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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE DAVID IPP AO QC

PUBLIC HEARING

OPERATION NAPIER

Reference: Operation E11/0475

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON WEDNESDAY 6 JULY 2011

AT 1.47PM

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

THE COMMISSIONER: Mr Alexis.

<ROBERT ALAN COSTELLO, on former oath

[1.47pm]

MR ALEXIS: Thank you, Commissioner. Mr Costello, I'm sorry, did you want to finish off your glass of water?---No, I just got the glass poured, thanks, it's okay. I just want to have it there, that's all.

10

We know, I think, that the contract for the purchase of Currawong was exchanged on the afternoon of Tuesday, 15 March, 2011, is that so?  
---That's so.

And should we understand that the following day Mr O'Reilly the Director-General of the Department of Premier and Cabinet telephoned you - - -?  
---No.

20 Didn't he telephone you and tell you that he was looking at whether or not Mr Watkins had the authority to enter into the contract to buy Currawong?  
---Not on the 16<sup>th</sup>, no.

What I want to suggest to you, Mr Costello, is that Mr O'Reilly rang you on the 16<sup>th</sup> and he said to you that he wanted you to carry on with the normal business of the LPMA and he made it very clear to you that any discussion that he had with you which related to the LPMA and Currawong was not to be discussed with Mr Watkins?---That was on the 18<sup>th</sup>.

30 And I want to suggest to you on the 16<sup>th</sup> he also told you that Mr Watkins was not to be advised of what it was that he was speaking to you about in relation to the request for documents and papers?---On the 18<sup>th</sup>.

See, what I want to suggest to you is that Mr O'Reilly spoke to you and that led to the preparation of the briefing document that we see behind tab 15 of Exhibit 1. If you could go to that please. And what led to the preparation of the Briefing Note at tab 15, was Mr O'Reilly telephoning you asking you to provide documents and papers relating to the purchase of Currawong and he told you not to inform Mr Watkins about it?---No.

40 Did you nonetheless prepare the Briefing Note that we see at tab 15, pages 68 to 69?---I did, yes.

And can you tell me why then you set about the task of having that document prepared?---Mr Watkins had phoned me and indicated that he, he had been asked to prepare an urgent briefing to the Minister, he gave me some information which I used to type up a draft sort of report, or briefing paper. I then sent that to Mr Watkins, Mr Watkins then phoned up and said, "No, it doesn't capture the information I need to have on this briefing." I

was Ms Hopkins' office at that stage so Mr Watkins basically dictated most of that note over the phone while Ms Hopkins typed it. After he'd finished I then took my basic information that I had plus the additional information that Mr Watkins had given and turned it into the briefing paper you have there.

10 So should we understand from this conversation that you had with Mr Watkins on 16 March that he told you that Mr O'Reilly had been in contact with him?---I didn't think he said Mr O'Reilly, he just said to prepare a Briefing Note for the Minister and Mr -- then got told later to also send a copy to the Department of Premier and Cabinet afterwards.

So you agree with me, Mr Watkins told you that he had been spoken to by Mr O'Reilly?---Yes, but not when he did the initial part.

20 But did the request, as you understood it, to prepare the Briefing Note or when Mr Watkins spoke to you come, as you understood it, from Mr O'Reilly?---No, it came from Mr Watkins to prepare a Briefing Note for the Minister.

So is your evidence that the preparation of this Briefing Note at pages 68 and following had nothing to do with any request made by Mr O'Reilly? ---I'm not sure.

So when you say you're not sure, you're not sure why it was that Mr Watkins asked you to prepare the Briefing Note?---That was what he had said, he said he had, he had, yes, he did, he said he had been requested by Mr O'Reilly to prepare a Briefing Note for the Minister, yes.

30 So he did disclose that he'd spoken to Mr O'Reilly - - -?---That's right, yes. - - - during this conversation?---Yes.

And you understood from what Mr Watkins told you that it was Mr O'Reilly that wanted the Briefing Note to understand what had occurred in relation to Currawong?---Yes.

40 And did you understand anything else from Mr Watkins about Mr O'Reilly and whether he had any concerns?---Not at this stage.

All right. When the Briefing Note was prepared, and can we accept by reason of the date under your signature on page 69 that it was prepared on 16 March?---It was the 16<sup>th</sup>, sorry, it was the 16<sup>th</sup>, I thought it was -- no, the 18<sup>th</sup> I spoke to Mr O'Reilly, yes, okay, yes, 16<sup>th</sup>, yes.

We'll come to that?---Yes. Yes.

But by at least 16 March, the day after exchange you knew that O'Reilly had spoken to Mr Watkins?---Yes.

But as the result of that Mr O'Reilly had requested a briefing on the purchase of Currawong?---Yes.

And you were tasked by Mr Watkins to prepare it?---Yes.

You did so?---Yes.

10

On the 16<sup>th</sup>?---On the 16<sup>th</sup>, yes.

And you then had it sent to Mr O'Reilly and a copy was also forwarded to Mr Fenn, is that so?---Yes.

Mr Fenn being Minister Kelly's Chief of Staff?---Yes.

20

Now, did you then learn through a further conversation with Mr Watkins that he, Mr Watkins, was to be stood down or stood aside and that there was to be an internal investigation of the matter by the Internal Audit Bureau? ---On the 18<sup>th</sup>, yes.

And when you say on the 18<sup>th</sup> should we understand that that was on the morning of the 18<sup>th</sup>?---Be about mid morning I think, yes.

At about 9.15 or 9.16am that morning?---I thought it would've been later than that but it's possible.

30

Do you recall speaking with Mr Watkins on the evening of Thursday, 17 March?---Yes.

And do you remember Mr Watkins told you that he had been speaking with Mr O'Reilly?---(not transcribable), no.

And you remember him telling you that he had been speaking with Mr O'Reilly and that he was meeting with Mr O'Reilly early on the following morning in a café at the Governor Macquarie Tower?---No.

40

You didn't learn of that on the evening of 17<sup>th</sup>?---No.

You first learnt of this on Friday morning on the 18<sup>th</sup> did you?---Yes.

And during the conversation which I suggest occurred at about 9.15 that morning did Mr Watkins tell you that he had just finished an early meeting with Mr O'Reilly?---(not transcribable). I'm getting confused, you're getting me a bit confused.

All right. Let me go back a step?---Yes.

I've put to you and I think you've accepted that you spoke with Mr Watkins on the morning of Friday, 18 March?---Yes.

At about 9.15am?---Yes, okay.

Do you accept that or not?---Yes, I accept that.

10 And do you accept that the conversation over the telephone went for just over 11 minutes or thereabouts?---It's possible, yes.

And during that conversation he told you, and just so we're clear, Mr Watkins told you that he had just finished a meeting with Mr O'Reilly that morning?---Yes, that's right.

And he told you, didn't he, that Mr O'Reilly was going to stand him down as the Chief Executive of the LPMA?---Yes, he said that they were still negotiating some, the extent of that stand down.

20 And he also told you, didn't he, that there was going to be an internal investigation over the purchase of Currawong by the Internal Audit Bureau?---Yes.

And he told you, didn't he, that there was a question that was to be investigated about whether he in fact had authority to commit the Government to the purchase of the Currawong site?---Yes.

30 And he told you that the investigation was likely to involve relevant people being interviewed by the investigator?---I don't know, I don't know that Mr Watkins told me that, I thought Mr O'Reilly told me that.

And should we understand that on the morning of 18 March after the conversation with Mr Watkins you'd also spoken with Mr O'Reilly?---Yes, I got a call after that.

Now, did the conversation with Mr O'Reilly come before the Watkins conversation or did it come after the conversation?---In my recollection it was after the Watkins conversation.

40 And during the telephone conversation you had with Mr O'Reilly after, as I think you say, the telephone conversation you had with Mr Watkins did Mr O'Reilly tell you that there was an issue about whether or not Watkins had the authority to commit the Government to the purchase of Currawong? ---Yes.

He told you that the IAB would be investigating the matter?---Yes.

He told you that Mr Watkins would be stood down pending that investigation?---Yes, he said, again, he said he was still negotiating what the extent of that stand down will be.

And subject to those matters being finalised you were to assume the role as Acting CEO?---No, I was to just keep the paperwork going through, anything I could sign off on to sign off on, anything that was of a more major nature I had to contact Mr O'Reilly and we'd work out how we'd handle the issue.

10

So from the time of this conversation you understood you had to keep the wheels turning but otherwise you were to remain in the position of CFO? ---Yes, that's right.

All right. Now, can I ask you to look at the document behind tab 16 at pages 79 and 80. Do you see the letter from Mr O'Reilly to Mr Watkins of 18 March enclosing the Instrument of Removal and Unattachment?---Yes.

20

And do you see that Instrument at page 80?---Yes.

Did you see that document on the 18<sup>th</sup>?---I didn't see the document but I received the envelope that the document was in.

And when you saw the envelope did you open it and - - ?---No, I, I knew, I knew what it was, I gave it to Ms Hopkins to put aside to give to Mr Watkins when he's next back in the office.

30

And was that later on during the Friday?---I don't know, just when he came back.

Now, can I just come back to the conversation with Mr Watkins please. I gather from what you've told us that when Mr O'Reilly rang you, as you would have it, after Mr Watkins had rung you what Mr O'Reilly told you about issues of authority, the IAB investigation and Mr Watkins being stood down was of no moment because you had already heard it from Mr Watkins during the earlier conversation?---I think so, yes.

40

Now, during that conversation with Mr Watkins did he say anything to you about having spoken to Minister Kelly?---I don't think so.

Well, didn't he say to you and perhaps, Mr Costello, it may have been during a further conversation you had with Mr Watkins during the course of Friday 18, but my suggestion is that during that 9.15 conversation that went for just over 11 minutes, Mr Watkins said to you that he'd spoken to the Minister and he had agreed to sign a letter giving formal authorisation to proceed with the sale. Do you remember that?---Yes, I remember that discussion.

Now, was it during that telephone conversation at about 9.15 on the morning of the 18<sup>th</sup>?---It would have been about that time, yes.

And is what I put to you an accurate outline of the conversation that he'd spoken to the Minister and the Minister had agreed to sign a letter giving approval?---I think signing, signing a letter, I don't think he used the words giving approval but the letter would do that, have those words in it.

10 Well, can you tell us your best recollection of this conversation please, Mr Costello?---Basically, it started on the, can I go to the Thursday night?

If you like.

THE COMMISSIONER: Start when you want to.---Okay, back on the Thursday, or late Thursday afternoon Mr Watkins asked me to look through the bundle of papers that we had submitted to, the, that's tab 15, that bundle of papers, the submission and the attachments to see if there was any, if I could have a look over it to see if I saw any major gaps in the information. I  
20 looked at it and it said, well, in terms of the October 2010 submission there was a note there from the Minister indicating that he wanted Mr Watkins to come back to get formal sign off before he proceeded with any conclusion of the contract, if you like.

Did you say to get formal sign off?---Yes.

30 Yes.---Yes. And then I said, but there's, in my looking at the paper, papers there's nothing there. And I said, he said oh well, I said normally you'd put a file note in to that effect I said but given that we've already sent copies of the papers up to DPC and to the Minister's office, you can't have a situation where, you know, copies of the files had nothing on it and this file has a  
note on it. So I said, we should do nothing at all I said because you've still got the letter, the Premier's approval. And at that stage he said, that's fine, it's okay. On the Friday morning he said, I've spoken to the Minister and the Minister's agreed he'll sign the letter. I said, no, you still shouldn't do this. And he said, it's been decided, the Minister's going to sign the letter he'll be back in Sydney this afternoon, draft me a letter. And then it started from there.

40 MR ALEXIS: Well, did he say anything else during this telephone conversation about the fact that the election was on the horizon and did he express some view about whether or not Minister Kelly would remain the Minister for Lands after the election?---Yes, yes one of the comments I made, one of the comments I made when I was talking to this, we should do nothing on this. He said, well we've got to get a note signed at some stage, we'll put it aside but the Minister after the election, the Minister is quite possibly not going to be the Minister, we only have a small window of opportunity to get him to sign the document so we'll do it today. Or words, you know, to that effect.

And what did you say in response to that?---I was still not comfortable with it but I, it seemed logical and then I thought, okay, I'll do it.

Well, what seemed logical Mr Costello?---Well, to have the note done and to have it signed by the Minister.

THE COMMISSIONER: Did you know what he was talking about?---I beg your pardon Commissioner?

10

Did you know what he was talking about when he referred to the note or the letter, you said a letter?---Well, a letter, a letter to basically to fill in the gap in the documentation on the fact that the October submission said come back for my formal endorsement or whatever.

All right. Just so that I understand that. That had been, you had raised that issue that there was a gap in the documentation?---Yes, on the 17<sup>th</sup>.

On the Thursday.---On the Thursday yes.

20

On the Friday Mr Watkins came back to you said the Minister has agreed to sign the letter?---Sign, yes.

How did you know that he was referring to the gap in the documentation when he said that?---It was the only, the only letter it could be.

It was in the context of that conversation was it?---Yes. It was a follow-on from the Thursday night discussion.

30

It must be a difficult thing to remember exactly what was said but can you try and give us some idea of the sequence, if you can't, I don't want you to make it up, if you can't remember it, we'll leave it but if you can it would be helpful.---He might have said look, in relation to, all right, something to, I refer to our discussion last night and then it went on that way.

And so it was clear to you what was intended?---It was quite clear what was intended yes.

40

MR ALEXIS: So after, as you understood it Mr Watkins had seen Mr O'Reilly on the morning in the cafe at Governor Macquarie Tower, while you were having this conversation, did you understand from him that he thought there might be a gap or a hole or some deficiency in his approval to buy Currawong?---I don't think a gap, I think he just wanted to make sure that he had all his bases covered, I suppose in that sense, yeah.

But was the gap identified in this conversation?---I identified the gap in the conversation of the 17<sup>th</sup> so it was before his meeting with Mr O'Reilly.



And this gap was the fact that the handwritten endorsement of the Minister -  
- -?---Had some come back and there was nothing, I couldn't find anything  
on paper to say where they'd come back sort of thing at that stage.

There was nothing in writing to say that there had been a comeback and  
there had been approval given thereafter?---That's right.

So that was the gap that you identified the previous evening?---Yes.

10 And that's the gap to which you understood the note or the letter was to  
fill?---Yes.

THE COMMISSIONER: Can you just explain again, I'm sorry Mr  
Costello, did Mr Watkins, I'm sorry. This was on the Thursday.---The  
Thursday we had the discussion, yes.

Yes. When you raised the problem of the absence of a written authority  
from the Minister, what did Mr Watkins say?---I said to him, I said there's  
no file or sign off by the Minister on this one and I said, and he said, I will  
20 do one. I said, no we won't do one because we had these other documents,  
the other copies have already gone out, you can't have them going out with  
no notation on it and have this file, our own file with a notation on it.

That's what you said.---That's what I said. So I said, we do nothing, and at  
that stage he accepted, I said you've still got the letter from the Premier  
which is the main authority for the actions that have been taken, so I said we  
should do nothing at all. And he accepted the advice at that time.

30 MR ALEXIS: So what changed overnight when you spoke to him at about  
9.15 on Friday morning?---I have no idea.

Now during this conversation did you and Mr Watkins discuss the dating of  
the letter?---No.

Are you sure about that Mr Costello?---Well, in terms of the dating, he said,  
it would need to have a date, not that we had that discussion, but subsequent  
discussion but anyhow, it needed to be dated at least the date of the  
Premier's letter or a subsequent date.

40 THE COMMISSIONER: So I just want to be, you said that quickly and I'm  
sure whether I heard you. Did you say that it was either in that conversation  
or some other conversation that there was this discussion that you've  
described?---A subsequent discussion I thought. We had two discussions.

So in which discussion did Mr Watkins talk to you about the date?---I  
thought it was the second discussion.

When was the second discussion?---It would have been about, it would have been about half an hour to an hour after the first one.

And what brought that about?---I'd sent a draft wording of the letter to Mr Watkins' email. He picked it up on his iPad and then sent back some suggested word changes and then we discussed it.

MR ALEXIS: Let's try and get some clarity around that Mr Costello. Before I ask the next question, could I just ask you to just slow down a little bit, Mr Branson's having trouble keeping up.

MR BRANSON: Thank you.

MR ALEXIS: Now, Mr Costello you've told us about the conversation with Mr Watkins that followed them, the conversation you had with Mr O'Reilly, should we understand that after those two conversations you then set about the task of having a letter prepared?---Yes.

And did you dictate the letter, the final form of which we see behind tab 10 at page 47B to Ms Hopkins?---No, I typed it myself.

Well, you heard her say the other day, didn't you, that you were standing next to her as she typed the words that you dictated onto the screen in front of her and she said that she prepared the letter?---Yeah, I think, I think she was wrong, I think.

Your recollection is that you actually typed it yourself.---Yes.

In any event, should we understand that the letter in a draft form was sent electronically to Mr Watkins?---Yes.

And you then had a subsequent conversation with him about what was sent to him by way of draft?---Yes.

And did you know on 18 March whether Mr Watkins had an iPad?---He did, yes.

And was that the way he was able to retrieve emails when on the road? ---Yes.

And when you had this further conversation with Mr Watkins had you sent the draft letter to him?---Yes.

And can you tell us what was then discussed during that telephone conversation?---Basically just the, the word changes.

What, what word changes were discussed? Perhaps you can explain that to us by reference to the final form of letter that you see at 47B.

THE COMMISSIONER: Just go to 47B Mr Costello, behind tab 10?---Yes, I've found it. Basically the main, I think there were a couple of minor little changes but the main changes were inclusion of the words, that last line, "including the execution of relevant papers" after the 13 million.

And can you recall any other change that Mr Watkins made?---I think, I think it was just, I, I can't recall anything further, I thought there was a small change up in the early part but I can't, I, I can't think what it is.

10

So were these amendments conveyed to you orally over the phone?---I think he sent it by his iPad first and then phoned.

I see. So you saw by way of return email the amendments that he'd made, you then spoke about them on the telephone?---Yes.

20

What was said during the telephone conversation?---These, these, these are the changes, get them included into the document. Minister Kelly will phone you shortly to let you know that, when he's - he'll be in Sydney this afternoon some time, get it signed and leave it for me. I thought we had some, some discussion about the date at that stage.

Yes. Well, could you tell us what was said on the subject of the date?---He said, the Minister can put any date on it but he said it should be at least 25 February or some time shortly thereafter.

30

THE COMMISSIONER: Because normally if you type a letter you type in the date or is that not right?---We generally, we generally, not as, not as a matter of practice.

I see. So as a matter of practice you leave the date and the person signing that will date it?---Will date it at the time they sign.

MR ALEXIS: And, Mr Costello, when Mr Watkins said according to your evidence that the letter should be dated after the Premier's - - -?---Letter.

40

- - - date or shortly thereafter was there any mention of whether or not that should be a date prior to the date of exchange of the contract, namely 15 March?---I, I assume it would have had to be, I don't know whether we actually said it's got to be before then.

Well, you've indicated that it was to postdate the Premier's letter?---Yeah.

Why would you make the assumption that it was to predate the date of exchange?---I don't know.

Well, isn't it obvious, Mr Costello, that in order for the letter to make sense it had to be dated prior to the date of exchange?---Oh, okay, yes, okay, yes.

Just look at the language of the letter, Mr Costello, it says “approval is given to enter into negotiations,” do you see that?---Yes.

So it wouldn't make any sense, would it, if the letter was dated the date it was created, namely 18 March, would it?---That's right, it wouldn't yeah.

So the assumption that you made was based on the language of the letter?  
---Yes.

10

And from what you understood from Mr Watkins he made the same assumption?---Yes.

Because this letter was intended to give the appearance that it was available to Mr Watkins prior to the date of exchange?---No, it wasn't. My, my understanding of the intention of the letter, it was to fill the gap in the file but once it was signed it was then to be put away for a few months so that it wouldn't interfere in any way with the investigation that was going on.

20

Well, Mr Costello, you haven't adverted to any conversation which informed that understanding have you?---Only the, well, the discussion - - -

Mr Costello, please attend to my question. You haven't adverted to any conversation with Mr Watkins that informed that understanding have you?  
---No, but a discussion was had though.

30

THE COMMISSIONER: I beg your pardon?---The conversation was had though. When, when we had the discussion on the Thursday we said we won't do anything and then on the Friday he said this will still be, well, no, didn't say it, sorry, I take it back.

I beg your pardon?---He didn't actually say those words.

He didn't actually say what words?---That it was to be put away, it was my assumption that it was to be put but he didn't say those words.

MR BRANSON: Commissioner, is it possible to just enjoin Mr Costello to try to speak more slowly.

40

THE WITNESS: I'm sorry.

MR BRANSON: I know he's very nervous, it's very pressurised for him but in fairness to everyone and I've got a client here and - - -

THE COMMISSIONER: No, no.

MR BRANSON: - - - I mean it, it, it really is - - -

THE COMMISSIONER: Yes, fair enough.

MR BRANSON: - - - gunfire from all sides at the moment with respect.

THE COMMISSIONER: Mr Costello, if you would just try and speak - - -?  
---Slow down.

10 - - - a bit slower. I understand that it is an, it is not easy for you but you  
may actually find it easier if you take a deep breath and slow down and you  
can have all the time in the world to reply?---Okay, Commissioner.

MR BRANSON: Thank you, Commissioner.

MR ALEXIS: Now, Mr Costello, is this the position: that nothing that  
Mr Watkins said to you led you to form an understanding that this letter  
would be put aside in the way that you've described?---I, I couldn't say that  
because my understanding was that it was going to put aside.

20 But you can't tell us about anything that Mr Watkins said to you in that  
respect?---No, I can't.

And that's why you say that that's your assumption?---Yes.

30 And you're unable to identify the basis upon which you would have made  
that assumption at the time?---Only in relation to the, the discussion we had  
on the Thursday night which I said in the normal course of events you put a  
file note on the file and I had assumed that anything that was signed would  
have just been put aside and would later become a file note but not in any  
that it would interfere with the investigation.

So did you have in mind, I'm sorry, Commissioner, did you have in mind,  
Mr Costello, some practice that you understood existed whereby files notes  
can be created after the fact and backdated - - -?---My, my - - -

- - - when, when filed to record the position?---My experience is that has  
happened quite a number of times over the years I've been in the public  
service, yes.

40 What, that documents are created and backdated to make them look as if  
they exist - - -?---No, no, no, I - - -

Could I finish my question, please?---Okay.

Your, your understanding of the practice is that documents are created and  
backdated so that they appear on their face to exist at a time when in fact  
they did not, is that right?---Yes, but it's to correct the record though, it's  
not to create something false it's just to say, you know, the approval was  
given but it hadn't actually been recorded on the file so what we're doing is

just recording on the file the, the confirmation that the approval had been given at that particular time.

Now, during the course of this particular day we're examining, Mr Costello, did you make some, initiate telephone contact with Minister Kelly to arrange to meet him?---The, I, I think the way the phone calls went was that I got the first call from Mr, Minister Kelly indicating that he had been speaking to Mr Watkins, he was in Bathurst at the time and when he got back to Sydney he would phone me up to make arrangements to have the letter, to get the letter signed and then it must have been - I had, we had a couple of calls in relation to - I got a phone call from the Bathurst office that day, not relevant to this exercise, I got a phone call from Mr Kelly some time shortly around lunchtime or just after lunch to indicate that he was back in Sydney and to - if we could set up a time. I indicated to him that I was still waiting to get a copy of the Instrument of Unattachment from Mr Watkins hand delivered from the Premier's Department and I said that should be coming down soon but I, I couldn't commit to any time until after I'd got that letter. I said I'll phone you back after that document had been delivered. Then when that document did get delivered I phoned Minister Kelly again indicating that yes, I'm, I'm now free, I've got the document, we can meet to just have the letter signed.

And you then met him, did you, at about 4 o'clock or thereabouts?---I think about 3.30 I think.

Now, during those communications with Minister Kelly did you speak with him at all about the content of the letter that you were to ask him to sign? ---Not about the content, just that - because he'd had the discussion with Mr Watkins so I assumed that they'd, they'd covered off on it at that point.

So the discussion with Minister Kelly during these various telephone calls to set up the meeting were directed to that and not the subject contained within the letter?---That's right.

All right. Now, where did you meet Minister Kelly?---At the Lindt Café in Martin Place.

And when you arrived I gather you'd walked over from the headquarters at Queen's Square - - -?---I had.

- - - to Martin Place to meet him?---I had, yes.

And was he seated at a table when you got there?---He was, yes.

And did you sit down and hand him the letter across the table?---We ordered coffee and then I handed him the letter, yes.

All right. And what did you see Minister Kelly do after you'd handed him the letter?---He, he read the letter, he signed it and he said, Is there any particular date? What date do I put on this or something along, words to that effect. I indicated that Warwick had said that he'd prefer, it had to be not before 25 February and either that date or a few days after.

And after that exchange did you then see Minister Kelly write the date that we see on the copy at 47B?---Yes.

10 28 February, 2011?---I did, yes.

Now, was there any other conversation with Minister Kelly about the content of the letter itself?---No.

Can I ask you to just think about this, Mr Costello, whether before Minister Kelly penned his signature on the letter there was a particular reference he made to the concluding words of the letter, the reference to execution of relevant papers. He raised a question about that with you, didn't he?

20 ---I don't, I don't remember. It's possible, but I just, I don't, I can't, I can't visualise anything happening then.

Do you recall him raising a reference to those concluding words of the letter and asking you what that means, something to that effect?---I don't think so.

All right. Now, did you also discuss with Minister Kelly that you would send him copies of the papers regarding Currawong later that afternoon?

30 ---Yes. When we, when we were about to leave Mr Kelly asked if I could send him a copy of the signed letter and I said we'd already sent off a bundle of other papers to his office and to DPC in relation to the Currawong. I said, "Would you like a copy of those?" He said, "Yes." And I said, "Well, I'm, I'm doing that", I said, "There's another couple of documents that weren't sent off in the other package", would he like a copy of those just for completeness, and he said, yeah, that would be fine, so I got his email address, went back to the office and got Ms Hopkins to send the information to him.

40 Now, apart from what you've told us and finishing your coffee, was there general chat about unrelated matters?---Yes.

And then you left?---And then we left, yes.

You went back to Queens Square?---Yes.

And en route back to Queens Square did you get a call on your mobile from Mr Watkins at about 4 minutes past 4.00?---I can't remember.

Can I suggest to you that he rang you and asked you whether you'd got the letter signed?---I thought I called him up when I got back to the office.

In any event- - -?---There was a discussion, yeah.

That detail doesn't matter, but- - -?---Yep.

10 - - -should we understand that there was a conversation between you and Mr Watkins after your meeting with Minister Kelly where he sought to confirm that you'd got the letter signed by him?---Yes.

And what did you say when he asked you that?---I said it has been signed.

And was there any other discussion?---I can't think of any.

Did he tell you where to put the letter?---Oh, well, I indicated I was going to give it to Lexie Hopkins to put aside for him.

20 All right. And is that what you did?---And that's what I did, yes.

And did you also then dictate an email for her to send to Minister Kelly?  
---I did, yes.

And can I ask you to look at Exhibit 12, please, which will be shown to you. And, Mr Costello, should we understand that the email was one that you dictated to Ms Hopkins who then sent it from her computer which explains why the email from Bob Costello appears to have been transmitted from Lexie Hopkins?---Yes.

30 And so as I think she told us the other day, you were standing next to her while she was typing the words that we see in the printed form as you dictated them?---Yes.

And should we understand that you, in this email, intended to refer to the discussion that you had had a short time ago before with Minister Kelly?  
---Yes.

40 And can I ask why it was that you were drawing attention to the pages after attachment F not having been submitted in the initial pack to Mr Fenn and Mr O'Reilly?---Yeah. When I had the meeting with Mr Kelly I said I'd send over the papers that we'd sent over to DPC and the Minister's Office. I also said that there were a couple of other documents that had not been included in that package and asked if he would like a copy of those just to get the complete picture, a more complete picture. He said yes. And given that we were sending it all as one attachment and not as separate attachments, I just made a note there that the information after F was the additional information that we had discussed.



And if you just look at the email, please, you'll see after attachment F, which is the plan of the Currawong site in the Pittwater, the next document was the letter that you'd had the Minister sign and date about half an hour or so before?---Yes.

And you also attached the October Briefing Note?---That's right.

10 And can I suggest to you, Mr Costello, that by drawing attention to what had been submitted and what had not been submitted, you were seeking to make it clear to Minister Kelly what it was that Mr O'Reilly had available to him via the Briefing Note of 16 October and the additional documents that had not been passed on to him?---Yes.

And did you see some significance about that?---No.

Are you sure about that?---Positive.

20 Well, wasn't it clear to you, Mr Costello, that the 16 October, 16 March Briefing Note that you'd sent to Mr O'Reilly made no mention of the backdated letter which follows annexure F?---Hang on, sorry, I, the, the copy of the, the, the copy of the letter was put there because the Minister had asked if we could send him a copy of the letter. That's why it's there. The other document is just the document of October which had not been included in the, in the other package 'cause it wasn't referred to in any way in the submission.

30 THE COMMISSIONER: When did the Minister ask you to send him the letter?---At the meeting at the café. Basically said, when you, when, when you get back to the office could you send me a copy of the letter.

MR ALEXIS: Now, do you recall speaking with Minister Kelly after this email was sent at about 8 minutes past 5.00?---I don't know what time it was but there was some time I indicated that I had, I think I said he, I'd sent it or he may have called and say he hasn't got anything 'cause then, like, I understand there was a second copy sent.

40 So your evidence is that after the transmission of the email which is Exhibit 12, there was further telephone communication with Minister Kelly by you around the subject of whether he received this email or whether a further email should be sent attaching the same information?---Yes.

And was the further, was there a further email sent to your recollection- - -? ---I think- - -

- - -sending this information?---I, I wasn't sure, but I thought when, when Ms Hopkins was being interviewed there was an issue came up over two different times on the same day with the same email, so I assumed that was the second email sent.

Now, this email that you asked Ms Hopkins to type and send on your behalf, did you tell her to send it to [ADDRESS GIVEN]?---Yes, because, yes, because that's the address that Mr Kelly gave me to send it to.

And when did he give you that address?---At the café.

And did you write that down somewhere as he gave it to you?---It was on a bit of paper somewhere, yes.

10

And you took that back to the office with you?---Yes.

And that's the address you dictated to Ms Hopkins- -?---Yes.

- - -which she then used to send the email?---Yes.

Did Mr, Minister Kelly tell you why he wanted the documents sent to that email address?---I just assumed because he was at home.

20 Right. Now- - -

THE COMMISSIONER: Have you ever sent documents to his home before?---I seldom send documents to him. Most have been to the office.

MR ALEXIS: But, Mr Costello, this was an unfamiliar email address, such that you had to write it down- -?---Yes.

- - -so that you could convey it accurately to Ms Hopkins for the purpose of preparing and sending the email. Is that right?---Yes, that's right.

30

Now, could I ask you to look at Exhibit 15, please, and just while that's being obtained for you, Mr Costello, was there any further communication with Mr Watkins on 18 March, that's the Friday?---I think I may have phoned him or he may have phoned me indicating that the, I'd sent the other information to Mr Kelly. I think. I can't be certain though.

All right. Now, if you look at Exhibit 15, Mr Costello, you'll see that on the Sunday late in the evening at about 11.16pm, Mr Watkins sent you and others what's described as a draft statement. Do you see that?---Yes, I see that.

40

And you received this email when you arrived at the office on the Monday morning, is that so?---That would've been so, yes.

And did you look through the draft statement and see what it was that Mr Watkins was saying about the matter?---I'm not sure, I may have opened it and scanned, skimmed through it but I don't think I did anything more than that.

Well, when you opened the draft statement which in the form that it was then was only four or five pages did you notice on the second page that he'd referred in the second last bullet point on that page to the Premier's letter of 25 February?---I don't recall seeing that.

10 And do you see that further down in that particular bulleted paragraph that he said, "It's clear that this approval from the Premier was in direct reply to the Minister's request." You see that?---I can see it, but I don't recall seeing it in the, in the emails.

But, Mr Costello, can I just pause and ask you this. You understood, didn't you, that Mr Watkins was to be the subject of an internal investigation?  
---Yes.

And when you saw this document that he had sent to you and the others on the email list you understood that this was a document that he was working up for the purpose of providing it to the investigator?---Yes.

20 And when you look at the heading to the document, Statement of Warwick Watkins on the Acquisition of the Currawong Site in Pittwater Salient Facts you knew that this was a document that he would be advancing to the investigator to explain his position?---Yes.

In response to the issue of authority?---Yes.

Because you knew that was one of the issues for investigation by the IAB?  
---Yes.

30 And when you looked at this document you saw that he was relying in the bullet point on the second page on the Premier's letter?---As I said I don't recall whether I've actually read all the way through that document.

Well, if you look at the next bullet point you'll see that Mr Watkins in his draft statement was saying, "On receipt of this letter the Minister wrote to the Chief Executive of the LPMA referring to his specific approvals of October 2010 as well as to his letter to the Premier and her reply. Now, can I suggest when you read that you realised instantly that in this draft statement Mr Watkins was going to rely upon the backdated letter that  
40 you'd procured on the Friday before?---I can see what it says but I don't, I don't remember reading that.

Are you serious about that, Mr Costello?---I am.

Can I ask you to just come over the page to the page that's got the word "summary" in the middle of it. It's about two further pages in?---Yes, I've got it, yes.

And do you see in the second paragraph he describes the actions that he took as Chief Executive being consistent with actions taken in relation to other acquisitions, do you see that?---Yes.

Newcastle Post Office and the Priory?---Yes.

You knew what those two acquisitions were all about, didn't you?---Yes.

10 And then do you see that he says specifically in the case of the purchase of Currawong the Minister for Lands gave specific authorisation to enter into direct negotiations for the acquisition of the Currawong site, do you see that?---I see that, yes.

Now, you would've appreciated immediately when I suggest to you when you looked at this statement, even at a glance, that Mr Watkins was there quoting directly from the backdated letter that you'd procured the Friday before?---I don't, I don't recall getting that far into the document.

20 But, Mr Costello, didn't you have a heated discussion with Mr Watkins during the morning of Monday, the 21<sup>st</sup> about his use of the letter?---I thought the heated discussion was on, was on the 25<sup>th</sup> after I'd had a phone call from Mr O'Reilly.

What I want to suggest to you is that you had a heated discussion about the fact which was made plain to you by this draft statement that Mr Watkins was going to use this backdated letter that you'd procured the Friday before?---I, I don't, we did have the heated discussion but I didn't think it was at this stage.

30 And didn't Mr Watkins say to you that as far as he was concerned and as far as the Minister was concerned when we received the letter from the Premier and the Minister he had the approval to go ahead with the transaction?---Yes, that's what it was about, yes.

And in referring to Mr Watkins' statement that as far as he was concerned he had the letter from the Premier and the letter from the Minister didn't you respond by saying, "Warwick, that's just not true."?---I did, yes.

40 And didn't he respond to that and say to you that he was proposing to use the letter?---(not transcribable) proposing to use the letter, he just, he just reiterated the fact that he says, as far as he and the Minister were concerned that letter was signed on the 28<sup>th</sup> - - -

THE COMMISSIONER: Of February?---Of, of February.

Well, I don't - - -?---I, I, I - - -

What does that mean, does that mean that they – what did you understand that to mean? As far as they were concerned they were going to lie about the letter?--Exactly, yes, they were, they were going to, to maintain that it was actually signed on the 28<sup>th</sup>.

MR BRANSON: I must object to this, with respect, Commissioner. I mean, they, this, he, I mean - - -

THE COMMISSIONER: You'll have an opportunity to question - - -

10

MR BRANSON: Well, your Honour, well, I'm just protesting now if I may because it's most unsatisfactory.

THE COMMISSIONER: I don't - - -

MR BRANSON: Grossly unfair, with respect. And the way - - -

THE COMMISSIONER: Mr Branson, excuse me.

20

MR BRANSON: May I just finish please and then I'll sit down.

THE COMMISSIONER: No, I would like to actually take you up on something.

MR BRANSON: Thank you.

THE COMMISSIONER: What is grossly unfair?

30

MR BRANSON: Well, because the way this evidence is being led. Now, this witness is being asked not coherently, his answers are at variance one with the other about dates. Now, I don't know what instructions Mr Alexis has, that will always remain a mystery, but the way this evidence is being led is grossly unfair to Mr Kelly. This man here Mr Costello is gibbering away about all sorts of things and Mr Alexis has a duty as Counsel in this inquiry to lead the evidence fairly and coherently, that's my point and I'll sit down please.

THE COMMISSIONER: Well, Mr Branson, do not regard the way in which the evidence is being - - -

40

MR BRANSON: Led.

THE COMMISSIONER: - - - led as unfair.

MR BRANSON: Yes, it is, with respect.

THE COMMISSIONER: And I think it is quite improper to suggest, to describe this witness's evidence as gibbering.

MR BRANSON: That's my description.

THE COMMISSIONER: And I understand that it's your description.

MR BRANSON: (not transcribable), with respect.

THE COMMISSIONER: It's no one else's.

10 MR BRANSON: Gibbering.

THE COMMISSIONER: Well, I think it is inappropriate to refer to the witness's evidence at this stage in that light. This is not a criminal trial.

MR BRANSON: No, it's not.

THE COMMISSIONER: And there is no jury here.

MR BRANSON: No, I agree, with respect.

20

THE COMMISSIONER: And I expect submissions to be made in a temperate way. Your submissions are not temperate.

MR BRANSON: Well, - - -

THE COMMISSIONER: I have heard what you've said and I do not uphold your objection .

MR BRANSON: Thank you. Thank you for hearing me, Commissioner.

30

THE COMMISSIONER: Yes. After that I think we ought to go back, Mr Alexis.

MR ALEXIS: Mr Costello, can we come back to your receipt of this email, Exhibit 15 which I think you've accepted occurred on the morning of Monday, 21 March. And can I suggest to you that once you read the draft statement and once you appreciated that Mr Watkins intended by this statement to refer to the backdated letter that you had procured the Friday before you then had, with Mr Watkins, a heated discussion?---Yes.

40

And can you tell us please what - - -

THE COMMISSIONER: Excuse me, Mr Alexis. There's a gentleman in the back of the court that does not appear to be well. I'm sorry, would you like the court to adjourn?

MR TAYLOR: No, no, I'm fine now, Commissioner. Clearly this medication should cure my problem. Thank you.

MR ALEXIS: May I continue, Commissioner?

THE COMMISSIONER: Mr Branson, if you have submissions to make - -  
-

MR BRANSON: No, I'm just saying that - - -

10 THE COMMISSIONER: - - - I would prefer it if you made them properly  
so that I can hear them.

MR BRANSON: I apologise. I was commenting, not submitting, it's  
difficult for me to hear whilst this gentleman is coughing behind me, that  
was my point only. Only that and I apologise if I interrupted my learned  
friend.

THE COMMISSIONER: Yes, Mr Alexis.

20 MR ALEXIS: Now, Mr Costello, can we try and get as clear as we can to  
the content of the heated discussion, please. Can you start by telling us how  
the conversation commenced that led to it becoming one of some heat?  
---Basically I saw that the letter, my, my understanding is that the letter was  
- - -

30 Could you please address my question? I'm asking you to tell us, please,  
what was said during the conversation with Mr Watkins which I've  
suggested to you occurred after you read the draft statement Exhibit 15?  
---I said that he can't rely on or use that letter, it was, it was not created at  
that time and it was not created for that purpose. I said, "You need to ignore  
it altogether for the purposes of any investigation." And he said, "As far as  
the Minister and I are concerned, this letter was signed on the 28<sup>th</sup>, just after  
we got the Premier's letter." And I said something along the lines of, "Well,  
that's not true, you can't do it. The existence of this letter will, in, in this  
investigation will take on a life of its own. You need not to have anything  
in it at all." And he's just slammed his fist down and said, "I'm telling you,  
as far as the Minister and I are concerned, this letter was signed on the  
28<sup>th</sup>?"

40 And when he slammed his fist down, what did he slam it down on?---Oh,  
just on his desk I think it was.

So he was seated behind his desk, was he?---I think he was standing at that  
stage.

Where were you?---I was just standing on the other side of the desk.

THE COMMISSIONER: When did this letter, when did this conversation  
occur, Mr Costello?---Well, that's where there's a bit of confusion at the

moment. I, I thought it was a bit later than this, Counsel Assisting says it must (not transcribable) on this date. I know the discussion occurred but whether it was here or a little later, I'm, I'm, I'm a bit confused at the moment.

MR ALEXIS: Well, Mr Costello, can I come directly to why I suggest it occurred on the Monday, because we know that on the Tuesday you provided a folder of documents to Ms Pettersson, the IAB investigator, don't we?---Yes.

10

We know, and I'll come to some detail, but we know that you prepared the index to that bundle, don't we?---Well, I started preparing the index to that bundle.

I'll come to the detail. But by that time you knew that the letter formed part of that bundle of documents and was referenced in the index, didn't you? ---No, I didn't.

All right. Well, then I'll come to some detail now?---Okay.

20

On the Monday, 21 March, Ms Pettersson from the IAB telephoned you on your mobile phone, didn't she?---She telephoned me. Whether it was mobile or (not transcribable) I don't know.

In any event, she rang you and said that she needed to inspect the records that were associated with the purchase of Currawong?---Yes.

She told you that she would expect to be interviewing Mr Watkins and Minister Kelly?---Yes.

30

And after that conversation, you set about the task of assembling the documents that related to the purchase of Currawong?---Yes.

And on Tuesday, 22 March, you learned either from Mr O'Reilly or from some other source that Ms Pettersson was intending to come to your office that afternoon after about 2.00pm?---Yes.

And she did so?---Yes.

40

And so knowing that that's the time that she was going to attend, you then stepped up the process of assembling the folder of documents for her. Is that so?---Yes.

Because you knew that it was, it needed to be ready before she arrived? ---Yes.



And if you look at the document behind tab 19, Mr Costello, we see at page 89 the form of index that was prepared which related to the documents in the folder that you provided to Ms Pettersson?---Yes.

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

10 And I'll have shown to you, please, Exhibit 8C which is one of the volumes of the IAB report that you, that has been tendered. And, Mr Costello, you appreciate the folder that has just been provided to you is not the folder that you provided to Ms Pettersson but- - -?---Yep.

- - -if you look at the tabbing and the documents and the index on the front - - -?---Yes.

- - -that's the form of the material that you provided to Ms Pettersson that afternoon. Is that so?---That is right, yes.

20 And the index, just if I can come back to that, at page 89, was a document that you dictated to Ms Hopkins?---In part, yes.

30 THE COMMISSIONER: What do you mean, in part?---Basically what happened was, I started putting the documents or this folder together based on the documents that we had previously submitted to DPC and to the Minister's Office. I got to a point where I didn't know what other documents existed or where they may have been. I then asked Mark Matchett if he could continue looking through his office, look on the, the TRIM record system and look in Mr Watkins' office to see if there were any other papers and to complete the, the index schedule. And then when, at some stage during that day Mr Matchett and I passed, passed each other in the hallway and Mr Matchett indicated that he had found some other documents or another document or something and had put them on the folder. I said, "Fine", and kept on going about my other business. Later that afternoon Mr Matchett gave me the folder or I took it from his office or Ms Hopkins' office and put it in my office until Ms Pettersson arrived.

MR ALEXIS: Mr Costello, you prepared this index by dictating it to Ms Hopkins and dictated the description of each of the documents from 1 to 18, didn't you?---No, I didn't.

40 I want to suggest to you that you dictated to Ms Hopkins each of the descriptions that we see and in particular that adjacent to number 9, being the backdated letter?---No, I didn't.

When you gave the folder of documents to Ms Pettersson, you knew that the backdated letter was in the folder and referred to in the index, didn't you? ---No. The first time I became aware that the letter was in the folder was when Counsel Assisting brought it to my attention at my interview. I was

not aware before then that it was in the folder and that's why I was absolutely dumbfounded when it, when I saw it there.

But when I examined you during your compulsory examination, Mr Costello, you accepted from me, didn't you, that you knew that letter was in the folder and that you had referred to it in the index, didn't you?---No. I said I accepted it was in the folder because it's in there, but I had no idea how it got there.

10 You know, don't you, that on the last occasion you told me that you prepared the index which included the reference to the backdated letter, didn't you?---I don't think I used those words.

You told me, didn't you, on that occasion that you dictated the words, "Approval from Minister to proceed with acquisition – 28/2/11", didn't you?---I don't think I did that. I may have done it but I don't recall doing it.

Well, if you told me then that the words that we see adjacent to number 9 are your words- - -

20

THE COMMISSIONER: Well, he denies that?

THE WITNESS: Yeah, but I had no, I, I had no idea how that, how that got in there. The, the, the letter at that stage was handed, on the day it was signed was handed over to Ms Hopkins to give to Mr Watkins. I've got no idea how it got from there into this folder.

THE COMMISSIONER: Who do you say dictated this index?---Well, I, I, I, I, I would have dictated, you know, portions of it.

30

Well, I don't, what do you mean, well, what, what was the process whereby this index came to be created?---Okay. Okay.

And I don't mean to go dealing with the assembly of the documents, I just want to know how the document which is at page 89 of Exhibit 1 was actually created?---Okay. We, we started off listing the documents that had been sent as part- - -

40 Who's we?---Lexie, Ms Hopkins and I. So she was typing and I was dictating, in terms of the documents that we had sent to DPC and to the Minister's, that is that, that submission and the attachments of the 16<sup>th</sup>.

Can I, just before you get there, you just described a scene to me?---Okay.

You're standing next to Ms Hopkins' desk?---Yes.

And she was in front of her computer?---Yes.

Where were the documents?---The documents were on the corner of her desk.

And were they in a, in a folder?---No, they were just loose documents.

There was a pile of loose documents not in any order?---Not in any order.

10 Right. So then, then what happened, how did you start the process?---And then started getting the, the papers that were there in some sort of order, so chronological- - -

Who did that?---I did that.

And what, well, what was the order?---Oh- - -

I mean, what, was it a chronological order?---It, I think we started to, how did we go?

20 Well, look at it. Have a look and see and- - -?---No, it's not chronological, it's, they, they, they should be generally in a thing of starting from the most recent document back to older documents.

Yes?---So- - -

So is that what you did? You started doing that?---I started doing that, yes.

30 And how far did you get with that before you started dictating? How far did you get with the assembling the documents - - -?---Oh, I had, I had, I had, the documents that we had I had them in some sort of order.

All of them?---Not all of them just, because we didn't have all the documents at that stage.

No, the documents you had, all the documents you had in some sort of order?---Yes.

Yes. Then?---Then I dictated some headings for each one of those ones.

40 A description of each document?---A description of the document with a tab number (not transcribable)

And do you start, for example, the first three items in the index you dictated?---Yes.

Yes, and until when did you dictate?---I don't know.

And what happens, well, what, what caused you to stop dictating?---There was - okay, so these are the only documents I have at that stage.

You finished dictating - - -?---Dictating the list.

- - - the pile of documents you had?---Yeah, it wasn't, it wasn't a big pile but it was a pile of documents. I then asked Mark Matchett if he could have a look around his office, the TRIM record system and Mr Watkins' office because he had, he had a better idea of the documents around this issue than I had and to see what other documents that may exist. I then went off and got hold of delegations and - - -

10

You left the office?---I left the office.

Yes?---Came back with some other information, I think I came back with some media releases and then I went out of the office again and then the next, the last, the next thing I had the, the final document later on.

And you don't know who completed the dictation?---No, I've got no idea.

20

Or whether there was any dictation?---Or there was any additions, I've got no idea.

Now, you were in the hearing room when Ms Hopkins gave evidence?  
---Yes.

And you know that her evidence is not the same as yours on this issue?  
---Yes, I, I accept that.

30

But she wasn't asked any questions about this and this, your version wasn't put to her?---I thought, I, I thought she was asked a question about whether she was the only one there or Mr Matchett because that's what you also asked Mr Matchett and he wasn't sure.

All right. Yes, Mr Alexis.

MR ALEXIS: Thank you, Commissioner.

40

Now, when you gave the folder with the index to Ms Pettersson did you observe that she was looking through the documents?---Oh, she had a, a quick scan through the, a quick scan through the documents.

She spent about half an hour or so with you didn't she?---Yeah, a lot of that was general talk though, yes.

Yeah. And in the course of her conversation with you this afternoon you told her, didn't you, that a statement was being prepared by Mr Watkins?  
---Asked me, come again, thanks.

I beg your pardon?---Could you repeat that again, thanks, yes.

THE COMMISSIONER: Did you tell Ms Pettersson that a statement was -  
- -?---Oh, yes, yes.

MR ALEXIS: Paragraph 18 of her statement, Commissioner.

THE COMMISSIONER: You, you, sorry, your answer is that afternoon  
you told Ms Pettersson that a statement was being prepared by Mr Watkins?  
---That, yes.

10

MR ALEXIS: And she said that she would be happy to receive a copy of  
the statement by email?---I think so, yes.

And you told her that you would pass that - - -?---To Mr Watkins.

- - - to Mr Watkins?---Yes.

And did you do so?---I think so.

20

And by that stage you must have known that there was a statement being  
prepared because that's what you conveyed to Ms Pettersson?---Yes.

And, of course, you'd seen it on the Monday when you arrived at work and  
we've been through - - -?---Well, yeah, we've been through that, yeah.

And if we look at the document behind tab 20 we see Mr Watkins' email to  
Ms Pettersson of 22 March at about quarter to 6.00 that evening referring to  
"the attached document as requested through Bob", do you see that?---Yes.

30

So that tells us that you passed on what Ms Pettersson had said to  
Mr Watkins and he responded as we see in that email?---Yes.

Now, during that afternoon there were also discussions between you and  
Ms Pettersson about arrangements for interviews, do you recall that?---Yes.

And she told you that she wanted to interview Mr Watkins on the Thursday  
afternoon at about 2 o'clock and Mr Kelly thereafter at about 3 o'clock or  
thereabouts?---About that, yes.

40

And may we understand that you passed on those arrangements in terms of  
interviews with, to Mr Watkins?---Yes.

Now, can I ask you to look at Exhibit 17 please, Mr Costello. Now,  
Mr Costello, on the afternoon of Tuesday, 22 March did you come to learn  
of the existence of a valuation for the Currawong site that Mr Watkins had  
received earlier that day?---No, I didn't.

And did you become aware of the existence of the valuation for the Currawong site after the 22<sup>nd</sup> and before the contract came to be completed on about 6 April?---I, I had, I had seen some valuation reports that we had in our office but I don't recall this one.

I think the exhibit, Exhibit 17 attaches just the executive summary of the valuation that travelled with that email, we can show you Exhibit 20 which is the full valuation if you like - - -?---Yes, I know it.

10 - - - but can you tell us please whether at any time after 22 March until completion of the contract on 6 April you saw the valuation for Currawong from Knight Frank Valuations?---Not to my knowledge.

All right. Thank you. That exhibit can be returned. Can I now take you please to the document behind tab 22.

20 THE COMMISSIONER: Mr Alexis, I do propose to adjourn for 15 minutes at about this time but if you want to go to that you're welcome to otherwise if you're going to be some time with that I think we should adjourn now.

MR ALEXIS: Thank you, Commissioner.

MR BRANSON: Can I apologise to you, Commissioner, for my intemperance.

THE COMMISSIONER: Yes, Mr Branson (not transcribable)

MR BRANSON: I did not intend to insult the Commissioner.

30 THE COMMISSIONER: I have, I have been thinking about your objection and I really think it is entirely without substance and I, I really think it's, I mean the evidence might be contrary to your client's interests and the evidence might not be given in a coherent way but that is not a ground for objection as you and I both well know.

MR BRANSON: We do and I agree. My, my, my complaint at the time, which I withdraw, was aspersive of Alexis, I withdraw it and I apologise.

40 THE COMMISSIONER: (not transcribable)

MR BRANSON: Well, it was aspersive. I reacted - - -

THE COMMISSIONER: (not transcribable) leading question.

MR BRANSON: Well, I know and as you point - - -

THE COMMISSIONER: (not transcribable) might find out what the, the evidence was.

MR BRANSON: And, Commissioner, you properly pointed out to me the error of my ways, I, I apologise for intemperance - - -

THE COMMISSIONER: Your apology is accepted.

MR BRANSON: - - - and, and to my learned friend.

THE COMMISSIONER: Yes. Your apology is accepted.

10

MR BRANSON: Thank you.

THE COMMISSIONER: We will adjourn for 15 minutes.

SHORT ADJOURNMENT

[2.58pm]

THE COMMISSIONER: My apologies for the delay. Mr Alexis.

20

MR ALEXIS: Thank you, Commissioner. Mr Costello, do you have the document behind tab 22 - - -?---Yes.

- - - at pages 104 and following?---Yes.

And we see from your email to Mr O'Reilly on the afternoon of 25 March that you had spoken with him some hours before, is that so?---That is so, yes.

30

And during that conversation you and Mr O'Reilly spoke about the subject of financial delegations and approvals available to Mr Watkins?---We did, yes.

You spoke about the subject of how the purchase of Currawong was going to be funded?---We did, yes.

And did he also raise with you concerns he had about securing the ministerial IT system?---Not on that day.

40

That occurred on - - -?---That was on the Sunday.

On the Sunday?---Yes.

Thank you. And was it in response to the discussion you'd had with Mr O'Reilly that you came to prepare the document attached to this email at pages 105 to 107 inclusive?---I did, yes.

And in general terms, if we go to the attached document please, should we understand that you drafted the document?---Most of it, yes.

And did you provide it to Mr Watkins?---I did, yes.

And what did he do with the document after you had provided him with the draft?---He made some changes, made some additions.

10 And after those changes and additions had been communicated to you did you then have them incorporated in the draft?---I did, yes.

And then you sent – I withdraw that. Did you provide him with the final document before it was despatched to Mr O'Reilly to review?---No, I think I sent it to Mr O'Reilly and I later sent him a copy I think it was.

Sent Mr Watkins a copy?---Watkins a copy.

20 So after you had incorporated the amendments that Mr Watkins had suggested you then conveyed it as a final document to Mr O'Reilly?---Yes.

Can you tell us please in relation to the document at 105 and 106 the matters that were the subject of amendment by Mr Watkins, if you can recall?  
---Yes. Under the delegations section about, that second last long paragraph and the last paragraph, starts off, "In regard to this particular transaction" down to, "Expenditure to up \$13 million to acquire the site" were basically words that Mr Watkins demanded be inserted into the document.

30 And when you say "demanded be inserted" what should we understand you mean by that?---Well, I originally just showed the pure delegation levels and he said, "I insist that this item go in and I demand that you don't delete it."

All right. And when he made that demand of you should we understand that he was seeking to have incorporated in this document the content of the letter of 28 February which had been procured by you the Friday before?  
---He was, yes.

40 And this is occurring on Friday, the 25<sup>th</sup> a week after the backdated letter had been procured?---Yes.

Now, you included that in the document before it was sent to Mr O'Reilly?  
---Yes.

You knew it was in the document before you sent it to Mr O'Reilly?---Yes.

And you knew when this document was being sent to Mr O'Reilly it was conveying the existence of a letter providing authority from the Minister in the terms that you quoted in the document when you knew the document did



not exist before the contract to purchase Currawong was exchanged?---I did, yes.

And so you knew, did you, that when this document was being attached to your email and sent to Mr O'Reilly, Mr O'Reilly would be misled about the existence of that backdated letter before the exchange of the contract?---I suppose, yes, but that wasn't my intention. When I was putting this document together Mr Watkins also gave information on the funding source because at that stage I still had no clear picture as to just how the acquisition was going to occur. In the telephone call I had with Mr O'Reilly he raised the point that Mr Watkins had handed, he had heard that Mr Watkins had handed a letter to IAB, Mr Watkins and I had another argument over that letter and the use of the letter. When Mr Watkins demanded that this paragraph be included my thought was well, if that's what you want it can go in there, you can sort it out later, I was, I was just angry, I shouldn't have put it in there, but it's in there and that's life.

But, Mr Costello, without pausing to debate with you whether you were angry or not, whether you were following what Mr Watkins told you to do or not, whether you were happy about it or not, the plain position is that when you sent this document to Mr O'Reilly you knew that it falsely represented the existence of the backdated letter as a document that was available before exchange when you knew that it was not?---Yes.

And you knew that Mr O'Reilly was interested in receiving information which informed him about whether in fact Mr Watkins had authority to execute the contract and bind the Government to the purchase?---Yes.

And you knew that this was information that Mr O'Reilly was interested to receive because it may have some significance on his investigation?---Yes.

And you knew, didn't you, that by sending this document to Mr O'Reilly and in particular setting out "the content of the backdated letter of 28 February" you knew that that would have some influence on the outcome of the investigation that he was running?---I didn't think of it at the time, but, yes, it would have.

It's obviously, isn't it, Mr Costello, that conveying to him the terms of the letter of 28 February in response to an issue of authority was going to have some influence on the outcome of the investigation?---Yes.

And that's why you sent the document to Mr O'Reilly, isn't it?---Not in that term, no, but I can understand where you're coming from.

Now, Mr Costello, - - -

THE COMMISSIONER: Sorry, Mr Alexis, there's something else that I forgot to do that I have to deal with now, with Mr Branson. Entirely unrelated.

MR ALEXIS: I'm sorry.

THE COMMISSIONER: Mr Branson, I received a letter from Mr Gerathy.

MR BRANSON: Yes, your Honour.

10

THE COMMISSIONER: And it is always the intention that the section 38 order that is made covers everything and the express mention is made in the order that I made to documents, to anything that is produced.

MR BRANSON: Correct.

THE COMMISSIONER: So the intention is that the section 38 order I made covers whatever is derived from the telephone and the intention is that Mr Kelly is protected by section 38 - - -

20

MR BRANSON: Thank you.

THE COMMISSIONER: - - - against any other matters raised by Mr Gerathy in his letter.

MR BRANSON: Thank you, your Honour.

THE COMMISSIONER: I should've said that when I came to the bench but I - - -

30

MR BRANSON: Thank you. We debated its necessity but, thank you, Commissioner, for that.

THE COMMISSIONER: Yes. Very well. I should say that the telephones will be returned tomorrow morning to both Mr Watkins and Mr Kelly.

MR BRANSON: Thank you, Commissioner, I'm indebted to you, thank you.

40

MR ALEXIS: Mr Costello, on the subject of funding, if you look at page 105 over on 106 do you see in the second paragraph on the top of the page commencing with the words "in summary" you've referred there to the Minister approved of funding for acquisition being sourced from a combination of SRDF and CLE funds, do you see that?---Yes.

And can you tell me what that statement in this document to Mr O'Reilly was based on?---It would've been based on a combination of some of the other documents, some of the other briefing papers and other documents

that existed that show, you know, here's how it's going to be funded. I couldn't point you to a specific – there would be a combination to say like the Briefing Note of October 2010 and any other files that came subsequent to that.

THE COMMISSIONER: Mr Costello, I am not seeing any document where the Minister has said to approve of funding being sourced in this way. Have I missed something?---Could I have a look at – could you tell me where the document, the October 2010 document is, thanks.

10

MR ALEXIS: Tab 2, Mr Costello?---Yes. Well, part of the note on 3.6 in that document at tab 2, 3.7 and recommendation E.

THE COMMISSIONER: Recommendation E. Yes, I see. So you're relying on those?---Essentially, yes, Commissioner, I think I was.

Yes, thank you.

MR ALEXIS: But, Mr Costello, when we read the terms of Minister Kelly's approval on page 6 there's not a word there about approval of funding is there?---No.

20

All it does is approve - - -?---The negotiations.

- - - negotiations with a final approval to come back with a possible budget committee, the final okay, do you see that?---I see that, yes.

Well, when you wrote this document to Mr O'Reilly on 25 March, 2011 what were you relying upon when you said the Minister approved of funding for the acquisition in the terms you set out in the document?---Well, I suppose Mr Watkins' advice to me.

30

And what advice was that?---Well, as it is, as it is there.

Did he say what the form of that ministerial approval was?---No, he didn't.

Did he tell you that the form of ministerial approval to fund the acquisition out of SRDF and CLE funds was in writing?---No.

40 THE COMMISSIONER: Or oral? Or oral?---No.

No. Mr Costello, your reference to the document at tab 2, was that in hindsight or are you saying that when you wrote this you were thinking of that document or is it something that you've thought about now?---I, I, I, in, in reading the words I would say I was relying – at the time of writing I was just relying on Mr Watkins' advice.

MR ALEXIS: And, Mr Costello, if you look at the paragraph at the top of page 106 you'll see that you refer in terms there to the Minister's approval to commence negotiations in October, you see that?---Yes.

And that's the document you've just taken us to, isn't it?---Yes.

And then you've said that the funding could be used to accommodate the acquisition pending more detailed valuation assessments being undertaken, do you see that?---Yes.

10

What valuation assessments were being undertaken on 25 March?---None that I'm aware of.

Well, why did you tell Mr O'Reilly that the Minister had approved funding that was pending some valuation assessment when you weren't aware that any were being undertaken at the time?---No, it hadn't been undertaken – it says “pending more detailed valuation being undertaken” so it was going to be future event.

20

Well, that's helpful, Mr Costello, but can you answer my question? Why did you tell Mr O'Reilly that the Minister's approval was pending a more detailed financial, valuation assessments when you knew at the time that none were being undertaken?---I don't know.

THE COMMISSIONER: Well, Mr Costello, there's a matter, this is an ambiguous sentence, Mr Alexis, in fairness to Mr Costello. It's not, it could mean and I think it might well mean being undertaken in the future, especially by reference to once the purchase price was known.

30

MR ALEXIS: But it was known.

THE COMMISSIONER: But it was known. Anyway, I think that's a matter of argument, for argument.

MR ALEXIS: Mr Costello, you see the paragraph commencing “It was planned,” do you see that?---Yes.

40

“It was planned that the sale of the two Council gifted parcels and other Crown Land if required would be effected prior to June 2011 - - -?---Yes.

- - - so that there would be no adverse impact on the 2010/11 budget”?  
---Yes.

Now, what was the basis upon which you made that statement on 25 March?  
---A discussion I had with Mr Watkins some, oh, this is some time earlier where I, I looked at the, the letter from the Premier said there was going to be no cost to the budget and I indicated to Mr Watkins, I said given that we're now in March are you sure that there's going to be no impact to the

budget and he said I'll have the money from the SRDF in and I expect to have the land sales completed by June. I said, Is that realistic? He said, I'm going to drive it through, I'll make sure it happens and he has that, he's a, he has a pretty good track record on delivering financial objectives for the government so I was, I suppose not dubious but a bit cautious about it but accepting it as - at face value.

10 And should we understand that because of what was said on that subject you prepared the funding model that we see in the table below - - -?---Yes.

- - - which must assume, may I suggest, that by the end of June \$6 million would be realised from the proceeds of sale of the two gifted Council parcels, do you see that?---That, that's right.

So as to lead to a nil effect when the 7 million from the SRDF is brought to account?---That's right.

20 Now, did you know at the time you sent this to Mr O'Reilly that no steps had been taken to sell the two gifted parcels of land as at 25 March, 2011?  
---I wasn't really sure just what had happened with that land at that stage.

So why did you say what you did in this document to Mr O'Reilly?  
---Because Mr Watkins indicated that he expected it to occur by then for that - by that stage.

So was really an exercise by you're saying in this document whatever Mr Watkins told you to?---Essentially, yes.

30 Did you not exercise some independence and some fortitude as the CFO and tell Mr Watkins that you weren't prepared to be involved in this?  
---Mr Watkins can be a fairly forceful character at times and I didn't.

You did not?---I did not.

40 And just coming back to the quote that is referred to on page 105 from the backdated letter, didn't you say to Mr Watkins that you weren't prepared to be involved in conveying to the Director General of the Department of Premier and Cabinet the existence of a letter which you knew did not exist before the contract had been exchanged?---We'd had, we'd had arguments on that issue but I didn't say it at that particular time.

Why not?---I suppose a bit scared.

Scared of what?---Mr Watkins.

Why?---Just his personality at times.

Now, can I come back to the bundle of documents that you handed to Ms Pettersson on Tuesday the 22<sup>nd</sup> and do you recall the index to which I referred you to earlier?---Yes.

And to assist my learned friend it's behind tab 19, page 89.

MR BRANSON: Thank you.

10 MR ALEXIS: Now, can I suggest to you, Mr Watkins, Mr Costello, I do apologise, that you'd had the heated discussion that you told us about with Mr Watkins on the Monday so that by the Tuesday whether you be content with this or not you decided that the backdated letter was going to form part of the material that was given to the investigator?---I wasn't aware that that letter was in that material at that stage, as I said before.

20 So is your evidence to the Commission that you realised at some point later in the week and at least by the time you sent the document to Mr O'Reilly that we've been examining?---I was aware that a letter had been handed to the IAB when Mr O'Reilly spoke to me on the 25<sup>th</sup> but I thought that Mr Watkins had separately handed a, a letter in. I was not aware that it was part of this package at that stage.

You see, what I want to suggest to you is that you were involved in supervising the preparation of the index and you well knew at the time the bundle was given to Ms Pettersson that it included the backdated letter? ---No, I didn't.

30 Well, you gave evidence on this subject during your compulsory examination didn't you?---Yes, but I thought even then I indicated I wasn't sure, I wasn't aware how it got in there.

All right. Well, let's go to it then and, Commissioner, in the circumstances what I'll do is provide Mr Costello with a copy of his transcript of the entire compulsory examination and Mr Wong will distribute copies for all interested parties and would you like a copy, Commissioner?

THE COMMISSIONER: Yes, please.

40 MR ALEXIS: Now, perhaps I'll just pause while it's being distributed. Now, Mr Costello, if you can just look at the first page of the transcript just to satisfy yourself that this is the transcript relating to the commencement of your compulsory examination?---Yes.

And before going any further I should note, Commissioner, the order made pursuant to section 112 and may we proceed on the basis that that's varied.

THE COMMISSIONER: Yes. The order made under section 112 in relation to Mr Costello's evidence at the compulsory examination is vacated.

**THE ORDER MADE UNDER SECTION 112 IN RELATION TO MR COSTELLO'S EVIDENCE AT THE COMPULSORY EXAMINATION IS VACATED.**

10

MR ALEXIS: Now, if you come through, Mr Costello, to page 46 and you'll see the pagination in the bottom right-hand corner of each page. Do you have that?---Yes, I have 46, yes.

And if I can ask you to go to material by reference to the numbers down the left-hand column and you'll see adjacent to line 30 you tell us there and you told us on this occasion that - about the heated discussion to which I've already asked you some questions?---Yes.

20

And then if you come over to page 47 you'll see at the top of the page I refer to the index to the bundle of documents and you'll recall, Mr Costello, that we had a shorter bundle of documents for the examination which reproduced the index that we find behind tab 19 at page 89, remember that? ---Yes.

And do see that I asked you whether you prepared the index, you said, "I supervised the preparation." Do you see that?---Yes.

30

About, about line 8 or thereabouts?---Yeah.

All right. And then you see the question, "In any event, you recall don't you giving a folder of documents organised in the format that we see set out in the index"?---Yes.

"I did, yes," do you see that?---Yes.

"You gave it to Ms Pettersson, the IAB investigator on 22 March" and you accepted that, do you see that?---Yes.

40

"You handed it to her?---Yes." Do you see that?---(NO AUDIBLE REPLY)

And then do you see in the question from line 20 I made reference to the letter of 28 February and you said, "I didn't think we'd done the letter, that it occurred at that stage" do you see that?---Yes.

And then I've said, "Well, Mr Costello, you've told me that the procured, that you procured the letter from the Minister on 18 March and this is the

index to the bundle of documents you provided to the investigator on 22 March,” and then I offered to show you the bundle, you said, “No, I” and then I said, “But your index or the index that you caused to be prepared includes this document does it not?” Your answer was, “Based on this, yes.” And then you see the next question that I asked you from about line 35, “Just coming back to what you told the Commissioner about remonstrating with Mr Watkins about the use of that letter, could I ask you perhaps to consider in relation to the evidence that you’ve given the fact that it was used and formed part of the material that was provided to IAB by you in the course of its investigation,” answer, “It was but I, I don’t know.” You see that?---Yes, I see that.

And then the Commissioner asked you, “Mr Costello, did you give the letter to IAB?” You said, “I gave the letter to Mr Watkins.”?---Yes.

And then you see the question, “You said I think that Mr Watkins informed you that he was going to use the letter in his defence or in his statement to the IAB?” You said, “No.” And then the question, no, do you see that at the bottom of the page?---Yes. Yes.

And then you said, “Well, this shows that I’m wrong, but my recollection was that the letter was merely going to be put aside.” Do you see that? ---Yes.

So do you accept from me, Mr Costello, that when you were asked questions back on 2 June, you accepted when confronted with the index that your evidence and your recollection about the letter forming part of the index and part of the bundle provided to Ms Pettersson was wrong?---I’m, I’m, I’m sorry, I got the impression that I was indicating that yes, I accept that the document is, is, the letter is in, was in the bundle of documents, but as I said then, I, I cannot work out how it got in there.

THE COMMISSIONER: Well, what did you mean when you said, “This shows that I’m wrong?”---Well, I said I gave the letter to Mr Watkins.

Just take your time, Mr, just take your time, Mr Costello?---Okay.

And read I suggest from about page, line 40?---What I was, if you look at line, what, 40, those two last lines- -

MR ALEXIS: What page, what page are you on?---Oh, sorry, page 47.

Thank you?---At, so from line 40 onwards when the Commissioner asks the question, and then I say, no, what I’m saying there, that this, the, the listing shows that I’m wrong in the fact that the letter, I thought the letter was going to be put aside. This shows that it wasn’t put aside.



And, Mr Costello, what follows from that, may I suggest to you, is that you well understood when the index was being prepared, which you tell us or you told us on that occasion you supervised the preparation of- - -?---Yes.

- - -that you well understood that the backdated letter was being used and was referred to in the index given to Ms Pettersson?---I, I, I understood that Mr Watkins was using it but I didn't, I didn't know or didn't recognise that it was being used as part of this document as well.

10 But how could that be, Mr Costello? If you understood Mr Watkins by this stage was going to use the letter and you'd had a heated discussion with him, you must have understood that when you were handing over a folder of document to Ms Pettersson it included the backdated letter and- - -

MR DUNNE: (not transcribable)

THE COMMISSIONER: Sorry, Mr Alexis (not transcribable)

MR DUNNE: I'm sorry, the term of that question is being put to the  
20 witness that he knew at that stage he'd had the argument with Mr Watkins, and this was at the time the folder was being handed to Mr Watkins which was 22 March. And I don't think that he has conceded that, I think there is a dispute as to whether the argument with Mr Watkins took place at that time on the 22<sup>nd</sup> or on the 25<sup>th</sup>. My objection to the question is it's been put to him that he agrees that he had the argument with Mr- - -

THE COMMISSIONER: That's not my recollection, Mr Dunne. I thought that Mr Costello accepted that he had the argument or said that he had the argument with Mr Watkins before 22 March. I thought he had it on the, on  
30 the Monday?

MR DUNNE: That's not my recollection.

MR ALEXIS: Well, let me withdraw the question and I'll accommodate the objection and the transcript will speak for itself, Commissioner. Now, Mr Costello, just, just coming back to it, you accepted at page 47 line 32 of the examination transcript that based on the index, the bundle that was given to the investigator included the backdated document. Do you see your answer at line 32, "Based on this, yes?"---Yes.

40 And then you went on to try and explain your evidence in light of the fact that the bundle and the index referred to the letter and you've said at line 38, 39, "I don't know." And then ultimately at the foot of the page you accepted from me, didn't you, that, or from the Commissioner I should say, that the index and the bundle shows that you were wrong?---(NO AUDIBLE REPLY)

Now, my suggestion to you is this, that it must follow that when the bundle was provided to the investigator you knew it contained the backdated letter because of its reference at the very least to it in the index?---I accept that when the bundle of papers and the folder was given to the IAB investigator, I accept as you said the document was in there, but I was not aware that it was in there. I hadn't checked. I, I, I didn't do a check to see just what was in there and what wasn't in there at the end of the day.

10 But, Mr Costello, this backdated letter would have been like a shining beacon, wouldn't it?---Not necessarily.

You were very conscious of the use to which the backdated letter was to be used because you well understood that in the Briefing Document that you prepared on 16 March it didn't refer to it?---Yes.

20 And the email that you dictated to Ms Hopkins that you asked her to send to Minister Kelly on the Friday afternoon drew specific attention to the fact that that briefing document did not include the backdated letter?---No, no. In, in sending that message that was, there was, there were three parts to that, to that email message. One, I was attaching a copy of the letter specifically asked for by Mr Kelly, two, I was attaching a copy of the documentation that we had sent to the Minister's Office and to DPC, and thirdly it attached that other document that had not been included in the earlier package. The way that it's grouped up and the way it's worded is not what was the intention. The intention was the email contained, you know, it would have normally gone as three separate attachments, I just put them together as one attachment.

30 But, Mr Costello, you knew that up to this point in time Mr O'Reilly did not have this document, the backdated letter?---Up to, that's right, yes.

And so on 22 March it would have been a shining beacon to you that this backdated letter was included in the index and was included in the bundle being given to the investigator?---Yes, but I didn't see it in the index.

40 Well, if you accept that it was a shining beacon, how do you explain that you didn't see it in the index or see it in the bundle?---Because as I said, I didn't, I didn't review the documents before handing them over to Ms Pettersson.

And what I want to suggest is that your evidence given to the Commissioner back on 2 June when I confronted you with the index and the content of the bundle led to your accepting at page 47 line 50 that you were wrong in your recollection of not realising the bundle included the letter?---I'm sorry? You've lost me there.

THE COMMISSIONER: I don't think it's worth pressing this.

MR ALEXIS: If the Commissioner pleases. Now, can I just ask you something else arising out of what we see at the bottom of page 47. You see you there express a recollection that the backdated letter was, “merely going to be put aside.” Do you see that?---Yes.

Now, can you explain to us when you thought that the letter was going to be put aside?

10 THE COMMISSIONER: First think that. When did you first think that the use of the letter was going to be that it would be put aside?---From the, from the date that, from the date that it was signed. I, I had assumed that when, when, when I, when it got signed by Mr Kelly and it got delivered back to Mr Watkins, he was going to put it in a drawer and it would sit there for some months.

MR ALEXIS: And what would be the point of arranging to see Minister Kelly and have him sign and date the letter only to have Mr Watkins put it in his drawer?---Well, then after the- - -

20

THE COMMISSIONER: For how many months?---After the investigation was completed it could come out and be attached to the file to complete the, to complete the record for the future.

MR ALEXIS: Now, can I ask you to explain what the point was of obtaining the letter if, as you understood it, it was going to be put aside in the fashion you've described?---Well, my initial intention was not do anything but Mr Watkins said, yes, we'll get the Minister to sign a letter, the Minister will sign a letter we'll make arrangements accordingly. Well, I just  
30 thought, okay, he wants to have a record for the future at some stage, he's going to get the signature and he's going to put it aside.

But Mr Costello, you well understood didn't you, that the difficulty attending the Premier's letter is that it didn't in terms authorise execution and exchange of the contract. Didn't you?---My understanding from the letter was it allowed completion.

I know you've told us that but you've also told us that when you drafted the letter that you then had Minister Kelly sign, Mr Watkins added the words in  
40 reference to the execution of papers.---Yes.

And you understood that you wanted those additional words put into the letter to make plain that he had authority to execute a contract for sale.  
---Yes.

And you knew that he wanted those additional and very important words added so that there could be no question about whether he had the authority

to execute the contract for sale.---Yes, but that's the niceties of the word, I still expected that the document would have been put aside though.

But, Mr Costello, if the important addition to that letter was an express reference to the execution of papers, it must have been obvious to you that this was not a document that was going to be put in Mr Watkins' bottom drawer?---I didn't take that view at the time.

10 Well, how could you not take that Mr Costello in circumstances where Mr Watkins was focused, may I suggest, on you ensuring that those additional words be added to the letter?---I can't answer that.

And you can't answer it because it's obvious what I'm suggesting to you isn't it Mr Costello?---No, I, I took Mr - - -

20 It's obvious that what Mr Watkins wanted you to do was to get in a written form express approval for him to execute the contract for sale?---I still expected the document would have been put away and it was only going to be used for the future.

And may I suggest to you that it's just a ridiculous proposition to suggest that Mr Watkins was going to receive the letter that you've procured from the Minister and stick it in his bottom drawer to be used at some future time some months later.---That's what I assume was going to happen.

30 THE COMMISSIONER: I don't understand, Mr Costello, what use you thought the letter would serve a few months later after the investigation had concluded?---It would just complete that loop of, in the Minister's October briefing note, he said come back for formal endorsement or whatever, and I just thought it would be used to complete the file record of that approval.

Why was that necessary?---It wasn't, that's what I said to Mr Watkins on the evening of the 17<sup>th</sup>, don't do anything and I thought at that stage he seemed to accept that view and then on the 18<sup>th</sup>, he said we're going to do a letter.

40 Do I understand you correctly is that your objection to Mr Watkins' proposal that you obtain a backdated letter was that you thought that it was unnecessary?---Yes.

Not that you thought it was dishonest?---No, no, just unnecessary, he didn't need it, he had the Premier's letter.

You didn't think there was anything dishonest about it?---About?

Obtaining the letter, I'm not talking about using it with the IAB I'm simply asking about obtaining the letter?---If, if, my view was that if the letter was

obtained and didn't, didn't get produced as part of the investigation it wasn't going to be an issue, we wouldn't be having this discussion.

But I don't know, what I don't understand is why you needed to complete the loop?---Just for, you know, future reference if someone goes back through the files sort of thing, they say, ah yes, everything's signed off where it had to be signed off.

10 But you had the letter, you believed you had the Premier's authority?---Yes, that's why I said - - -

The Premier's authority must have superseded anything the Minister had said?---That's why I said on the 17<sup>th</sup> don't do anything.

But why get the letter and put it aside if, as you have agreed, the Premier's authority superseded everything?---On the 18<sup>th</sup> Mr Watkins said he and the Minister had come to an agreement and they wanted a letter.

20 MR ALEXIS: Mr Costello, you're very conscious aren't you, that being tied to the production of the back dated letter to the investigator might lead to the result of you were party to that investigation being completely mislead?  
---That's possible.

30 And you know, don't you, that if you accept that you knew that that letter was provided to the investigator together with the index that you supervised the preparation of that might lead to the suggestion that you were involved in the investigation being falsely misled as to the existence of the document you knew didn't exist at the time of the contract?---There was never any intention of doing that.

I didn't ask you about your intention Mr Costello, I'm asking you whether you appreciated, whether you appreciate that that is the significance that attaches to and follows your involvement in the provision of this document to the investigator.---That's logical yes.

40 And what I'm suggesting to you is that you are acutely aware and therefore you are structuring your evidence to ensure that you are not tied to the provision of that letter to the investigator on 22 March?---No, the evidence is my recollection of the events as they occurred.

And what I'm suggesting to you is that you well know that having had the heated discussion that you've told us about, having been overborne in respect of the use of that letter you nonetheless provided it to the investigator because you knew that by that stage Mr Watkins was intent on misleading the investigator as well?---I had no idea of that letter of being in that folder.

And what I want to suggest to you, Mr Costello is, that by the time of the meeting with the investigator on the afternoon of March 22, you and Mr Watkins had decided perhaps not an entirely voluntarily way on your part but, nonetheless you and he had decided that this letter was not going anywhere near his bottom drawer, it was going to be used to defend his position in this investigation?---No, that was not the case - - -

That's why you gave it to the investigator.---It is not.

10 That's why you quoted it verbatim in your statement that you emailed to Mr O'Reilly on Fridays 25th?---That is not so.

Now, whilst all this was going on Mr Costello, you were dealing with Mr Malmberg about getting a grant from the SRDF weren't you?---Yes.

And you remember on the 17 March preparing a memorandum for Mr Watkins execute to Mr Malmberg seeking a grant?---Yes.

20 And do you recall preparing a document that recommended that the grant be approved?---Yes.

And when that document was prepared did you have available to you any valuation evidence concerning the open space component of Currawong?  
---No, I didn't.

I think you told us already that you received the email – I'll withdraw I'm sorry. I think you told us earlier that you didn't see the Knight Frank valuation for Currawong.---That's correct.

30 But according to the email Exhibit 20, had been received by Mr Watkins - -  
-?---Yes.

- - -on 22 March, you never saw that valuation?---Never saw the valuation.

Now, did you prepare the order and the tax invoice in relation to the SRDF grant?---Yes.

40 And should we understand Mr Costello that the application for the grant in the form of the memorandum and the briefing document and the approval was given at the same time?---I'm sorry.

Well, do you know the document I'm speaking of, it's the memorandum - -  
-?---Yes, this the memo from Mr Watkins to Mr Malmberg.

Undercover of the briefing document that you and Mr Watkins signed?  
---Yes, yes.

It's dated 17 March 2011?---Yes.

And should we understand that the request for and the recommendations for the grant and the approval of the grant occurred at precisely the same time when Mr Watkins signed the document?---Yes, I assume.

In other words, we have a situation where Mr Watkins was requesting the grant from the SRDF and was approving the giving of that grant at the same time?---In his two separate hats, yes.

10 Well, he may have had two separate hats but he was wearing them at the same time wasn't he?---In terms of the way the submission is constructed, yes.

And your role in that exercise was to simply prepare the paperwork for him to execute?---Yes. Mr Watkins indicated that he had had a discussion with Mr Malmberg and they agreed that there was going to be grant payment made, I then drafted some words up, I sent it off to Mr Malmberg for him to have a look at to see if there's anything in there that needed a bit of fine tuning because I wasn't all that familiar with the SRDF workings. Carl  
20 suggested some changed words, it came back, I incorporated those in the submission, Mr Watkins then signed it, signed the memo and we put it into the system.

And why did you sign it, the - - -?---Because I, I, I, I signed it as the person preparing the actual document.

THE COMMISSIONER: But this was simply the right hand knowing what the left hand was doing?---Yes, but having some documentation as to what you've done.  
30

Did you not see your role as necessarily being some kind of independent mind here?---In this particular case given that Mr Watkins had control of the SRDF from his LPMA position it seemed reasonable.

It seemed reasonable. He could apply to himself and he can approve?---In, in the particular case there's nobody who could do it though.

I beg your pardon?---There was nobody else who could do it, he had, he had the responsibility to do that unless you went to the Minister, the next, the  
40 next level up.

MR ALEXIS: Now, Mr Costello, you were in the hearing room, I think, when Mr Malmberg gave evidence and I stepped him through the email communications concerning the request for a valuation?---This is the, this is the valuation that I asked of him or another valuation?

Well, do you recall being involved in emails with Mr Malmberg where he requested a valuation in relation to the Currawong site?---Yes.

And you recall that the grant money from the SRDF was paid over to the Crown Leaseholds Entity before any valuation was received?---Yes.

And do you agree with the proposition that in fact the Currawong transaction was completed on about 6 April before any valuation had come back in relation to Currawong?---Yes.

10 Commissioner, I've got one final topic, it's probably 10 or 15 minutes, shall I continue?

THE COMMISSIONER: Yes.

MR ALEXIS: Now, Mr Costello, could I show you please - - -

THE COMMISSIONER: Are you tendering the transcript of the compulsory examination?

20 MR ALEXIS: I'm sorry, Commissioner, I do apologise. Yes, I will, thank you.

THE COMMISSIONER: Exhibit 44 is the transcript of Mr Costello's compulsory examination.

**#EXHIBIT 44 - TRANSCRIPT OF MR COSTELLO'S EVIDENCE  
GIVEN UNDER COMPULSORY EXAMINATION ON 2/06/2011**

30 MR ALEXIS: Now, Mr Costello, could you be shown please Exhibit 34 which is a Statement of Evidence from Ms Ponniah from Treasury. Now, Mr Costello, if you look at Ms Ponniah's statement you'll see that she's attached a string of emails that commencing with your email of 4 April, 2011 at 12.09pm?---Yes.

And should we understand that at the time you sent this email you were conscious that the time for completion under this 21 day contract fell due on 5 April, the following day?---Yes, but it was delayed anyway, yes, yes.

40 Well, Mr Costello, by 4 April you didn't know that the vendor would consent to an extension of it though, did you?---That's right.

So at the time you wrote this email you were very conscious and, may I suggest, acutely aware that the time for completion under the contract was the following day?---Yes.

And in that context you prepared and sent the attached document to her indicating, as we see in your email, "time is critical."?---Yes.



Do you see that?---Yes.

And you regarded time as critical at that point in time?---Yes.

And in the document that you sent to her do you see that you told her that there would be insufficient funds in the CLE account to fund the acquisition?---Yes.

10 And do you see that you go on to say over the page, “Given the need for acquisition to be settled it would seem that the best option would be for Treasury to re-credit 5.5 million of the recent distribution so that there are sufficient funds in the account to enable the purchase to proceed.” Do you see that?---Yes.

And should we understand that as a reference to, in effect, you asking Treasury to send back some money that had been previously sent to them in accordance with the ordinary distribution to the Consolidated Fund?  
---That’s right.

20

Did you really think the Treasury was going to send that money back when you asked for it?---I thought there was a good chance they would because that way we could keep the whole transaction in the CLE and not involve any of the other companies within the LPMA.

Now, can I just ask you to come back to the first page of your document and  
- - -

30

THE COMMISSIONER: Which - - -

MR ALEXIS: I do apologise. It’s the attachment to your email to Ms Ponniah - - -?---Okay, yes.

- - - headed Acquisition of the Currawong site. And do you see about halfway down you refer to the acquisition price of 12.2 million?---Yes.

“And the initial purchase will be funded from the Crown Leaseholds Entity.”?---Yes.

40

“It’s proposed that the expenditure would be offset by the following”?  
---Yes.

And you see the SRDF contribution of seven million?---Yes.

And anticipated proceeds from the sale of Council land gifted as we see there set out?---Yes.

And then you see the next reference to the four million having been received from the SRDF?---Ah hmm.

And you say, "The balance will be payable once valuations of the required acquisition are concluded." Do you see that?---Yes.

Now, when you sent this document to Ms Ponniah on 4 April can we understand that you knew that no valuations had come forward in relation to the open space component of the Currawong site?---Yes, that's right.

10

For SRDF purposes?---That's right.

And you knew that nothing had been done in relation to the sale of the Council land which was said there to lead to a offsetting return of about six million?---Yes.

And did you have any idea on 4 April when you were writing to Ms Ponniah whether or not the sale of Council land and the recoupment of that \$6 million was going to be within two weeks or two months or two years?

20

---Given that I've got the words "net additional cost to Government is nil" I've assumed it goes beyond the financial year. I haven't said, you know, net impact on the budget, I've said a cost to the Government so I was assuming that it was going to happen that financial year. I said it would be a cost to the budget.

Just come back, if you would, to the email that came back from Ms Ponniah and you'll see that's the first page of the attachment to her affidavit, to her statement, I'm sorry?---Yes.

30

And you see you asked her to put her verbal advice in writing and she did so at the top of the page?---Yes.

And do you see in the reference in the second or third paragraph to the LPMA TOES return?---Yes.

Just passing over the reference to that, do you see there that she said "The cost of land purchase would be offset from the sources set out in your note so this should only be a temporary drawdown on the cash balances?---Yes.

40

And do you think, Mr Costello, that Ms Ponniah understood that the drawdown would be only temporary because of what you said in your attachment to your email?---Yes, quite likely.

And do you think that she thought that because your document told her that there was going to be anticipated proceeds from the sale of Council land which would mean that there'd be no additional net cost to the government? ---Yes.

You knew that wasn't the case though, didn't you, Mr Costello?---Over time that would be the case.

But you knew at the time you conveyed this document to Ms Ponniah that what was the subject of her advice, namely a temporary drawdown, was completely and utterly false, didn't you?---I'm sorry, I, I, I, I wasn't seeking a temporary drawdown, that was her words.

10 But you led her to believe by your document that the use of LPMA funds which she knew was available according to the LPMA TOES return, would only be for a temporary purpose, whilst the balance of the SRDF funding and the proceeds of sale of the Council land were realised?---I, I can't see the point. It's, that's, that's her, that's her terminology, not mine. I didn't give an impression that, I didn't hope to give an impression that it's only a temporary drawdown just- - -

20 Mr Costello, when you spoke to her and asked her to confirm her verbal advice, she spoke to you and made plain, didn't she, that her advice assumed that you would be making a temporary drawdown on cash balances?---Yes.

And you knew, didn't you, that temporary was nothing of the sort because there were no arrangements in place for the sale of the Council land?---No, but, sorry, the, the use of the word temporary is her word, not my word.

30 But she conveyed that to you when you spoke to her before you asked her to confirm it in writing, didn't she?---No. The only thing she said in, in, she didn't speak to me actually, she spoke to ah, I think it was Kimberley Taylor, and she said just, I think it was, the way I got the message back was, use, you've got \$100 million in your overall bank account, use that money to do it and fix it up later. And I said, no, I want more than that. So I asked, I sent the email back saying, could you please confirm your advice, and that's the advice that came back.

You sought to convey to Treasury that use of the LPMA's cash reserves would only be temporary and you conveyed that by indicating that there would be a remaining contribution coming forward from the SRDF when the valuations were to hand- - -?---For part of it, yes.

40 - - -and that the balance would be paid out of the proceeds of sale of Council land?---Yes.

And you never told her, did you, that you then understood that the Council land was nowhere near the stage where it could be rezoned and made ready for sale, did you?---In those, in those words, no, I didn't.

And you led her to believe, didn't you, that the drawing down of cash balances would only be temporary?---No, I didn't.

Yes, thank you, Mr Costello.

THE COMMISSIONER: Yes. Mr Branson, there's something I think that I should raise now about tomorrow.

MR BRANSON: Yes.

10 THE COMMISSIONER: I am minded to, not, to, to only allow you to cross-examine on matter on which Mr Kelly could testify. What I'm really getting at is, where there is a, if there is a dispute as to what Mr Watkins said to Mr Costello or Mr Costello has said to Mr Watkins, I am minded not to allow you to cross-examine on that and to leave that to Mr Curtin.

MR BRANSON: I agree. And then insofar as any such conversation, to use a neutral term, impacts on my client of course, that- - -

THE COMMISSIONER: It does impact on your client.

20 MR BRANSON: No, no.

THE COMMISSIONER: It's a matter of instruction as to what was said.

MR BRANSON: Exactly. Only if it, A, directly relates to my client and, B, we want to take issue with it. I think- - -

THE COMMISSIONER: Well, you understand what I'm (not transcribable)

30 MR BRANSON: Yes, exactly. But I was just going to ask this to facilitate that kindly, your Honour's associate has told us that the usual practice is for the team to review this afternoon's transcript before it's released. Now, I, I happen to work early and if I can get it before midnight when I get in at whatever time I can go through it.

THE COMMISSIONER: Well, we'll do our best to accommodate you.

MR BRANSON: Thank you.

40 THE COMMISSIONER: And just speak to my associate and - or Mr Alexis.

MR BRANSON: Yes, and she's been very helpful.

THE COMMISSIONER: We will do our best to accommodate you.

MR BRANSON: That's fine and I mean I want to do it efficiently, I mean, I appreciate there's this big issue out there and - - -

THE COMMISSIONER: I accept that.

MR BRANSON: - - - so that's fine.

THE COMMISSIONER: Your request will be attended to, Mr Branson.

10 MR BRANSON: Thank you, your Honour. It's important we note that Mr Curtin is providing morning tea tomorrow. I won't, I won't specify the quality and quantity.

THE COMMISSIONER: Yes.

MR BRANSON: It's very important - - -

THE COMMISSIONER: Do you mind sitting down and - - -

MR BRANSON: The media have (not transcribable)

20 THE COMMISSIONER: There are other serious matters that I have to still deal with.

MR BRANSON: I'm sorry. I'm done, I'm sorry.

THE COMMISSIONER: I am giving you advance notice that I propose asking you at the conclusion of Mr Costello's evidence if there any reason why no questions were asked of Ms Hopkins of her version as to how the index was drawn up. Do you understand the point?

30 MR DUNNE: Commissioner.

THE COMMISSIONER: I'm not asking you to answer now, I'm giving you time to think about it and to answer when Mr Costello has finished his evidence.

MR DUNNE: Does that mean after I've finished asking questions?

THE COMMISSIONER: Yes, yes, yes, it does.

40 MR DUNNE: And would I be afforded a short opportunity to confer with him before I ask him questions (not transcribable)

THE COMMISSIONER: You'll have an opportunity to - well, I'm not sure why you would want to do that because of what I said to you. It's not ordinarily done. Why, what is the reason for that?

MR DUNNE: I suppose simply, your Honour, from comments that you made in relation to a, an unrelated incident that occurred in - - -

THE COMMISSIONER: Well, if you want to get information on matters that Mr Costello has not given evidence about you're at liberty to do so but I, I will not give you permission to speak to him generally about his evidence. If there is a new matter that you want to ask him about you are free to do so.

MR DUNNE: Commissioner.

10 THE COMMISSIONER: But nothing, not about material concerning which he has already been questioned.

MR DUNNE: Yes, Commissioner.

THE COMMISSIONER: Thank you. We will adjourn until 10.00am tomorrow.

20 **AT 4.27 PM THE MATTER WAS ADJOURNED ACCORDINGLY**  
**[4.27pm]**