 – I withdraw that, I'm sorry – 10 million to 11.5 million as we saw in the Executive Summary?---Yes.

Now, did you see this valuation at all prior to 11 March?---No.

40 When you were asked the question, "Are there any valuations for the open space lots" do you recall any reference to the existence of this valuation?---I don't recall anything.

Did Mr Watkins ever tell you in your communications with him prior to 15 March whether he had this valuation in his possession?---I don't believe so.

And, Mr Malmberg, did you have any idea prior to the SRDF fund approving the grant of \$4.2 million that Mr Watkins had in his possession, assuming it be the fact, this valuation Exhibit 20 would show the open space component of \$500,000?---Sorry, could you put that again.

Did you know prior to the SRDF grant funds being paid to the Crown Leasehold Entity that Mr Watkins had in his possession, if that be the fact, this valuation would show open space valued by a valuer in December 2010 for \$500,000?---No, I don't believe so, no.

Had you known that, Mr Malmberg, would that have caused you some concern as to whether the grant for \$4.2 million should've been approved?
---No.

10

Why not?---My understanding was that the Government's intention to acquire Currawong was to achieve a particular public purpose, to provide regional open space. The SRDF's, one of the SRDF's main functions is to acquire regional open space and acquire land for planning purposes and I would've regarded despite the figure of 500,000 for the three lots which is over 70 per cent of the land area of the Currawong purchase, I would've regarded that the contribution was consistent with the SRDF's objectives.

20

And from whom did you understand that there was a Government objective to acquire this site?---From Mr Watkins' initial email.

And from anyone else?---From the fact that the LPMA including Executive Officers and Corporate Finance were involved in the purchase of it.

30

But did they tell you that they were doing it because they understood there was a Government objective to buy this site or did they tell you they were doing it because Mr Watkins told them to?---I don't recall that it was said either way, I think – well, that would be an assumption on my point. From my point of view I understood that this was a Government objective.

THE COMMISSIONER: Where did you understand that from?---From the email originally and from the involvement of LPMA officers in the purchasing of the land.

MR ALEXIS: And in paragraph 43 you tell us that you received an inquiry from Mr Simpson who was tasked to act on the conveyance of the property?---Yes.

40

An inquiry about GST issues, do you see that?---Yes, that's right.

And there was then reference I think to earlier valuations and you made a suggestion about a VG valuation. Do you see that?---Yes, I do.

Can I just ask what, what valuations you are referring to there?---I believe it was the 2004 and 2006 valuations earlier mentioned.

And that was the extent of the valuation evidence that you had at the time, is that right?---That's correct.

All right. Now, can I ask you to please come through to annexure J to your statement at page 179 and if I could ask you to start on page 180 - - -?
---Yes.

- - - and is this where we see from Mr Ng's email at 11 March at 2.14pm the emergence of the idea for the SRDF to grant or act like a grant of funding to the Crown Leasehold Entity?---Yes.

10 And then you responded I think at the top of the page at page 180 "the land we purchase will be in the name of the Corp Sole and then transferred effectively like all other open space land we purchase," and then you've posed the question, "Does that help? How we treat it would best be determined by advice from Bob et cetera, do you see that?---Yes, I do.

Now, can I just ask why you were putting that at this point in time and why you were asking whether that helped?---Well, I was still of the understanding that we were effectively purchasing or contributing towards the purchase and actually purchasing the land for which - the three lots for
20 which there was an acquisition obligation.

THE COMMISSIONER: I - - -?---Sorry.

I'm not sure if I understand this properly?---Yes, Commissioner.

I'd appreciate it if you'd just clarify this for me?---Certainly.

I understood from what I read and perhaps I didn't understand it properly but in a case like this an acquisition liability would only arise if you were
30 called upon to purchase by the owner of the land?---There is two ways, there may be, Commissioner, the acquisitions where we have a responsibility or a liability to acquire may be either owner initiated or they may be at the discretion of government.

I see. Yes, thank you.

MR ALEXIS: Now, if I could bring you back to you the further emails within annexure J on page 179 and if I could just ask you to note without
40 reading Mr Ng's email to you at 221 at the bottom of the page where he says, "I've been told CLE will be paying and putting it on their books straightaway", do you see that?---Yes, I do.

And then if I can just draw attention to your response at the top of the page where you told him that "in relation to these issues you best check with Bob C," a reference no doubt to Mr Costello, is that right?---That's correct.

And then you say, "We are paying dollars for land and whilst it may end up Crown Land it will initially be Corp Sole, I think what we may be talking

about here is an initial payment of 10 per cent from CLE with a reimbursement from SRDF, that's what was discussed with M," I think that's me, "by Bob Costello." Is that right?---Yes, that's, yes. That's what's there.

10 So would it be fair to describe the position on the afternoon of Friday, 11 March as somewhat of a moving feast in terms of how this was going to be structured and paid for?---It, it, yes, I think you could say that there was, at that stage it appeared that it was a little, there was the emergence of other options. I, as I say in the email, was still expecting that we were looking to acquire the three lots.

20 But, Mr Malmberg, could I suggest to you that by the afternoon of Friday, 11 March it was obvious to you that there had been no clearly articulated acquisition strategy concerning Currawong?---The acquisition strategy as it had been expressed to me was that the government would purchase Currawong and we would have a role to play, the SRDF would have a role to play. It would focus on the acquisition of the lots that it had the liability for but there was some potential still for a contribution towards the purchase of other land.

But the planning for this was occurring as it was proceeding, wasn't it? ---Well, it had already, the plan, it depends what you mean by planning I think.

Well, Mr Malmberg, initially you thought you'd have to provide the funds out of the SRDF for the deposit didn't you?---Yes, that's correct.

30 And you then thought that the Corporate Sole representing the Minister for Planning would be one of the purchasers together with the Minister for the Crown Lands Entity?---Yes, that's correct.

And then you learnt that there was, rather than that, going to be funding provided by way of a grant out of the SRDF?---Yes, that was later.

But the arrangements for this were evolving as time was passing by on Friday, 11 March weren't they?---Arrangements evolving, I think you could say that.

40 THE COMMISSIONER: There was no fixed plan?---There was an overarching plan I think but there was a determination of options to achieve the outcomes.

But you'd seen nothing in writing?---Only - - -

No plan in writing?---Just the initial email and the conversations we'd had, that's right, Commissioner.

And no valuations?---No, it was already, it had already been agreed according to the email to be purchased at a particular price - - -

Yes?--- - - - and I, I had views about how we could manage our accounting.

Without valuations?---At the time yes, I felt that we could make the necessary accounting actions to account for the fund's money.

10 But you, you had asked for valuations and you hadn't received them?
---That's correct.

And didn't that concern you?---It was a, an avenue of inquiry initially. There was a degree of concern but as I say, I formed the opinion that in the time available that we would be able to get adequate valuation information at a later date if it appeared then and be able to make the necessary accounting actions.

20 Why did you ask for valuations when you did?---It would have helped us understand how much the acquisition cost might be to the SRDF for the three lots and if there was - - -

Why is that? I'm sorry, I don't understand. How does valuations tell you what the acquisition cost is going to be?---I'm sorry, Commissioner, could you repeat that?

30 I asked you why you got the valuations, you said that it would help to tell you what the valuation, was the acquisition costs would be?---Oh, yes. The acquisition costs to the SRDF. I'm sorry, I'm not perhaps making myself clear.

I don't, still don't understand that so do you mind explaining that?---Yes, certainly. It was my understanding that the SRDF would be contributing to the purchase and my overarching understanding was that it would contribute to the purchase by acquiring or purchasing or providing the funds for the purchase of the three lots that we had an acquisition obligation for. Whilst we didn't have valuation information at the time we knew what the overarching purchase price was.

40 The overarching purchase price - - -?---Was 12.2 million.

Which Mr Watkins had agreed to pay?---Yes.

You knew that he had agreed to pay that?---He, that was, I took that as being the fact from the email, initial email.

That's all you knew what was in the email as to the price?---Yes.

Yes, well, I understand that?---And so the lack of valuation information about the three lots that the SRDF could acquire through Corporation Sole, the acquisition obligation, the lack of that was an initial concern, but it was essentially a concern for how we kept our accounts, the fund's accounts. The land would be transferred effectively over to the Crown Land Entity or as we found later on purchased by them, so they would've been the end owner. It would then be a matter for our books to record the, shall we say, notional value of what we would've purchased if we didn't or the actual amount that we would've contributed towards the purchase.

10

But I take it that if the purchase price was \$12.2 million and the market value was \$1 million that would be a problem for you?---The market value of the entire area, a million dollars - - -

Yes, the notional, this is just a notional - - -?---Yes, yes. Yes, it would've.

Why would it have been a problem?---If the market value was a million and the purchase price as agreed by Mr Watkins was 12.2 that would've been a very large difference.

20

So what would that have – that would've been a problem for your books, would it?---It would've been a problem for the purchase, Commissioner.

As far as you were concerned your role, why would it have been a - - -?
---Well, it wouldn't have been a problem for our books.

It would have?---It would not have, it would not have been a serious problem for our books.

30

What, you could show him the books, show him the book that you've brought that the SRDF had paid \$12.2 million for a \$1 million property and that would be all right?---No, of course it wouldn't be all right.

No, it wouldn't?---No.

So, I mean, look, just to come to the point - - -?---Yes.

- - - you needed to know the value to ensure that what the SRDF was paying was a fair amount?---That's correct.

40

And you didn't have the value so you just trusted what you'd been told, you just assumed that what you had been told in the email was a fair value?
---Yes, I expected that Mr Watkins had negotiated an accurate purchase price.

And so you trusted him?---Yes, I did.

And that was the basis of your agreeing to go along with this?---(not transcribable)

You had no valuation, you had no idea what the true value was or am I wrong?---Well, we had old valuations, the estimated valuations.

Which were?---It was approximately 1.3 million, they were five and seven years old.

10 Yes?---We, and the issue about the valuation is that if we, we – Mr Watkins was the Chief Executive of LPMA, he had responsibilities - - -

I understand all that. I'm not criticising?---No, no, no, yes, sorry, I'm just trying - - -

I'm just trying to find out - - -?---The issue of valuation is that we could've, we could go back even post-purchase in my opinion, determine what was the component of the purchase price or the amounts that we paid that was attributable to the three lots - - -

20

There would be an order provided the valuation stood up as against the purchase price. You're taking this - - -?---It would be, it would be in order if the, if the purchase price negotiated was - - -

With the valuation?---?- - - consistent with, with valuation information that Mr Watkins, I expected Mr Watkins had.

And you were prepared to take the risk, you might regard it as a remote risk, you were prepared to take that risk of the valuation not being consistent?

30 ---Yes.

Is the way things are ordinarily done in your Department?---No, they're not, Commissioner.

I take it that ordinarily valuations are obtained in advance?---The normal process is valuation, negotiation and approval.

And I take it that as part of the process there's usually a firm plan of purchase, where the funds are coming from, who the purchaser is going to be and matters of that kind?---In OSL's business, yes, Corporation Sole's, yes, that's the usual practice.

40

And it's all in writing?---Yes.

And in this case nothing was in writing except for one email?---There was a series of emails about the - - -

There was a series of emails---?- - - process and, and the final action was at the, the final action I think 17 March, I think, or 18th was – perhaps the 17th – was based around a Briefing Note and a memorandum from the Chief Executive.

But this was not the ordinary course of business?---It was not normal, no, not the ordinary course.

10 What's the explanation for this happening otherwise than in the normal course of business?---For us it was a, a purchase negotiated by the Chief Executive with the intention that, as I understood it, that the land would be going to the Crown Land Entity for a State Park and I expected and relied on the LPMA Executive to have conducted a valuation and negotiation consistent with that and to have approval.

By the LPMA Executive who do you mean?---In this instance predominantly Mr Watkins.

20 So, I don't want to be over-simplistic or unfair in any way, but my – I'll tell you that the impression that I get, and please correct me if it's wrong, is that you did this in this unusual way simply because that's what Mr Watkins wanted?---Well, that was the direction we'd had from our Chief Executive that there was some negotiated purchase, we had an obligation to acquire land in that area. The, it was consistent with the SRDF funds, it's common for - - -

I know all of that?---It's common for us to acquire land and transfer it to an end entity for no gain to the Corporation. So the whole project was consistent with our normal activities but conducted, - - -

30 The process was - - -?--- - - - but conducted in a not ordinary manner.

Yes. Quite.

MR ALEXIS: Mr Malmberg, would you agree with the proposition that it wasn't until about 11 o'clock on the Monday before the day of exchange that an acquisition strategy had actually been formulated for you?---I believe it had been finalised then, yes.

40 Well, paragraph 47 of your statement tells us that Mr Costello's email to you just after 11 o'clock on 14 March outlined the acquisition strategy and if we go to that at annexure L on page 188 we see that strategy set out in his email, do we?---I'll just have a look please.

Just come through to page 188. And we see in Mr Costello's email that he's telling you and Ms Taylor who also worked in Corporate Finance, didn't she?---Yes, she did.

That, about his understanding of the acquisition. He says, "After a talk with Mr Watkins and legal officers this morning it's proposed that the acquisition of this property will be on the basis that", and we see the Corporate Sole purchasing two, the two smaller parcels and the Crown Leaseholds Entity and purchasing the larger parcel, do you see that?---Yes, I do.

10 So should we understand that this email the day before exchange, just after 11.00am was the first time that it had been clearly articulated who the purchasers were going to be?---This is, as I understood it to have been organised all along up to that point, some of the details were not accurate at the time.

Well, in any event, Mr Malmberg, do you see the paragraph which is directed particularly to you, you see your Christian name - - -?---Yes.

20 - - - followed by the words, "Could you check and let me know how much has been set aside for these parcels," and that's a reference I gather to the two smaller parcels that the Corporation Sole was to acquire. Is that right? ---Well, firstly it would have been three parcels. As I said, some of the details aren't accurate.

I see?---It comprises four titles. My understanding was that the SRDF would purchase three titles and that the CLE, LPMA would purchase the larger parcel so that's the first thing I think needs to be said about it.

All right. Well, Mr Costello may have been a little inaccurate in that respect - - -?---Yes.

30 - - - but do you see that he goes on to say this, "In the event that it is insufficient to meet the costs of the two parcels," and let's just interpolate two or three parcels," is there some contingency within SRDF for variations to the initial amount set aside or," I'm just missing the next word there, "there is some other process which needs to be worked through to approve any variation." Do you see that?---Yes, I do.

Now, did you respond to that question about contingencies and processes to approve variations?---Look - - -

40 And if it wasn't by email do you - - -?---No, no.

- - - recall speaking to him about it?---Honestly I cannot recall whether I did or not. The, the, the arrangements then were that SRDF had a, well, Corporation Sole had a, an existing budget, money was available in the budget well beyond, excuse me, well beyond the amount that had been discussed. I, I may not have even answered that question - - -

All right?--- - - - or I may have simply, I may have contacted Mr Costello and said, yes, the funds are available.

All right. Can I just finally before we have a short break ask you to confirm a couple more things about this email. Do you see in the second last paragraph Mr Costello's telling you that "settlement will be in four weeks by which time we should have all the paperwork in place for the two separate acquisitions through SRDF and LPMA," and just pausing there - - - ?---Yes.

10 - - - should we understand that by your receipt of this email the day before exchange the usual paperwork had not been put in place or prepared?---It says we should have all paperwork in place for the two separate acquisitions. My understanding was that this was in reference to the determination of the appropriate amounts to be allocated towards the purchase of what should have been three titles according to the email. That was my understanding.

20 So insofar as you're concerned ordinarily there would be an application for funding wouldn't there to the SRDF?---It's not an application in the sense that one would make an application to a bank or an application to a grants programme.

I'll come to some detail about procedure perhaps after the morning break but can you just tell me what you understood Mr Costello's reference to having the paperwork available in the following four weeks to be a reference to?---I took that to be a financial accounting determination of, of how any funds attributable to the SRDF would be determined finally.

30 And should we understand from the second sentence which says "By that time we will know the value that will need to be drawn from each account," that within the settlement period it was anticipated that valuations would come forward so as to determine the amount of the contribution to be made from the SRDF?---That was my general understanding.

And as I think we've confirmed you didn't have that valuation available to you before exchange the following day?---No.

And were you - - -

40 THE COMMISSIONER: Does that mean the purchase price wasn't known? The purchase price that each entity was going to, was going to pay? Isn't that a necessarily, a necessary implication?---It, it would have been desirable to have had that information.

I know it would have been desirable, I understand all this to mean that the purchase price that each entity was going to pay for the land that each entity was going to get was not then known?---It had not been determined no, finalised.

So a transfer was going to take place of land to each entity without knowing how much each entity was going to pay for it?---Yes, the deposit - at that stage a deposit would be made and prior to settlement the financial allocations from the fund and CLE would be determined.

THE COMMISSIONER: All right.

MR ALEXIS: We know, Mr Malmberg, that when the contract was exchanged the following day and you've got Exhibit 1 before you just look
10 at the contract?---Sorry, is this, is this where Exhibit 1 is?

It's in the folder?---Yes, thank you.

Yes, thank you. If you look at tab 13 you'll see the contract pursuant to which Currawong was purchased and you'll see that the purchaser there described as the Minister Administering the Crown Lands Act, do you see that?---Just a moment, yes, I see the purchaser there.

So at some point between 11 o'clock on 14 March and the time when this
20 contract was executed and exchanged on 15 March the decision was made to acquire in the Minister Administering the Crown Lands Act name without any reference to the Corporate Sole?---Yes, that's correct.

Were you involved at all in that decision?---I was advised of the decision.

After exchange?---No, prior to exchange I believe. It's in my statement.

All right. Well, we might come to that after morning tea.

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

SHORT ADJOURNMENT

[11.36am]

THE COMMISSIONER: Mr Alexis?

MR ALEXIS: Thank you, Commissioner. Mr Malmberg, before the
40 morning break I was drawing attention to the identity of the purchasers changing to the single purchaser, being the Minister Administering the Crown Lands Act and you told me that you thought you'd dealt with that in your statement in the sense of the communication which informed you of that before exchange. Over the break have you had a chance to look at that and find it for me, because I haven't been able to?---No, I wasn't aware that you'd like me to look for it.

Oh, well, I'm sorry, but- -?---I would have done so.

If I could assist you then this way. If we look at page 13 of your statement we see that you deal with events up to that email on 14 March and then you seem to jump to the events of 17 March, paragraph 48 and following. And I think the balance of your statement deals chronologically with events thereafter. So could you tell us, please, what the communication was that led you to understand that the Corporate Sole would not be one of the purchasers after Mr Costello's email to you of 14 March at page 188?
---I address that in paragraph 48. It was on 17 March.

10 So that was after exchange?---Oh, I'd have to check that.

Well, I thought I took you to the contract and- -?---I looked at the purchaser, I'm sorry, not the date.

Well, the date, the contract was exchanged on 15 March?---Ah, yes, that's correct.

20 And so should we understand that you learned that the Corporate Sole was not one of the purchasers, not before the contract was exchanged but after the contract was exchanged on 17 March?---Yes.

Now, in paragraph 48 you refer us to the email at annexure M at page 189 which attached a draft memorandum from Mr Watkins to you seeking the payment of the grant of \$4.2 million as a contribution towards the acquisition of Currawong. Do you see that?---Yes, I see that.

And the draft memorandum we see at page 190 over to 191, together with your tracked changes. Is that- -?---That's correct.

30 Is that so. And should we understand that the preparation of this document was a step in the procedure to procure the grant referred to in that memorandum?---Preparation was a step, yes, that's right.

And at the time you considered the memorandum and made the changes and then as we see back on 189 sent it back to Mr Costello 17 March at about 11.30, had you seen any valuation for the Currawong site?---No.

40 And in paragraph 50, I'm sorry, can I just go back to paragraph 49 of your statement to understand this?---Yes.

You tell us there that it is usually the case that the OSL will acquire land using the SRDF and then make a land grant to the relevant agency, and I think we've already discussed that before?---Yes, that's right.

So did the arrangement as contained in the draft memorandum that you made the tracked changes to represent an unusual way in which to utilise the funds of the SRDF?---It was not the usual use of the, not the usual method of funds use.

Well, if we look at paragraph 50 of your statement you tell us- -?---Yes.

- - -that it was not common- -?---Yes.

- - -to make a grant of money from the SRDF and in your time as director, you're not aware of it having been done before. And I think we've already been through that earlier this morning. Is that so?---Yes, that's right.

- 10 Now, could I ask you to look at the documents that you refer to in annexure O in paragraph 51. And that's at page 194 of the annexures to your statement. And Mr Costello I think by that email is sending you some document for your records and information. Is that right?---That's correct.

And firstly do we see what appears to be a memorandum or a document headed Acquisition of Currawong Site, signed by Mr Watkins and Mr Costello on 17 March?---Yes. That's, yeah, it's commonly referred to as a Briefing Note.

- 20 Thank you. And then behind the Briefing Note do we have at page 196 and 197 the final memorandum to which you had been involved in the drafting of?---That's correct.

And that supports, does it, the Briefing Note that we see back on 195?
---Ah, it is associated with it.

And then there's also, after the memorandum at page 198, a proposed form of tax invoice. Do you see that?---Yes, I do.

- 30 And we see that that was issued on 18 March for your reference?---Yes.

And the due date expressed to be 25 March for the \$4.2 million plus GST of \$420,000?---Ah, yes, payment required. But that's, do you mean by the 25th?

Yes?---Yes.

- 40 Now, can I just come back to the Briefing Note at 195. Now, you see the recommendation, the Briefing Note recommends that the Chief Executive approve the Corporation Sole making a grant of the 4.2 million towards the cost of Currawong and there's then reference to the sales voucher and the appropriate tax invoice, and also approve the attached memorandum to the Director of Office of Strategic Lands. Now, should we understand that the author of the Briefing Note and the person who's giving approval for the recommendations contained within it are one and the same?---Looking at the way the Briefing Note is laid out, the author I would expect would be Bob Costello and the approver, Warwick Watkins. I, I am unaware of who

wrote it, but that would be my expectation based on usual Briefing Note formats.

But, Mr Malmberg, perhaps we should come straight to the point. This is a Briefing Note in which Mr Watkins is effectively briefing himself and making a recommendation to himself for the approval of \$4.2 million being paid out of the SRDF, isn't it?---No, I would have read that as that Mr Costello was briefing Mr Watkins and recommending that Mr Watkins approve the recommendations.

10

THE COMMISSIONER: So why does Mr Watkins sign it? Why has it got a place for him to sign at the bottom?---The recommendation from Mr Costello as I read it is that it is recommended that the Chief Executive approve 1, 2, 3, and the Chief Executive to my reading has approved 1, 2, 3 actions.

MR ALEXIS: All right. Now, can I then ask you to come through to annexure P at page 199. And do you see your lengthy email which starts on 199 and concludes on page 201- - -?---Yes.

20

- - -to Mr Watkins, sent on 24 March at about 10.50?---Yes.

And should we understand that you'd received some communication from Mr Watkins asking for the information that's set out in that email?---Yes, that's right.

And can you tell us what was said during that communication?---From recollection it was a request to simply outline the circumstances around the acquisition obligation and the zonings in Pittwater LEP and have some address of the, the SRDF's capacity to, and responsibilities to acquire land.

30

Mmm. And that's why in response you refer in some detail to the zoning of the Currawong land and provide the relevant website links principally to (not transcribable) where the underlying information can be found. Is that right?---Yes, that's correct.

Thank you. Mr Watkins responds about an hour or so later indicating that's what he needed and then you provided the further response at the top of page 199. Is that right?---Yes, that's right.

40

And in the further note you told him that the approximate 70 per cent land area valuation percentage would be different as the area under acquisitional obligation appears uncleared and is zoned 9B and would be valued differently from the more developed 2A zone land. "I am not in a position to determine values but perhaps the VG could assist if required." Do you see that?---Yes, I do.

Now, can I ask you to just explain to us why as at 24 March you weren't in a position to determine the values?---I had ah, sought to get valuation advice. I had not been able to acquire that from the Valuer General. People were on leave, a variety of other small delays, and at that point I had not been able to get the valuation information.

10 Now, may we understand that as a result of the briefing note and the memorandum that we went to a moment ago from page 195, that steps by this stage, and by that I mean by 24 March, had been put in place to make arrangements for the funding to be made from the SRDF to the Crown Leaseholds Entity?---Yes. I'm not sure if the grant had gone through at that stage. I did provide some financial documentation to the inquiry's investigators that would set out the dates at which the, the grant had been transferred. I'm, I'm unable to recall at this stage if that was prior to the 24th or the 25th.

20 Now, in paragraph 53 of your statement you tell us about a telephone call you received from Mr Costello during which he made a request for site valuations. Do you see that?---53? Yes.

And should we understand that that request related to all of the Currawong site or just those parts of the Currawong site that the OSL had acquisitional liability?---Well, I took it to be for the, for the full site but with an emphasis on the, well, my emphasis would have been on the three lots that we had had an acquisition obligation for. I took it to be all four.

30 In any event, and I think the email that follows make plain if you look at Exhibit Q at page 202 of your statement we have there, do we, an instruction that you gave to staff under your contract to organise a set of valuations for the Currawong lands and indeed you've identified the four parcels to which you've just referred?---Yes. Ah, yes, there, yes, that's correct.

Now, do you see in that instruction you gave your staff at page 202 you refer to that being attended to as a matter of urgency?---Yes, that's right.

And can you tell us, please, what you understood the urgency to be as at 25 March?---Mr Costello asked as a matter of urgency.

40 And did he explain to you why?---No.

Did you ask?---No. I was interested to get it myself so - - -

But by this date had the SRDF grant been paid?---At the moment I can't tell you, the financial details have been provided. If you'd like to bring those forward we can establish the date when it was paid.

Well, if you come through please to Exhibit R at page 208 do you see that Ms Taylor, just starting at 209 - - -?---Yes.'

- - - has raised some questions with her staff within Corporate Finance and that led Mr Ng to email you for your assistance, do you see that?---Yes, that's correct.

10 And you responded at the top of page 208 to the question concerning the owner of each lot at Currawong that as at 1 April final ownership was not clear, do you see that?---No, that was, yes, unfortunately that was to me and my quick response I think I go on to say that my understanding was Crown Lands was to acquire the lot and we would contribute a grant based upon our acquisition obligations and the power to acquire land adjacent.

All right?---I was, look, I was answering that I suppose in a fairly academic manner.

20 And then in the final paragraph you refer to you waiting for a call back from Michael Parker but will email about a valuation so should we understand that by 1 April no valuations had come to hand?---No, that's correct.

Now, did you have any further involvement in the completion of the purchase of the Currawong site, Mr Malmberg?---Apart from the exact date of the transfer of the funds as a grant, I don't believe. I have, as I said in my statement, sought to obtain valuation services, valuation of the land.

30 Now, in paragraph 55 if I could go finally to that, Mr Malmberg, you say that "with regard to the acquisition of Currawong my expectation and assumption was that the appropriate due diligence had been undertaken by LPMA executive." Do you see that?---Yes, I do.

And in answering one of the Commissioner's questions earlier I think you described the executive to be Mr Watkins?---In this sense Mr Watkins and any other of the LPMA executive officers that had been involved in the exercise.

40 All right. And what due diligence did you there have in mind when you said that you had an expectation that it had been attended to within the executive?---Valuation, negotiation and approval.

And authority?---And, and, yes, authority and, and to some degree the accounting treatment.

Now, can I just ask in relation to the three matters that you've referred to broadly whether there is any procedure in place where a purchase like this comes along and by reason of the use of funds available in the SRDF other respective acquisitions that are the subject of the strategic planning effectively gets either delayed or overtaken by this more recent

development?---Could you be more specific, I don't quite follow your question.

Well, we started your evidence this morning I think by reference to the Business Plan and the strategic planning documents that you've referred to in your statement?---Yes.

10 Currawong it seems came to you in late 2010 and your involvement increased within a reasonably short compass from the 11 March. What procedure is there which would consider whether or not other projects that are the subject of the strategic lands planning get deferred or delayed by reason of a new acquisition such as Currawong coming along?---The, if I understand what you're saying or asking is there some way to make a decision as to whether one project goes before another, is that what - - -

Correct?---Yeah, okay.

20 How, how do you assess and what's the procedure for assessing that Currawong should get the grant as opposed to other acquisitions that are then proposed for acquisition by the Office of Strategic Lands?---The open space component of the land acquisition programme is not prioritised, it's very difficult to prioritise negotiations for the acquisition of land. We may seek to negotiate an acquisition of land or a purchase of land and there is no guarantee that it will either reach fulfilment nor will it be done in a specific period of time. The essential components of - if one project would take precedence over another it would be an executive or a government decision to acquire land, the availability of budget, that would be the fundamental - - -

30 And, Mr Malmberg, in that respect are there any guidelines which inform how that's to be achieved, where the acquisition is not part of any strategic plan?---There are no guidelines that I know of. It would be at the direction of executive or government to acquire the land.

Can you tell me whether or not the operation of the SRDF, particularly matters of accounting, are audited?---Yes, they are.

And who undertakes that task?---The Audit Office, New South Wales Audit Office.

40 All right. Now, in assessing the application for the grant which is the subject of the Briefing Note and the Chief Executive's Memorandum to which we have been to, did you have regard at all to the gateway review process?---No.

And did you think that the gateway review process the subject of Treasury circulars was applicable in the circumstance of the application for the grant relating to Currawong?---I did not consider it specifically.

And why didn't you?---I have no reason for not considering it.

Well, should we understand that on 11 March when discussions and emails occurred in relation to the acquisition of Currawong it occurred to you that there would have to be consideration of the Gateway Review System?---No, it didn't.

10 Do you recall speaking to either Mr Watkins or Mr Costello about the application of the Gateway Review process and whether or not documents needed to be prepared in that regard?---No.

Did you have a familiarity with GAMC in early March of 2011?---Yes, I did.

20 And can you tell me what your understanding of GAMC was at that time? ---GAMC is a committee set up amongst various senior officers of agencies for Government Asset Management, it is the Government Asset Management Committee. We submit disposal of surplus land proposals to the Committee for approval prior to divestment or sale.

And what about acquisitions pursuant to acquisitional liability, do they get submitted to GAMC?---I'm unaware.

And by that answer are you telling me that you don't know one way or the other?---That's right.

30 Have submissions been made to GAMC previously in relation to any land acquisition pursuant to acquisitional liabilities, do you know?---Not that I'm aware of.

Now, when you received from Mr Watkins his Briefing Note and his memorandum did you see your role in receiving those documents as providing some form of approval to the use of the SRD funding for this purchase?---No, I saw that as being, that approval as being within the documentation.

40 So you received those documents as simply the Director of the OSL without yourself performing any approval function, is that right?---Yes. Approval for expenditure, yes.

Just pardon me a moment, Commissioner. Thank you very much, Mr Malmberg, that's all I wish to ask you.

THE COMMISSIONER: Mr Branson.

MR BRANSON: No questions, thank you, Commissioner.

THE COMMISSIONER: Mr Curtin.

MR CURTIN: Mr Malmberg, my name is Curtin, I appear for Mr Watkins. Can I ask you, you mentioned earlier in your evidence that in other, that is, other than Currawong acquisitions of property by the SRDF that sometimes or often these properties would be transferred to the end user or another agency?---Yes, that's the intention of the acquisition program. We acquire land for public purposes with the intention of transferring it to other agencies. We have, for example, in my time transferred land acquired in the Wollie Creek area for the Wollie Creek Regional Park to National Park and Wildlife Service. We have transferred land also to the National Park and Wildlife Service for a regional park on the Central Coast. We - - -

THE COMMISSIONER: You want Mr Malmberg to detail every one he's done, Mr Curtis?

MR CURTIN: No.

THE WITNESS: Commissioner, I only bring those forward because they're open space.

20 THE COMMISSIONER: I understand that?---Yes, sorry.

I'm just not sure what the relevance is.

MR CURTIN: The question I had, Mr Malmberg, is when they are transferred and let's say when they are transferred to another agency you intend to convey that the ownership of the property is transferred or - - -? ---Yes, it is.

30 And does the end user pay cash to the SRDF for that transfer?---There's two ways that the transfer generally occurs, the first is that it may be a simply land grant and, or it may be referred to as an equity transfer. In both situations my understanding is that having transferred the land after the action of acquisition and transferral the SRDF will then make the necessary financial accounting adjustments to its books to reflect the actual value of the land as received by the other agency. So we may acquire a house site for open space purposes, transfer it to an agency which would value it at a lesser value, after the exchange there would be an adjustment of books so that, and it's Government Treasury policy to do so, that our asset register values would reflect the receiving agency's value which may be lower or
40 higher.

THE COMMISSIONER: But you wouldn't be the owner, the fund wouldn't be the owner?---No, but we still need to, we still need to reflect the transaction in our accounts which is why I still require the valuation information to make the necessary accounting treatments for the grant. Well, I believe I do.

But the eventual - - -?---The eventual owner will be another agency.

Yes. The eventual value doesn't affect the fund's net asset position?---It does.

Once you've transferred it you have no interest in it?---It's a Government, a Treasury policy that there be, if I can paraphrase at the risk of being a little bit inaccurate, but there would be no net loss between agencies in the transfer. So, well, not in the net loss, net cost, I think, it perhaps a way to put it. But the way it is dealt with is that if we transfer lot A to agency X,
10 agency X will tell us what its value is for that land.

Yes?---And we will then be required to adjust the SRDF accounts to reflect agency X's valuation for the lot that we initially purchased. So there will be an effect on the SRDF's accounting.

If you purchase a lot for a million dollars, transfer it to an agency who places a value of \$400,000 on it what entries do you make in your books?
---We will be required to adjust our value of that land having left as being 400,000.
20

But if you paid a million dollars for it that must be shown in your books?
---Yes. Look, there's, there's accounting terms for it, Commissioner, but, yes, that is reflected in our accounts as well.

And do you then reflect the net value being the \$400,000 that the agency's placed on it as a capital asset? Well, it's not, it can't?---As, as, as - - -

You don't understand the point?---No. Well, the accounts are a specialist role, Commissioner.
30

I'm not sure whether it's important but I just don't understand it. I don't understand - - -?---So the 400,000 will be reflected in one area of the accounts and the - - -

As what?---Look, I can't explain it simply, your Honour, sorry, Commissioner, I'm sure another accountant could do that quite comfortably.

All right?---I'm not an accountant.

40 It may not be relevant?---But certainly the - to summarise the 400 would be reflected in our accounts, 400,000, and the 600,000 will also be reflected in our accounts as changes in asset value and, and equity, for example.

That's what I don't understand because you haven't got it anymore?---No, but we're still required to reflect that, it's a Government policy.

For how long? What happens if there's an increase in value, it goes up \$200,000 in five years time?---It, it will, it will be an action that is contained within the financial year.

I see?---Yes.

MR CURTIN: You were asked some questions, Mr Malmberg, about initially it was one option was that the three LEP lots, if I can call them those, - - -?---Yes.

10

- - - would be purchased in the name of the Corporation Sole and the remaining lot purchased in the name of the Minister administering the Crown Lands Act I think?---Yes, that was the original proposal.

And then eventually the contracts, the only purchaser was the Minister Administering the Crown Lands Act?---That's right.

And there are some questions about the granting of SRDF funds- - -?---Yes.

20

- - -to assist as it were the Minister Administering the Crown Lands Act to purchase the property. And you held a view that although granting the money in the fashion you've described was not usual or not common or - - -?---That's right.

30

- - -whatever expression you used, you didn't see any problem with it. And is that because for instance if Currawong had been purchased in the two names but the end user was the Minister Administering the Crown Lands Act, and if Corporation Sole after purchase transferred its interest to the minister, the position so far as you saw it was no different to that situation to the making of the grant to the Minister Administering the Crown Lands Act as occurred in this case?---If I understand the question, there would be the use of a grant of funds towards the acquisition of the three lots and perhaps some balance over into the other lot, which is the acquisition of the land types were consistent with the powers of the, of the corporation SRDF. The use of a grant is a, achieves the same outcome as if we had acquired the land and acquired or contributed towards a portion of other land and then transferred it. The end outcome would have been the acquisition of regional open space, the SRDF's transfer of that to another agency for, in this case, a State Park. It's, our view is that it was consistent with the objectives of the SRDF and the actions of, of Corporation Sole. I understand that the use of a grant of funds is an acceptable financial accounting process and as such we viewed it as not dissimilar, unusual, but not dissimilar to the normal practice of acquiring land and transferring it.

40

THE COMMISSIONER: Mr Curtin, I think I should make it clear that my understanding of Mr Malmberg's evidence is that the transaction was unusual in several respects. The one you mentioned was simply one of them.

MR CURTIN: Oh, yes, quite. I, I only meant to focus on that one particular matter.

THE COMMISSIONER: Well, you said to him, when you said it was abnormal or unusual or not common, it was for a number of reasons and you said, "is that because", and you put your questions. But let me think- - -

10 MR CURTIN: I thought I'd confine it by using the words (not transcribable)

THE COMMISSIONER: I understand. Well, if your question, if your questions is that in the respect that you mentioned it didn't make any, the outcome was the same, then I understand the answer in that light.

MR CURTIN: Yes. Thank you. Mr Malmberg, you were taken to a number of emails and documents I think from around about 10 or 11 March and then forward a few days and it was put to you that one description, I'll withdraw that. Now, in those emails and documents there were, can I call
20 them various propositions for how the end purchase would be acquired or achieved rather, and it was put to you that one description of those changing proposals was that, "Arrangements were evolving." And I think you used the word in an answer of options?---Yes.

And is, is it your view, and tell me if it's not, that those various proposals explored a number of different options for achieving the end purchase, that is the settlement of the conveyance?---That's the way I viewed them.

30 THE COMMISSIONER: Well, the settlement of the conveyance to some purchaser who had not yet been identified. Is that right?---The settlement of the conveyance to, ah, yes. We knew the purchaser would be one of two entities or two entities. We knew there was two entities that had the interest in purchase, as I understood it, and that ah, the options revolved around how that would be structured and- - -

THE COMMISSIONER: The purchaser, the purchaser ended up as the Minister Administering the Crown Lands Act?---Yes, that's right. But there was the original option of the Minister Administering the Environmental Planning and Assessment Act as being one of the options. So that's the two.
40 Originally there was the option of a two purchase, two purchasers, the Ministerial Corporation, shall we say, which then evolved into a single entity with a grant of funds towards the purchase of the land rather than having the two with an acquisition and a transferral.

MR CURTIN: Mr Malmberg, you mentioned some interaction between yourself and Commission investigators prior to today?---Yes, interviews.

Thank you. And can I ask you, in the course of those interviews were you shown a letter from the Premier dated 25 February, 2011?---I can't recall, to be honest. I had not seen, I've seen the letter since in the hearing but I don't recall seeing that. The interviews took place over three sessions. The predominant presentation of documents occurred during the first interview.

Do you recall whether or not you were asked a question about whether a letter from the Premier in your view gave authority to purchase the property?---I don't recall, I'm sorry.

10

You're right. I don't have any further questions, Commissioner.

THE COMMISSIONER: Mr Dunne?

MR DUNNE: No questions.

THE COMMISSIONER: Does anyone else have any questions? Mr Alexis?

20 MR ALEXIS: None arising, thank you.

THE COMMISSIONER: Yes. Thank you for your evidence, Mr Malmberg. You are excused?---Thank you, Commissioner.

THE WITNESS EXCUSED

[12.48pm]

30 MR ALEXIS: Commissioner, could I now seek to tender a statement from Ms Julitta Ponniah, a principal financial analyst from New South Wales Treasury? It's not proposed to call Ms Ponniah unless of course any party wishes me to make her available. Can I indicate why that is the position we've taken, Commissioner. Ms Ponniah in her statement deals with the singular issue of receiving an email from Mr Costello on 4 April, you'll see that in paragraph 4, which attaches a document which I'll come to in a moment. In paragraph 5 she indicates that in that email Mr Costello sought advice on how funds could be obtained to settle the purchase and she then in paragraph 6 indicates her response which is contained in the email. Can I just go to the email, Commissioner, and you'll see as an Exhibit A starting
40 on the second page, there's Mr Costello's email which refers to the attachment and he said, "Could you please review the attached and discuss with your senior officers to help determine a way through this matter. Time is critical." And 4 April was the day before the due date for completion under the contract which provided of course for a twenty-one completion period after exchange on 15 March.

If I could ask you, Commissioner, to go to the attachment and you'll see the issue is described as "the provision of funding to enable the acquisition to

proceed.” Could I pass over the background but note in the third paragraph of it, Commissioner, Mr Costello there records that it was intended that the acquisition would not result in any net cost to the budget. And then in the next paragraph there’s reference to the acquisition price, that the initial purchase would be funded from Crown Leaseholds Entity. He then says, “It is proposed that this expenditure would be offset by the following” and there’s reference to SRDF contribution said to be \$7 million approximately and secondly, anticipated proceeds from the sale of Council land which will be gifted to the state and that’s said to be \$6 million approximately with a net cost to government being there ascribed as nil.

He then notes that “to date an amount of 4 million has been received from the SRDF, the balance will be payable once valuations (of its required acquisition) are concluded.” He then says under the comments section after the reference to quick time, he says, “Corporate Finance within LPMA was unaware of any need for retention of funds in the CLE and recently paid a distribution of 13 million to the government. An outcome of this is that there are currently insufficient funds in the CLE account to fund the acquisition. At the present time there is approximately \$6 million in the CLE bank account and would need an infusion of 5.5 million to enable the acquisition costs plus the transfer cost arrangements et cetera to be funded. It is unclear from the recent administrative orders whether the CLE accounts would go with Crown Lands to Department of Primary Industries or to some other location (either Finance or Treasury).”

And then over the page, Commissioner, you will see that Mr Costello says this, “Given the need for acquisition to be settled it would seem that the best option would be for Treasury to re-credit \$5.5 million of recent distribution so that there are sufficient funds in the CLE account to enable to purchase to proceed without incurring additional penalty or legal action. He then deals with some other options in the next paragraph. In the penultimate paragraph he refers to his understanding of the acquisition as being considered by Cabinet that day and then he asks for the matter to be raised with senior officers as a matter of urgency “to provide me with advice as to how the provision of the additional \$5.5 million might best be managed.”

If we then come back to the emails forming part of Exhibit A you’ll see, Commissioner, on the first page that Mr Costello asks the Principal Financial Analyst to confirm the verbal advice in writing and we see the terms of that at the top of the page. You’ll see, Commissioner, that at about 3.34 on 4 April, 2011 Ms Ponniah confirmed that she was unaware of any government decision approving funding for the transaction. She notes her understanding that payment is due tomorrow and then she says, “I note from LPMA’s TOES return” and that’s a reference to the Treasury Online Entry System, “the TOES return for the month of February, 2011 there is around 100 million in cash and deposits on call account of LPMA drawing down an agency cash balance is the most straightforward way of meeting the contractual commitment in the time available. The cost of land purchased

would be offset from the sources set out in your note so this should only be a temporary drawdown on cash balances.” Then she refers to “Treasury approval may be required if net cost of service limits or capital authorisation limits are breached by the transaction” and she suggests “that Minister approval be sought at the earliest opportunity,” and she concludes her email with a note about “a presumption that the necessary Ministerial approval to be proceed with the transaction is in place.” Could I now call, Commissioner - - -

10 THE COMMISSIONER: Well, I - - -

MR BRANSON: Were we invited to comment on whether she - - -

THE COMMISSIONER: Just a moment, Mr Branson.

MR BRANSON: I beg your pardon, I’m sorry.

THE COMMISSIONER: You will get an opportunity.

20 MR BRANSON: I’m sorry, I beg your pardon.

THE COMMISSIONER: The statement of Ms Ponniah, is that Ponniah, how do you pronounce her name?

MR ALEXIS: That’s how I understand it.

THE COMMISSIONER: Yes, will be Exhibit 34.

30 **#EXHIBIT 34 - STATEMENT OF MS PONNIAH**

THE COMMISSIONER: Now, Mr Branson, do you want to say something?

MR BRANSON: Your Honour, I was just going to inquire and just because we’re doing it on the run it’s through you and not through Mr Alexis, but it just seems that there’s a couple of issues left hanging and it may be that we’re going to hear from Mr Costello about this approval.

40

MR ALEXIS: Yes.

MR BRANSON: Sorry, it’s about to come. I’m sorry. I’ll sit down. I don’t want to interfere.

THE COMMISSIONER: Mr Branson if you - - -

MR BRANSON: No, I’m fine.

THE COMMISSIONER: You're not committing yourself. If it comes - - -

MR BRANSON: My friend has given me an assurance, I'm content.

THE COMMISSIONER: All right.

MR BRANSON: Thank you. I apologise for interrupting, thank you.

10 MR ALEXIS: Well, apart from (not transcribable) witness I am not sure if I have given any further assurances.

MR BRANSON: Oh, no, well, I mean, I accept Mr Alexis is not left (not transcribable)

THE COMMISSIONER: Well, it's always open to a party to request that a witness be called.

MR BRANSON: Thank you very much, Commissioner.

20

MR ALEXIS: Commissioner, I call Kimberley, Ms Kimberley Taylor.

MR PATTERSON: If it please, Commissioner, Patterson for Ms Taylor and I'd ask that you give the direction under section 38.

THE COMMISSIONER: Yes. Ms Patterson, won't you be seated. Pursuant to section 38 of the Independent Commission Against Corruption Act, I declare that all answers given by Ms Taylor and all documents produced by her during the course of her evidence at this public inquiry are to be regarded as having been given or produced on objection and accordingly there is no need for her 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 MS TAYLOR AND ALL DOCUMENTS PRODUCED BY HER DURING THE COURSE OF HER EVIDENCE AT THIS PUBLIC INQUIRY ARE TO BE REGARDED AS HAVING BEEN GIVEN OR PRODUCED ON OBJECTION AND ACCORDINGLY THERE IS NO NEED FOR HER TO MAKE OBJECTION IN RESPECT OF ANY PARTICULAR ANSWER GIVEN OR DOCUMENT PRODUCED.

40

THE COMMISSIONER: Ms Taylor, do you wish to give your evidence under oath or do you wish to affirm the truth of your evidence?

MS TAYLOR: Under oath, Commissioner.

THE COMMISSIONER: Mr Alexis.

MR ALEXIS: Thank you, Commissioner.

Ms Taylor, is your full name Kimberley Taylor?---Kimberley Grace Taylor

10 Thank you. And in this matter is it the case that you have provided the
Commission with a statement of evidence dated 28 June, 2011?---It is.

Can I show you your statement with the exhibits to that statement together
with a copy for your, Commissioner.

THE COMMISSIONER: Thank you.

MR ALEXIS: And, Ms Taylor, is that the statement to which we just
referred?---Yes, it is.

20

And is the content of that statement true and correct?---It is.

Thank you. Can I tender the statement and the exhibits to that statement,
Commissioner.

THE COMMISSIONER: Yes. The statement of Ms Taylor and the exhibits
attached will be Exhibit 35.

30 **#EXHIBIT 35 - STATEMENT OF MS K TAYLOR**

MR ALEXIS: Thank you, Commissioner.

Now, Ms Taylor, just by way of background we should understand you're
the Financial Controller of the LPMA as it was then known before taken
over by the Department of, I withdraw that. You're the Financial Controller
of the LPMA?---Yes.

40 And that was the position that you held since about 2009?---2006.

2006?---It was the Department of Lands.

Yes, I'm sorry. You were the Financial Controller for the Department of
Lands since 1 February, 2006 and then became the Financial Controller of
the LPMA, LPMA since 2009?---That's correct.

I'm sorry, I can't read my own writing. You are a certified practising accountant, is that so?---That's so.

And you hold a Bachelor of Commerce degree?---Yes.

And in your role as Financial Controller of the LPMA you report or have reported at least until April of this year to Mr Costello. Is that so?---That's correct.

10 Now, in paragraph 7 of your statement you tell us that the Department of Lands and LPMA included the core department as well as a number of related financial entities and you've exhibited to your statement in that regard a matrix from the relevant accounting system known as SAP at various points in time annexure C I think is the latest of those three matrix documents. Is that how we should understand that?---The document is a table that's been prepared in Excel but it does represent what you said.

Yes. And annexure C is the most recent one for present purposes, is that so?---That's correct.

20

And if we go to that please at page 20. Could you just explain the various divisional arrangements within the LPMA with particular reference to the Crown Leaseholds Division and the Crown Leasehold Entity and the Office of Strategic Lands?---The reporting entity LPMA is referred to in row number 1. LPMA is made up of a number of divisions including the Crown Land, Crown Lands Division which in column 4 going across, if you look down there's number 90, that's the reference to the SAP company that, that has the financial details of the Crown Lands division. In the next row company 91 relates to the Crown Leaseholds Entity. The Corporation Sole -

30 - -

Before we go to that could I just ask you to tell us about the last column headed TOES Entity, what that relates?---TOES Entity refers to a number within the New South Wales Treasury financial system and TOES 308 refers to the, the number as far as Treasury is concerned that we report to them on a monthly basis.

And does TOES 308 relate to each of the separate entities within the LPMA?---TOES 308 encapsulates all of the financial transactions included within the whole of LPMA.

40

Sorry, I interrupted you. You were then going to tell us about the Corporate Sole and the Office of Strategic Lands?---Yes. On row number 7 or report number 7 that's the reporting entity of Corporation Sole, Minister administrating the Environmental Planning and Assessment Act. The, going across that is the Financial Reporting Entity which relates to the activity which the Office of Strategic Lands as an organisational unit undertakes.

All right. Thank you. Now, could I ask you some questions concerning the Crown Leasehold Entity and I think you deal with that subject from paragraph 12 of your statement if we could go to that please?---Yes.

And should we understand that since 2009 the Crown Leaseholds Entity became part of the LPMA as a financial reporting entity?---That's correct.

And that entity records the activities related to Crown land, just putting it very generally, is that so?---Generally, yes.

10

And insofar as the revenues from Crown land are concerned should we understand by reference to the second bullet point in paragraph 12 that those revenues include the Crown Land tenures, acquisitions and disposals and there's also reporting around Crown land in terms of assets and liabilities? ---Yes.

20

Now, in paragraph 14, if I can come to that please, you tell us that each month a remittance should be made from LPMA to the Consolidated Fund administered by Treasury. "Your branch is responsible for the monthly reconciliation process prior to the remittance" and then you go on to tell us what the average monthly remittance during the course of this financial year has been in the region of \$5 million, do you see that?---I do.

30

Can you tell me what the basis is for you saying in that paragraph that there's a responsibility for monthly reconciliation and I assume reporting, why monthly and not quarterly or at some other stage during the course of the financial year?---My understanding is that the process is based on a historical practice at the moment and it hasn't been changed probably with Treasury. So for a number of years the remittances have been distributed to Treasury we undertake that on a monthly basis to have regular processes on the accounting side.

So if something occurred in the course of the financial control within the LPMA that caused a monthly remittance to be held back for some reason would that be contrary to your understanding of the procedure and what your ordinary practice would be?---That would be different to what it should be.

40

Yes. Now in the next sentence Ms Taylor you tell us about the 2010/2011 Budget target for, and I gather this relates to the Crown Leasehold Entity of \$69.192 million, is that how we should understand that?---Yes.

And the source of that I gather is Annexure F, if we could go to that please at page 80 of the Exhibit to your statement and is this an extract from the budget estimates for 2010/2011 relating to the Crown Leasehold Entity and we see, do we, in the third column down the right hand side of the page adjacent to the words, distributions – dividends and capital repatriations, a

reference to the \$69.192 million you refer to in paragraph 14 of your statement?---Yes.

Now, the average remittance of about \$5 million a month that you refer to in paragraph 14 – when you gave your statement I gather you looked at what had been remitted during the 2010/2011 financial year up to the time you gave your statement and that’s what led you to be able to calculate the approximate \$5 million?---That’s correct.

10 And at the time you did that calculation I gather it was fairly obvious to you that the budget target of \$69.192 million was not going to be met?---That was fairly obvious.

Now, I’ll come back to some detail of that.

THE COMMISSIONER: Mr Alexis - - -

MR ALEXIS: And I’ll do that after lunch.

20 THE COMMISSIONER: I’m just getting a little concerned about time and finishing by Friday.

MR ALEXIS: That concern is shared, Commissioner.

THE COMMISSIONER: So I propose to without wishing to inconvenience Mr Branson, to sit longer hours.

MR BRANSON: What would that be, Commissioner?

30 THE COMMISSIONER: Well, that’s - - -

MR BRANSON: Moving fees and that out

THE COMMISSIONER: As has been said about other things it will evolve and so we will start by coming back at quarter to 2.00.

MR BRANSON: Oh my goodness.

40 LUNCHEON ADJOURTMENT [12.58PM]