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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE DAVID IPP AO QC

PUBLIC HEARING

OPERATION NAPIER

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON WEDNESDAY 6 JULY 2011

AT 10.05AM

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THE COMMISSIONER: Mr Alexis.

MR ALEXIS: Thank you, Commissioner. Mr Foster I understand is in the hearing room and is available to give his evidence so it's appropriate to call him now.

THE COMMISSIONER: Yes.

10 MR ALEXIS: So may I call Mr Greg Foster, Commissioner.

MR HALSTEAD: Good morning, Commissioner, my name is Halstead.

THE COMMISSIONER: Yes, Mr Halstead. Take a seat, please.

MR HALSTEAD: I'm on the record for Ms Pettersson but I also now seek leave to appear for Mr Foster.

THE COMMISSIONER: Yes, you have leave.

20 MR HALSTEAD: Will Mr Foster will require the oath and he seeks a section 38 order.

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

30

**PURSUANT TO SECTION 38 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT, I DECLARE THAT ALL ANSWERS GIVEN BY MR FOSTER 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**  
40 **GIVEN OR DOCUMENT PRODUCED.**

THE COMMISSIONER: Would you swear Mr Foster in please.

THE COMMISSIONER: Mr Alexis.

MR ALEXIS: Thank you, Commissioner.

Commissioner, could I indicate that yesterday I tendered Mr Foster's  
statement, it was marked Exhibit 32. I then took you through the salient  
10 features of Mr Foster's statement and in light of that I propose to go to only  
a small handful of areas - - -

THE COMMISSIONER: Yes.

MR ALEXIS: - - - with Mr Foster if I may.

Mr Foster, could you tell us your full name, please?---Gregory Alan Foster.

Thank you. And in this matter being investigated by the Commission have  
20 you provided a statement of evidence dated 20 June, 2011?---I have.

And it's been marked yesterday, sir, as Exhibit 32. Could I show you a  
copy of that please and would you confirm that the content of that statement  
is true and correct?---I do.

Thank you. Now, Mr Foster, you tell us firstly of an occasion in paragraph  
6 of your statement when in August 2010 you attended a meeting involving  
personnel from Pittwater Council. Do you see that?---Yes.

30 Was that your first involvement in the possible acquisition of the Currawong  
site?---Yes.

And could I then ask you to look at paragraph 8. And do you see that you  
there refer to the carrying out of investigations after the meeting in August  
2010 with respect to ownership and indicative value of land, do you see  
that?---Yes.

And do we see the result of that investigation in the form of the documents  
to which you've attached to your statement? You see in capital, bold type at  
40 the end of paragraph 8 you refer there to producing a copy of recent land  
valuation report, do you see that?---Yes, I do see it.

And so if we go to the attachment to your statement we see firstly a plan of  
the lots adjacent to Beaconsfield Street in Newport, is that so?---That is so.

And can you just tell us where you were able to obtain this from?---This  
diagram was downloaded from our CRV system which is the Crown Lands  
Viewer within the authority.

And we see in the top right-hand corner in the bar running across the top of the plan a reference to the Cadastral Records Viewer?---That's correct.

Which is what you downloaded to produce what we see on this page, is that so?---That's correct.

10 And the land that you were seeking to understand that indicative value of is that the darker shade of land identified by reference to lots 5 and 6 DP 25340?---It is.

And then between that darker shade parcel or parcels of land and the foreshore there's DP 752046, I think it is, lot 155. And was that the Crown land as you understood it that was located between the Council and the foreshore?---That's correct.

20 Thank you. Then if we turn to the next page and could you just explain to us what we're looking at on the page headed in the top left-hand corner ValNet Property Details and I'm looking in particular at the reference to 69A Beaconsfield Street, Newport, do you see that?---Yes, I do.

So what's this document telling us?---This document is an extract from the ValNet database which gives indications of current land values as determined by the Valuer-General. The three lots shown at the top of that heading lot 155, lot 6 and lot 5 are grouped together in that lot 5 and 6 are Council owned land and Council holds a tenure or a licence over the Crown land to be used in conjunction with their two freehold blocks, as such the ValNet will group those together as one holding.

30 Now, when you used the expression "current land value" that the Valuer-General holds do you mean current as at the time of your search which followed the August 2010 meeting or is there something within this document to tell us at what time the value as identified relates to?---This document that was attached to my statement was generated when I prepared the statement so it's indicative of the form of the report that comes out of ValNet. I understand that ValNet is updated by the Valuer-General on a regular basis, probably once every year and reading that it looks like the base date was the 1<sup>st</sup> of the 7<sup>th</sup>, 2010 so that would be indicative of the value if I had searched it back in October.

40

And if you drop down about four lines or so you see the prior base date - - - ?---Yes.

- - - which was 1 July, 2009?---That's correct.

So are you telling us, Mr Foster, that when you did the ValNet search you were able to ascertain that the current land value as far as the Valuer-General records were concerned as at 1 July, 2010 was \$967,000?---That

was the value that the Valuer-General would've determined for those group of lands.

And that relates to all, let me withdraw that question, that relates to each of the three blocks that we see identified at the top of the search?---Yes, but the combined value would be the 967.

10 Yes, thank you. Now, did you also carry out ValNet searches for the other land that you then understood might be included with the Currawong site as part of a proposed state park?---I've shown in my statement the, the value report for the adjoining Council land to the Currawong land, yes.

And if we turn the page we see there's a ValNet search for 79 Monash Avenue, Great Mackerel Beach?---Yes.

And can I ask you to turn the page and tell us what the ValNet search relating to 73 Beaconsfield Street is a reference to and perhaps you can answer the - - -?---Yes.

20 - - - question by reference to the plan that we started with?---The report relating to 73 Beaconsfield Street is the ValNet report for the land that adjoins the Council land to the left if you're looking at the diagram. The reason I do that is that that's the value of a parcel of land which is zoned for residential purposes in one form or another whereas the values we were looking at for the three parcels, they were based on an open space zoning.

Mr Foster, could I just get some clarity around the lot you're referring to? ---Yes.

30 When we're looking at the plan we see on the left-hand side of the shaded battleaxe block number - lot 5, a rectangular parcel immediately adjacent to Beaconsfield Street and then next to that we've got another battleaxe block and we can locate a number 4 residing between the two parallel lines, do you see that?---Yes, I do.

Is that lot 4 in DP 25340 which is the subject of the further ValNet search for 73 Beaconsfield Street, Newport?---That's correct.

40 Thank you. Now, Mr Foster, after you derived those indicative values can you tell us what if anything you did with that information as far as the, can you tell us what you did with that information?---That information was looked at after my initial meeting with Council, that strategic meeting in August. Council had provided us with a, a list or diagram showing a number of parcels around Pittwater that they may be looking at contributing towards the Currawong project so I did that exercise on all those parcels, mainly to gather, to gather information that we could use when assessing contributions in kind for the whole exercise should the Currawong project proceed.

Now in paragraph 9 you tell us that while you were relieving in the position of Director of Strategic Policy and Projects, you were asked by Mr Watkins, the Chief Executive of the LPMA, to attend a meeting with his Chief of Staff, Mr Matchett and Mr Ferguson from the Pittwater Council, do you see that?---Yes. I was asked by Mr Matchett to attend that meeting.

10 Oh, I see, thank you. Now, during the course of the arrangements for that meeting or during the course of the meeting itself do you recall conveying the result of your investigations concerning the indicative value of the Council land at Newport to Mr Watkins?---No, I don't recall.

All right. And should we understand that you've set out your recollection of that meeting that you attended on 1 October in paragraph 10 and you also during the meeting made some notes as referred to in paragraph 11, a copy of which you've attached to your statement?---Yes.

20 Now, in paragraph 12 you tell us that you were aware from your investigations that each of the Council blocks at Newport if rezoned from open space to residential would be worth about \$2.5 million each as unimproved land, do you see that?---I do.

30 Now, can you just help us to understand how the ValNet investigations led you to think that after rezoning and after those lots were available for residential development they'd be worth in an unimproved state about \$2.5 million each?---Yes. That, if we go back to what we were looking at, is why I did the ValNet report on that adjoining block being lot 4 which is very similar to what the land of Council would look like if it was subsequently rezoned. So using the comparison of the similar block next door which is valued at 2.21 million including the Crown land which would most likely be included in ultimate disposal I estimated that the value of the Council land when rezoned for residential would be similar to the one next to it.

40 And we see just going back to the ValNet search for 73 Beaconsfield Street that the current base date was 1 July, 2010 and so it was the 2.210 million that arrived from that ValNet search that would've been available to you when you had the meeting on 1 October with the Council officers?---That's correct.

So did that lead, to some extent, to you informing yourself that the likely unimproved land when rezoned might be in the order of 2.5 million each? ---That's correct.

Thank you. Now, should we understand, Mr Foster, that after the meeting you were tasked with Ms Connolly, I think, to work up a Briefing Minute for the Minister?---Yes.

And you did that based on what you understood the position to be from that meeting that you attended?---That's correct.

And also I think there was a subsequent telephone conference with Mr Watkins?---There was.

And the October Briefing Note that you refer to there was the result of that as well?---That's correct.

10 And then in paragraph 14, if I can just ask some questions about your role which you indicate there involves you with an expected revenue to be generated of \$10 million per financial year for Treasury through the strategic Crown Lands Sales Program, do you see that?---That's correct, yes, I see that.

And is that something, that is to say, the expectation that you were under is that something that was set out in a strategic plan of some sort which provided for sales targets in relation to revenue generated by the sale of Crown land?---That was a standing amount that was set out in my unit's  
20 business plan and probably the Crown Lands Division business plan as being a standing target to provide part of the dividend that was to go back to Treasury each year.

THE COMMISSIONER: By "standing target" you mean the budget, its part of the budget?---The dividend, I understand, going back to Treasury is combined in with the budget.

Yes, but the amount that you require, that you were asked to realise was an amount that represented a figure that was incorporated in your budget.  
30 When I say "your budget" I mean the LPMA's budget?---If budget - - -

Do you know or don't you know?---I don't know.

MR ALEXIS: Now, about halfway through paragraph 14, Mr Foster, you say this, "Accordingly the CEO indicated to me in passing that my program should make additional sales for the year to cover the balance of the cost of the Currawong purchase if progressed." Do you see that?---Yes.

40 Now, can you just explain to us please whether this was passed to you during conversation with the CEO?---It would've been a conversation, I can't recall the exact date but in passing means that whilst working in the Queen's Square office Warwick and I regularly met in the corridors and such and Warwick would've indicated to me – and that's Mr Watkins – that my program would have to start looking at covering the costs of the purchase which would mean an additional 12-odd million onto my 10 so the 25 was the figure that we sort of, we used.

THE COMMISSIONER: You used the phrase “would have” does that mean that you don’t have a recollection, a specific recollection of this happening?---I recall that it did happen.

But you don’t recall where it happened?---It would’ve occurred in the - - -

You said “would have” again?---Sorry? It did occur, sorry, in the Queen’s Square - - -

10 You actually remember that?---Yes.

When did it occur?---In the Queen’s Square head office building.

And under what circumstances?---In our day-to-day sort of running into each other that we would do.

In the corridor?---In the corridors.

20 And what’s the status of a request like that? Do you grant that as an instruction, a formal instruction or do you wait for something in writing?---I take that as a precursor to me getting a formal instruction.

MR ALEXIS: Now, Mr Foster, you’ll see at the top of the page that we’re looking at, page 6 of your statement you refer to the pink that was the briefing document prepared on 8 October, 2010?---Yes.

30 Can you tell us whether the passing comment that you refer to about making additional sales to cover the cost of Currawong if purchased occurred before the preparation of the pink or after?---I can’t recall.

All right. Now, after receiving the passing comment did you receive anything in writing from Mr Watkins to instruct you more formally about making additional sales to cover the cost of Currawong if it progressed? ---Not to date, no.

And do you see further in paragraph 14 you refer to a further passing, I gather, conversation, is that right?---Yes.

40 That occurred subsequent to the earlier one?---Yes.

And do you recall in your statement that it was during that second passing conversation that Mr Watkins identified what the increase in your target was, that is, to 25 million for the 2011/2012 year, do you see that?---I do. That was not Mr Watkins it was my Director.

I see. That was Mr Harding was it?---No, that was Mr Robertson.

I see. And can you recall relatively to the production of the pink on 8 October when that later passing conversation occurred?---The later conversation occurred this calendar year, I can get the exact date if you need, but it was around February/March.

And in that passing conversation with your Director did he convey to you that Currawong had been purchased?---No.

10 You see the way you've expressed yourself in the last sentence of paragraph 14 after the \$25 million reference you say "to cover the purchase cost of Currawong."?---Yes.

So when the Director spoke to you did you understand that Currawong had been purchased?---No.

So again, the conversation occurred in the context of the purchase of Currawong if it progressed to a purchase?---Yes.

20 All right. And is your memory clear that the Director referred to the \$25 million increase for the 2011 and 2012 financial year?---Yes.

In other words, it wasn't a situation where the director was asking you to push the button immediately to general sales before the end of the then current financial year?---No, no.

Now, after this passing conversation did you receive anything formal from your director in terms of a written instruction to increase your target for the 2011/2012 financial year?---No.,

30 Thank you, Mr Foster.

MR BRANSON: Just several questions. Mr Foster, I'm appearing for Mr Kelly?---Yes.

My name is Branson. Can I just inquire of you first of all going back to the meeting on 4 August, 2010, that's the subject of paragraph 6 of your affidavit?---Yes.

40 Now at that meeting can you recall any words used such as joint purchase by the government and by Pittwater Council?---(NO AUDIBLE REPLY)

You may or may not, I appreciate it's a long time ago?---No, I don't, I don't recall the exact words that were used.

What was your understanding as at the time of that meeting as to whether or not it was proposed that there be a joint purchase of the Currawong site by the government and by Pittwater Council?---My understanding from that meeting was that if progressed government would purchase the property and

Council would give in kind contributions by the way of land towards the purchase value.

Did you understand that to not involve any cash component contributed by Pittwater Council?---That would have been my understanding, yes.

At any time leading up to 8 October, 2010 did you have any knowledge of the possibility that the Friends of Currawong may contribute an amount of up to \$2 million towards the purchase of the Currawong site?---No.

10

Thank you. Now, I'm just not clear, the meeting on 1 October last year, where did that take place? I don't think you specified? It's not particularly important but do you remember where it took place?---It took place in the Queen's Square head office.

Thank you. You may have said that and I apologise?---No, I didn't.

Now, following, well, let me just ask you this please: at that meeting on 1 October, 2010 do you recall the words "joint purchase" being used?---No.

20

Thank you. Was your understanding at the conclusion of that meeting much the same as it was as at the conclusion of the 4 August meeting, namely that the purchase would consist of the government providing the cash funds but Pittwater Council was contributing lands owned by it which were to be sold down the track? Is that question - - -?---Yes.

- - - capable of answer, I'm sorry?---It is, yes. My understanding was the same as from the August meeting, is that government would purchase the property - - -

30

Yes?--- - - - and Council would contribute lands in kind - - -

Yes?--- - - - to be counted as a contribution towards it. At the October meeting the only difference was that Council had withdrawn the offer of contributing lands on the western foreshores of Pittwater other than the main lot adjoining Currawong.

Right. So there was that element of clarification to what was the nature of the Pittwater Council contribution - - -?---Yes.

40

- - - in your mind?---Yes.

Correct. And do I correctly understand that Mr Watkins asked you to draft the document which is the pink, I don't think it's got an annexure number but it's annexed to your - - -?---Yes.

It has a page, I'm sorry, pages 11 and 12 of the exhibit, I'm sorry, 11, 12, and 13.

THE COMMISSIONER: Do you see the page numbers at the bottom right-hand - - -?---Yes, I see that.

MR BRANSON: Sorry, I should have said that. Is that the document that you - - -?---Mr Watkins asked the collective Crown Lands Division, the General Manager and the Regional Director South and myself to prepare the pink.

10 All right. Was there a first draft of the pink?---There was a first draft.

Do you know who prepared that?---I prepared the first draft.

Thank you. And do you recall to what extent if at all that first draft was altered, whether substantially or otherwise?---It was altered I know from the first draft that I forwarded on.

Did you see the final draft of the pink before it went to Mr Watkins' office?  
---No, I didn't.

20

All right. Well, bearing that in mind just let me ask you this and I appreciate you may not know but in 3.5 on page 12, do you see that?---I do.

It stated, "Council has indicated a commitment to jointly fund the purchase of the lands in question." Now, were they words that you used in the first draft or not? Can you recall?---They - - -

If you don't - - -?---Well, it would be similar, yeah, that would be similar to the words I may have put in.

30

Well, I know it's difficult to recall without having the first draft but can you just think carefully please to the extent that you recall whether in the first draft that you prepared the words "Council has indicated a commitment to jointly fund the purchase of the lands in question," are your words or not?  
---I do have a copy of the first draft.

Here?---Yes.

With the Commissioner's leave may the witness produce that?

40

THE COMMISSIONER: Yes.

MR BRANSON: Thank you.

THE COMMISSIONER: And you'd better show it to Mr Alexis.

MR BRANSON: Yes, I will, of course.

THE COMMISSIONER: Now.

MR BRANSON: Straightaway, yes, and get copied, thanks.

THE COMMISSIONER: Can you proceed with other questions while we -  
--

10 MR BRANSON: Oh, yes, of course, I'm sorry. I, I just thought you wanted  
me to pause.

THE COMMISSIONER: No, no.

MR BRANSON: I apologise.

THE COMMISSIONER: (not transcribable)

MR BRANSON: The witness is distracted by, perhaps Amanda can help.  
Thank you. Show it first or - - -

20 THE COMMISSIONER: Well, make copies and then - - -

MR BRANSON: And then I'll on, sir, that'd be fine, thank you,  
Commissioner.

Mr Foster, still on page 12 - - -?---Yes.

- - - there's a heading number 4, "Recommendation," and 4.1, you can go  
into c) - - -?---Yes.

30 - - - with a right, right-hand bracket stated, "Approve the LPMA to enter  
into a Memorandum of Understanding with Council regarding proposal to  
jointly purchase the Currawong site and other freehold lands and water." In  
a moment we'll be able to check from your first draft whether they were  
your words but independently of that can you recall whether that, those are  
the words that you used in the first draft?---I don't recall using the words  
"and water".

40 What about the phrase "the proposal to jointly purchase the Currawong  
site"?---I would have to look - if I did use that it would have been in the  
context of - - -

All right?--- - - - the contribution in kind.

All right?---Yes.

Well, they're the only questions and it might just be a matter of the  
Commission comparing the first draft with this document, Commissioner?

THE COMMISSIONER: Well, perhaps we can move on to Mr Curtin and you have a chance of asking him the questions you wish.

MR BRANSON: Yes, certainly, yes, please, thank, thank you, Commissioner. Thank you, Mr Foster.

10 THE COMMISSIONER: Mr Foster, your last comment, I just want to understand that clearly. I think you said that if you did use the words “proposal to jointly purchase the Currawong site” you used it in the context of the Council’s contribution to the purchase as being the provision of lands in kind rather than money, is that what you said?---That’s correct, yes.

Mr Curtin. Oh, just a moment, let’s just deal with this. Does Mr Patterson have a copy? Does Mr Patterson have a copy?

MR BRANSON: Just about to. I’ll be very quick. Thank you. I think, with respect, Commissioner, I don’t need to ask anymore questions, the documents speak for themselves, do they not?

20 THE COMMISSIONER: I would imagine so, but then I think we should tender the - - -

MR BRANSON: Yes, please. Yes, thank you, Commissioner.

THE COMMISSIONER: Yes. The first draft – is this properly described as a Briefing Note, Mr Foster?---Sorry?

30 Is this properly described as a Briefing Note?---This would be described as a Briefing Note, yes.

Yes. Mr Foster’s first draft of Briefing Note of 6 October, 2010 is Exhibit 41.

**#EXHIBIT 41 - FIRST DRAFT OF MR FOSTER’S BRIEFING NOTE DATED 6 OCTOBER 2010**

40 MR BRANSON: If the Commissioner pleases.

THE COMMISSIONER: Mr Curtin.

MR CURTIN: Mr Foster, my name is Curtin and I appear for Mr Watkins. Can I ask you firstly about paragraph 12 of your statement. Can I ask you do you recall whether the investigations you refer to in paragraph 12 as to the value of the blocks at Newport if rezoned to residential was before or after the meeting of 1 October?---Sorry, could you just repeat that.

Paragraph 9 you'll see - - -?---12?

Paragraph 9 refers to a meeting on 1 October?---Yes. Yes.

And paragraph 12 says, "From previous investigations" you were aware of a certain value?---Yes.

Have those investigations do you recall taking place before 1 October or after?---Yes. Yes, before.

10

And paragraph 10 of your statement refers to a number of issues that you recall being discussed at the meeting of 1 October?---That's correct.

And I'll come to your notes that you refer to in paragraph 11 at the moment. And then paragraph 12 you refer to these investigations and if you turn over the page to page 9 of your statement, still in paragraph 12 - - -

THE COMMISSIONER: Page 9?

20 MR CURTIN: Page 5 of 9, I'm sorry?---Yes.

You recall, do I take it, that at this meeting of 1 October that you recall the Council officers suggesting that rezoning of the two lots at Newport would most likely be supported by Council?---I do recall that, yes.

And using the pagination on the bottom right-hand corner, if you can just go to your notes at page 10 there's a date which appears to be 10 June at, in the bottom half or third of the page?---There is, yes.

30 And above that is that some notes of something which occurred on 5 October?---That's correct.

And are the notes above it, is there a date there in your copy?---There's not a date in my copy.

All right. But is it the top third of the page above that horizontal line the notes of your meeting of 1 October?---That's correct. That's correct.

40 And just looking at your notes they start with "Currawong purchase consensus" and then you see the figure of \$12 million?---That's correct.

Do you recall what was said at the meeting which caused you to write \$12 million in your notes?---That was the figure that Mr Watkins explained at the meeting.

Explained in what, explained - - -?---In the context of - in going through the process of acquisition he was estimating I assume that the value of the

purchase would be 12 million and then he indicated that would be made up by those figures to the right of that 12 million.

When you say “made up of the figures on the right” - - -?---Yes.

10 - - - you mean to convey that the anticipated or perhaps provisional or perhaps expected purchase price of \$12 million would be funded by a combination of those three items to the right?---That’s correct. The estimation of 12 million would’ve been made up again as estimations on those figures at the right.

All right. And so OSL is the Office of State - - -?---Strategic Lands.

20 Strategic Lands, thank you. And the Council figure of \$5 million that you see there was that figure your opinion of the value of the lands Council was, at the date of the meeting, proposing to gift in the way you’ve described? ---No, they were the figures that Mr Watkins offered in his explanation as he went through how this would all work and being aware, I was aware that they were in the ballpark of what I had investigated so I let it run at that.

Because before this meeting you, as you’ve described, your investigations led you to the opinion that you set out in paragraph 12 as to the value - - -? ---That’s correct.

- - - of the Newport if rezoned?---That’s correct.

So that’s \$5 million and then Council was also, even at this meeting, talking about gifting further lands?---They were, yes.

30 And underneath the LPMA figure of \$5 million – I withdraw that. The LPMA figure of \$5.5 million from the meeting is that a note recording at least a discussion of LPMA selling land to come up with \$5.5 million? ---That’s correct, yes.

And then underneath that we have, “Council throws in its adjoining land of \$1.5 million.” What was the adjoining land refer to?---That’s the large parcel of land adjoining the actual Currawong site that Council owns.

40 The Great or Greater Mackerel Reserve?---I’m not aware of its correct name.

All right. And that figure of \$1.5 million for that land was that an opinion of yours from investigations or otherwise or something else?---No, again, these were just the ballpark figures that were expressed in the discussions.

And then you see the next line, “Two parcels at Newport to Crown of \$4 million.”?---That’s correct.

And are you able to tell the Commissioner why \$4 million is written there rather than say the \$5 million - - -?---That I had - - -

- - - that you had come to?---Again, I was just noting the ballpark figures that Mr Watkins was indicating as he went through the possible funding scenario for this.

10 All right. And you had – after your investigations and forming this opinion of the value of the Newport land had somebody asked you to do that or was that something you did of your own initiative?---That is something that I did on my own initiative following an August meeting to get a handle on what land values and ownerships were involved should the matter progress from the August meeting.

Using your own initiative you felt this was, the values of these lands was something in your areas of responsibility and that's why you exercised - - -?---I did, yes.

20 And you also valued, if I understood you correctly earlier today, the other parcels of land the Council at that meeting were proposing to transfer or gift?---At the August meeting.

At the August meeting?---Yes. We went through and looked at all those similar to that example of the information.

30 And did you make a note of, putting aside the Newport land, the, the other pieces of land that you valued at the August meeting?---I haven't kept those, that information. From memory going through the, the lands or the individual lots on the western side of Pittwater were generally having values around \$1 million for each one.

Could I, could I have Exhibit 1, please, Commissioner, shown to the witness. In that folder, Mr Foster, you'll see some tabs with numbers on the plastic tabs on the right-hand side?---Yes.

If you could go first to tab 15 and you'll see in the bottom right-hand corner some page numbers and the first page you should see is page 68?---That's correct.

40 Would you turn please to page 73?---Yes.

And you'll see this is a letter from Pittwater Council to Mr Watkins of 15 March, 2011 and you'll see five dot points at the bottom of the page referring to various parcels of land?---Yes.

And you'll recognise the first dot point is the lots that you've given evidence about at Newport?---Yes.

And the second dot point you'll see a lot number known as Great Mackerel Beach Reserve. I just want you to assume that that is the land contiguous to the Currawong property?---Yes.

And was that, and tell me, please, if your recollection does not allow you to say so, but do you recognise either by the words "Great Mackerel Beach Reserve" or the lot and DP number whether that was a parcel of land that you valued?

10 THE COMMISSIONER: Well, why don't you tell him where it is, Mr Curtin?

MR CURTIN: This is the land contiguous to Currawong?---Yeah, yes, yes, yes, I know, I know which land it is.

Yes. Did you value that at the - - -?---I did do the, the check on that value, yes.

20 And what value did you come up with?---That's the value shown in my statement of 800 and something thousand dollars.

All right. Can you just, I may have missed it in your statement Mr - - -

MR ALEXIS: Page 8.

MR CURTIN: Page 8, is it?

30 THE COMMISSIONER: Page, I beg your pardon, Mr Curtin, but what page number was that?

MR BRANSON: 8, 8.

THE COMMISSIONER: 80?

MR BRANSON: Sorry, 8, after 7, before 9. Is that what you said, I'm sorry?

THE COMMISSIONER: What paragraph number please.

40 MR BRANSON: I was told - - -

THE WITNESS: Page 16.

MR BRANSON: Page 16.

THE WITNESS: In my statement.

THE COMMISSIONER: Sorry, page 16 - - -

MR BRANSON: Of the statement.

THE COMMISSIONER: Of the, you're looking at the notes?

MR CURTIN: No, the, one of the three ValNet printouts, the second-last one.

10 THE COMMISSIONER: Have you got that, Mr Foster?---Yes. So, yes, I did.

MR CURTIN: So the property on page 16 with the address 79 Monash Avenue, Great Mackerel Beach was that large parcel of land contiguous to Currawong?---That is correct.

20 And your investigations together with your experience, did you value it at \$837,000 or something like that?---That's the value in, in the database, market value which is a different issue is generally a certain percentage higher than the Valuer General's base rates.

All right. That land I think is zone open space or something of that sort? ---I believe that's so.

And so this, the Valuer General's valuation we saw on that page is under the then applicable zoning of that piece of land?---That's correct.

30 And if we just return to page 73 of that folder, Exhibit 1, if we go to the last dot point an area of land called McKay Reserve at Palm Beach, do you recall whether that was a piece of land that you investigated to arrive at a value?---Yes, I do, it was.

And do you recall - - -?---I don't recall what the value was for that.

You're, are you able, and don't tell me if you don't recall but are you able to recall a range, that is, less than \$100, greater than - - -?---I would recall it would have been in the hundreds of thousands.

And if you go to the dot point immediately above - - -

40 THE COMMISSIONER: That's the whole, that's the total or that's the individual lots making up the part of the reserve?---That would be the, the total area of the reserve.

Thank you.

MR CURTIN: And the next dot point up, what's called Governor Phillip Park, do you recall whether that was a piece of land you valued at the time

we're talking about?---No, I didn't value that or either Pittwater Park in the dot point above as they are Crown Land.

So with reference to this letter you recall valuing the third, the property, the land referred to in the first, second and fifth dot points?---I do, yes.

The first your valuation was \$5 million assuming a rezoning to residential 2A, is that right?---That's correct.

10 The second at, I think it was 867,000 zoned as open space?---That's correct.

And McKay Reserve, the last one, some figure of hundreds of thousands of dollars again presumably under its then current zoning?---That's correct.

The total of those, something over \$6 million, those three pieces of land?  
---Yes.

20 And can I ask you having taking the initiative you did to value the various lands, did you pass that information onto anybody at the LPMA?---I didn't pass it on in any formal report as such. I may have discussed it briefly with my director in, in our week meetings.

THE COMMISSIONER: That being Mr Roberts?---Mr Robinson.

Mr Robertson?---Robinson, yes.

MR CURTIN: And could I ask you the – if I can just return to your notes at page 10 of your statement, your handwritten notes. And can I ask you about your handwritten notes next to the date 10 June?---That's correct.

30 Is that 10 June, 2011 or 2010?---No, that's a transposing it should've been the 6<sup>th</sup> of the 10<sup>th</sup>.

Of which year, 2010?---'11. Sorry, '10. Yes, '10.

So 6 October, 2010?---That's correct.

40 And you'll see the first word there is "pink for Currawong ASAP", so does this note refer to paragraph 13 of your statement where you say just under halfway through the paragraph, "The CEO ask that we prepare a pink."?  
---Yes.

And are these handwritten notes made by you after a meeting with the CEO or a meeting with other people or in some other way?---These notes were made during the telephone conference or the telephone linkup we had with Mr Watkins. When I say "we" it was Graham Harding and Bronwyn Connolly.

THE COMMISSIONER: And yourself?---And myself, yes.

MR CURTIN: And you'll see the initials SRDF in your handwritten notes?  
---I do.

And underneath those initials I think it reads, "Current valuation by Phillip"  
- - -?---Weston.

10 Weston. Is that W-E-S-T-O-N?---Yes, that's correct.

And then what's the rest of that line?---The rest of the line is  
"approximately \$20 million full development."

And do you know who said what about Mr Weston?  
---Again, that is a note of what Mr Watkins indicated during the telephone  
conference.

20 THE COMMISSIONER: What does it mean?---I understand that meant  
that if the land was successfully – this is the Currawong land – if it was  
successfully rezoned to permit residential type development it's value would  
be in the vicinity of \$20 million.

What land?---The Currawong site.

I see?---The subject land.

30 And underneath it's got "say 11 to 12 million."?---Again, that was the  
indication from Mr Watkins as to his estimation of what the purchase price  
may be.

MR CURTIN: And I think you mentioned that the draft of the pink or your  
first draft Exhibit 41 there were some other people involved in, perhaps not  
in your first draft but in later drafts?---Yes, the people involved we indicated  
as the approval trail at the bottom of the draft being the Regional Director of  
South Crown Lands Bronwyn Connolly, the General Manager of Crown  
Lands Graham Harding, the CEO Warwick Watkins and then the Minister.

40 THE COMMISSIONER: I'm not sure what that means?---It means that I  
prepared the initial draft which would then go to each of those officers (not  
transcribable) to look at the draft and - - -

You don't know who made what changes?---No. No.

MR CURTIN: And so you drafted Exhibit 41 and then sent it to Ms  
Connolly first?---That's correct.

And the system, as you understood it, is that she would make any additions or deletions et cetera and pass it on to the General Manager?---That's correct.

Mr Harding?---That's correct.

And then he would make any changes and pass it on to Mr Watkins?  
---That's correct.

10 And did you discuss with Ms Connolly, with Mr Harding the valuations that you had arrived at in August 2010?---I don't recall specific words, I imagine that I would have said that the figures

THE COMMISSIONER: I - - -?---I can't remember.

You can't remember?---I can't remember.

MR CURTIN: Having exercised your initiative and come to those values  
20 did you keep those values a secret from other officers of the LPMA? Or can I put it a different way?---No.

Is that something that in the ordinary course of exercising your functions you would pass on to somebody?---I would normally keep that information and pass it on if requested.

THE COMMISSIONER: Formally?---Formally. Given the context of the values that were being indicated at the meetings and that they all fell in line with what my investigations had shown. So as such I didn't raise any issues about valuations being out of whack.  
30

MR CURTIN: And so at the meetings that you've described if somebody else expressed a view that these Council properties were worth X dollars it accorded with your investigations and say there was nothing for you to - - - ?---That's correct.

THE COMMISSIONER: Mr Curtin, I'm rather anxious to finish Mr Foster's evidence as soon as possible, do you have long to go?

MR CURTIN: About three or four minutes. Can I just ask you, Mr Foster,  
40 about paragraph 14. You've told the Commissioner you had a, if you like, a budget or a standing instruction to achieve about \$10 million in sales per year?---That's correct.

You referred to some in passing comments that your budget would be required to increase. If you assume for the moment, and I don't think anybody, nobody has given you that formal instruction to date?---That's correct.

On the assumption, Mr Foster, if you had been given a formal instruction to increase your sales to cover the purchase price of Currawong, so let's assume \$12 million or thereabouts, if you'd been given that instruction in March of 2011 - - -

THE COMMISSIONER: Are you saying increase it by another 12 million?

MR CURTIN: Yes. So increase it from \$10 million to \$22 million - - -?  
---Yes.

10

- - - would that have been achievable by the end of June 2012, that is, if you had a year and three months to do it?---Yes.

And can I ask you that same question a different way. If you'd been given that instruction in March of 2011, doing the best you can, about how long do you think it would have taken you to achieve a sales target of an extra \$12 million?---It would've taken approximately about 12 months.

20 THE COMMISSIONER: Mr Foster, I'm not sure, well, I don't understand how you increase the sales target, do you have to - I take it you have to identify the land you're going to sell?---That's correct.

And you have the sole discretion as to which land you're going to sell?---I, I managed a programme that brings parcels of land onto the sales programme. Ultimately approval to sell those is higher than me but I prepare the submission to bring them on. I have a land bank of identified Crown Lands which are suitable for possible disposal which I can draw on should we need to raise the target.

30 MR CURTIN: So if you were given this instruction you would identify extra properties as it were that you thought were suitable to sell?---That's correct.

Prepare the relevant submissions?---That's correct.

And give it to somebody higher up to then give formal approval to - - -?  
---That's correct.

40 - - - sell those lands?---That's correct, yes.

Thank you, Commissioner.

THE COMMISSIONER: Any other counsel wish to ask Mr Foster any questions?

MS FISHER: I do, Commissioner, and I'll foreshadow for, for your convenience two topics, one about the MOU and one about the transfer of the lands.

Mr Foster, my name is Fisher, I'm the barrister for Pittwater Council. I'll take you to page 10 of your statement, this is your, these are your handwritten notes. Are we to understand, is the Commission to understand that the topic of a Memorandum of Understanding was discussed in the 1 October meeting?---It was.

Can you recall what was said about that?

10 THE COMMISSIONER: Can you just put what, just to move it along - - -

MS FISHER: Yes.

THE COMMISSIONER: - - - put your (not transcribable) so that we can focus on the points.

MS FISHER: Yes, yes, Commissioner.

20 So was it said in the meeting with, did Mr Watkins give a direction that a memorandum of understanding was to be drafted as a matter of urgency?  
---It was, yes.

Thank you. And if I can take you to Exhibit 1 which is on the ground there, if you open it at tab 1 and turn to page 2. Sir, this is your email to Dwayne Schulz asking him to draft the MOU?---That's correct.

And you'll note about a quarter of the way down you say we'll need to have (not transcribable) ASAP?---Yes.

30 So on 5 October it's still your understanding there's some urgency around getting the MOU drafted?---That's correct.

I'll show you a email from yourself to Ms Connolly, Commissioner, this is out of Exhibit 8C and I took Mr Harding to it the other day.

THE COMMISSIONER: Is it in, is it in Exhibit 1?

MS FISHER: Is it in Exhibit - - -

40 THE COMMISSIONER: Is it in Exhibit 1?

MS FISHER: No, no, Commissioner.

THE COMMISSIONER: And it's not an exhibit?

MS FISHER: It is an exhibit, it's in 8C.

THE COMMISSIONER: Right.

MS FISHER: Mr Foster, you will see there the, just in the bottom third of the page there's an email from you to Mr Harding and Ms Connolly dated 12 October?---Yes, yes, I see that.

And you'll see the very last line "have had Dwayne Schulz mock up a very preliminary draft format for the MOU attached"?---That's correct.

I'm going to show you another document. Then - - -

10

THE COMMISSIONER: The document - the email you've been referred to is an email dated 12 October, 2010 at 2.03pm. That's correct?---That's correct.

MS FISHER: Mr Foster, I show you an email from yourself to Ms Connolly dated 27 October, 2010 at 10.26am.

THE COMMISSIONER: 22 October.

20 MS FISHER: 22, sorry?---Yes.

And there you appear to be attaching a draft of the MOU and you say "for your review and send on to Council"?---That's correct.

To your knowledge was that document sent on to Council?---I'm unaware of, of whether that was progressed or not.

30 Thank you. And were you - did you receive any phone calls or emails from officers of the Pittwater Council chasing the MOU?---I do recall getting a phone call from a Council officer asking where it was up to.

Thank you. So if I ask you to assume that it was, that MOU was finally sent to Council on 6 December can you offer the Commissioner any explanation as to why there was a delay in sending it to Council?---I can't, no.

Thank you. You attended a meeting at Pittwater Council on 21 April, 2011, do you recall that?---Yes.

40 And between the date of the election and that meeting, in that period of time, the lands that Pittwater Council had resolved to transfer to the government or gift to the government had not been so gifted, is that your understanding?

THE COMMISSIONER: You mean not transferred.

MS FISHER: Not transferred.

THE COMMISSIONER: Not gifted is correct but I don't think - they still haven't been gifted.

MS FISHER: Well - - -

THE COMMISSIONER: But - - -

MS FISHER: - - - transferred.

10 THE COMMISSIONER: - - - Mr Foster doesn't know that.

MS FISHER: No?---No.

THE COMMISSIONER: But he does know, you know that it, that they haven't been transferred?---I'm aware of that now, yes.

MS FISHER: Yes. And can you offer an explanation to the Commission as to why they have not been transferred?---No, I can't.

20 Thank you. That's all the questions, I have, Commissioner.

THE COMMISSIONER: Yes. Any other counsel wish to question Mr Foster? Mr Alexis.

MR ALEXIS: Mr Foster, I gather when you were looking at ValNet and passing on as you told us the results of what you'd learnt from that to your director, Mr Robinson, you were acutely aware that it was an indicative value, nothing more?---I was aware.

30 And we know, I think, that you didn't carry out any title search to see whether or not the Council land was affected by any burdens of covenants or restrictions?---In our initial investigations after the August meeting we did get copies of titles and quickly looked at those as to ownership.

And did you see that the lot 5, one of the two Council lots was burdened by a right of way?---I did.

40 But lot 4, the one that you did the ValNet search on to see what residential land was valued at according to VG records was the dominant tenement of that right of way?---I did.

And did you factor that into your assessment of indicative value?---I didn't factor that into the - - -

Sorry, you did not?---I did not, no.

Thank you. And I gather also you didn't go to the site and have a look at the land so, was that so?---Not at that time, no.

But at the time that you're passing on perhaps this information to your director had you been to the site and looked at the land?---No, I hadn't.

So you weren't aware that there's a, that lot 5 was burdened by the existence of stormwater pipes and that there was trees - - -?---I was, I was unaware of that.

10 And there were trees down close to the foreshore that might provide some restraint to residential development of those parcels of land?---I was unaware of that.

Thank you, Mr Foster.

THE COMMISSIONER: You may be excused, Mr Foster. Thank you?  
---Thank you, Commissioner.

**THE WITNESS EXCUSED**

**[11.19am]**

20

THE COMMISSIONER: The Commission will adjourn for 10 minutes.

SHORT ADJOURNMENT

[11.19am]

MR ALEXIS: Thank you, Commissioner. I call Mr Robert Costello.

30 MR DUNNE: Your Honour, my name is Dunne.

THE COMMISSIONER: I know, Mr Dunne.

MR DUNNE: Representing Mr Costello. Mr Costello- - -

THE COMMISSIONER: Be seated, Mr Costello.

MR DUNNE: Mr Costello will give evidence under oath and seeks a declaration under Section 38.

40

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

**PURSUANT TO SECTION 38 OF THE INDEPENDENT  
COMMISSION AGAINST CORRUPTION ACT, I DECLARE THAT  
ALL ANSWERS GIVEN BY MR COSTELLO 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.**

MR DUNNE: Your Honour, just before Counsel Assisting commences,  
can I just advise the Commission that Mr Costello can't hear out of his right  
ear and - - -

MR COSTELLO: Left, left.

THE COMMISSIONER: Mr Alexis?

MR ALEXIS: Thank you, Commissioner. Sir, is your full name Robert Alan, with one L, Costello?---Yes.

10 And prior to the recent transfer of LPMA functions to the Department of Finance and Services, were you the corporate secretary and the chief financial officer of the LPMA?---I was.

And should we understand you held that position since 2005?---In the early days it had a slightly different name, but essentially the same role since 2005, yes.

And from at least 2005 you reported directly to Mr Watkins as the CEO of that organisation?---I did.

20 Now, in relation to your role as corporate secretary, should we understand that broadly to involve you providing advice as required to the CEO on major issues affecting the organisation and the work that he undertook as CEO?---It does, yes.

And in relation to your functions as CFO, should we understand that that broadly involves you managing the financial function of the organisation as well as human resource functions within the LPMA?---That's right.

30 Now, should the Commission understand that you were first appointed to the LPMA in 2003?---Yes.

And Mr Watkins was then the CEO to which you reported in part?---In part, yes.

You also reported to Mr Graham Harding from whom we've heard evidence and that was because you were working in the Crown Lands Division in a financial controlling capacity. Is that so?---That is so.

40 So from 2003 to 2005 you had a split reporting between Mr Harding and Mr Watkins. Is that right?---Yes, that's right.

Now, before 2003 if we can just check through your short work history albeit a very long one in the Public Service, should we understand that you worked within the Premier's Department- -?---I did.

- - -for some, some years?---About three years.

And before that you were working in a chief financial officer role within the National Parks and Wildlife Service for about nine years?---Yes.

And before that you worked in the Chief Secretary's Department in a chief financial operations role for about two to three years?---I did.

And before that you worked in Treasury- - ?---Yes.

- - -in a number of different roles. Is that right?---That is right.

10

You worked as a budget inspector?---Yes.

You worked in relation to poker machine and casino control proposals and related matters?---(not transcribable)

And prior to that, and I think this is where you started in your Public Service career, you worked as a clerk with the Police Department?---I did.

20

Have I left out of that short CV, Mr Costello, anything of significance we should understand in terms of your work history?---Nothing at all.

Thank you. Now, can I come directly to Currawong. We know that in October 2005 Mr Watkins submitted an Expression of Interest regarding the possible purchase of that property. Were you involved at all in the preparation of that EOI and the submission of that as part of the, the tender process for that property?---No, I wasn't.

30

And the October briefing document, and can I identify it so that we're clear, could the witness be shown Exhibit 1, please. Behind tab 2, Mr Costello, you'll find the October briefing document to the Minister at pages 4 to 6. Do you have that?---Yes, I do.

And were you involved at all in the preparation of that document, either in the formulation of the draft or the review of a draft so as to achieve its final form that we see behind tab 2 before submission to the Minister?---No, I wasn't.

40

And were you consulted at all or asked your advice on any of the funding arrangements, just to put it generally, that are set out in that Briefing Note? ---No, I wasn't.

Can I ask- - -

THE COMMISSIONER: Is that, is that unusual or not?---Mr Watkins has a way of, sometimes I'd get involved in issues, sometimes I wouldn't. He was the boss, he called the shots.

MR ALEXIS: Now, behind tab 4, Mr Costello, you will see at page 9 that Mr Harding sent you and others an email on 4 November, 2010, relating to a Currawong meeting at the Minister's office. Do you see that?---I do, yes.

And do you see that Mr Harding was then raising with you and your other colleagues there referred to some questions about the way forward, and you'll see in particular his reference to him having no idea about where the money will come from and how that would be substantiated in the submission. Do you see that?---Yes.

10

And do you see that, just passing over the next reference to the GBE, there's a reference to the 15 million to come from anticipated Treasury PRMF loan and that that would be swallowed by this acquisition, nothing left over for urgent capital requirements, and then you see there's a specific reference to you, in the email he says, "Bob, can you assist in advising where the cash flow is predicted to come from?" Do you see that?---Yes.

So does this email, Mr Costello, provide us with your first footprint on the acquisition path for Currawong, the receipt of this email on 4 November?

20

---That would have to, yes.

Yeah. And can you tell us how, if at all, you responded to the question that Mr Harding was there proposing about where the cash was going to come from in relation to the acquisition?---I, I think I phoned him up on this one and indicated that this was the first I'd heard that there's anything going on with Currawong and until such time as I got some further information I was just in the dark as much as anybody else as to where funding would come from and would have also told him that he couldn't use the \$15 million, it wasn't a PRMF loan, it was a loan to the Lands Administration Ministerial Corporation and he wouldn't be able to use that because the Treasurer put some specific requirements on how that funding could be used.

30

Now, if you come through please to tab 8 of Exhibit 1 and can I ask you to look at the Briefing Minute of two pages that we see at pages 41 and 42? ---Ah hmm.

And you'll see behind that the two page letter from the Minister to the Premier at pages 43 and 44?---Yes.

40

Now, were you involved at all in the preparation of either the Minute or the letter from the Minister to the Premier referred to in that Minute?---No.

Were you consulted at all about its content?---No.

Were you asked to give any advice at all about the matters that we see referred to either in the Minute or the letter?---No.

And should we understand from your answers, Mr Costello, that not one word was conveyed to you as the CFO about the potential or prospective funding for any acquisition of Currawong by the 8<sup>th</sup> or 9<sup>th</sup> of February, 2011?---That's right.

Now, could I ask you please to look at the letter from the Minister to the Premier at pages 43 and 44 and particularly at the second page of that letter at page 44, do you have that?---Yes.

10 And can I ask you to look please at the second last paragraph of that letter and particularly the last sentence where you'll see the statement, "I believe that should the site be available for purchase that this could be achieved by the LPMA with no additional cost to the budget." Do you see that?---Yes.

Now, prior to 9 February, 2011 and when you later came, I think, to understand that this letter went off to the Minister and it was signed and then sent on to the Premier but prior to the letter being signed and sent had you had any discussion at all with Mr Watkins about the proposition that Currawong could be purchased by the LPMA with no additional cost to the budget?---No.

Were you asked to prepare any cash flow projection or any financial analysis or indeed any funding model to underpin the stated proposition in that letter that the LPMA could purchase Currawong with no additional cost to the budget?---No.

Were you asked to prepare any such projection analysis or model?---No.

30 And, Mr Costello, if it be suggested in this inquiry that there was an agreement made on or around the date of this letter that the purchase could occur with no cost to the budget and that by reason of that the prospective purchase did not have to go up to a budget committee of Cabinet should we understand from your evidence that you were not a party to any such agreement?---No.

And by "no" you mean to tell the Commissioner that you were not involved in any such agreement, if there be one, about the prospective cost had no effect on budget?---I'm not quite sure – when you say I wasn't party - - -

40 Let me put it again?---Okay.

As at 9 February, 2011 if a suggestion is made to the Commissioner in this inquiry that by that date Mr Watkins had made an agreement that there be no cost to the budget and therefore the matter didn't need to go to a budget committee should we understand from your evidence that you were not party to any such agreement?---I was not party to any such agreement.

Thank you. Now, Mr Costello, can I ask for your assistance on this. If one wanted to determine as at 9 February, 2011 that the cost of Currawong to purchase would have no impact on the budget would you need to undertake at least a cash flow projection and some form of financial analysis to determine whether or not that was a reality?---You'd have to at least do some sort of analysis even if it was on the back of an envelope you'd have to have some idea where the money was coming from so there was no net, net cost to the budget.

10 And you'd need to at least undertake some form of funding model albeit in a crude fashion on the back of an envelope to work out whether or not come 30 June, 2011 assuming acquisition occurred during that financial year there would ultimately be no impact on the budget?---That's right.

And do you tell the Commission that you were not involved in any way, shape or form in the formulation of any such projection analysis or model whether on the back of an envelope or otherwise?---That's right.

20 Thank you. Can I show you, Mr Costello, an email, with a copy for you, Commissioner. And, Mr Costello, do you see that on 4 March Ms Kimberley Taylor from whom we heard evidence from yesterday sent you an email about the subject of whether the Minister can sign CSEPA accounts during Caretaker, do you see that?---Yes.

Can you just tell us please what the reference to CSEPA is?---That's the Corp Sole under the Environmental Planning and Assessment Act.

30 And do you see that you've responded later that day indicating that the Caretaker Conventions restrict him entering into any new commitments, major new commitments, he's still required to undertake the day-to-day matters of Government, do you see that?---Yes.

And when you sent this email you appreciated, didn't you, that 4 March was the commencement day of the Caretaker Conventions?---Yes.

And can I ask you to look at Exhibit 5 please. And while that's being obtained can I tender the email, Commissioner.

40 THE COMMISSIONER: Exhibit 42 is the email dated 4 March, 2011 sent 3.12pm from Mr Costello to Ms Taylor.

**#EXHIBIT 42 - EMAIL FROM MR COSTELLO TO MS  
KIMBERLEY TAYLOR DATED 4 MARCH 2011**

MR ALEXIS: Now, Mr Costello, by the time of the email exchange on the day of commencement of the Caretaker period should we understand that as

the CFO of the organisation you well understood the content of the guidelines that had been dispatched to Government departments from the Premier's Department back on 14 October, 2010?---I was aware of it, yes.

And we see the content of that within Exhibit 5 which is before you, is that so?---Yes.

10 And could I ask you please to look at the guideline document and particularly at page 3 in paragraph 1 dealing with the terms of the Caretaker Conventions, do you have that?---Yes.

And you see in paragraph 1.2, second sentence there's reference to the general rule - - -?---Yes.

- - - that no significant year decisions, appointments or contractual commitments should be made?---Yes.

20 And that's, in effect, what you were conveying to Ms Taylor wasn't it on the day of commencement of the Conventions that the Minister was restricted from entering into major new commitments, do you see that? ---Yes.

And do you see further down the page under the subheading Major Contracts and Agreements there's reference to the Convention is that the Government avoids entering major contracts or agreements during the Caretaker period?---Yes.

30 And do you see in the next paragraph, and did you understand at the time that in order to assess whether a contract was major or not you'd have regard to the dollar value of the commitment?---Yes.

Content and the extent of other financial and non-financial obligations? ---Yes.

The duration of any commitments?---Beg your pardon?

The duration of any commitments be given?---Yes. Yes.

40 And finally over the page at the top of page 4, you have regard to whether or not the contract was likely to be politically contentious and was one that should be particularly avoided. Do you see that?---Yes.

And do you also see and did you understand on 4 March that the Caretaker Convention didn't prevent the Government taking action that it had already committed to and announced prior to the Caretaker period commencing? ---Yes.

And then, shall I also understand that in paragraph 1.3, you well understood by 4 March the Caretaker Convention was not a black letter law but was a convention that required judgement and common sense.---Yes.

And that if there was any question arising as to the application of the convention to a particular circumstance as we see just under paragraph 1.3 the Department of Premier and Cabinet was available to provide advice and assistance to agencies and Ministers should any difficulties arise in the application of the conventions to said circumstances.---Yes.

10

You well understood that on 4 March?---I had a fairly good understanding, yes.

Now, when you learnt about the purchase of Currawong and I'll come to some detail in a moment but I think we should understand for present purposes that that was either before or after Mr Watkins' email of 10 March, on the Thursday or the Friday before the exchange on the Tuesday?---Yes.

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

20

So when you learnt that there was likely to be a purchase of the Currawong site it would have been fairly clear, wouldn't it Mr Costello, that it was a major purchase as that expression is used in the convention.---Yes.

And it was likely to be one of some political contention.---Not necessarily.

Well, there was doubt in your mind wasn't there?---No, I thought the, in terms of the history of the site in the past the government had always been keen to acquire it and the then opposition, the local member was always keen for the site to brought back into well, brought into public ownership. I didn't see it being a contentious one.

30

Well, Mr Costello, would you agree with this proposition that at the time you learnt of the possible purchase it was something that you thought it could be – I put it no higher – could be politically contentious?---Could be, yes.

And would you agree with me that when you learnt of the possible purchase on 10 or 11 March, you well understood that the government had made no commitment to purchase the site and no announcement had been made before the commencement of the caretaker period?---Yes, but the, it was hardly a site where you were going to be able to get any sort of announcement beforehand anyway given that the idea was to negotiate.

40

But Mr Costello, I'll just come back to page four of the Caretaker Conventions please, and do you see under the third paragraph down from the top of the page the sentence I took you to a moment ago, the Caretaker Convention doesn't prevent the Government taking action that it has already

committed to and announced prior to the Caretaker period commencing.---  
Ah hmm.

Do you see that?---Yes.

Now this transaction was clearly enough to you on 10 or 11 March one that  
the Government had not committed to and made no announcement about.  
That's so isn't it?---No, because when I'd heard, when it was first advised  
me that the sale - - -

10

THE COMMISSIONER: (not transcribable) party upon, I didn't hear that.

THE WITNESS: Sorry, when I was first advised that the sale was likely to  
go ahead, I asked Mr Watkins whether he'd considered that he had met all  
the Caretaker Conventions. He said, he had and he had approval from both  
the Minister and the Premier before the Caretaker Convention came in and  
on that basis I was satisfied that because the decision, I hadn't seen the later  
but I accepted him at his word because that advice had been received  
Caretaker Convention had started. Then it would seem that it was  
reasonable to continue to proceed.

20

MR ALEXIS: So Mr Costello, you took what Mr Watkins said to you as  
the Government having made a commitment to the purchase of Currawong.  
Did you?---No, I couldn't go that far.

Well, it was obvious to you then wasn't it, come 10 or 11 March that the  
Government had made no commitment to buy Currawong and had made no  
announcement about that fact?---That is so.

30

And therefore it must have been clear to you that the Caretaker Convention  
would apply because no committeemen and no announcement had been  
made prior to 4 March?---The Caretaker Convention also allowed, it wasn't,  
it wasn't a hard and fast, not, what was, it was not black letter law. It  
looked on the balance of discussions I had with Mr Watkins that it was  
reasonable to continue.

Mr Costello, did the fact that it is not regarded as black letter law cause you  
to disregard it's application?---No, not disregard but be aware of the picture  
of what was going on.

40

But if you knew on 10 or 11 March that the government had made no  
commitment and no announcement had been made, it follows, doesn't' it,  
that the Caretaker Convention, was something that was applicable to this  
transaction and if there was any doubt in your mind about it it was available  
to you to get some advice from the DPC about it.---Yes, I accept that.

And you didn't get any advice from the DPC did you?---No, I accepted the  
advice from Mr Watkins that everything was in order.

THE COMMISSIONER: I don't understand why, on what basis was it in order?---Well, Mr Watkins, I asked Mr Watkins whether he had complied with all the conventions, and he said, he looked at all the convention and he was satisfied that his actions that he was about to embark on met with the requirements of the convention.

But by that date, as you have rightly accepted, the Government had not committed to purchase.---I accept that, yes.

10

And by that date the Government had not made any announcement.---Yes.

So how could, what, what value did Mr Watkins' assurances had to have met?---I was satisfied that the Government had made a decision to allow negotiations to be commenced before the Caretaker mode, before the Caretaker Convention came in and because of the, the timing around that issue there was not going to be, you couldn't have made an announcement beforehand anyway because you don't negotiate, you don't advertise that you're going to negotiate and I - - -

20

Do you regard a decision to commence negotiations as a commitment?  
---Not as a commitment but as a step forward, a step to go forward though, not to stop the, not to stop the action.

But that, did you know that that would comply with the, the mere agreement to the, the mere giving of authority to negotiate did not involve a compliance with the Caretaker Convention.---Yes, I accept that.

30 So Mr Watkins assurance you must have realised was pretty valueless?---I thought it was - - -

Not pretty valueless, was valueless because you knew that those two strict requirements had not been complied with?---I accepted Mr Watkins at his word that he had sufficient approval to proceed.

40

What would be sufficient approval to proceed?---The fact that he had a, the letter from the Premier that he could go ahead with the negotiations and let me know what the outcome is. If, if, well, my view was if the Premier had wanted, was concerned about the Caretaker, the letter wouldn't have been cast in those sort of terms.

MR ALEXIS: Mr Costello, have a look at the email please behind tab 11, page 47(c). Now, we see that the email from Mr Watkins to Mr Linz that was copied to you and Mr O'Keefe and Mr Simpson was sent about 8.30 on the evening of Thursday 10 March, when should we understand you actually saw this email for the first time?---On 11 March.

That's the Friday morning.---The morning, yes.

And when you saw the email, no doubt you fixed immediately on the words in the opening sentence about the existing of a verbal contract today?---I looked at that, yes.

And you understood that what would follow would be the preparation of a contract for sale and exchange of that contract?---I did.

10 And you understood that although Mr Watkins expressed himself in terms of a verbal contract, there was nothing in terms of any commitment until the written form of contract for sale had been exchanged?---That's right.

So therefore it was obvious to you, wasn't it, that the government had made no commitment to buy this property?---Yes.

20 Well, may I suggest to you that when you read this email it must have been obvious to you that the application of the Caretaker Conventions required some care?---No, because my, my, my feeling was when we had the discussion with, when I had the discussion with Mr Watkins the day before I was satisfied that at that discussion that he had met the requirements.

But that was based on nothing more than him telling you that he had the Premier's authority?---Yes, but then in the same way in this, this, this, this email I saw that as a follow-on from the, the work that we had done the day before.

30 But in order for that to satisfy you you'd also need to be satisfied, wouldn't you, that the approval from the Premier which makes the commitment was one given prior to the date of commencement of the Convention on 4 March?---Yes.

Well, what Mr Watkins told you didn't or couldn't have satisfied that could it?---I don't see why not.

Now, can I come to that conversation with Mr Watkins?---Yeah.

40 And is the position that you had the conversation with him during the course of the Thursday before you opened and read this email on the Friday morning?---Yes.

About what time of day was the conversation?---Oh, mid morning I think.

And can you tell us, please, what he said to you?---Basically that he had been negotiating with the owners of the Currawong site and he was close to, close to getting a settlement on the, on, on the purchase and it could be around the \$12 million mark.

And when he told you that, was that the first time that you had heard that there was actually some negotiations that had been going on about the purchase of Currawong?---Yes.

Prior to that telephone conversation did you have no knowledge about that at all?---No.

None at all?---None at all.

10 THE COMMISSIONER: And your, the authority that you thought that Mr Watkins had came from the Premier?---The Premier's letter, yes.

That's all?---That's all, yeah.

MR ALEXIS: And in that telephone conversation is that when you asked him whether or not he had approvals in place or something to that effect? ---Yes, yes.

20 And what did he say?---He said, yes. He said, I've got a, a letter from the, the Premier and I've got the Minister's okay to, to proceed.

And did you specifically raise with him the fact that at the time of this conversation, namely 10 March, you were in Caretaker mode?---No, I didn't.

Are you sure about that?---Well, because I asked him a question whether he had met the provisions of Caretaker so I suppose, that assumes I had, yeah.

30 Didn't you say, didn't you say to him, Look, Warwick, we're in Caretaker mode, are you satisfied that you've met all of the Caretaker Conventions? ---Yes, that's that conversation.

What did he say to you in response to that?---He says yes, I've been through the Caretaker Conventions and I, the, the requirements and he said I believe I've met them all.

40 And in that conversation did he tell you anything about how it was that he regarded himself as having met them all?---Basically the main one was that he had the, the Premier's approval to proceed before the Caretaker period commenced.

Now, did you look on the Friday morning when you got to work and opened this email, did you look at the Premier's letter or did that come later?---I, I'm not sure just when, I, I would have seen it earlier, I thought I might have seen it on the Thursday when I was talking with him with Mark, Mr Matchett, I think Mr Matchett then showed a copy there, he had a copy of the letter there.

Can I just try and be clear about this, please?---Yeah.

When was the first time you saw the Premier's letter?---I think it was at that, in that telephone, while that telephone conversation was going on on, on the 10<sup>th</sup> I think.

10 I'm sorry, Mr Costello, are you telling us that during the telephone conversation you saw the letter from the Premier, a copy of which we find behind tab 9 at page 47A, just check that please?---I think that's when I saw it.

THE COMMISSIONER: And did you say that Mr Matchett brought it to you?---I think Mr Matchett had it there, yes.

So he, he put it in front of you while you were on the telephone to Mr Watkins?---Yeah, it was a telephone, it was a loudspeaker telephone system, yeah.

20 MR ALEXIS: So the conversation that you're telling us about during which you learnt for the first time that some negotiations had been going on and you raised the question of whether he had approvals in place and you asked him about whether he was satisfied that he'd met the Caretaker Conventions, this was a conversation during which you were listening to his voice on a speakerphone in the company of Mr Matchett, is that correct? ---Yes, that's right.

30 And was it during that telephone conversation where Mr Watkins referred to the Premier's letter that Mr Matchett procured the letter and showed it to you?---I think that's correct, yes.

So your recollection is that before receiving the email from Mr Watkins that you opened first thing Friday morning you'd already seen the letter from the Premier?---I think so.

Now, on the Friday morning after you'd seen Mr Watkins' email do you recall having a conversation with Mr O'Keefe, the Corporate Counsel of the LPMA?---Yes. Mr O'Keefe walked into my office at one stage and he said, "Oh, your boss is going to acquire Currawong."

40 And you'd seen no doubt that he'd been copied in on the email - - -?---He'd been copied in on the email, yeah.

- - - that you opened that morning?---Yes.

And did he say to you something to this effect: Is the transaction okay given that we're in Caretaker mode?---Yes, he did say that.

And how did you respond to that question?---I, I think basically I said that the boss has got a, a letter from the Premier allowing him to proceed.

And when you had that conversation with Mr O'Keefe had you seen the letter?---I'm sure I had.

Did you show it to him?---No, because I didn't have a copy of it.

10 So Mr Matchett had shown it to you and then you gave it back to him?  
---Yeah.

I see. So is this the position: that when you answered Mr O'Keefe's question you conveyed that Mr Watkins was relying on the Premier's letter and that Mr Watkins regarded that as providing sufficient authority given the Caretaker Convention to proceed?---Yes.

Did you tell Mr O'Keefe that you'd read the letter?---I don't, I don't know.

20 And did you say to him, Look, Kel, I've read the letter and I think it's okay or something to that effect?---I don't think I'd go that far.

What do you mean that far?---Well, I think I just said that, that, that, that, you know, Mr Watkins had a letter from the Premier which allowed him to, to proceed.

Now, have you got the Premier's letter open in front of you, Mr Costello?  
---Yes, yes.

30 When you saw it I gather you saw that it was dated 25 February and therefore before the commencement of Caretaker?---Yes.

I gather you read it and saw that a letter had gone from the Minister to the Premier of 9 February seeking approval for the Chief Executive to hold negotiations with a view to purchasing Currawong?---Yes.

And I gather when you read that you then looked at the next paragraph and noted what was said about budget?---Yes.

40 Now, just pausing there, given what you've told us about your involvement in questions about whether or not any acquisition was going to affect budget, did the reading of that sentence cause you to pause and feel somewhat concerned?---I had a, a, a concern as to just how or what sort of arrangements had been put in place to ensure there was going to be no additional funds needed in the budget.

Well, at this stage you didn't know anything about that?---Yeah. In fact all I was, it's just that, I just thought if there were no additional funds how is going to be, how is it going to be acquired.

And then you see that the Premier says that she was happy to provide that approval and - - -?---Yeah.

- - - you understood that of course to the approval referred to in the opening paragraph?---Paragraph.

And then she says, "Look forward to advice on these important negotiations"?---Yes.

10

Now, when you read the letter you realised no doubt that there was not a word of reference there to the Caretaker Conventions?---Yes.

When you read the letter it was clear to you, wasn't it, that she, the Premier was not making any commitment there to the purchase of Currawong?  
---I looked at the letter being a, a, a, the fact that a political decision had been taken and they wanted some action fast.

20

Well, can you tell me in the letter where there is evident the expression of some political decision to buy Currawong?---No, it's my assumption.

Well, why would you make that assumption, Mr Costello?---Because of the timing and the fact that the Minister, that the Premier was looking forward to a, you know, advice on the matter.

30

So what I want to suggest to you, Mr Costello, is that when you read this letter it was obvious that this did not authorise a transaction within the Caretaker Convention period?---I took it that the, that the Premier's letter said that he could go ahead with negotiations and if you can get a deal, get a deal done.

Now, do you recall receiving on Monday, 14 March an email from Mr Simpson which provided to you the October Briefing Note? And I'll provide you with a copy. With a copy for you, Commissioner. Do you recall receiving this, Mr Costello at about 11 o'clock on Monday, 14 March?---I don't remember but I can see, yes, okay.

40

And you'll see that it was part of an email string that emanated from Mr Foster who seems to have done a TRIM search to find the Minister's Briefing Note back in October?---Yes.

And you see the TRIM document number within Mr Foster's email?---Yes.

And you read, no doubt, what his comment was to Mr Simpson about, "We have this document signed by the Minister, submission will be update to this given the Minister's comment at the end." Do you see that?---Yes.

And if we can just go to the Minister's comment at the end which is otherwise to be found within tab 2 of Exhibit 1 but when you read this email you would've read, no doubt, the terms upon which the Minister had endorsed approval on the third page of his Briefing Note?---Yes.

And you would've understood directly that approval was to proceed with negotiations but final approval had to come back to him?---Yes.

Because of a policy or budget committee?---Yes.

10

And it was plain by the words in the brackets wasn't it, "before concrete agreement concluded."?---Yes.

So it was obvious when you read this document that was given to you by Mr Simpson under cover of this email on the Monday that the October briefing document didn't authorise entry into any contract?---But Mr Watkins had advised me that he had informal, had a verbal advice from the Minister that he could proceed.

20

When did he advise you of that?---That was on that, the day we had the, the, when we had the telephone call on the 11<sup>th</sup>. The 10<sup>th</sup>.

So you're taking us back to the conversation that - - -?---The conversation (not transcribable).

- - - you were having with Mr Watkins on the speaker phone - - -?---Yes.

- - - in Mr Matchett's presence?---Yes.

30

And I thought you told me a moment ago that he said that he had the go-ahead from the Premier?---He said he had the letter from the Premier and he had the Minister's, Minister's, Minister's okay or something along those words.

I see. Well, can you perhaps go back and tell us again what it was that Mr Watkins said during this telephone conversation?---I, I asked him if he had all his approvals in place, he said, "Yes, I've got a letter from the Premier and I've spoken to the Minister and he's given his okay."

40

So when you came to look at this document on the Monday that Mr Simpson provided to you you understood from what Mr Watkins has said that the terms of the written approval on the third page of that document had been overtaken by some verbal approval conveyed by the Minister to Mr Watkins?---Yes.

THE COMMISSIONER: I don't – by the time – when you had this telephone conversation that was on the loud speaker when Mr Matchett

brought you the letter had a price been arrived at?---At that stage he said it was in the vicinity of \$12 million.

And that price had been arrived?---Not, not, not a firm one, no.

So how could he have had the Minister's approval?---Well, I just accepted what, what he told me.

10 How could he have had the Premier's approval?---Because he's got the letter that says, says they can negotiate.

There's no price?---The letter doesn't stipulate a price.

So he – you understood Mr Watkins to be authorised to enter into a contract at whatever price he thought fit?---No, because I think in terms of the Minister's letter they were talking about somewhere in the order of 12 to \$13 million.

20 The Premier - - -?---Was silent.

Was silent?---Yes.

And you thought that Mr Watkins was authorised by the Premier?---Yes.

Even though she had not put any price on the contract?---Well, I assumed that in, in giving her response that there would've been something in the letter that went to her that would've indicated a potential price.

30 So you thought as Chief Financial Officer that the Premier had given a letter of authority not only to enter into negotiations but to execute a contract? ---Yes, there was.

But to execute a contract?---Yes, there was.

Even though there was no mention of a price in the letter?---Even, that's right, even though there was no mention - - -

40 You thought that by that letter other than any qualification that the Minister might've provide the Premier was authorising Mr Watkins to enter into a contract at any price he thought fit?---Yes, Commissioner.

Have you ever seen that ever done before?---Even an acquisition like this is unusual in itself.

So is your answer no?---Be no, Commissioner.

MR ALEXIS: Mr Costello, in this email from Mr Simpson that should still be before you do you see that he says, "This may help with any approval for the deposit cheque." Do you see that?---Yes.

And should we understand that the context for that comment is this, that you well understood that if the contract was going to be exchanged the following day a cheque for the deposit had to be drawn?---That's right.

10 And that you had to provide a certification under the Public Finance and Audit Act for that to occur?---Yes.

And you were looking around for some documentary basis so as to provide that approval?---That is right.

And he then conveyed to you under cover of this email the October Briefing Document that we've just discussed?---Yes.

Thank you. I tender the email please, Commissioner.

20 THE COMMISSIONER: Yes. The email of 14 March, 2011 at 10.51am sent by Mr Simpson to Mr Costello is Exhibit 43.

**#EXHIBIT 43 - EMAIL FROM MR SIMPSON TO MR COSTELLO  
DATED 14 MARCH 2011**

30 THE COMMISSIONER: Mr Costello, I just want to come back to this Briefing Note attached to Exhibit 43 and the remarks and handwriting at the bottom of the last page. That says, "Approved to proceed to negotiations but final approval to come to me."?---Yes.

"And possible budget committee."?---Yes.

40 Do you not understand that to mean that the Minister was expecting that there would be no contract until the terms of the contract to be entered into were to be shown to him?---I took it that events were moving faster than what the paper flow would allow so that the – if Mr Watkins had indicated to – Mr Watkins had indicated to me that the Minister had given his verbal approval I'd assume, I assumed that they had had that discussion and that the actual formal signup hadn't occurred but the – he had been advised that he could continue.

I'd like to understand you correct so there's no misunderstanding so I'll just go through the procedure again. You must've realised when you looked at this last page that when the Minister signed off he signed off on the basis that Mr Watkins was authorised to proceed to negotiations but that there

should be no contract until the Minister had seen the terms and gave final approval. You knew that's what the Minister was thinking at that time?  
---Yes.

And that was on 8 October?---Yes, Commissioner.

Then Mr Watkins spoke to you again, was it on the - - -?---10 March.

10 10 October?---No, no, I didn't speak - - -

10 March?---It was only March when I became involved in this - - -

10 March. So you thought that at some time between 8 October and 10 March the Minister had changed his mind?---Yes.

20 And whereas at 8 October he wanted to know the precise terms and so on before he gave final approval and that there should be no contract until he approved. He had subsequently changed his mind to authorise Mr Watkins to enter into a contract without coming back to him?---As I said Mr Watkins had indicated that he had been in contact with the Minister and I assumed that those issues had been discussed at that, at that, when they had that discussion.

Yes, and of course at that time, the final terms of the contract had not been arrived at?---That's right, yes.

So the Minister had changed his mind in the way that I described?---That would have to be the case then, yes.

30 Yes.

MR ALEXIS: Mr Costello, could you look at the briefing minute behind tab 8 at pages 41 and 42. Now, Mr Costello, we know from Mr Simpson's email Exhibit 43, that you got the October briefing note before the contract was exchanged. Did you get the briefing notes of pages 41 and 42 as well?  
---Before then, no.

40 So before the contract was exchanged on the Tuesday and you were seeking to satisfy yourself about authority on the Monday you had the October briefing note, you had the Premier's letter I think you've told us, did you have the Minister's letter at pages 43 and 44 behind the briefing note?---I don't think so.

So if you look at the briefing note at page 41 and I think your evidence on this is clear but I'll just make sure it's absolutely clear. Do you see under the current situation heading, in paragraph 3, the various funding proposals just to put it broadly set out in each of the sub-paragraphs?---Yes.

And we should understand that you weren't involved in any way in the working up of those proposals as we see them expressed in this briefing minute?---That's right.

And before the exchange of the contract you didn't see this briefing minute to assist you with an understanding as to how the contract and the obligations on the purchaser under the contract would be performed?  
---That's right.

10 So when you were satisfying yourself about authority for the purpose of giving the certification under section 13 of the Public Finance and Audit Act, we had the – you had I should say, the October briefing note with the limitations with I think that you've already accepted in your evidence so far and the Premier's letter.---That's right.

And I come back to the Premier's letter please at page 47A behind tab 9 and you've already, I think, indicated to the Commissioner that absent any reference to price in the letter you thought that Mr Watkins had authority to purchase this property at any price?---Subject to a limitation that the  
20 Minister may have put on, yes. In terms of the Premier's letter, unlimited.

When you read the letter, didn't you think that it mightn't be a bad idea to look at the letter of 9 February to see precisely what it was that the Minister, the Minister had asked the Premier to give by way of authority?  
---I didn't look at it.

What, you just took it that the letter of 9 February from the Minister to the Premier was encapsulated in the opening paragraph in terms of what the request was?---I just took that the Premier's letter was sufficient for him to proceed.  
30

And did you notice when you read the letter that it spoke in terms of approval for negotiations with a view to purchasing?---Yes.

And did you notice that it didn't say negotiate and purchase?---I took the view that if you are going to negotiate you've got to come to a conclusion and a conclusion is either you get a deal or you don't.

But isn't there an intermediate step, namely, once you negotiate the purchase and you have a position where a vendor and a purchaser agree on a price I'd have to take the formal step of entering into a contract?---I would have, in meaning the way that for say my experience in government is if you're doing arrangements where you're going to acquire you get approval to say negotiate and acquire up to a certain amount.  
40

THE COMMISSIONER: Yes, negotiate and acquire.---Yes, but it's, it's, to get negotiate you've got to come to a conclusion somewhere, you can't, I couldn't'; see a situation where you could say you'll have a negotiation, you

get to a conclusion and say, oh hang on, I can't conclude this thing till I go back to another party and come back again.

Have you ever sold private, personal property Mr Costello?---I haven't sold any, no.

No. Would you, you understand what happens when a private seller instructs an estate agent to find a buyer?---It's usually up to a certain amount, well they're going to (not transcribable) a certain amount.

10

And the private seller instructs the agent to negotiate?---Yes.

Do you think the agent's then instructed to enter into a contract as well?---It depends, if the person says you know, up to this amount, they might otherwise they've got to go back.

So the agents, are you, are you saying under oath that you expect that the agent who is authorised to go and negotiate - - -?---Can't conclude - - -

20

- - -because of that can conclude a contract?---Can't conclude Commissioner.

So what is the difference between Mr Watkins and an estate agent?---My view on this one was the fact that the Premier had, you know, said negotiate with a view to purchase I thought in the terms we had you couldn't get to a certain point and then come back again. I take - - -

Why not?---Because I think politically the Government wanted a decision fairly quickly.

30

Yes.

MR ALEXIS: Mr Costello, remember I took you to Mr Watkins' email which announced the verbal contract made today. Do you remember that? ---Yes.

And I asked you about whether or not that indicated some commitment and you told them that there was no commitment until a contract was exchanged which was forecast then as occurring the following Tuesday?---That's right.

40

Well, just coming back to the Premier's letter, wasn't it clear to you when you looked at this that there was not a word of authority in the letter which authorised the execution and exchange of a contract once any negotiations had concluded?---I didn't take that view at the time.

Well, what did you think when you read the last sentence of the letter when the Premier said, she wanted to receive advice on these negotiations?---I read that as to be that either that the Minister would come back with advice

at either the acquisition had occurred or the, they weren't able to come to some sort of terms.

But didn't you think when you read the letter that once the deal had been done in terms of agreement on price and other material terms that Mr Watkins would have to go back to the Premier or the Minister would have to go back to the Premier for final approval at this stage and make a commitment?---Not for formal approval, the Premier's asked for advice the advice would be either yes, we've done a deal or we haven't done a deal.

10

Can I suggest for your consideration this as well Mr Costello, that when you looked at this letter from the Premier you realised that by that stage the Caretaker period was well and truly underway.---Yes.

And that the reason why the Minister, I'll withdraw that I'm sorry. The reason why the Premier was wanting advice on important negotiations was because of the fact that this was occurring during the Caretaker period?

MR BRANSON: Or at 25 February.

20

THE WITNESS: I didn't take it that way, I took it that the Government wanted to have a deal done so it could make some sort of announcement.

MR ALEXIS: But Mr Costello the letter is dated six days before the commencement day of Caretaker?---I know, unusual in itself.

You're looking at this letter in Caretaker on 14 or the 11 March, aren't you?---Yes.

30

So wasn't clear when you read what the Premier said about wanted to advice on negotiations, she needed to hear back as to the result of those negotiations so that it could be dealt with within the Caretaker provisions as they then applied?---I took the view that the Premier's letter was dated before the Caretaker mode or before the Caretaker period came in and that she was expecting a deal to be done in fairly quick time. I didn't see that she would necessarily be going back to anybody else.

So you read and understood the last sentence of that letter about advice on important negotiations as advice on the exchange of contracts did you?---

40

Well, no, the, of what the outcome was going to be, whether we've got a deal or we haven't got a deal.

So that the Premier, within the context of Caretaker, could give clear approval to enter into a contract having reached that deal?---I took the view that the Premier's letter said you could hold negotiations with a view to purchasing.

Did you really come to that view Mr Costello or are you reconstructing the events having regard to what has, in fact, occurred after the event?---No, that's the way I took the letter at that time.

Was there no doubt in your mind about this?---There was no doubt in my mind about the negotiation and acquire it if you can, the only issue I had was, you know, how the funds were going to be secured in that time.

10 Now, we've heard some evidence in this inquiry, Mr Costello, about the need for submissions to GAMC, that's the Government Asset Management Committee?---Yes.

And reviews to be undertaken with respect to acquisitions through the Gateway Review Process?---Yes.

Are you familiar with both of those I gather?---Yes.

20 And you're familiar with the Treasury Circulars and Premier Memoranda which underlie those arrangements?---Yes.

And we know, don't we, that neither a submission to GAMC or any Gateway Review was undertaken with respect to the purchase of Currawong, don't we?---That's right.

30 Can you explain to us why that didn't occur?---In terms of the Premier's letter I, as I said before, I took it that the, the Premier's decision or the Premier said go ahead and do a negotiation she was expecting a, a fairly quick result and she looked forward to advice on, you know, as you said on these negotiations. If, if the Premier was concerned about meeting the GAMC and the Gateway Review Processes, well, then the letter would be entirely different because it would, to get, to go through Gateway and the GAMC processes would take at least I'd say 18 months to two years at a minimum so you wouldn't go into a situation of negotiating something when the outcome was going to be some two years or longer down the path so I took this letter as being, you know, we want this deal done, we'll put the normal procedures to one side.

40 Mr Costello, did you really read all of that out of the Premier's letter when you saw it on or around 10 or 11 March?---I did.

So you read this letter and thought, okay, that, that means that we don't have - - -?---Well - - -

- - - to concern ourselves with putting up the submission to go through GAMC and we don't need to concern ourselves with any Gateway Review, is that how you really saw it?---Not, not, not, not in terms of these, the specifics. I took it as though the Premier had basically said go ahead and

see if you can get this deal done and we'll, you know, the, the, the normal policies as I said are, are put to one side.

THE COMMISSIONER: But you're - - -?---Without, without looking at them specifically.

You keep saying you took it as meaning the Premier was instructing you to go and see whether you can get this deal done?---Ah hmm.

10 That's different from the Premier saying go and do this deal?---In, in, in terms of the letter it was to, to see if you can get it done and conclude it if you can.

MR ALEXIS: I gather, Mr Costello, that if you didn't interpret the letter in the way that you've just told us and you didn't come to the view that the GAMC submission process and the Gateway Review process were to be circumvented they would be processes that you well understood would have applied?---That would normally have applied yes, and they would take some years to do.

20

Well, leaving aside time - - -?---(not transcribable)

- - - Mr Costello because of course I think you would accept from me that if the procedures had been worked up in or around the November/December period like the draft submission to Cabinet was, then that would have afforded ample time, wouldn't it, for the GAMC committee and the Gateway reviewers to consider the proposal and respond?---No, it wouldn't have. It would take, as I said, it would take I'd say 18 months to two years to get through those processes.

30

Then are we clear, Mr Costello, that the only thing standing between Currawong being scrutinised through GAMC and the Gateway Review as you saw it was the Premier's letter?---Yes.

Thank you. Now, on Friday, 11 March you had some communications with Kimberley Taylor, the Financial Controller, didn't you?---Well, I, I, I assume so, I don't know.

40 Well, can I show you please her statement and I ask you to look at page 108 and do you see, Mr Costello, the email that we're familiar with from Mr Watkins to you and others which formed the streamed email that you sent to Ms Taylor at about quarter to 9.00 on the morning of Friday the 11<sup>th</sup>?---Yes.

And you describe that as preliminary information for our discussions, you told her of an understanding that the deposit would be funded from the SRDF, do you see that?---(NO AUDIBLE REPLY)

Do you see that?---Yes.

And you also refer to an understanding that funds for this part of the acquisition would have to be set aside, do you see that?---No, had been set aside, yes.

Thank you. How did you come to learn of that?---Mr Watkins would have told me.

10 You then say a balance of funds - - -

THE COMMISSIONER: Sorry, would have told you?---Would have told me, yes.

But you can't remember him telling you?---Well, I wouldn't have, I wouldn't have known any other way, Commissioner.

MR ALEXIS: You then tell her that the balance of funds to initially come from the CLE, that's the Crown Leaseholds Entity, is it?---Yes, that's right.  
20

With Council eventually contributing about 50 per cent, the balance to come from increased LDWA which I think is Land Development Working Account or something to that effect?---That's right, yes.

And I gather that the understanding expressed in this email reflects the level of knowledge that you then had received from Mr Watkins?---That's about it, yes.

30 And the question marks concerning Council contributing about 50 per cent, why did you express that in questionable terms?---I don't know. Most, most, I'd say most probably because I still had a level of uncertainty just what the Council contribution was going to be.

Well, you were learning this on the run, weren't you?---I was, yes.

And then you've said the Premier has signed off approval for the sale to be concluded if possible. Do you see that?---Yes.

40 And was that based on what Mr Watkins told you or was that based on what he told you and your reading of the letter?---A combination of both.

Both. All right. Thank you. Now, can I ask you to go to page 110 of Ms Taylor's statement and you heard Ms Taylor give evidence about the conversation that she had with you when I asked her to step us through the conversation aided by her note?---Yes.

You were in the hearing room listening to that yesterday?---Yes, I was, yes.

And can we take from the fact that Mr Dunne asked her no questions about that subject matter that you accepted her recollection of that discussion as accurate?---That's a reasonable assumption, yes.

Thank you. And can I just ask you therefore one question about this note, do you see about four or five lines from the bottom there's reference to a Treasury payout, have you got that?---Yes.

10 Just adjacent to Ms Taylor's signature, do you see that?---Yes.

And it says "keep back deposit out of payments," do you see that?---Yes.

And you recall yesterday, Ms Taylor told the Commissioner that during this meeting on the Friday of 11 March the subject of funding was discussed and included the holding back of Treasury payments?---Yes.

And do you recall having that conversation with her?---Yes.

20 And should we understand that that was discussed because at this point in time you were troubled about how it was that the Crown Leaseholds Entity was going to fund this acquisition?---That is so.

Had you done any projections yourself by this point or work out - - -?---No, not, not - - -

- - - how this transaction was going to be funded?---Not at this stage.

30 So this was what we should understand as an explorative type discussion with the Financial Controller to try and get a handle on how this transaction could be bedded down and executed?---That's right.

THE COMMISSIONER: Keeping back of payment would affect the budget, wouldn't it?---It would affect the budget only to the extent if at the end of June you weren't able to recover sufficient funds externally to make sure that the distribution or the amount you paid to the budget or to the Con Fund was in line with where the budget was supposed to be. Okay.

40 Where would you get the additional fund from? That would affect the budget in other ways?---No, but if, if, if say for instance, if say the budget was \$20 million and you spent \$30 million but you got \$10 million from an external source, in other words not the Con Fund, it'd still only be \$20 million as far as your budget concerns, is concerned, because you would have spent \$10 million but you would have got \$10 million extra to offset it.

Are you saying it's quite in order for you to hold back the deposit?---In, in this particular case I hold back until we can work out just where the funds are going to come from. We're going to have a commitment at some stage

to, to make a payment but I was still uncertain as to just where the funds to acquire were actually going to come from.

Well, I understood Ms Taylor to say that the remittance, monthly remittance of receipts by your agency was a requirement of practice as between you and the Treasury and it was in accordance with budget?---Yes.

So by holding back the deposit funds - - -?---Yes.

10 - - - you were breaching that requirement - - -?---Not at that stage, it only becomes, it only becomes an issue if it's not in balance by the end of June.

So you're saying that you can withhold moneys you've received at any time during the year provided that at the end of the year you make it up somehow or another?---Technically, yes, but in practice, no. In practice we do pay it on, on a regular basis.

20 Because that's the requirement, isn't it?---That's the requirement but the Minister has control of the funds so the Minister can move the timing of the payments if he wishes, or she wishes.

Without Treasury knowing?---They, they would know, but they don't, we don't need to get their endorsement or anything beforehand.

Did Treasury know that you were holding back the deposit?---No, well, at this stage we hadn't heard back, we were exploring the option of holding back.

30 MR ALEXIS: Mr Costello, you were in the hearing room yesterday when Mr Roberts was giving evidence?---Yes.

The Deputy Secretary of Economic, Environment and Communities Directorate of Treasury?---Yes.

And you recall I drew attention to Minister Kelly's request to the then Treasurer Mr Roozendaal under section 13A of the Public Financial and Audit Act for the LPMA to retain the revenues derived from Crown lands holdings?---Yes.

40 And do you recall that I also drew attention to the reply from the then Treasurer to the Minister dated 25 February, 2011?---Yes.

And you recall I made the comment that that was the date of the Premier's letter in respect of Currawong?---Yes.

And I drew attention to the fact that the Treasurer had advised the Minister that the application had been deferred pending an expenditure review process?---Yes.

So we should understand that at the time of these communications with Ms Taylor you well understood that the application had been made to retain Crown Leasehold Entity funds and that that application had been deferred? ---I took that in a slightly different way to the way Mr Roberts took it though.

10 Well, you may have but can you answer my question. You understood the application had been made and you understood that it had been deferred?  
---Yes.

And therefore the subject matter of the Minister's application did not enable you to hold back in the way you've described funds in the Crown Leasehold Entity account?---I disagree with that.

20 Why?---Because the, the, the arrangement for, the Minister's request to hold back the funds in terms of section 13A were to enable the Crown Lands Division basically to operate off budget, that is, it wouldn't get a Con Fund allocation but it will keep the revenues it earned to meet a whole range of its operating expenses so as travel, maintenance and what-have-you. In terms of this specific holding back I'm of the view that when the, when the funding for the CLE transferred out of the Crown Entity into the LPMA in 2009 it became part of the total funds of the LPMA and in this particular transaction the way we do distributions back to Treasury is it's the revenue received less our expenses. In holding back the expenses of the acquisition it is just that, it is – if the CLE wish to acquire land, well, then, part of the expenses it has is in that acquisition.

30 So, Mr Costello, if your interpretation be right can you explain then why, as you understood it, as the CFO of the organisation in respect of which Minister Kelly was making the application the application for approval under section 13A was necessary?---The application under section 13A was needed for the Crown Lands Division to meet its operating costs out of the income it gets in not for the CLE's own operations.

40 Now, just coming back to Ms Taylor if I can. Do you recall during the meeting represented by the notes that we went to a moment ago in her statement at page 110 there was a discussion about the authority available to make the purchase? Do you recall her evidence yesterday that she raised the question of authority with you?---I can't quite.

And you said to her, didn't you, the Premier has given approval or something to that effect?---Okay. Yes, to that effect, yes.

And you didn't show her the letter from the Premier that you had available to you then, did you?---No, I didn't have the letter at that stage. I'd seen the letter but didn't have it available to her at that stage.

So that's the occasion where you'd seen the letter during the conversation involving Mr Matchett?---Yes.

When you later spoke with Ms Taylor you didn't have the letter at your fingertips?---That's right.

Did you provide it to her when you had a copy available to you?---I've got no idea.

10 You didn't, did you?---To her personally, no, but I think it would've attached to the payment voucher.

Now, could you look at the email string at page 112 of Ms Taylor's statement please. And do you see that on the afternoon of Friday, 11 March she was communicating to you the results of a projection that had been undertaken with respect to the balance of the CLE, the Crown Leaseholds Entity account?---Yes.

20 And do you see that that projection is set out in Mr Mediati's email to Ms Taylor at 2.52pm that day?---Yes.

And when you looked at the projection it was plain to you, wasn't it, that in order for the acquisition of Currawong to be funded it was necessary to withhold distribution of funds to the Consolidated Fund from the CLE of \$5.2 million in the month of March and a further \$5.2 million in the month of April?---It was going to be that way, yes.

30 And assuming withholding in that respect and assuming deposit and the receipt of the money referred to there from the Corporate Sole that the closing balance at April would be just over \$79,000?---Yes.

And when you looked at that projection and you then read Ms Taylor's email did it concern you that your financial controller was telling you that, "we only may scrape through without going into the red."?---Yes.

And do you see that she communicated that sentiment to you with some emphasis - - -?---Yes.

40 - - - by reference to the word "scrape" being in capitals the rest of that comment being in bold and underlined?---Yes.

So she was trying to convey to you a very clear message of concern wasn't she?---Yes.

How did you respond to it?---My view was that - - -

I didn't ask you about your view I asked you how you responded to it, Mr Costello?---Well, I just noted it and put it to one side.

THE COMMISSIONER: Why?---Because I, I, I took the view that it's going to be close, if we don't get Council money we've still got to get this sale through in terms printing this letter.

But you're not to withhold more than \$10 million over the next two months from what you normally remit to Treasury?---Yes.

10 And you had to recover that by the end of June to meet budget?---It was going to be difficult, yes.

Well, that's what you had to do - - -?---Yes.

- - - to meet budget, isn't that right?---That's right, yes, Commissioner.

So where is the 10 million going to come from?---I, at that stage I didn't know because this is only - we're still only talking about 11 March.

20 But you knew that whatever you thought about the Premier's letter one thing she was making clear that there was to be no effect on budget?---Yes.

And you knew that if you didn't get the \$10 million in the next couple of months after April you're not going to meet budget?---That's right, Commissioner.

Didn't you think you'd better do something about that?---Well, at this stage I didn't have enough information to do anything about it.

30 Didn't you ask Mr Watkins how he proposes to find the extra \$10 million? ---Not on the 11<sup>th</sup>, I asked him the following week.

MR ALEXIS: And you heard Ms Taylor say yesterday that she got no reply to this email from you?---Yes.

And if you look at page 114 of her statement, Mr Costello, you see at the top of the page that you sent Ms Taylor an email two minutes later at 3.22 but that email didn't deal with her email that she sent to you?---No, it was before, it was a separate (not transcribable)

40 So we should understand, should we, that you received the email and understood its significance at about 3.20 and didn't respond to Ms Taylor directly, and as I think you've said, you noted it and put it aside?---Yep.

And you spoke to Mr Watkins about the subject matter of potentially just scraping through on the following Monday. Is that right?---Not scraping through, but how, how he was going to, how he saw he was going to fund the acquisition.

Didn't the receipt of the email in the terms that we've been through from the financial controller cause you to speak to Mr Watkins about funding immediately?---Not in the terms, I think by the Monday things had moved that fast I'd forgotten about the email.

But didn't you go to him and say, look, Warwick, in order to do this deal I need to hold back over \$10 million from Treasury?---Not at that stage, no.

Did you think that was something you should bring to his attention?

10 ---I should have, yes.

Do you think he would have been concerned about that?---You'd have to ask him that question.

Well, what do you think, Mr Costello?---He would most probably think, oh, you'll find it.

Sorry? I just missed that?---I said, he'd most probably say, oh, you'll find it.

20

Thank you. In other words, your understanding of Mr Watkins' position come Friday afternoon was that this deal was going to happen no matter what?---Yes.

He was determined?---Yes.

He was highly motivated?---Extremely.

30 And can you explain to us, please, why you, from, why you saw him being determined and highly motivated about this purchase?---I think he's, he's, he's a, a real outcome-focussed sort of person. He's been, over the years he was, he has a fair, a fair amount of passion over this particular site and the fact that, his belief that it should be in public ownership and I just saw him following in that path.

THE COMMISSIONER: Does outcome-focussed mean whatever it takes? ---Pushes, pushes the envelope a fair bit, is the word I'd use, Commissioner.

40 What does that mean?---Well, he'd, he'd take, he'd take a few, a few risks that perhaps I wouldn't take.

Cut corners. Is that what you're saying?---Cut corners, yes, I suppose you could say that, Commissioner.

MR ALEXIS: Now, on the Monday you had a meeting with Mr O'Keefe and Mr Simpson and Mr Callaghan in company with Mr Watkins shortly after you had arrived at the office. Is that so?---Yes, that's right.

And either during that meeting or after that meeting, do you know whether either of those gentlemen were provided with any of the documents that you had available to you, namely the October Briefing Document, the Minister's letter of 9 February or the Premier's letter of 25 February?---Well, at that stage I didn't have those documents either.

So when did you get them for the first time?---I think the first time I got that batch of documents would have been on, the whole batch, would have been the 16<sup>th</sup>, the day after we exchanged.

10

But you've told me I think that you'd received the October briefing from Mr Simpson- - -?---Yes.

- - -by email around about 11 o'clock- - -?---On the- - -

- - -on the morning of the Monday?---Ah, Friday. I think the, no, it wasn't, that was, it was after the meeting, yes, it was on the Monday, yes.

Well, at the time of the meeting with the three lawyers you hadn't received the Briefing Document from Mr Simpson?---No, I hadn't, no.

20

That's the October Briefing Document?---Yeah.

You've already told us that the February Briefing Document was not something you got until after the contract had been exchanged?---That's right.

You've told us you saw the Premier's letter- - -?---Yes.

30 - - -but you didn't get a copy until the Monday?---Yes.

And my question is whether or not during the meeting any of the lawyers that were present were shown either the October Briefing Document or the Premier's letter?---No. At the meeting Mr Watkins just talked about the documents.

Now, do you recall during the meeting that Mr Watkins provided a short presentation about the background of the matter and the partnership arrangements with the local Council?---Yes.

40

Did he reiterate in very clear strong terms that this transaction was urgent and that the contract had to be exchanged by close of business the following day?---Yes.

Did he discuss with Mr O'Keefe and Mr Simpson some contractual issues focussing in particular on the indemnities that had been sought by the vendor in the Contract of Sale?---There was some talk on conditions, I don't know just what the specifics were, yes.

And was there also discussion between you and Mr Watkins about the identity of the purchasers?---Yes.

Because at that stage there were two purchasers, weren't there?---That's right.

The Corporate Sole and the Minister Administering the Crown Lands Act?  
---That's right.

10

And can you tell us when as best you recall that issue, namely identity of purchaser, was resolved? I, I, I had no involvement in that. The only thing I had was, you know, I heard Mr Simpson the other day mention that it was on, I think he said on, on that morning when he was signing the papers or something.

And do you agree that those were the subject matters of discussion?---The only other thing that I, I thought there was some discussion on was the Caretaker Convention itself.

20

I see?---I understand, my, my, my recollection is that when Mr Watkins was giving his, his overview, he also touched on the various Caretaker Convention issues and we all had some discussion on those issues and at the end of the day we all, we all seemed satisfied that he had met the conditions.

All right. And do you recall after that meeting concluded there was a further meeting that involved Mr Simpson, Mr Watkins and yourself only?  
---I'm fairly vague (not transcribable)

30

Well, there is a subject, there was a discussion around the subject of GST, wasn't there?---Ah, yes. Okay, yes.

And during that discussion, Mr Simpson having considered the position in relation to GST, told Mr Watkins that the purchase would be subject to GST and therefore an additional \$1.2 million would have to be paid on completion?---Yes, that's right.

And from what you heard I gather Mr Watkins understood what that meant?  
---Yes.

40

Namely that GST would have to be paid out on completion of the contract  
- - -?---Yes.

- - -and ultimately might be the subject of a refund?---Yes.

The point being that, that might create a cash flow issue?---It could, yes.

Now, did you consider the implications on cash flow that 1.2 going out of the organisation and coming back a month and a half later might have?

---No, no.

Now, can I ask you, please, to look at tab 14 of Exhibit 1. And do you see there, Mr Costello, the payment voucher at page 66 with respect to the deposit?---Yes.

And the deposit cheque at page 67?---Yes.

10

And the deposit cheque was paid out of Company 91, which I think we now understand to be the Crown Leaseholds Entity?---That is right.

And do you see the certification there which you've provided with Mr Watkins under Section 13 of the Act?---Yes.

20

And you know, don't you, that Section 13 of the Act requires an officer of an authority not to authorise payment of an account unless that's been approved for payment by a person who's duly authorised to approve the payment?---Yes.

Rather circular I accept but the point is that you needed to be satisfied, didn't you, before executing this payment voucher that authority existed to approve the payment?---Yes.

Now, can you tell me please what document you relied upon to execute the section 13 certificate on this payment voucher?---The Premier's letter.

30

And that was it?---That was it, yes.

Because you know, don't you, that under section 12 of the Act the authority has to be in writing?---Yes.

And therefore any verbal approval that may or may not have been conveyed by Minister Kelly to Mr Watkins was inapplicable when it came to providing a certificate under section 13 of the Act?---Yes, that's right.

THE COMMISSIONER: Mr Alexis, is a convenient time?

40

MR ALEXIS: Yes, it is.

THE COMMISSIONER: You can go on if you like.

MR ALEXIS: No, no, it is, thank you, Commissioner.

THE COMMISSIONER: Yes. We'll adjourn until 1.45.

MR ALEXIS: Thank you, Commissioner.

LUNCHEON ADJOURNMENT

[1.00pm]