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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 1.50PM

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

THE COMMISSIONER: Mr Alexis.

**<KIMBERLEY GRACE TAYLOR, on former oath [1.50pm]**

MR ALEXIS: Thank you, Commissioner. Ms Taylor, before the luncheon adjournment I was taking you to your evidence in paragraph 14 concerning the monthly remittance obligation to Treasury and in that respect could I ask you to come to paragraph 15 of your statement where you there tell us that integral to LPMA funding is the obligation to make contributions to the Consolidated Fund, do you see that?---Yes, I do.

And does it follow that if the contributions are not made to the Consolidated Fund that may have some impact on LPMA funding and the arrangements for funding?---It would have an impact against the budgeted target for contributions, yes.

Now, I think the material that you refer us to in your statement which supports what you tell us there is annexure G commencing at page 81 and annexure H commencing at page 84, is that so?

THE COMMISSIONER: G?

THE WITNESS: Sorry, 81, page 81 is clarifying the distribution of the note to go into the financial report.

MR ALEXIS: Yes. And behind annexure H from page 84 if you could just tell us briefly what that relates to?---Yes. That was clarifying the appropriate wording.

And ultimately, I think, if we look at page 87 which is annexure I we have a page of the Crown Leaseholds Entity's Annual Report for the 2008/2009 financial year that we should understand you wrote yourself, is that right? ---Yes, that's correct.

And the relevant part, I think, is at the foot of page 87 which tells us that cash received by the CLE is distributed to the Consolidated Fund of New South Wales on a monthly basis, net of costs paid, et cetera, do you see that?---Yes, I do.

Now, in paragraph 18, if I could go back to that please, of your statement you've extracted material from the LPMA financial statement for the 2009/2010 financial year, is that right?---That's right.

And over at the top of page 7 of your statement we see what you quoted from the note relevantly to those financial statements, is that right?---That's right.

And that tells us, does it, in relation to the LPMA financial statement and from the Crown Leaseholds Entity Annual Report that the obligation to remit is one that falls on a monthly basis?---Yes.

Now, should I understand that what you've reproduced as annexure K at page 89 and following and annexure L which is pages 91 and following confirms that position in relation to the monthly remittance obligation?  
---Sorry, I'm not sure of the reference.

10

I'm sorry, I'm looking firstly at annexure K which is at page 89?---That particular one is in relation, the letter in relation to transfer of Crown estate functions.

THE COMMISSIONER: What passage are you referring to, Mr Alexis?

MR ALEXIS: Sorry?

THE COMMISSIONER: What passage in the letter?

20

MR ALEXIS: Perhaps I need to ask a question, Commissioner. The letter at 89 and 90, does that relate to the monthly remittance obligations from the Crown Leasehold Entity, the CLE entity, to Consolidated Fund or, or not?  
---It does not specifically discuss the monthly distributions.

All right. What about the document comprising annexure L from page 91?  
---That annexure L would refer to the Crown Leaseholds' budget situation but I don't believe that it specifically mentions the monthly distributions.

30

All right. Well, in light of that, Ms Taylor, can I come directly then to the acquisition of Currawong and your involvement in that and in doing so can I take you back to paragraph 21 of your statement. And is it correct for us to understand that your first involvement arose on the morning of Friday, 11 March, 2011 when you received the email from Mr Costello?---I was advised of an acquisition the evening or late in the day before. 11 March was the first time I was aware it related to Currawong.

Thank you. And if we go to annexure M which is at page 108 do we have the email that was sent to you by Mr Costello in that respect?---Yes.

40

And attached to that I gather was the email from Mr Watkins to Mr Linz relating to the verbal contract, do you see that in the opening line and the further detail concerning the purchase price and the other detail?---That's correct.

All right. Now, just in terms of the email that Mr Costello sent to you at the top of page 108, just passing over the detail about the Sydney Regional

Development Fund, do you see in brackets the reference OSR and there's a further reference to OSR in the next line?---Yes.

Can you tell us what you understood that related to?---I had assumed that the initials should be OSL referring to Office of Strategic Lands.

I see. Not the Office of State Revenue?---No.

10 Now, a further couple of lines down it says "balance of funds to initially come from CLE (with Council eventually ? contributing about 50 per cent and the balance to come from the increased LDWA sales programme. Do you see that?---Yes, I do.

And what should we understand the LDWA to be a reference to?---That would be a reference to the Land Development Working Account.

20 And what's that account?---It's a separate SAP company which records activities in relation to a specific Crown Lands Division activity for the development and sale of Crown Land.

All right. And you also read the reference to the Premier that Mr Costello made about "the Premier has signed off approval for the sale to be concluded as soon as possible"?---Yes.

Now after receiving that email later that morning you meet with Mr Costello in his office to discuss the Currawong purchase?---Yes.

30 And in the course of that meeting did you take some notes of what was discussed as it was being discussed?---I did.

Thank you. And do we find those, those notes, Ms Taylor, in annexure N to your statement at page 110?---Yes.

40 And could you just take us through by reference to those notes what you recall was discussed at the meeting with Mr Costello?---I was advised of the acquisition of Currawong, purchase price was to be 12.2 million. There was a question at the time as to whether GST would apply so my question there is whether GST is within or on top of the price. The next section LPMA is to own the asset. Reference company 91 is a reference to Crown Leaseholds Entity. And then there are – there are my notes about the – do you want me to address each part?

Yes, please?---The question there Land Tax implications, a reference to one of my staff members to follow that issue up. Question. "The funding contributions as I was advised were to come from two parts, the Corp Sole, EPA of 1.2 million for the deposit." There was two options or two questions whether the OS, Office of Strategic Lands would pay for this, needs to be through, SF is a reference to Service First or whether the OSL

would pay LPMA. It was determined that the latter would happen.  
Question I raised is whether with the grant revenue that we would receive - -  
-

Can I just pause. When you say it was determined that the latter would happen, do we understand that because the earlier proposition was crossed through with the squiggle line we see?---Yes.

Thank you. If you could continue please?---The next one. Question.  
10 “Would the grant revenue come into company 91 as well” as a question I had, “and if so would that revenue go back to Treasury?” So that was my question about the arrangement and I was informed that yes, the revenue from the OSL grant would, would come back to company 91 and be credited against there and to then be distributed back through the normal process through the Treasury. I’ve got a question there, “Would it need to go back to company 91 or just more generally within LPMA?” And that was seeking to clarify the arrangement. And Mr Costello confirmed that it would go back through company 91. The second component was an  
20 element to come from the local Council, in future, there didn’t seem to be a definite understanding conveyed to me about what, when that would be. My, the asterisk there, and I’ve got, “Note, if this not until the future, in my mind I was thinking of the next financial year, then it would be unrelated, disconnected to the purchase.” And therefore my question would be how to account for it. When I asked Mr Costello about that the answer I was given was yes, he would, or be then matched back as revenue through, into company 91’s accounts.

Within the then current financial year?---Whenever it was received.

30 All right. Thank you?---I then - - -

THE COMMISSIONER: Did you have any idea when it would be received?---It, I was, there didn’t appear to be any concrete details. The next line, “A note will probably be written down to fair value.” That’s a reference to the asset. And the next line there, “Council to provide a letter confirming arrangements.” I discussed with Mr Costello whether there was any agreement from, to, any agreement documented about the Council providing funds. The next part there is my summary, my summary of my understanding at the time, funding with deposit to be paid out of 91 That  
40 the Office of Strategic Lands grant would be paid back into 91 and “Treasury Payout” refers to the remittances to Treasury, “we would keep that deposit out of the payments to Treasury at the time.”

MR ALEXIS: And you’ve noted the deposit there of \$1.22 million?  
---That’s correct.

And then what should we understand about the notes at the foot of the page?---They were additional notes that needed to, things that needed to

occur. Capital funding threshold was an issue that I raised and said to Mr Costello, “We agreed that there would need to be a request for an increase in the capital expenditure threshold.” And my reference there is to one of my staff members to draft that letter, that request to Treasury and to refer back to Mr Costello regarding the date for it to be sent, but that it would be sent but that it would be sent before 25 March.

10 Thank you. Could I ask you just to come back to paragraph 22, Ms Taylor, where you’ve set out but in slightly less detail than you’ve just gone through the matters discussed at the meeting. Could I draw attention particularly to what you’ve said towards the end of that paragraph where you’ve said, “We also discussed the possibility of withholding Treasury payments from the CLE to Treasury until other funds were received and how long it would take the OSL to generate the grant.” Do you see that?---Yes.

Now, when you were going through your notes the reference to “Treasury payout” seems to be related to the deposit, do you see that?---Yes.

20 And was it related to just the deposit or was the withholding of Treasury payments discussed more generally particularly with respect to payment of the balance of the purchase price in due course or can’t you now recall? ---The notes of the meeting there, the initial thing was certainly related around the deposit. I’m just trying to recall whether – I think at that early stage it was expected that we would provide, receive further information about funds coming in.

30 You’ve also said in paragraph 22, the last sentence, “This is the only time I had any experience or knowledge of a financial grant from SRDF to LPMA.”?---Yes.

And did the proposal as Mr Costello explained it to you strike you as being unusual or a bit odd?---In relation to the SRDF grant?

Yes?---It was certainly unusual, I hadn’t had experience of that before.

40 Do you recall asking questions about why it was that the SRDF would be effectively making a financial grant to the LPMA?---I do recall discussing that and I was told that the lands to be acquired, these lands are lands that the Corp Sole EPA was looking, had an obligation, an acquisition obligation for.

And did Mr Costello explain to you what land in particular that related to or not?---Not at that meeting, no.

All right. In the next paragraph you tell us that you raised the issue of submitting a formal request to Treasury for an increase to the capital funding threshold, do you see that? Firstly, to 23?---Yes.

Can you tell us what the capital funding threshold is?---Each year departments have an approved capital threshold within the budget process and if they're going to exceed that threshold it needs to be identified to Treasury and agreed.

And was the purchase of the Currawong site for \$12.2 million something that you thought might be pushing the envelope on the existing capital funding threshold as you then understood it?---That's why I raised it, yes.

10 And what did Mr Costello say about that?---He agreed that we would need to submit a request, send a letter to Treasury.

THE COMMISSIONER: If the capital funding threshold is changed, does that have an effect on your budget?---It, it – I'm not quite sure. It doesn't necessarily provide additional budget if that's what your question is, Commissioner.

It changes the budget or does the budget remain the same?---It would change the approval to spend capital funds.

20

I presume your budget authorises the amount of capital funds you would spend in a given financial year?---That's correct.

If you, if you spend more than that that's a change to the budget?---Yes.

If you, so if the threshold is changed that is in effect a change and, and you do spend up to the next threshold you would change the budget as originally set?---Yes.

30 MR ALEXIS: Now, Ms Taylor, the drafting of the request that you refer to in paragraph 25 and the intended date for its dispatch which I think is 25 March, do you see that reference in paragraph 23?---Yes.

Did that ever occur to your knowledge?---It has occurred.

When did it occur and was it before the contract was exchanged on 15 March?---It was not before that time. As I understand it the letter was drafted on or about 17 June.

40 17 June?---That's correct.

I see. All right. Now, over on page, page 10 of your statement, paragraph 24, you tell us that at this meeting with Mr Costello you also asked about the authority to make the purchase and that Mr Costello told you that the Premier had given approval. Do you see that?---Yes.

Now, can you just recall to mind and tell us, please, what was said on that subject, particularly about the request you made about documentation?

---Sorry, could you repeat the question?

Yes. Could you tell us what was said between you and Mr Costello on the subject of approval and your request for documentation?---I asked whether the, whether the approval, the approval for the purchase was, was, was available, was there, sorry, and - - -

10 THE COMMISSIONER: You mean authority? Are you talking about authority for the purchase?---I asked about the approval in relation to the purchase. I don't recall the exact words that I used. Mr Costello replied that we have a letter from the Premier.

MR ALEXIS: And then did you ask about that?---I asked whether that was available and he said that he has a copy of it but that he wouldn't be providing it at the moment.

Did he say why?---He, he didn't.

20 Did you ask why you couldn't see it there and then?---I didn't.

Why not?---I think I made an assumption as to why.

30 THE COMMISSIONER: And what was the assumption?---That it, there was certainly talk of that it, that it would be, that an announcement would be made by government about the purchase and I assumed that if I was provided with a copy of the letter in the, in the documentation once we process it within the financial system it goes onto our scanned records. The, I didn't ask Mr Costello for, for the letter. I assumed it related to the fact that the government was going to make an announcement and they didn't want that documentation being made available at that time.

MR ALEXIS: Now, as you tell us in paragraph 24 Mr Costello didn't show you the letter and you didn't see it until some later point in time after the contract I assume was exchanged and completed. Is that so?---Yes.

40 Now, in paragraph 25 you tell us about the meeting that you then called with your staff and before going to some detail about that could I ask you to go to annexure O at page 111 of your statement and, Ms Taylor, should we understand that the notes that we see at page 111 are the notes that you made of the meeting that you had with your staff?---Yes.

And it recorded the tasks that you had delegated to each of your staff members?---That's right.

And if I could just ask you to look at the notes and particularly to the last star on the page you'll see a reference to Bob?---Yes.

Can you tell us what that's a reference to?---That's a reference to Mr Costello.

And you see it's expressed in these terms, "Bob to provide approval documentation"?---Yes.

Now, was the conversation that you had with Mr Costello left on the basis that he would make that available to you?---Yes.

10 So what did he say about that?---(NO AUDIBLE REPLY)

Let me go back a step, Ms Taylor. You told us that you made an assumption, namely that he wasn't showing you the Premier's letter because there was as you thought to be some announcement by government, government about the purchase?---Yes.

20 And I asked you whether you asked him for it and you told me I think that you didn't ask him for it, all I'm drawing attention to is your note at page 111 which rather suggests that he was asked for it because you've noted that he was going to provide it?---Yes. I didn't ask him for it at that meeting. I was to go away and prepare my staff to receive the documentation which would include the payment voucher and the appropriate supporting documentation.

I see. So was that more a note to yourself that you needed to follow up and get the approval documentation from Mr Costello?---Yes.

Why did you need that?---Well, we wouldn't - - -

30 As you then saw things?---We need some, some documentation to process the payment within the system.

And that's the payment request for the deposit. Is that right?---That's correct.

And ultimately for the cheque or cheques required for completion?---That's correct.

40 Now, did you get the "approval documentation" before the contract was exchanged and the deposit cheque was drawn?---I didn't personally but my staff did.

So you didn't see it until after the contract had been completed. Is that right, you personally I mean?---Exchanged, until after exchange, yes.

All right.

THE COMMISSIONER: What was the, what payments were being held - the first time?---The “hold payments to Treasury”?

Yes?---That would refer to the Treasury distributions.

The monthly?---Yes.

I thought that you wouldn't ever withhold those?---We, there would not have been any way to pay for it if, out of company 91 without doing so.

10

I understood you to say but please correct me if I didn't understand you correctly, that there was an obligation to pay Treasury each month whatever you had received?---The, we, we don't, within the distribution arrangement we do, we should make payments on a monthly basis in accordance with the distribution policy, more due to administrative processes rather than anything else, we haven't always made it every month.

But this was a deliberate decision not to do it?---Correct.

20

I also understood you to say, and please correct me if I'm wrong, that these payments that you make each month to Treasury are in effect budgeted, in other words they are forecast and they are payments that Treasury expects to receive?---They certainly are budgeted, yes.

So holding back the payments to Treasury means affecting the budget?  
---Affecting the month remittances, yes.

And hence the budget?---Yes.

30

MR ALEXIS: Now, Ms Taylor, in paragraph 25 you record there that you specifically told your staff to cross the T's and dot the I's, do you see that, paragraph 25 page 10?---Yes.

And could you just tell us why, unless that's always how you address your staff, but why on this particular occasion you reinforced that with your staff on this particular occasion?---All I had at the time was the notes that I made and the email from Mr Costello. I was expecting further documentation to come so we didn't have all of the information.

40

But was it also because you felt you were being rushed to do something?  
---Certainly.

And was it also because you didn't feel totally comfortable with what had been requested of you?---Yes.

Was it because you were given to understand there was a great sense of urgency with the transactions, particularly an imminent exchange of contracts and the need for a deposit?---Yes.

And is that why you said what you did to your staff to make sure that things were covered off properly?---Yes, I reinforced to them that they should make sure that they have all the documentation provided to them and that is, it is correct.

And did you also have a concern about whether or not there would be sufficient cash available to cover the purchase when the time for completion arrived?---Yes.

10

And was that the subject of a particular instruction to one of your staff members to see by way of projection what the cash position would be come time for completion?---Yes.

And where - - -

THE COMMISSIONER: Excuse me, Mr - - -

MR ALEXIS: I'm sorry, Commissioner.

20

THE COMMISSIONER: - - - Alexis, is that - the instruction to hold payments to Treasury, was that part of, was that caused by that concern, that you might not have enough money come completion to pay?---If I recall correctly we may have been in the process of being about to send the remittance to Treasury - - -

Yes?--- - - - and I wanted to make, I wanted to find out the position, the cash position before we did that so I asked that person to intervene in that process until we checked.

30

Because, because you feared that you might not have enough money to be able to finance the completion, is that right?---Yes.

And had you ever deliberately withheld a monthly remittance to Treasury before?---Once.

And for what reason was that?---For the purchase of an asset, the purchase of a property.

40

Which one?---Newcastle Post Office.

MR ALEXIS: Now, if we look at the note with respect to the staff meeting you convened on page 111, it's exhibit O to your statement, is the very first item on the page a note recording your instruction to Hasan, that's H-A-S-A-N?---That's correct.

Hold payments to Treasury?---Yes.

And that was in anticipation of a projection being done to work out what the cash position would be come the time of completion of this contract. Is that so?---That's correct.

And if we look at the document behind tab P or annexure P at page 112 and 113, do we see the email that you received on Friday, 11 March at 2.52 projecting the bank balance of the Crown Leasehold Entity account?---Yes.

10 And do we see that Mr Mediati, is that, have I pronounced his name correctly?---Mediati.

Mediati, thank you. He reported to you that when taking into consideration the transactions discussed at the meeting including the Treasury distribution based on a five month average the balance of April doesn't look good and can I just have you step us through the calculation. Should we understand, Ms Taylor, that he was saying to you in this email that in relation to March the current balance as at the day in question in just over 3.7 million when you take out the deposit and if you withhold \$5.2 million to Treasury less the money received to date in March there was a March closing balance of just over \$3.8 million?---Yes.

And then with respect to April if there was a Corporation Sole grant of 1.2 million which I assume was to cover the deposit, is that right?---Yes.

And we bring to account the completion of the purchase of \$12.2 million, we withhold from Treasury another \$5.2 million, we add a further Corporation Sole grant of say \$2 million, we'd have a closing April balance of about \$79,000 which meant that there was a residual debt of 2.6 million?---No, that meant that the April closing balance was just over \$79,000.

30 I'm sorry, I've misread the last entry?---Yes.

What this is telling you is that the projected balance of the CLE account at the end of April was about 2.6 million?---No, 79,000.

I'm sorry, 79,000. Could you just explain the next entry, CLE LDWA debt 2.642 million?---That would be a reference a intercompany, intercompany obligation for the Land Development Working Account to pay the Crown Leaseholds Entity for the cost of the land assets that had been transferred to LDWA.

40 So what this told you, I gather, is that if one makes the assumption that for the month of March and the month of April 2011 \$10.4 million is withheld from Treasury then you scraped through with a purchase of the Currawong site given that the projected balance was just over \$79,000?---That we may scrape through, yes.

And do we see that the result of that deduction was one that you conveyed to Mr Costello at page 112 by email at 3.20pm on 11 March?---Yes.

And you forwarded to him Mr Mediati's work together with your comments as we see in the email?---Yes.

And you drew to his attention that "by the end of April we may scrape" in capitals "through without going into the red"?---Yes.

10 And you raised the fact that there were a few ifs attached to the projection and of course in the last paragraph you confirmed to him that you weren't factoring in anything from the Councils?---That's correct.

So did your staff member's calculation make you feel any easier than you did earlier that day during the meeting with Mr Costello?---No.

Now, did you get a response from Mr Costello to your email at 3.20 on Friday, 11 March?---Not that I can recall.

20 You've attached I think a response that you did get from Mr Costello as annexure Q at page 114 and noting your email was sent at 3.20 you see at the top of the page Mr Costello seems to have sent you an email at 3.22, shortly after your email, but it was not responding to your email and related to another subject matter. Is that how we should understand it?---That's correct.

So beyond the email at page 114 received at 3.22 did you receive any other email from Mr Costello about the concern expressed in your email at page 112 before the contract was exchanged on 15 March?---Are you asking  
30 specifically in relation to the bank balance?

Well, your email where you tell him with emphasis "we may scrape through", did you get a response to that email from Mr Costello before the contract was exchanged the following Tuesday?---No, I don't believe so.

And do you recall speaking with him at all either face to face or on the telephone about what you conveyed to him in this email at 3.20 on the Friday afternoon?---I don't recall specifically talking about it.

40 Now, Ms Taylor, paragraph 29 and following of your statement on page 12 seems to deal with events that occurred after 11 April. Should we understand from that that you, apart from what you've told us up until about the afternoon of Friday the 11<sup>th</sup>, weren't involved in the transaction any further, directly I mean?---I wasn't involved directly in the payment transaction documentation. I, over that period of time I had various correspondence, mainly in relation to confirming the accounting arrangements and trying to understand where the, who would be making,

what entity would be making the purchase and accounting matters along those, those lines.

But you had no direct dealings with Mr Costello or Mr Watkins directly about the transaction?---I had discussion with Mr Costello but not with Mr Watkins.

10 Now in paragraph 29 you refer us to some emails you received on 11 April and they relate to some communications that Mr Costello had had with Julitta Ponniah from New South Wales Treasury. Is that so?---Yes.

And we see those in annexure R to your statement at pages 120 and following, do we?---Yes.

And you were sent I think at page 122 the advice that Mr Costello obtained from Treasury about how to fund the completion of the contract, see 122 and 123?---Yes.

20 And particularly can I take you to the document at page 126 and 127 where Mr Costello appears to have prepared on 4 April and- -?---Yes.

- - -sent to Ms Ponniah for Treasury advice. Do you have that document? ---Yes, I do.

And can you tell us, please, whether you were spoken to or consulted in any way about the content of that document used it seems from the emails for the purpose of obtaining Treasury advice?---No, I don't recall anything.

30 You weren't involved in the preparation of that document or discussions around that document at all?---No.

Now, can I bring you through to the document comprising annexure S at page 128. And the position is I think, Ms Taylor, that you by about this time were concerned to understand how the completion of the contract was funded. Is that right?---Yes.

40 And because as this document tells us of the correspondence that you'd by then received between Ms Ponniah and Mr Costello which alluded to the possibility of using any available cash across the whole of the LPMA, you weren't certain what the final outcome was and you wanted to get to the bottom of it. Is that so?---That's right.

And should we understand that the conclusions to that are largely set out in the numbered paragraphs just below halfway down that page?---Yes.

The deposit was paid from the CLE, the Crown Leaseholds Entity account and the final settlement was funded as to \$9 million from the CLE account

and as to the remaining \$3.189 million from what's there described as the LPMA Shared Banking Facility. Do you see that?---Yes, I do.

10 Just explain what that Shared Banking Facility is, please?---We administer a number of financial entities and to efficiently do that we have, within the SAP system we've set up a shared banking facility so that not every separate company requires a bank account. Most of the payments out go, come through ah, come from the shared banking facility and then we have a remittance process, an internal transfers process that then allocates the funds to the appropriate company.

And as you tell us there, by the end of the month of April any issue that related to the mixing of funds between the separate entities had washed through the Shared Banking Facility account. Is that right?---That's correct.

Now, in paragraph 35 of your statement you deal with the financial impact of the Currawong purchase on the remittances made to the Consolidated Fund. Is that right?---Yes.

20 And you tell us there that the last remittance to the Fund was made in March and that related to CLE distributions that had been received up to the end of February. Is that right?---That's correct.

And at the time you gave your statement, which was in late June, you were then working through the process of calculating the remittance to the Fund for the end of the financial year and at that stage you expected that the remittance would be reduced by about \$8 million because of the acquisition of Currawong. Is that right?---That's correct.

30 And in paragraph 36 you refer to the purchase of the Newcastle Post Office and should we understand that that was a purchase that occurred during now the past financial year but early in that year, July 2010. Is that right?---The deposit was paid in the former financial year and the settlement occurred in July 2010.

So the \$4.675 million that you refer to in paragraph 36 in relation to the Newcastle Post Office was funded in the first month of the 2010/2011 financial year. Is that right?---Yes, the final payment was made then.

40 Now, could I ask you to come through annexure Y and then annexure Z at pages 186 and 187?---Yes.

And I think in this document, Ms Taylor, you bring together the budget target for the Crown Leaseholds Entity which we see recorded again at the bottom of page 186 in the sum of \$69.192 million. Do you see that?---Yes.

And then you've said there up until February, up until the February period, I should say, paid in March, we had remitted a total of \$48.152 million in cash. Do you see that?---Yes, I do.

And if we can see the illustration of that in the schedule on page 187, do we understand that in the column working from right to left, third from the right, headed Pro Rata Budget Target, we have on a monthly basis the target as postulated by the budget ultimately totalling the \$69.192 million figure?  
---That's right.

10

And then working again from right to left we come to the distribution amounts and the timing of those cash remittances and we see that at the time you prepared this schedule there was remittances of just over \$48 million?  
---That's right.

Such that there was at that stage a significant shortfall of about \$21 million?  
---(NO AUDIBLE REPLY)

20 THE COMMISSIONER: When compared to the position as at 30 June. You had to get another \$20,000 to meet budget.

MR ALEXIS: 20 million.

THE COMMISSIONER: 20 million I mean?---Yes, that's correct.

MR ALEXIS: Now, I think with the advent of the close of the financial year you've been able to update this schedule to tell us what the position in fact is as at 30 June?---That's correct.

30 And can I provide you with an updated schedule please, Ms Taylor. And should we understand, Ms Taylor, that with a further remittance that occurred for the month of June 2011, again, just looking at the Timing of Cash Remittance column for the moment?---Yes.

We see that total remittances for the last financial year were just over \$57 million?---That's correct.

40 And, again, there's a shortfall although not for \$21 million but the shortfall was reduced to \$11.4 - 746 million?---11.746, that's right.

Thank you. And we see that if we come down to section B of this document entitled Expected Results versus Budget and in the table there we see under the column headed CLE the identification of budget versus what in fact was remitted and we have the variants identified there in red ink?---That's correct.

THE COMMISSIONER: Just so that I understand this correctly the distribution amount for March, April, May was only \$3,863,000-odd, is that correct?---That's correct.

So there was, in effect, no remittance in March and there was no remittance in April, is that correct?---March, April and May have been done - - -

Consolidated?---Consolidated, yes.

10 All right.

MR ALEXIS: Now, underneath that table, Ms Taylor, you see the subheading Negative Variance for CLE is explained by?---Yes.

And have you sought to set out there your findings after you sought to understand why in relation to the CLE budget there was the shortfall of \$11,746,000?---Yes.

20 And can you just step us through how you've calculated the reason or reasons for that?---The first line there refers to funds that were from the previous financial year that were not remitted at that time and therefore flowed into this financial year. The total 9.787 million.

That's the opening balance if you like?---Correct. Is essentially the total of the June remittance and the value of the Newcastle Post Office. The next three lines relate to specific transactions, the first with the purchase, the post office purchase, the next for the Currawong purchase and the next one with the SRDF grant coming back in. All those figures are net of GST. The next line there refers to, from what I understand as from analysis is the variance explained by the reduced business, reduced operational revenues for the year.

30 And the reference to the PO purchase is a reference to the Newcastle Post Office purchase that you refer to in paragraph 36 of your statement, is that right?---Yes.

Thank you. Could I tender that updated schedule.

40 THE COMMISSIONER: Yes. The document headed 2010/11 LPMA Cash Remittances to New South Wales Treasury for CLE is Exhibit 36.

**#EXHIBIT 36 - DOCUMENT HEADED 2010/11 LPMA CASH  
REMITTANCE TO NSW TREASURY FOR CLE**

MR ALEXIS: Thank you, Commissioner. Now, Ms Taylor, finally can I deal with the subject of GST on the Currawong transaction. And I provide

you with a copy, Commissioner, of a note that you've prepared in that respect. And, Ms Taylor, should we understand that following a request that I made the content of which is set out at the top of this note you've delved into the way in which the GST that was paid on the purchase of Currawong was dealt with internally within the LPMA so as to ultimately derive the result that you set out on the second page in relation to the washing through of the input tax credit and the refund that ultimately came back with respect to that?---Yes.

10 And could I just perhaps ask you to step us through each of the documents that are attached to your note just so that we can understand their source. Firstly, document A, and each of these documents, I think, reference back to your note. The document A in the top right-hand corner records what precisely?---It's an excerpt from the SAP report for the Business Activity Statement. The centre section there headed Account 35001 deals with company 91 CLE. There are five items there.

And is it the third item which - - -?---The third item.

20 - - - records the GST paid to Eco Villages for the purchase of Currawong?  
---That's correct.

And ultimately each of the company 91 GST payments total the \$1,225,336 figure we see highlighted with the letter "a" next to it?---Yes.

And that's the figure that then is pulled into the Business Activity Statement, is that right?---Yes, for CLE.

30 Thank you, I'll come to that. Now, the next page can you tell us what that is please?---That's a spreadsheet which consolidates all of the business activity summary details across the whole of the BAS return.

And if we then see how that's treated in the Business Activity Statement that we see with the letter C1 in the top right-hand corner, do you have that?---Yes.

40 And should we understand that the GST on – perhaps I'd better get you to explain it to me. But is the short position that the GST that was incurred together with other GST incurred by the CLE was accounted for in the BAS, Business Activity Statement in the section where you've got a report the GST on purchases, if we look at C3, box 1B?---Yes.

So within that 2.279 figure is the 1.2 million approximately paid as GST to the vendor?---That's correct.

And ultimately we see that after GST on sales of just over \$991,000 is brought to account there was a refund in respect of this particular activity period of just over \$1.2 million?---That's correct.

And we see that in box 8 – sorry, I withdraw that. Box 9 on page C3?  
---Correct.

And then if we look at the next document identified as document D we see that that refund came into the LPMA's bank account on 25 May, you see the deposit for \$1.288 million?---That's correct.

10 So we should understand that the GST went out on the completion of the contract on about 6 April and ultimately came back subject to the offsetting credits and into the LPMA's bank account about a month and a half later on 25 May?---Would've gone out on 8 April.

8 April. Thank you. And back in on 25 May?---Correct.

Yes, thank you, Commissioner. That's all I wish to ask Ms Taylor.

THE COMMISSIONER: Are you tendering this document?

MR ALEXIS: Oh, I'm sorry, I should tender this note.  
20

THE COMMISSIONER: Yes. The note on the GST payable is Exhibit 37.

#### **#EXHIBIT 37 - NOTE ON GST PAYABLE**

MR ALEXIS: Thank you, Commissioner.

THE COMMISSIONER: Mr Branson?  
30

MR BRANSON: No questions, thank you, Commissioner.

THE COMMISSIONER: Mr Curtin?

MR CURTIN: Ms Taylor, my name is Curtin. I appear for Mr Watkins. Counsel Assisting knows more about these things than I, but the GST paid out or the total of the GST paid out on the settlement- - ?---Yes.

40 - - -did you get back?---Yes.

So the net result was zero in terms of expenditure by the LPMA or the CLE, I should say?---In, in relation to the GST after it was remitted, yes.

Yes.

THE COMMISSIONER: Can I, the money that's returned to you, does that, do you keep it or does it go to Treasury?---In relation to the GST?

Yes?---It would be reimbursing costs that we have expended.

So you would keep it?---It, it would then go into the cash position for the next remittance and any additional cash to flow through.

So it goes back to Treasury?---After we reconcile, any remainder would go back to the Treasury, yes.

10 MR CURTIN: When you say after you reconcile, what went to Treasury was in very basic terms, income minus expenses?---Correct.

And the GST was an expense?---Yes. And an income.

Yes. Thank you.

THE COMMISSIONER: So nothing goes back to Treasury?---If I could just have a moment.

20 I'm glad to see that some things are a problem for you, Ms Taylor.

MR CURTIN: Ask Mr Alexis, Your Honour, he's on top of the detail.

THE WITNESS: Once the GST comes back, then if that should be remitted to Treasury it will be remitted to Treasury.

THE COMMISSIONER: I'm not, but you're not sure whether it should be or not?---Yes, it would be.

30 It would be remitted to Treasury?---Yes.

So it's a reduction. So in other words, while there is no loss to the Government as a whole, the payment of the GST affects the budget of the, of, of your agency or entity?---The timing would, of the cash flows would make a difference to when it is remitted.

Yes, because you would, you would remit it in the month that you received it?---The GST coming back?

40 Yes?---Yes.

But you wouldn't keep it?---No.

MR CURTIN: When the GST was paid on settlement, it was paid, it was, it was paid by the Crown Lands Entity?---It was paid by LPMA.

LPMA. Out of moneys that, well, that GST component, if not paid for GST would have been paid to Treasury?---Yes.

And when the GST came back, that money again belonged to Treasury?  
---Yes.

And so in a practical sense the net effect on Treasury was not having the amount of the GST roughly for the period between paying it out and getting it back, subject to the dates of remittances?---That's correct.

And do you still have Exhibit 36 in front of you, Ms Taylor, the, your document with your name on 1 July, oh, thank you?---Yes.

10

And can I ask you about section B and the table underneath the words, "Negative Variance for CLE is explained by", do you see that?---Yes.

And the total is a little over \$11.7 million?---That's correct.

Which is the same total in the table under section A in the bottom right-hand corner?---Yes.

20

And that figure of a little over \$11.7 million in table A represents, does it, the amount of money between what Treasury was expecting in its budget and what it received at the end of the financial year?---Yes.

And meaning Treasury has got about \$11.7 million less from LPMA in that financial year than it had budgeted for?---\$11.7 million?

Yes. Is that right?---Yes.

30

And you explain in that table under Negative Variance for CLE as explained by the big ticket items which accounted for this \$11.7 million shortfall?  
---That's correct.

And the last item balance attributed to lower revenues from operations of about \$9.3 million by that are you conveying that \$9.3 million of the \$11.7 dollar shortfall was caused by lower revenues from operations?---I am saying that, yes.

And by lower revenues from operations you are, in that line item, excluding the purchase of Currawong?---Yes.

40

So for example, if there had been the expected or budgeted revenues from operations in that financial year, so let's assume instead of \$9.3 million it was zero the shortfall figure in the bottom right-hand corner of your table A would've been about 1.8, \$1.9 million, thereabouts?---Would've been about two and a half.

Two and half, thank you. I should've asked Mr Alexis.

THE COMMISSIONER: You're doing well, Mr Curtin.

MR CURTIN: Not doing too badly for a beginner. And can I ask you, Ms Taylor, paragraph 24 of your statement - - -?---Yes.

You asked Mr Costello about authority to make the purchase and by that expression do you mean the authority to sign the contract or commit the Government to the contract or are you talking about financial authority or both or something else?---I would have been referring to, to all of that, particularly the expenditure delegation.

10

And have you set out in this statement the totality of the concerns you have from time to time during the period you were asked about?

THE COMMISSIONER: Well, Mr Curtin, Ms Taylor has given oral evidence about her concerns.

MR CURTIN: Yes, thank you, Commissioner.

20 Does the, does your written statement together with your evidence earlier today, have you identified every concern you had during the period with Currawong?---I haven't specifically addressed some of the accounting questions.

All right. And other than accounting questions?---I believe so.

And when you, at the end of paragraph 24 you give evidence that you were not shown the letter by Mr Costello but you did see it at a later date and can I ask you do you recall what that date was?---No, not specifically.

30 Can you remember the, the month or can you relate to before or after settlement or some other event?---It would have been after the deposit was paid, possibly before the settlement.

And was that a letter to your recollection from the Premier dated 25 February, 2011?---Yes.

When you saw the letter did you do anything? Did you - when you saw the letter did that raise any concern with you?

40 MR ALEXIS: I object to the question. If by the question my learned friend is seeking to adduce evidence of Ms Taylor's opinion about what it mean because if that is the purpose of the question, it may not be, I accept there may be some other purpose that escapes me but if that be the purpose we would object to it if, and another reason to ensure consistency with evidence that was the subject of objection from another witness which I sought to lead and I think the question that I put - - -

THE COMMISSIONER: And I stopped you.

MR ALEXIS: And you stopped me so can I just raise that for consideration. Maybe there is some other purpose in the question which - - -

THE COMMISSIONER: Mr Curtin?

MR CURTIN: Well, Counsel Assisting is on the ball, your Honour, that's the precise point of the question.

10 THE COMMISSIONER: Yes, all right.

MR CURTIN: Now, I don't recall objecting myself.

THE COMMISSIONER: No, I don't think you did object but I made a ruling and I explained why.

MR CURTIN: Yes, but some witnesses, it's been put to them the terms of a letter that, words to the effect, the plain English of the letter says - - -

20 THE COMMISSIONER: Yes, but why didn't you, why didn't you realise something.

MR CURTIN: It was a little stronger than that, Commissioner - - -

THE COMMISSIONER: I, I accept it may have been.

MR CURTIN: - - - and if, for example, a number of people other than say particularly Mr Kelly, Mr Costello and Mr Watkins had formed a contemporaneous view then that evidence would support a submission as to  
30 an - - -

THE COMMISSIONER: As to whether it's ambiguous.

MR CURTIN: Well, at least, at its lowest or more particularly though that Mr, Mr Watkins, the Commission knows the version or what his evidence will be about that letter and - - -

THE COMMISSIONER: I am of the opinion that what the letter means is a matter for submission.  
40

MR CURTIN: But it's a question of whether it's an honest and reasonable or honest but mistaken belief.

MR ALEXIS: Could I put this submission and it may assist my learned friend, those witnesses to whom he refers that were the subject of questioning about when you saw the letter didn't it tell you this or that, they are what might be helpfully described as transactional witnesses in the sense that they had a role to play either in the creation of the letter or the despatch

of the letter to those who ultimately made the decisions to proceed and to that extent they formed part of the relevant transaction matrix of evidence in respect of which what they thought about the letter at the particular time was important and of course may well bear on a submission on about honest and reasonable interpretation. Ms Taylor is not in that category and that's why I objected and her consideration of the letter, her interpretation of the letter obviously well after the event and unrelated to the circumstances of the transaction can't be of any assistance in my submission.

10 THE COMMISSIONER: Mr Curtin.

MR CURTIN: There's nothing more that I can put other than saying (not transcribable)

THE COMMISSIONER: Yes. I am of the opinion that the, that Ms Taylor's opinion as to what the letter meant is not of assistance.

MR CURTIN: May it please. They're the only questions I have for Ms Taylor.

20

THE COMMISSIONER: Yes, thank you. Mr Dunne?

MR DUNNE: No questions.

THE COMMISSIONER: No questions. Mr Patterson?

MR PATTERSON: No questions.

30 THE COMMISSIONER: No questions. Ms Fisher, you have no questions? Thank you. I take it you have no questions?

MR ALEXIS: No, no nothing arising, thank you.

THE COMMISSIONER: Thank you, Ms Taylor, thank you for your evidence?---Thank you.

You're excused from the summons.

40 **THE WITNESS EXCUSED**

**[3.06pm]**

THE COMMISSIONER: Mr Branson.

MR BRANSON: I'm sorry, I was just going to disappear for a (not transcribable)

THE COMMISSIONER: No, no, this, this is in your, it is in your interests to hear what I'm going to say.

MR BRANSON: I'm sorry, I beg your pardon. I was trying to do a theatrical changeover between the actors.

THE COMMISSIONER: No. I propose to adjourn now for ten minutes and I propose to sit until 4.30 unless anyone has objections.

10 MR BRANSON: Thank you.

SHORT ADJOURNMENT

[3.06pm]

THE COMMISSIONER: Mr Alexis.

MR ALEXIS: Thank you, Commissioner. Commissioner, back on 29 June Mr Kelvin O'Keefe, Corporate Counsel for LPMA gave evidence. During  
20 the course of his evidence he was shown a record of interview that he gave to Commission officers before the inquiry started. At the conclusion of his evidence there was a question remaining as to whether he ought to be recalled, but that record of interview hadn't been made available to those appearing before you in this Commission. There was an outstanding question as to whether Mr Curtin for Mr Watkins wanted Mr O'Keefe recalled for further examination. Now, I understand from him that that's no longer required, particularly in light of the discussion that occurred before the short adjournment on the question that was before Ms Taylor that was  
30 the subject of objection so I thought I ought to note that.

In relation to Mr Foster whose statement I tendered this morning and was marked as Exhibit 32 arrangements in place for Mr Foster to attend but I'm not in a position to indicate precisely at this stage. Having indicated that could I now call Mr Richard Timbs.

THE COMMISSIONER: Mr Timbs, are you legally represented?

MR TIMBS: No, I'm not.

40 THE COMMISSIONER: Not. You haven't been in the inquiry before have you?

MR TIMBS: No, I haven't.

THE COMMISSIONER: Well, I am able to make an order which protects you against the use of any evidence that you may give here in any criminal or civil or disciplinary proceedings and I can do that – you're entitled to that protection if you object to particular questions or I can make a blanket order

affording you that protection. I think it's in everybody's interests if I make the blanket order because then you don't have to object after every question. Would you like me to make that order?

MR TIMBS: Yes, thank you.

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

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

THE COMMISSIONER: And would you like to give your evidence under oath or would you prefer to affirm the truth of your evidence?

30 MR TIMBS: I'm happy to give it under oath.

THE COMMISSIONER: Mr Alexis.

MR ALEXIS: Thank you, Commissioner. Sir, is your full name Richard Timbs?---Yes, it is.

10 And you're employed in New South Wales Treasury as Deputy Secretary of Commercial Management?---That's correct.

And you've held that position since June of 2009, is that so?---Yes.

And in this matter you've provided the Commission with a statement of evidence dated 28 June, 2011, is that so?---Yes.

And can I provide you with a copy of that statement, together with a copy for you, Commissioner.

20 THE COMMISSIONER: Thank you.

MR ALEXIS: And, Mr Timbs, is that the statement to which I just referred?---Yes, it is.

Thank you. Is the content of that true and correct?---Yes, it is.

Thank you. I tender that statement.

30 THE COMMISSIONER: Yes. The statement of Mr Timbs is Exhibit 38.

**#EXHIBIT 38 - STATEMENT OF MR R TIMBS**

MR ALEXIS: Now, Mr Timbs, in paragraph 4 of your statement you tell us about your role as Deputy Secretary of Commercial Management and in broad measure that involves being responsible for the commercial activities of the State Government, is that so?---Broadly, yes.

40 Could you be a little bit more specific about your role particularly in reference to the LPMA from June/July 2009?---Yes. My role in fact didn't have a direct relationship with the LPMA, however, a couple of the teams that reported to me through one of my branches had dealings in the area of property policy and procurement policy. In relation to property policy the team in our Property group provides secretarial services to the Government Asset Management Committee and I also sit on the committee representing the Secretary of the Treasury, I'm one of seven representatives on that committee. As I say my team provides secretarial services to that

committee, they keep records of papers, they keep minutes of meetings. That would be probably the extent of my dealings with LPMA.

In paragraph 5 where you deal with the meetings of the Government Asset Management Committee which I think is often referred to as GAMC, is that right?---That's right, yes.

10 You confirm there that your Treasury's representative – and does the LPMA have a role in meetings that are convened with respect to GAMC?---The LPMA was represented on the committee in my memory from about the middle of 2009 to earlier this year. Prior to that the State Property Authority or SPA, S-P-A was represented on that committee. LPMA took the role of SPA and then earlier this year the LPMA role was taken on by the Department of Finance and Services.

20 And if I could jump to the end of your statement just while we're dealing with the meetings of GAMC, should we understand that after the LPMA was formed from 1 July, 2009 the LPMA had a seat on the committee that was previously held by the State Property Authority, is that right, at paragraph 16?---That's right.

And the LPMA representative Mr Watkins attended the GAMC meetings in the 2010 year, is that right?---The records that I've been provided show that he attended meeting during 2010.

And in paragraph 17 you refer to him attending four out of four GMAC meetings. Should we understand that those meetings were held quarterly or approximately quarterly?---Roughly quarterly, yes.

30 And so you were at each of those meetings as was Mr Watkins, is that what we should understand?

I'm not sure that I was at all four for that year, I think there may have been one where I had other engagements.

I see?---I would've attended some of those meetings.

40 Now, can we come to understand a little more about GAMC. In paragraph 6 you tell us that it was established in 1998 to ensure effective management of what you there describe as Government's significant investment in assets and office accommodation. It's not a statutory body, doesn't have any governing legislation. Can you explain to us how then GAMC is regulated?---GAMC is essentially an advisory group which provides advice to either Cabinet or the relevant subcommittee of Cabinet that deals with property related matters.

Now, is there some structure provided to it by the New South Wales Government Procurement Policy which you've reproduced as attachment A

to your statement?---I don't believe that GAMC is governed by New South Wales Procurement Policy, I'm not familiar with all of the detail on this particular procurement policy but I don't believe that's the case. GAMC effectively is a, as I say, an advisory body or an advisory committee, it's comprised of relevant senior members of Government departments typically Director-Generals or their nominees.

10 Attachment B to your statement is the Treasurer's circular NSWTC 10/13 dated 2 November, 2010. Do you have that document, Mr Timbs?---Yes, I do.

THE COMMISSIONER: What page is that?

MR ALEXIS: It's - - -

THE COMMISSIONER: There appear to be page numbers both on the top and the bottom.

20 MR ALEXIS: Yes. Page 41 I'm told, Commissioner.

THE COMMISSIONER: Thank you.

MR ALEXIS: Annexure B on 42.

THE COMMISSIONER: Yes, thank you.

MR ALEXIS: And this Treasurer circular, Mr Timbs, do you have that? ---Yes, I do.

30 Thank you. And is that something dealt with by GAMC as part of its procedures, the Gateway Review System?---No, Gateway is unrelated to GAMC. Gateway is a product of procurement policy that relates to the procurement of construction projects, goods and services and other items by general Government bodies and agencies, but there's no relationship between GAMC and the Gateway process.

40 The Gateway Review System I think is part of the policy and guidelines paper with respect to the government's procurement policy and we see that set out in attachment 5, do we, at page 35 of that publication within your - - -?---Yes, it is, yes.

And then if I could come then to the document at 43 which is the Premier's Memorandum M2008-06?---Sorry, did you say 43? I've only got 42 pages I think.

THE COMMISSIONER: So do I.

MR ALEXIS: I see. In paragraph 7 of your statement, Mr Timbs, you make reference to the GAMC review and endorsement role, I'm looking at the last sentence of paragraph 7, was expanded to include property acquisitions in Premier's Memorandum 2008-06, the State Property Authority and Government Property Principles and you note that that memoranda is still current. Now, does that memoranda, no doubt you're familiar with it, does that relate to the Gateway Review process or does that inform the GAMC review and endorsement process?---It informs the GAMC process.

10

Thank you. Commissioner, we have a copy of that Premier's Memorandum which I have worked on. We will seek to obtain a clean copy and have that circulated. I was working on the basis I must say that it formed part of Mr Timbs' statement but I've obviously - - -

THE COMMISSIONER: Right.

MR ALEXIS: - - - made an error in that respect.

20 Now, Mr Timbs, in paragraph 7 where we deal with property acquisitions as part of the GAMC review and endorsement process does that include property acquisitions by the LPMA or by divisions within the LPMA?---It would improve, include property acquisitions by all government departments and agencies.

So a property acquisition by the Crown Leaseholds Entity being a separate division within the LPMA would need to undertake GAMC review processes. Is that so?---Yes, unless it had an exemption.

30 Thank you. And would it also be obliged under the government's procurement policy to satisfy the Gateway Review Process?---That would be expected, yes.

Now in paragraph 8 of your statement you've noted there that according to records retained by Treasury by the GAMC Secretariat the purchase of Currawong was not tabled before the GAMC committee for consideration and was required by the Premier's Memorandum. Do you see that?---(NO AUDIBLE REPLY)

40 So have you called for the production of those records to see whether or not any GAMC submission was put up or whether any Gateway Review Process was followed?---In, in making this statement I've asked the people at Treasury who performed the secretarial duties for GAMC to check all of the records to see whether the purchase of Currawong came through GAMC. They've confirmed that no paperwork was provided to GAMC.

And when we speak of paperwork and we refer to paperwork going through GAMC, what are we talking about?---Typically it would be a written

submission, it would have information about the proposed transaction and some rationale, justification and economics around the transaction.

10 And with respect to the Gateway Review Process, what's the paperwork that you would ordinarily expect to find in respect of that?---It is similar, Gateway's a little bit different in the sense that Gateway is effectively a serious of reviews based on, on procurement to enable the relevant body or authority to do a, effectively a sort of an independent review of their procurement process, to test it at various points in the process to see whether it was, you know, meeting the objectives that, that they were setting themselves, complying with government policy, those types of things so it's effectively a - the best way to describe it is an independent review of the procurement strategy and, and proposed process.

20 And if we can just look at what you've said in that answer in the context of the Treasurer's circular, attachment B to your statement at page 41, do we see firstly under the subheading of "Summary" there's reference to the Gateway reviews at the strategic and business case gates being mandatory for all construction goods and services, property and accommodation procurement?---Yes, that's right.

And so you would understand that to include a property acquisition within the LPMA of a property such as Currawong?---It refers in fact to, to property in the first paragraph in the summary there at the top of that, the top of that memo.

THE COMMISSIONER: What about gates, Mr Timbs?---Sorry?

30 What about gates?---Gates are effectively the discreet - - -

Stages?--- - - - steps in the process, there are six gates in fact all up. The first two are the strategic and the business case.

40 And then how does each agency know what the gates are?---There is a lot of information made available through Treasury to all of the departments and agencies around the Gateway process, it's on our website, there is a toolkit and, and our team provides regular information sessions to departments and agencies that may not have the same level of knowledge of the processes, other departments that use it regularly would.

MR ALEXIS: And, Mr Timbs, I gather if the submission doesn't get through the strategic gate review which was one of the first two gates I think you referred to you, does that mean the submission goes no further?---No, that's not necessarily the case. The Gateway process is not a, an enforcing type of a process. It's meant to be a, a peer review type process so the, the real purpose of Gateway is to, to do a test and to flag to the agency bringing forward the proposal where there may be areas in their submission that they might like to improve. Gateway, we usually make recommendations about

things that should be addressed as part of the procurement if there are things that need to be addressed but ultimately the procurement strategy is, is up to the department or the agency that's looking to, to do the procurement themselves.

And so would the agency prepare a submission for example if the estimated total cost of the proposed property acquisition exceeded say \$10 million?  
---Under the Treasury circular that's, that's what should happen, yes.

10 Well, we see in the Treasury circular at page 41 that you need to navigate the strategic gate review if the estimated cost is over \$10 million, do you see that?---Yes.

And you need to navigate the business case gate review for all projects with an estimated cost over \$10 million or commencing any upcoming budget year, do you see that?---Yes.

20 And should we understand from what follows after those particular matters in the Treasurer's circular that the intent of the Gateway process is to give government a level of assurance on whether the investment is warranted? Is that right?---Again, not necessarily. It's meant to be a, a review process sort of pre and during the procurement phase that will allow the submitting agency or department to try and address any shortcomings in their proposal so that when they do come forward for government approval they've addressed those things so Gateway is not meant to be in any replacing the traditional budget type approval process.

30 But coming back to my initial question on paperwork, should we understand from what appears at the bottom of the first page of the Treasurer's circular that agencies must complete a, what's called a risk profile using the online risk assessment tool, that's part of the toolbox I think you mentioned is it?  
---Yes, that's what the policy says, yes.'

And that's referred to as the first step in the Gateway process?---Yes.

And does that then over the page tell us or give rise to, I should say, reviews that are then facilitated by teams of experienced procurement practitioners?--Ah, that's correct.

40 And you're one of those?---(not transcribable)

The people that report to you I think are (not transcribable)?---Yes, I have people within one of my branches of Treasury that facilitate the Gateway Reviews.

And just to understand the criteria around this, we see in the Treasurer's circular that the review teams are to assess the project, the progress of projects against seven stated criteria, service delivery, affordability, value

for money, sustainability, governance, risk management, stakeholder management and change management?---That's correct.

They're the essential criteria, are they?---Yes.

THE COMMISSIONER: Now, Mr Timbs, if the Premier authorises the acquisition of property, does that go through Gateway and GAMC?---Let me deal with Gateway first. Matters only come through Gateway if an agency or department bring them to Gateway.

10

There's no- - -?---Gateway in itself is not an approval.

Is Gateway, is there an obligation to bring them to Gateway?---There is, yes.

That's the obligation that one sees set out in- - -?---In the circular.

- - -annexure B in the circular?---Correct. Equally with GAMC. GAMC is not a- - -

20 Can I just, before coming to GAMC- - -?---Yes.

Is there any exemption provided for the case where the Premier authorises the acquisition of property as regards Gateway?---There is no exemption but it could be the case that a property could be acquired without having come in through Gateway.

And what, what gives rise to that possibility?---The relevant agency or department not actually volunteering to come through the Gateway process.

30 And what happens if a Minister authorises the acquisition of property?  
---Again, Gateway is not an approval, it's simply an aid to procurement, its a review of a procurement.

I understand. But would it be open to the agency to avoid Gateway?  
---Ultimately the people running the Gateway process could only be aware of a project if it was brought to Gateway for an approval.

40 I understand that, but that's not what I'm asking. Would it be appropriate practice for an agency to withhold the intended acquisition from Gateway if, I'll ask again, firstly the Premier authorises the acquisition, secondly if not the Premier but a Minister authorises the acquisition?---Gateway usually happens before that, so our expectation would be that an agency would bring a proposal that fitted within the criteria for Gateway for consideration prior to seeking any approvals.

Yeah, I understand that as well, but I assume there may be instances where the proper conduct of Government would require the acquisition of property urgently?---There may, there may be.

And in that event would you mind answering my two questions?---Could you repeat the question, because I'm not sure that I understand the question.

Well, in this case there is an issue as to whether the Premier authorised the purchase of Currawong. There is also an issue as to whether the Minister independently authorised the acquisition of Currawong. There is evidence and evidence has been given that it was believed that there was a short window of opportunity to acquire this property and because either the  
10 Premier or the Minister or both authorised its acquisition, Government officers in the LPMA acted expeditiously. I am trying to find out whether assuming that evidence is accepted, that is to say assuming that the Premier did authorise the acquisition of Currawong, would it have been appropriate for the officers concerned not to submit the matter to Gateway, having regard to the urgency of the matter and the Premier's authority, assuming that it's found that the authority was given?---Yes, there may well be circumstance- - -

Right---?- - -that would mean that it was not appropriate to go through a  
20 Gateway process.

And would that apply to the Minister's authority as well?---I'm not sure that it's a matter of authority. I think it's just a matter of provided an agency went through an appropriate approval process, if it determined that it wasn't in a position to come through Gateway, then it was quite enabled to, quite able to act under its own approval authorities.

All right. Now, do you mind answering those two questions as regards  
30 GAMC. Is your answer the same as regards GAMC or is it different?  
---No, it would be the same answer.

MR ALEXIS: In that respect, Mr Timbs, you tell us in paragraph 10 and 11 of your statement that the LPMA did not seek an exemption from the provisions of the Premier's Memorandum in relation to the requirement to submit property acquisition proposals to GAMC for review and endorsement. Do you see that?---I see that, yes.

And you also tell us that no agencies currently have an exemption. So  
40 should we understand from the answer that you've just given that there is nonetheless an exemption or could be an exemption if the Premier gives authority for the particular acquisition?---I don't think it's a matter of granting an exemption, I think it's more a case of a matter may not actually make it to the Government Asset Management Committee in the, in the first instance.

I'll show you the document that I was fishing for earlier, which is the Premier's Memorandum. And I can provide a copy for you, Commissioner. And can I just ask you to confirm that this is the Premier's Memorandum to

which you made reference in your statement?---Yes, I believe that to be the case.

Yes, thank you. Can I tender that Memorandum, Commissioner?

THE COMMISSIONER: Yes. The Memorandum number M2008/06 is Exhibit 39.

10 **#EXHIBIT 39 - 2008-06 STATE PROPERTY AUTHORITY AND GOVERNMENT PRINCIPLE**

MR ALEXIS: And, Mr Timbs, if you can assist me with this. Is there anything in the principles, both operating principles and guiding principles of this Memorandum which indicates that this is subject to either Premier's consent or the Minister's consent with respect to acquisition of property by an agency?---I'm not intimately familiar with this particular Memorandum. I can really only speak to the GAMC process and the, and the Gateway  
20 process.

Thank you, Mr Timbs.

MR BRANSON: No questions, thank you, Commissioner.

THE COMMISSIONER: Mr Curtin?

MR CURTIN: I think all my questions have already been asked.

30 THE COMMISSIONER: Yeah, I would have thought so, Mr Curtin. Mr Dunne?

MR DUNNE: No questions.

THE COMMISSIONER: No, no questions. You may be excused.

**THE WITNESS EXCUSED**

**[3.48pm]**

40

MR BRANSON: I think he holds the record for the shortest witness. It's a compliment.

MR ALEXIS: Commissioner, can I now call Mr Matthew Roberts.

THE COMMISSIONER: Mr Roberts, you heard the exchange between Mr Timbs and myself about the making of an order for your protection. You would like me to make that order, I take it?

MR ROBERTS: Yes.

THE COMMISSIONER: Pursuant to section 38 of the Independent Commission Against Corruption Act, I declare that all answers given by Mr Roberts 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  
10 objection in respect of any particular answer given or document produced.

**PURSUANT TO SECTION 38 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT, I DECLARE THAT ALL ANSWERS GIVEN BY MR ROBERTS 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  
20 OBJECTION AND ACCORDINGLY THERE IS NO NEED FOR HIM TO MAKE OBJECTION IN RESPECT OF ANY PARTICULAR ANSWER GIVEN OR DOCUMENT PRODUCED.**

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

MR ROBERTS: Under oath.

THE COMMISSIONER: Mr Alexis.

MR ALEXIS: Thank you, Commissioner. Sir, is your full name Matthew Roberts?---Yes.

10 And you are employed in New South Wales Treasury as Deputy Secretary of Economic, Environment and Communities Directorate?---That's correct.

And you've been in that position now for nearly 11 years, is that right?  
---Not in the position, just in Treasury generally.

How long have you been in that position for?---About 18 months.

And in this particular matter I think you've provided the Commission with a statement of evidence dated 30 June, 2011?---Yes.

20 Can I show you a copy of your statement together with a copy for you, Commissioner. Mr Roberts, is the content of that statement true and correct?---Yes.

Thank you. I tender that statement?

THE COMMISSIONER: Yes. The statement of Mr Roberts is Exhibit 40.

**#EXHIBIT 40 - STATEMENT OF MR M ROBERTS**

30

MR ALEXIS: Now, can you explain to us please, Mr Roberts, what role the Directorate has with respect to the LPMA and particularly since about October 2009?---Yes. It's primarily financial management, it has regards to the, the net cost of services, basically the costs and the revenues of each agency, particularly in example LPMA and that involves financial monitoring on a monthly basis and also end of year financial accounts.

40 Now, in paragraph 8 of your statement you've told us that Treasury has no record of any Government decision to purchase Currawong prior to 15 March and no record of funding being requested or approved for that purpose. Can you tell us please what you did to satisfy yourself that no records in that regard were found to exist prior to 15 March?---Yes. Having been made aware of it more recently I spoke to my Director who looks after the area involved and also key staff just to understand what the issues were, what correspondence had been received and what advice had been given back which was contained in this, initially in this advice here.

And in relation to the purchase of a property like Currawong by the LPMA or by the Crown Leaseholds Entity within the LPMA what would you ordinarily expect to see in terms of record-keeping within Treasury about decision to purchase and decisions about funding being approved?---It does depend on the agency concerned, some agencies which are general Government budget-dependent agencies have a higher threshold of monitoring than, than in the case of the, in other agencies, for example, the Sydney Regional Development Fund which is a general Government budget, non-budget dependent agency. What that typically would involve is  
10 monthly monitoring where analysts in Treasury receive information from the Department and at a high level looking at the revenue and expenses, making sure it accords with the agreed net cost of services as approved in the allocation letter and any sort of individual major items and variations involved.

Now, can I firstly ask you some questions about the capital authorisation limit which you deal with in paragraph 9 of your statement. And in that paragraph, Mr Roberts, you refer to annexure A which is at page 12. Now, what should we understand as the capital expenditure authorisation limit of  
20 12.8 million that's referred to at page 12 being an extract from the infrastructure statement for 2010/11?---So in this, this is the, this is allocation letter that goes out to the agencies. As you can see there it's 2.8 million which is basically the capital allocation limit which is about halfway down the page and that basically is consistent with the Treasury circular also aforementioned in this advice essentially constrains the agency to work with those capital allocation limits and the Minister within approved funding levels which is that for a given year.

But does the capital authorisation limit have anything to do with the Crown  
30 Leaseholds Entity acquiring land as Crown land?---I think they're different. Basically the authorisation limit would include approved capital spending up to, in a given year which usually comes out of one of the budget papers whereas in the Crown Leaseholds Entity account that is an account which sits within LPMA which collects funds for various things, leases and revenue leases and also sale of Crown lands and the funds are deposited in that account as a revenue capturing mechanism.

But does the CAPEX authorisation limit referred to on page 12 in addition  
40 to any provision with respect to the Crown Leasehold Entity or should we understand that the CAPEX authorisation limit of 2.803 million includes acquisitions made through the Crown Leaseholds Entity?---Again, I don't think the connection is that straightforward. The Crown Leasehold Entity is essentially, it's a funding source whereas here this is a capital limit which may comprise several funding sources.

I see.

THE COMMISSIONER: I'm sorry if I'm very slow at this but I really don't understand it. There were three things here, there is the capital expenditure authorisation limit and then there is the budget that Treasury authorises the agency to expend in a year and then you've got a delegation of say the Chief Executive Officer which would be \$50 million. Now, assume that a person holding that delegation wants to purchase land that exceeds - a person in the LPMA I'm talking about. Assume that a person, that person wants to purchase land over the capital expenditure authorisation limit but within budget and within his delegation. Can he do it?

10 ---Delegations - I'll just break down each of those questions, you've asked a pretty complex question there. It is complex. Essentially through, through the PAFA Act and through - basically agencies receive an allocation through the budget process so basically the capital allocation for spending on capital and so forth is \$2.8 million. They also have an appropriation which is funds that go with the ceiling on how much they can spend. Now, that appropriation may not be equal to the capital allocation so it may be part of how much you can spend in total and you may have other funds coming in from other sources within the agency or from revenue sources. So the allocation simply says how much you can spend in a given year up to  
20 a cap and this is how we're expected to spend within that. If they need to spend above that cap that then goes to the circular which is the one referenced in here which is, I think, T06 which is the capital authorisation limits and that allows agencies to come forward and say I need to vary my capital allocation limit therefore I need approval to do so and the Treasurer or Budget Committee can grant that approval to go above that cap for significant variations or for anything over a million dollars requires this approval by either Budget Committee or the Treasurer.

30 Yes, thank you. And I take it that whatever delegation the officer might have that will be subject to the capital expenditure authorisation limit and the budget?---That's right, yes. So the Minister may delegate in his right or her right to have certain delegation, delegated panels up to a certain amount to relieve him or her of her responsibilities. Ultimately there is that allocation required through the budget process and - - -

THE COMMISSIONER: Yes, I understand, thank you.

40 MR ALEXIS: So if we just pick up the reference to the Treasury circular 2006 06/20 that you advert to in paragraph 11 I think we find that as annexure C at page 60, is that right?---I've got a whole lot of photocopies here, I'm just trying to find it.

THE COMMISSIONER: You should, there's a page number on the top right-hand side?---Okay. What page was it, sorry?

MR ALEXIS: Page 60?---Page 60, yeah.

And in summary we see the reference to “Ministers must manage their capital expenditure programme within the authorisation limits approved by Budget Committee” and then you see in the next paragraph “all over variations including proposals to introduce major new works within an estimated cost of more than \$1 million require the prior approval of the Treasurer or Budget Committee”, do you see that?---(NO AUDIBLE REPLY)

10 So is that what you were referring to when you said - - -?---That’s right.

- - - if they exceed their Capex authorisation then, then they need approval and the basis for that is the Treasurer’s circular of June 2006 06/20. Is that right?---Yes.

20 Now, can you tell us how that requirement would relate the LPMA’s acquisition of the Currawong site for 12.2 million in March 2011?---Yep. So from this particular circular here generally any variation or approved new works as it mentions out here would, would require the approval of either a Budget Committee or, or the Treasurer.

And if we could just come back and I’m sorry to be jumping around but there is I hope some logic to this, if we can jump back to paragraph 24 of your statement. Do we there pick up the point that prior to any acquisition of land that exceeds the capital authorisation limit specified in the allocation letter the LPMA should have made a submission to GAMC in accordance with the Premier’s Memorandum and - is that right?---I’m advised that’s right, I’m not familiar with this policy particularly well but it’s - - -

30 But does that, would that process then satisfy the requirement of the Treasurer’s circular, annexure C to which we just referred if of course GAMC approved the expenditure?---Again, I’d, I’d refer back to the circular in terms of what’s required under there which is on the Treasurer’s approval which is the standard practice or through a Budget Committee process.

40 Right. Now, paragraph 12 of your statement you’ve picked up the provisions or some of the provisions of the Public Finance and Audit Act and you’ve reproduced in annexure D I think at page 63, section 12 of that act, now could I ask you what the significance of that is in relation to the LPMA’s purchase of Currawong? You’ve said at the end of paragraph 12 that LPMA did not have approval to exceed the consolidated fund allocation, do you see that?---Yep.

So what should have occurred in order for that accident to be either approved or otherwise regularised?---So this is, this PAFA Act is consistent with the Treasurer’s circular mentioned earlier essentially, the PAFA Act is essentially saying that no officer shall incur a liability for funds out of the Con Fund, the Consolidated Fund, without the express approval of the

Treasurer so that's the same sort of limiting conditions the same as with the, the Treasurer circular.

I see. All right.

THE COMMISSIONER: What happens if the Premier authorises the contract?---Look, I'm not aware of previous examples of that. I'm sure it may have happened but I'm not - - -

10 And the Minister, a minister?---Again, customary would be for a minister to often write in and seek approval from the Treasurer - - -

Yeah?--- - - - or to, to - - -

And you'd expect the Minister to get the Treasurer's approval and you're not aware of the Premier ever authorising the expenditure without Treasury approval because that's what I gather from what you're saying. Am I right? ---Oh, look, it may have happened, I'm not aware of specific examples, I'm just saying but generally both these guidelines specify quite clearly what the expectation is to happen and that - - -

20

And is that the general practice?---That is the general practice, yeah.

MR ALEXIS: Now, in terms of advice to Treasury do we see in paragraph 14 of your statement, Mr Roberts, that Treasury first received advice of the purchase via the email that you've produced as annexure E to your statement at page 64 and following?---Yeah.

That's the email from Mr Costello to Ms Ponniah who I think was working within Treasury, is that so?---She does, she works for me, yes. I actually wasn't aware that this email came through like until I was advised which was, which was as mentioned in my advice here.

30

But in paragraph 14 of your statement where you tell us that you are, you are advised the Treasury first received advice via that email - - -?---Mmm.

- - - what have you done to satisfy yourself that 4 April, 2011 email is the first advice the Treasury received about this?---As I said, I have spoken with my director and, and the staff involved who looks after the agency and we've had a general chat around just, just, just making sure this correspondence is accurate and the chronology's accurate and, and they've satisfied me that that is the case.

40

Now, can I come to the subject of the Crown Leaseholds Entity account within the LPMA. In paragraph 16 of your statement you refer to the responsibility for the CLE being transferred to the LPMA in July 2009 and you refer us I think to the Treasurer's letter in that regard at annexure G at page 69, is that right?---Yes.

And then in paragraph 17 you refer us to the Constitution Act, that's the State Constitution Act, section 39 which you've extracted as annexure H to your statement at page 71. Is that right?---Yes.

And is section 39 of the State Constitution Act to be understood as the statutory foundation for the obligation to remit to the Consolidated Fund? ---Yeah, that's right.

10 And then you've referred us in section, in paragraph 18 of your statement to section 13A of the PAFA Act, is that right?---Yes, that's right, yeah.

And that is I think a section you've reproduced in annexure I to your statement at page 72?---That's right, yeah.

Thank you. And is the point of that together with what you tell us in paragraphs 19 and 20 of your statement that the LPMA had a remitting obligation in relation to the Crown Leaseholds Entity to the Consolidated Fund and presently there is no approval for the LPMA to retain funds that  
20 accumulate in the CLE account?---That's correct.

In paragraph 20 you go on to say that LPMA did not have authority to access funds accumulated in the Crown Leaseholds Entity account and could you explain why that's so?---That, that's essentially, if you're going back, the logic through those three previous things you've stepped through there, one was the Crown Leaseholds Entity essentially's an accounting entity as I make mention here within the organisation for collecting revenues from those sources. Secondly, the Constitution Act says  
30 essentially all these accounts across Government from the Conceptual Consolidated Fund so whether it's within Treasury or within an agency they are still regarded as part of the consolidated fund administered by Treasury. And then thirdly, that unless an exemption is granted towards the use of those funds under Section 13A of the Public Finance and Audit Act that those funds are, in essence, part of the Con Fund and should be remitted back to the Consolidated fund.

So if we just get in focus the terms of Section 13A on page 72 of the Exhibit to your statement and we see in sub-section 1 the provision that says, that  
40 the Treasury may establish a working account for an authority within the special deposits account. Is your view that the CLE, the Consolidated – I'll withdraw that I'm sorry. The Crown Leaseholds Entity and the fund related to that is a working account within the meaning of 13A(1) of the PAFA Act?---That's something where you would traditionally write to the Treasury and request that a working account be set up so the Crown Leasehold Entity is for all intense and purposes an accounting entity for the Consolidated Fund but to have that designated a working, a working account, that's where typically you'd write to the Treasury seeking an exception under Part 13A

and that's whereas, we intend to hear there was correspondence of that nature.

So in substance paring away the structure and accounting arrangements, use of the fund of the Crown Leaseholds Entity is using the Consolidated Fund?---Yes.

10 Now, you're not aware of the Treasurer having granted any authority within the meaning of 13A(2) of the PAFA Act with respect to the use of the CLE account by the LMPA?---No, I'm not.

And just in regard to what we've just stepped through, would you regard a fair description of the Crown Leasehold Entity account as sacrosanct?---Can you ask that again please.

I'll ask another question. Now - - -

20 THE COMMISSIONER: The spiritual quality is something that is probably so far escaped the Treasury.

MR ALEXIS: But no doubt Commissioner, you understand the reference I was making (not transcribable) In paragraph 21 of your statement Mr Roberts you refer to Minister Kelly writing to the Treasurer on 9 December proposing new arrangements for the Crown Lands which included a proposal that the Crown Lands be given a Section 13A approval. Do you see that?---Yes.

30 And do we see the terms of that request in Annexure J to your statement at page 73?---Yes.

And in particular we see in the second bullet point in the opening paragraph of Minister Kelly's letter to the then Treasurer Mr Roozendaal approval under Section 13A for the LPMA to retain the revenues derived from those land holdings and you see a reference to the Crown Entity, Crown Land Holdings from the Crown Entity in the previous bullet point. Do you see that?---That's correct.

40 And should we note the Treasurer's reply in Annexure K to your statement at page 75?---Yes.

And perhaps not so much for you Mr Roberts but for everyone else we should note the date of the Treasurer's reply is the same date as the Premier's letter that we're concerned with in this inquiry but having noted that, Mr Roberts, should we understand that the Treasurer's response was to defer the request until the expenditure reviewer was there described was concluded.---That's correct.

And can you tell us whether the expenditure review concluded before 6 April 2011?---I'm not aware of that date, I could find out for you but - - -

In any event, you're aware of any subsequent approval from the Treasurer in response to Minister's Kelly request for approval under Section 13A of the PAFA Act?---No, I'm not aware.

10 Thank you. Now in paragraph 24 of your statement Mr Roberts, you deal with the acquisition of the Currawong site and you tell us there that prior to any land acquisition that exceeded the capital authorisation limit the LPMA should have made a submission to GAMC in accordance with the Premier's memorandum. Do you see that?---Yes.

And on page 8 of your statement you've set out, I think, what's required by that, I'm just trying to find – in any event Mr Roberts in paragraph 25 you also tell us that the submission should have gone through the Gateway Review. Do you see that?---Yes.

20 Now are you aware as to whether or not the submission to GAMC and the process that navigates the Gateway Review procedure can be circumvented by a letter of approval for a particular acquisition being given by the Premier?---Look I'm not aware of that, it's not really an area that of my expertise so I'd refer back to the statement or previous answers from Richard.

And you're aware whether that process can otherwise be circumvented by a letter from a Minister responsible for the agency involved in the particular acquisition?---No, I'm not aware.

30 THE COMMISSIONER: Well, I think Mr Roberts has already testified is the ordinary practice is for a Minister to seek the Treasurer's approval

40 MR ALEXIS: Thank you Commissioner. Now finally, can I come to the SDRF, the SRDF I'm sorry which I think you deal with in paragraphs 27, 28 through to 29. Just in 29 Mr Roberts, can I ask you to tell us what you mean by the reference to the Minister administering the Environmental Planning and Assessment Act being classified as non-budget dependent?---Yes, there's essentially two, two main types of entities there's budget dependent and un-budget dependent. This particular one which is commonly referred to as the Sydney Regional Development Fund is a non-budget dependent agency which basically means it acquires most of its funding from external sources.

And in paragraphs 30 to 33, you deal with the concept of net cost of services tolerance limit. Do you see that?---Yes.

And can you just explain to us how that applies in relation to the SRDF as a non-budget dependent Government agency?--- Yes, so consistent with the

earlier discussion around the capital authorisation limits circular which is TC06, essentially there's what we call tolerance limits for budget dependent and non-budget dependent agencies. The purpose of the tolerance limits are to prevent or to not require Minister's to come back every time they exceed their net cost of services which is either a recurrent or capital allocation limit so it provides in views, a certain level of flexibility for the Minister. In this example, for budget dependent agencies there's a raft of different types of tolerance limits which are in the circular – I won't go through them now. And for non-budget dependent ones there's a, a quite a larger one which is around \$5 million tolerance limits for any agency over \$100 million which basically means that there's a, they can go within five, you know, above their net cost of services being \$125.8 million up to around \$5 million without requiring additional approval from the Treasurer or from a Budget Committee.

10  
20 Now we'd ordinarily expect any acquisition by the SRDF through the corporate sole, the subject to a submission to GAMC and/or a Gateway Review?---Again, that's not really my area, I'll have to refer you back to Richard.

Finally could I bring you through to paragraph 34 of your statement which records when Treasury was advised that part of Currawong was acquired with funds provided by the Minister Administering the EP&A Act. Do you see that?---Yes.

And if you could just have a look at annexure A to your statement at page 103, is this the advice to which you were there referring?---Yeah (not transcribable) that's right.

30 And could I just ask you about what appears in the third line of that email from Mr Ng. You see that he says that OSL, the Office of Strategic Lands, has an acquisitional liability for part of the Currawong land as it was zoned for planning purposes and thus after negotiations between LPMA and OSL a cash grant was made to LPMA for \$4.2 million to provide for funding. Do you see that?---Yeah.

Do you understand what the negotiations there referred to were?---No, I don't.

40 And should we understand that if it be the case, that what that is really referring to is Mr Watkins negotiating with himself about the cash grant there referred to. Would you regard that as acceptable in terms of processes that ultimately lead to approval being given for the giving of a grant for this sort of purpose?---I'm not aware that was the intended purpose, so I wouldn't comment on that.

But if it be the case that funding from the SRDF is not subject to GAMC review or Gateway review, and if it be the case that the use of that fund is

within the discretion of the person who authorises within the agency the acquisition of the property, but in those circumstances there should be some consideration to whether someone independent ought to review the decision to approve funding out of the SRDF before it is utilised for that purpose. Would you agree with that as a general proposition or not?---Again that may be something we would look at as a process but I wouldn't comment on this in terms of the particular email here. I don't know enough information about it.

10 All right. Thank you, Mr Roberts.

MR BRANSON: No questions, thank you.

THE COMMISSIONER: No questions. Mr Curtin?

MR CURTIN: No, thank you, Commissioner.

20 THE COMMISSIONER: Thank you, Mr Roberts. You are excused. We finished early. Right. Well, we'll start at 10.00 tomorrow but I'm afraid the hours will be as today.

**At 4.23pm THE MATTER WAS ADJOURNED ACCORDINGLY**  
**[4.23pm]**