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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE DAVID IPP AO QC

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OPERATION NAPIER

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON THURSDAY 7 JULY 2011

AT 10.05AM

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THE COMMISSIONER: Mr Alexis, Mr Branson is not here, I assume Mr Gerathy, - - -

MR ALEXIS: Here shortly, your Honour, but I understand Mr Curtin will lead it off.

THE COMMISSIONER: Yes, very well. Mr Curtin.

10 <ROBERT ALAN COSTELLO, on former oath [10.05am]

MR CURTIN: Mr Costello, my name is Curtin and I appear for Mr Watkins. Mr Costello, you were here on, that is, here at the Commission on Monday, 27 June when I told the Commissioner that I anticipated Mr Watkins would give evidence but he made a significant mistake in participating and producing what we've called the backdated document and using it thereafter. You were there when I said that?---Yes.

20 So can I turn to the question which is of some significance in this inquiry as the authority or otherwise of the Premier's letter of 25 February, 2011. And, Mr Costello, can I start with some level of generality, come down to some particular facts and then come down to the questions of legality, if I can call them that, in relation to authorisations, delegations and otherwise. You were asked some questions yesterday about whether you had seen a valuation, which is Exhibit 20 in this inquiry, from Knight Frank?---Yes.

And your answer was you had not seen that valuation?---Yes.

30 But you had seen some other valuation reports in the LPMA office, correct?---I saw some documents that were valuation reports on Mark Matchett's desk, but I hadn't looked at them.

Well, in your compulsory examination at page 53 at line - this is Exhibit 44. And I think you have a copy there, Mr - - -?---Where are we?

If you go to page 53. At line 31 you gave evidence "I later found out there was some valuations so on that basis, yes, he had to have engaged a valuer." He being Mr Watkins?---Yes.

40 And at line 38 you gave evidence that after the event you saw copies of the valuation reports, do you see that?---Yes.

And were those valuation reports concerning the value of Currawong?
---They were, yes.

And in line 41 you were asked, "Can you recall the value that was postulated to those valuations?" Answer, "I think there were a couple of

different reports and I think generally they talk in the vicinity of 10 and \$15 million because each one had looked at them from different, from a different sort of perspective.”?---Yes.

Do you see that?---Yes.

So I take it you gave that answer because to a degree at least you had read those valuation reports?---Yes.

10 THE COMMISSIONER: But at what point in time, Mr Curtin?

MR CURTIN: And had you, do I take it from line 38 these reports you saw after the event?---(NO AUDIBLE REPLY)

You have to say something?---Yes.

And do you recall - I withdraw that. You are familiar that valuation reports give a particular date at which the valuer expresses his opinion a property is worth?---Yes.

20

And do you recall, and I'm not asking you to guess or assume, Mr Costello, but do you recall the date at which the valuer's expressed their opinion of value?---No, I didn't.

And you saw these on Mr Matchett's desk, can I ask you are you able to recall how long after the event you saw these reports?---I couldn't say with any precision.

30

And do you know where those reports are?---What, where they are now?

Yes?---No idea.

Yesterday, if I can turn away from, well, actually before we leave Exhibit 44 for convenience, Mr Costello, if you turn to page 18 at about line 40 your recollection on 2 June when you gave this evidence was that you had been present at a meeting with Mr Watkins in which there were some discussions about Caretaker?---Yes.

40

And your recollection on 2 June, and telling me whether it varies today, was that at this meeting at which Mr Matchett was also present, you and Mr Matchett had asked a question of Mr Watkins about his satisfaction or whether he was satisfied that the Caretaker Conventions were met?---Yes.

And he told you that the paperwork showed there was approval to go ahead and he had both the Premier, the Premier's letter and the Minister's - I'm sorry. He had the Premier's and the Minister's written approvals to go ahead?---No, well, that should be he's got the Premier's written approval and the Minister's endorsement.

And you saw the Premier's letter of 25 February, 2011 before exchange of contracts?---Yes.

THE COMMISSIONER: Mr, sorry, Mr Curtin, Mr Costello, in this answer you gave at line 40 to 45 - - -?---Yeah.

10 - - - you said that the paperwork, that, that Mr Watkins said, as I read this, that the paperwork shows that the approvals to go ahead were done some months ago?---Yes.

Is that still your memory? Is that, that is what he said?---That, that is still, yes, Commissioner.

Yes, thank you.

20 MR CURTIN: And, Mr Costello, if you turn to page 23, at the top of the page, you at least up until 28 January, 2011 knew or understood or perceived that there was a clear understanding in the LPMA that the Currawong land would not be bought by the then Labor Government from the Unions?---I'd say yes.

Is that right?---Yes

You can put that aside, thank you, Mr Costello. Yesterday at page 704 of the transcript you gave some evidence that Mr Watkins was determined and highly motivated to see the property of Currawong become publicly owned?---Yes.

30 And you describe him as outcome focused, you describe him as pushing the envelope, taking a few risks that you wouldn't, and in answer to one of the Commissioner's questions that Mr Watkins was somebody who would cut corners, you see that?---Yes.

And in none of those questions did you identify, and I'm not saying, I'm just saying this as a fact, but in none of those answers did you identify any particular fact or piece of evidence in relation to those opinions, correct?

40 THE COMMISSIONER: He wasn't asked. He wasn't asked.

MR CURTIN: Well, can I put some facts to you, Mr Costello. Firstly, you were asked a number of times about your reading of the Premier's letter and whether it authorised, that is, the Premier's letter of 25 February, whether it authorised Mr Watkins to complete the sale?---Yes.

And you expressed the view that you did. And that letter, perhaps we can show you the letter if you don't remember, Mr Costello, but that letter uses the expression "at no cost to the budget."?---Yes.

And that letter, you might remember, after the word “negotiate” uses words to the effect, “with a view to purchasing.”?---Yes.

So we know Eco Villages - - -

THE COMMISSIONER: I’m just looking at the letter, Mr Curtin, it doesn’t say “at no cost to the budget.”

10 MR CURTIN: Thank you. You’ll see the Premier’s letter – thank you, Commissioner. You’ll see the Premier’s letter on the screen, Mr Costello, and you’ll see in the second paragraph the words “I note there are no additional funds being sought from the budget.”?---Yes.

And I appreciate I think you didn’t see the Minister’s letter at the time, but subsequently you’ve seen it and it uses the words “no cost to the budget.”? ---Yes.

20 Now, you know at least now that Eco Villages completed their purchase from Unions New South Wales on 28 January?---Yes.

You know now that Mr Watkins’ first contact with Mr Linz after 28 January was 17 March, 2011?---Ah - - -

Were you here for Mr Linz’s evidence?---Yes, but it wouldn’t have been March because we’d, we’d done the settlement on 15 March.

I’m sorry, 17 February?---Okay, that makes sense, yes.

30 Thank you. And you heard the evidence that Mr Linz asked Mr Watkins or put an offer to Mr Watkins of \$20 million?---Yes.

And you heard from Mr Linz that Watkins had said to him that he, Watkins, believed the site was worth 11 to \$12 million?---Yes.

40 And you know that when Mr Linz contacted - I withdraw that. And you know from Mr Linz’s evidence that Mr Watkins rejected the offer of \$20 million and made no further attempt to negotiate with Mr Linz until Mr Linz rang him shortly before 11 March?---Yes.

And on the, the result of Mr Watkins and Mr Linz’s discussions around 11 March was that Mr Watkins went up \$200,000 and Mr Linz came down \$7.8 million?---Yes.

And you heard Mr Linz say, in answer to Counsel Assisting’s question, that he was the one who blinked first?---Yes, I remember.

And so Mr Watkins - I withdraw that. You know now I think that the Briefing Note of 8 October, 2010 authorised at the very least Mr Watkins to negotiate up to \$13 million?---Yes.

And you know now that in this conversation with Mr Linz shortly before 11 March Mr Watkins spending the public's money said to Mr Linz that \$11.2 million, I'm sorry, \$12.2 million was his final offer?---Yes.

10 And so this public servant negotiating with an experienced property developer secured an outcome, and I'll come to the value of it later, but negotiations with a private developer got the developer to reduce his offer by \$7.8 million and only increase his offer by 200,000, correct?---Yes.

And so somebody who was, well, we know from Mr Linz that Mr Watkins was not so passionate, so determined or so willing to cut corners for example that he - it was not any of those things because he didn't say to Mr Linz I've got \$13 million or words to that effect, correct?---That is correct.

20 So in layman's terms in those financial negotiations this public servant in effect screwed this developer down to a particular price, would you agree? ---Yes.

And we know from Mr Linz's evidence, unchallenged by anybody in this inquiry, that Mr Linz made clear to Mr Watkins this deal was conditional on a quick exchange and settlement?---Yes.

30 Because Mr Linz or his evidence was that if that deal wasn't done he was on "a mission" to prepare for the case which he gave evidence he was confident of being successful in, correct?---Yes.

40 MR ALEXIS: Just while there's a pause, Commissioner, could I object to the question because it's been answered and object to the line of questions. What my learned friend has been putting to Mr Costello does rather sound like a submission and I'm not sure if the point of the question is to ascertain whether this represents Mr Costello's state of mind prior to exchange or not. In other words, it's not clear from the questions and the answers whether or not he's seeking to understand that Mr Costello was aware of all these things prior to 15 March and if that is the intent of the questions then perhaps that ought to be made clear.

THE COMMISSIONER: Yes, Mr Curtin, the thought has been crossing my mind that these are matters that could well be put in submissions and I'm not at the moment sure how it's helpful to elicit them through Mr Costello. I mean, they all speak for themselves.

MR CURTIN: Well, yesterday through this witness evidence was adduced that my client was somebody, amongst other things, who would cut corners.

I wish to put to this - on behalf of my client through the very same witness put some incontrovertible facts and I will get to some other facts and some legalities to deal with that evidence.

THE COMMISSIONER: All right, Mr Curtin, you understand that I have reservations about this but you may proceed.

MR CURTIN: I intend to, subject to being allowed to go on, to deal with it expeditiously.

10

THE COMMISSIONER: That is my main concern.

MR CURTIN: Yes, quite.

So Mr Costello, just turning back to those financial negotiations and Mr Watkins going up 200 and the developer coming down \$7.8 million, that is not somebody or those actions you would not describe as cutting corners or pushing the envelope, correct?---Yes, that's correct.

20 And as to the value that is the purchase price paid of \$12.2 million in the circumstances at the time you're aware that Exhibit 20, the valuation by Knight Frank says the property is worth 10 to \$11.5 million subject to the then zoning of the land?---Yes.

And you're aware that there's some evidence to the effect that if Eco Villages were successful in the Land and Environment Court proceedings and changed the zoning Currawong might be worth in the vicinity of \$20 million?---That's so, yes.

30 And you're aware that even at \$12.2 million Eco Villages suffered a financial loss according to Mr Linz of \$2.2 million and upwards, correct? ---Yes.

And you mentioned these valuations this morning that you saw on Mr Matchett's desk ranging between 10 and \$15 million so that value of \$12.2 million in your opinion could not be described as cutting corners or pushing the envelope?---No, it couldn't.

40 And can I turn to the Pittwater Council's promise to transfer various lands or to gift various lands to the Crown as an in-kind contribution to the purchase. I won't go through the detail with you, Mr Costello, but if you examine Mr Foster's evidence, Exhibit 23, the BM valuation of the Newport land Mr Ferguson's evidence of a private valuation of McKay Reserve and Mr Foster's evidence of Great Mackerel just assume from me, if you take various figures from those witnesses and assuming a rezoning or the Newport land the lowest value of those properties combined was some \$5.3 million plus some hundreds of thousands, just assume that. And assume by taking the highest values revealed by that evidence the combined value of

the properties was \$7.8 million. Now, if that evidence is correct and keeping in mind various Briefing Notes or emails that value the land at five to seven million or four to six million that aspect of the transaction in your opinion could not be described as pushing the envelope or cutting corners, correct?---That's so, yes.

10 THE COMMISSIONER: I have to take issue with that, Mr Curtin. The full picture has not been put. I don't attach any value to that reply because the full value has not, the full picture was not put. For example, was not put that there was no contractual obligation with the Council and the Council executed no Deed of Donation and the Council was under no legal obligation to transfer the properties, arguably, and so the mere fact that the properties had a value is no answer to the issue with which you're now dealing.

20 MR CURTIN: May it please. On the assumption, Mr Costello, - I'll deal with Council's legal obligations in a moment, but let's just assume that Council did transfer these lands specified simply on the question of value, assuming my calculations are correct, you wouldn't describe that aspect of the transaction as pushing the envelope or cutting corners, correct?
---Correct.

THE COMMISSIONER: But in what way was it not cutting the corners?
---In the, in the, I think in the, in the question yesterday the description - - -
Just answer my question?---Sorry, Commissioner.

In what way was it not cutting the corners?---In my mind - - -

30 On the basis that it was worth between five and \$6 million and closer to six million than five, the land?---On that basis the package of what was being put together that represented a sizeable amount of funding that would save any cost to the budget on acquiring the land.

Budget at what date?---At, at the date of the transaction in March/April.

But which budget would it represent a financial contribution to?---This financial year.

40 2012?---No, 2010/11. Sorry, 2010/11, that was the intention that it would all happen within the 10/11 financial year.

Mr Costello, as I understand the evidence there is no prospect of this land being transferred by 30 June, 2011 was there?---When I had my initial discussion with Mr Watkins he felt that there was.

So your answer that there was no cutting of corners is based on the assumption that what he told you was true?---Yes, Commissioner.

MR CURTIN: Can I come to the subject of the Commissioner's questions. You heard, I think, the evidence from Ms Taylor and perhaps some others of regular remittances from the CLE account to Treasury and there was a particular budget that is anticipated revenue flowing that way about which Ms Taylor gave some evidence, remember that?---Yes.

10 And you remember – if Exhibit 36 could be put up please. – that Ms Taylor's evidence was in substance that at the end of June 2011 these remittances to Treasury were, as a gross figure, \$2.45 million less than budgeted?---Sorry, where are you at?

THE COMMISSIONER: I don't recall that.

MR CURTIN: The evidence, Commissioner, is - - -

MR ALEXIS: I can indicate, Commissioner, (not transcribable) \$2 million followed I think was put by way of assumption concerning the \$9.295 million referred to at end of calculation - - -

20

THE COMMISSIONER: And that's by taking into account the extra receipts. That's not an answer, Mr Curtin.

MR CURTIN: The evidence of Ms Taylor, Commissioner, is at page 622 of the transcript and the context I think starts at the top of the page. At line 12 she refers to the heading Negative Variance for CLE's explained by, and at line 23 it meant that Treasury got about \$11.7 million less from LPMA than it had budgeted for, which he agreed at line 32, "Once you took out of that deficit the \$9.295 million for a shortfall from lower revenues from operations excluding Currawong the net result was a shortfall of" well, she said 2.5, two and a half in line 43.

30

THE COMMISSIONER: Yes, I know she said that, Mr Curtin, but this is really a matter for submissions because on one view and as far as I'm - my provisional view at the moment, a compelling view, is that but for the purchase of Currawong which involved \$12,188,000 the budget figure would have been exceeded and but for the purchase of Currawong, despite the receipts, budget would have been met so any question to Mr Costello involving these matters which, as I say, to me are matters of argument rather than anything else has to involve a consideration of that fact. That is, had the government not incurred a liability to pay \$12,188,842 for Currawong in the 2011 financial year the budget would have been met but with that purchase it was not met and therefore the Premier's condition was not met.

40

MR CURTIN: Well, there's a further - all that is correct. There is a further consideration and that is the evidence that part of the funding would come from Crown Land sales.

THE COMMISSIONER: Oh, yes, but not by 30 June, 2011.

MR CURTIN: Well, that's what we don't know because Mr Foster's evidence was that if he'd been told to increase his target of \$10 million Crown Land sales in March of 2011. He said he would buy \$12 million, it would take 12 months.

THE COMMISSIONER: Exactly.

10 MR CURTIN: But if he'd been able to achieve sales of \$2.45 million by 30 June, 2011 then there would have been mathematically no cost to the budget.

THE COMMISSIONER: Mr Curtin, I reiterate: these are matters for argument and as one can see in the debate between you and myself at the moment that's what's happening. I do not regard it as helpful to canvass this with Mr Costello.

20 MR CURTIN: Well, Mr Costello, I think your evidence was that Mr Watkins mentioned Currawong to you on either 10 March or thereabouts?---Yes.

And between that time and exchange of contracts on 15 March one of the matters that you were examining as part of your role was how to fund this purchase, correct?---At that stage I hadn't been looking at that, no.

No, but between that conversation with Mr Watkins and 15 March you started to look at how the purchase might be funded?---Started to, yes.

30 Yeah. And continued to look at how to fund the purchase after exchange and before settlement?---Yes.

And you gave evidence yesterday in answer to some questions about your opinion of the correctness or not of withhold remittances from Treasury et cetera?---Yes.

And your evidence was simply to the effect that you thought doing - withholding those funds et cetera in your opinion was allowable?---Provided we got the June target, yes.

40

Yes, quite, thank you. And your role as Chief Financial Officer of the LPMA was that if you became aware, or one of your roles, I should say, is that if you were tasked with a matter and you formed a view that doing something was not allowable, you would so advise Mr Watkins, correct? ---Yes.

If you like, you were the financial specialist in the LPMA, correct?---A specialist is, there are, there are financial specialists that have expertise that

I don't have expertise on so - as a financial specialist in an over, overlooking sort of role yes, but as a specialist specialist, not necessarily.

All right. Underneath you were the specialist specialists - - -?---Yes.

- - - is that right, reporting to you?---Yeah.

10 And you would in turn report to Mr Watkins if there was a, a task you and your specialist specialist were being asked to do which you thought was improper?---Yes.

THE COMMISSIONER: Mr Costello?---Commissioner.

In relation to the LPMA's obligation to make monthly remittances to the Treasury - - -?---Yes.

20 - - - does Ms Taylor know more about the LPMA's obligations in this regard than you or do you know more than she does?---She'd know more than me.

MR CURTIN: And in undertaking the tasks that you described yesterday after 11 March and after exchange et cetera to fund the purchase and with particular references to the CLE remittances, did Ms Taylor, did you ask her for any involvement?---Only, only to see that, if there were sufficient funds in the, in the CLE to, to accommodate it.

All right. Is she somebody you would regard as one of those specialist specialists?---Yes.

30 And did you ask Ms Taylor or anybody else that was working under your supervision about the propriety of holding back the remittances et cetera you spoke of yesterday?---No, I didn't.

All right. And I think either at that meeting - sorry, the meeting you referred to yesterday at which Caretaker was discussed et cetera, was that a meeting on Monday, 14 March, 2011?---It was, yes.

Did you have more than one meeting on that day?---On that day, yes.

40 And how many meetings did you have?---With, with who? Are we talking with, just with Mr Watkins or with other people?

Well, let's start at the beginning of Monday morning. What was - who was at the first meeting?---The first meeting would have been with Mr Watkins, Mr O'Keefe, Mr Callaghan and Mr Simpson and then I think Mr Watkins and I had a, just a short meeting after the legal team left. Then Mr Simpson and Mr Watkins and I had a meeting about lunchtime and I'm not sure about after lunch.

All right. And the discussion you remember where the subject matter of Caretaker was mentioned, was that at the first meeting?---The first meeting, yes.

At which you and Mr O'Keefe and the others you mentioned were present?
---Yes.

10 And was it at one of those meetings on the Monday, or tell me if it was earlier or later, that you first became tasked with the job of working out how the purchase would be funded?---It would have been from the first meeting, yes.

And so at that first meeting there was some discussion of how the purchase would be funded?---Yes.

And did people mention the CLE account, for example, - - -?---Yes.

20 - - - or CLE remittances?---Not, not remittances but from the CLE, yes.

And mentioned selling Crown land?---Yes.

And selling the Council's land?---Yes.

And then you went away and started that task with the assistance of such specialist specialists as you thought was necessary?---At that stage the only thing we were looking at was the payment of the deposit at that stage.

30 But after that date and up until completion you went and undertook that task of funding – we're not talking about – by that question I mean excluding the sale of Crown land or Council land – you undertook that task from that date forward utilising such specialist specialists as you thought was necessary?
---Yes.

40 And either expressly from something you said to Mr Watkins or impliedly from not saying there was a problem with it you conveyed the impression to Mr Watkins, at least up until the time he was stood aside, that there was no impropriety in funding the purchase price in the manner that ultimately occurred?---The manner that ultimately occurred was different to the manner that we discussed.

In the manner that was – who was it who made the decision to change the, can I call it the funding arrangement, from that proposed by Mr Watkins to that which eventuated?---That was a recommendation put in the Cabinet minute to the new Government.

And who was the author of that?---Paul Miller from the Department of Premier and Cabinet.

I missed his surname?---Paul Miller.

Miller, thank you. So Mr Miller was the author of the funding arrangement which eventuated?---Which eventuated, yes.

THE COMMISSIONER: There's something else I want to ask you, Mr Costello. Excuse me, Mr Curtin. The LPMA, as I understand it, conducts various operations from which it receives money?---Yes, Commissioner.

10

And the receipts are budgeted? And what I mean is that each year you budget what receipts you're likely to receive?---We did, Commissioner, yes.

And do you get monthly returns showing what the receipts are?---We monitor it on a monthly basis, sometimes on a fortnightly basis.

So at least monthly you are aware whether the monthly returns meet budget or not?---Yes, Commissioner.

20

And perhaps fortnightly you're aware?---In, in some cases at particular times of the year, so getting up towards the end of the financial year they might watch some, some particular transactions on a, on a more closely, not in Corporate Finance but in the business they'll look at it more regularly just to see that they're travelling towards their, their targets.

So when would you start looking more closely at these targets, at what stage?---It's usually around about, from about March onwards, March towards the end of June just to - - -

30

So how often would it be looked at? What sort of frequency is that, weekly?---I suppose at least weekly at that stage.

And who does do this?---It's generally accounting staff in the businesses themselves, in each of the businesses.

And who gets the results?---It all gets fed into the Corporate Finance system and then it's that system that's used to download information into the Treasury system.

40

Do you see it?---Generally not. I see, I see, we have monthly budget meetings where I get the big picture details across the businesses, but just basically at that monthly, that monthly finance meeting.

Does Mr Watkins see it?---When we have executive meetings the results are available at that particular point of the year fed into the executive meetings as well.

From around February to March do you know whether Mr Watkins called for these results?---Not to my knowledge.

Did you?---I would've seen a finance report at about the end of February would've been the last one I would've seen, Commissioner.

I'm just looking at Exhibit 36, do you have it there?---Yes, Commissioner.

10 And there is an item there under the heading Negative Variance for CLE as explained by, in the middle of the page on the left-hand side, do you see that in bold black letters?---Yes, Commissioner.

And on the right-hand side there's a table?---Yes, Commissioner.

And you see an item, "The last item balance attributed to lower revenues from operations" and not including June SAP revenues which is some nine, almost \$9,300,000?---Yes, Commissioner.

20 When did you first become aware of that figure?---When I saw this paper yesterday or - - -

When did you become aware that there was – do you regard that as a significant difference between the budget and what was achieved?---The, the, while we have a budget for the Crown Leaseholds Entity it can go up, it can fluctuate on an annual basis, sometimes we can get \$10 million more than expected, sometimes we can get 10 or \$12 million less than expected depending on just what activity is going on in that particular year.

30 Was there any point in time that you realised that in the 2011 year there was going to be a difference between revenues from operations and the budgeted revenues from operations which was of the order of \$9 million?---No, Commissioner.

Was that an issue that was ever discussed?---No, Commissioner.

Was it ever discussed in meetings with Mr Watkins?---No, Commissioner.

Thank you.

40 MR CURTIN: Mr Costello, yesterday you gave some evidence of conversations with Mr Watkins and at 717 of the transcript you gave some evidence at about line 35 that Mr Watkins when talking about the, I'll call it the backdated letter, that he had said to you when it was in its draft stages that it would need to have a date of at least the date of the Premier's letter or a subsequent date?---Yes.

Mr Watkins did not say words to that effect to you, isn't that correct?---My recollection is that was the discussion.

And at 719 line 18 for the assistance of those with transcript, you gave some evidence that Mr Watkins said to you words to the effect that Minister Kelly would phone you shortly to let you know when he'd be in Sydney to be able to sign this letter?---That's my recollection, yes.

Mr Watkins did not say words to that effect to you, isn't that correct?---My recollection is those words were, were said.

10 And at page 731, about line 31, you gave some evidence that - and I think this might have been the discussion which was the heated discussion where you had advised Mr Watkins at line 28 that he can't rely on or use that letter and he said to you amongst other things "As far as the Minister and I are concerned this letter was signed on the 28th, just after we got the Premier's letter"?---Yes.

I want to suggest to you that you said to him instead of those words that I've paraphrased for you, you said to him words to the effect of, You shouldn't use the letter, that is the backdated letter, and he replied words to the effect
20 of that he understood the point you were making?---No.

Is that correct?---No, it's not.

And this heated discussion - was that the heated discussion?---On this particular issue we had about four discussions.

Right?---It wasn't just one, one discussion, it had happened a few times.

30 All right. And were they, was any one or all of them heated?---The, the, the one where, you know, he slapped his fist down on the desk was the heated one, the others were still a bit antagonistic but, you know, they were, they were not, not as heated but they were still not, not friendly discussions.

MR BRANSON: Sorry, not?

THE COMMISSIONER: Friendly.

MR BRANSON: Thank you.

40 MR CURTIN: And when you describe them as heated and not friendly you include in that description that you were forthright in your views about the use of this letter?---Yes.

And you've given some evidence of Mr Watkins having a strong personality et cetera and you were asked some questions I think about why did you put things in documents, was it simply because he told you to do so and you were the - he was the dominant personality as it were, do you remember that?---Yes.

But when it came to matters of propriety such as this letter you were forthright in your views to Mr Watkins, correct?---Yes.

And so any, any element of the transactions with which you were involved after 10 March and up until settlement, if you considered any aspect was improper you would have forthrightly expressed your views to Mr Watkins or whomever was in charge, correct?---I, I, I couldn't answer that because it would depend on, on the particular issue. The letter was in my mind
10 something that we just, you know, it shouldn't have happened. It shouldn't be put, it shouldn't put into the, into the system, it muddied the, muddied the waters if you like.

All right. But if you thought there was any impropriety in the funding arrangement proposed by Mr Watkins for the time between 10 March and when he was stood aside - - -?---Ah hmm.

- - - you would have said to him something to the effect of I don't think we can do it that way or I don't think that's right?---I suppose I should of but I didn't, yes. I think the - when we had one of our meetings there was a
20 discussion over the funding sources and how much we'd get from the, like the SRDF or the Corporate Sole and how much we'd be getting from the sale of the land. I indicated to him well, I said look, we're nearly March, do you think you can get this done? He says, I'm going to drive the issue, I think I can get it done. I thought, okay, he's, he's the sort, he is, he is a man who achieves against the odds sometimes and I said, okay, I, I accepted that it was going to be difficult but I accepted him at his word that he'd be able to do it and then later on, well, we found it didn't happen so we had to go to
30 other alternative sources.

When he said to you that he thought he could achieve something by the end of the financial year that you've described, your experience of him as you said at page 745 of the transcript was, was that he had a pretty good track record on delivering financial objectives for the government?---Yes.

And so you had confidence in his ability to achieve what he'd described to you?---Yes, I did.

And you had that confidence in what he said to you at the time from,
40 amongst other things, your experience of him previously?---Yes.

Putting aside the question of whether these particular sales et cetera could be achieved by 30 June in all other respects in the funding scheme Mr Watkins outlined to you up to the time that he was stood aside, you saw no impropriety, correct?---Yes, I'd say that, yes.

THE COMMISSIONER: But does that include not remitting the monthly amounts to Treasury?---I, I took the view that given the, the Premier's letter,

my understanding of what the Premier's letter was that would allow us to do that because we needed, we needed to have a funding source. The money wouldn't materialise out of anywhere in the event that, you know, the timing was right. If, if all the, if the sales had occurred there wouldn't have been, or there would have been a need just to remit basically one month's holding if you like or one month's revenue but by the end of June everything, all the books would have been back in balance and the main thing we are judged on is how we are at the end of June.

10 Would that have involved, would that have involved selling the Newport land as well?---That would have, yes, Commissioner.

So you would have had to in the space of two, less than, about two and a half months sell the land, well, you'd have to have the land rezoned, sold, contracts exchanged and settled in two and a half months?---Yes, Commissioner, but - - -

And is that - - -?---I'm sorry.

20 Did you really think that that was possible?---I thought that was, that, that was, that was a, a, a, a difficult task but Mr, Mr Watkins was quite confident that he'd be able to drive the initiative through.

Were all these matters discussed - the ones I've raised now in this - - -?
---Not, not in that detail because at that stage I wasn't sure of the zoning. I just relied on Mr Watkins saying that I'm going to drive the issue through and I'll, I'll get it there and I was confident that he could.

30 MR CURTIN: Just two more short matters, Mr Costello. After Mr Watkins was stood aside from your observation the, the process if I can use that term broadly to have Council transfer the various lands and achieve various other Crown sales for whatever reason ground to a halt?---Yes.

That is in the absence of Mr Watkins after, I think, 18 March, 2011. In substance nobody else did anything to advance the Council land proposal and extra Crown land sales?---That's right.

40 And coming to the Commissioner's question from a moment ago - could Mr Costello have Exhibit 34 please.

THE COMMISSIONER: What are you looking for, Mr Curtin?

MR CURTIN: It's Ms Taylor's - I'm sorry, it's Ms - - -

THE COMMISSIONER: Ms Ponniah's.

MR CURTIN: Ponniah's - - -

THE COMMISSIONER: Statement.

MR CURTIN: Statement, thank you.

THE COMMISSIONER: What are you asking for?

MR CURTIN: If Mr Costello could have that statement and - - -

10 THE COMMISSIONER: He has it.

MR CURTIN: He has it. And Mr - - -

THE COMMISSIONER: Do you have it, Mr Costello?---Yes, Commissioner.

MR CURTIN: If you just go to the document headed Exhibit A, Subject: Acquisition of the Currawong Site.

20 THE COMMISSIONER: It's the first annexure to her statement, it's the third page?---Yes, Commissioner, got that.

MR CURTIN: And on that first page you'll see the table, Mr Costello, with the final line item being Net Additional Costs to Government.

THE COMMISSIONER: I'm sorry, I can't see that. I think there's a problem with the document. There are two Exhibit A's.

30 MR CURTIN: It's the second Exhibit A, Commissioner, headed Involved, Subject: Acquisition of the Currawong Site.

THE COMMISSIONER: Do you have that?---Yes, I've got that, that's the submission at the back, yes.

MR CURTIN: And you'll see that the table with the final line item, Mr Costello, saying net additional cost to government?---Yes.

40 And yesterday, if you could just keep that document in front of you, Mr Costello, but yesterday at page 758 of the transcript you gave an answer at line 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 Government so I was assuming that it was going to happen that financial year. I said it would be a cost to the budget." I have a question mark whether that's correct, Commissioner, but - - -

THE COMMISSIONER: Sorry, you have a question mark?

MR CURTIN: Over whether that last sentence is a correct transcription, but if I can ask Mr Costello.

THE COMMISSIONER: Yes.

MR CURTIN: Where you say in this table, Mr Costello, net additional cost to the government nil - - -?---Yes.

10 - - - do I take it that you used those words deliberately as distinct from words such as “net impact on the budget” or something to that effect?---Yes.

And were you intending to convey from that line item that if one ignored the annual budget what you were conveying was that on that scenario as an arithmetical exercise there would be no cost in dollar terms to the Government, correct?---Yes, that’s right.

It may have had an impact on the 2011 budget because certain things couldn’t happen before 30 June?---That’s right.

20 But if they happened in the 2012 financial year combining those two years no dollar cost to the Government?---That’s right.

THE COMMISSIONER: Mr Curtin, will you be long? I’m just thinking of adjourning.

MR CURTIN: I’m thinking that’s my last question, but could we have the adjournment first please, Commissioner.

30 THE COMMISSIONER: Yes. Mr Costello, I just want to come back to what’s been described in effect as a reserve store of Crown lands which can be sold whenever is necessary?---The Land Bank, yes, Commissioner.

This land, I take it, has different kinds of zoning?---Yes, Commissioner.

It’s not all zoned the same is what I mean?---That’s right, Commissioner.

40 And earmarking land to be sold does that sometimes require zoning to be changed?---It does, Commissioner, but then quite often it happens fairly quickly, it can happen fairly quickly at times too. We’ve had, we’ve had programs where a few years ago the Government was looking at, it needed some additional money into the budget by some millions and millions of dollars. Commissioner Watkins said, Look, I can find you another 10 million or whatever it was at that particular year, instigated a program where we were looking around the, say, the Hornsby type areas, areas where you had a lot of residential, or you had houses and you had blocks of individual or a few blocks of Crown land that are not maybe together, but were not needed for any sort of park or reserve, they were just the Government’s

spare land, if you like, and well, to get zoning started and get them sold and put money into the budget.

So is most of the land in this reservoir zoned open space or something of that kind?---The majority of it would be at any particular point of time, yes.

10 So are generally speaking the prospects of realising land of some millions of dollars dependant on rezoning of the Crown land before it's sold?---Yes, Commissioner. In other cases it, sometimes it is sold as it is without the zoning, we let the buyer then look after the zoning type issues.

That would affect the price?---Affects the price, yes, Commissioner. And we make that, we make that decision on a case by case basis so that we get better value doing it this way or the other way.

The Commission will adjourn till 11.30.

20 **SHORT ADJOURNMENT**

[11.18am]

THE COMMISSIONER: Mr Curtin.

MR CURTIN: I have one question, Commissioner, being a barrister that probably means ten but, Mr Costello, you mentioned there was a change in what I've called the funding arrangements outlined to you by Mr Watkins with the funding arrangements that eventuated?---Yes.

30 Do you remember that?---Yes.

And do you recall when that change occurred?---It would have been some time between - about towards the end of March, 26, 27 March and 3 April I suppose or 2 April when the Cabinet Minute was finalised.

And is there some particular event you recall which causes you think that the change may have been on 26 March?---It was around about that time when I think Mr Miller from DPC contacted me indicating that he was doing a cabinet minute.

40 They're the further questions, Commissioner.

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

MR BRANSON: Thank you.

Mr Costello, I think you know I'm acting for Mr Kelly. Sir, can I just clarify with you some aspects of your experience and qualifications. How old were you when you left school?---18.

Did you attain the Leaving Certificate?---Higher School Certificate.

Yes, thank you. And have you studied accounting principles?---Yes.

Right. What, what qualification do you have?---I have a Diploma of Technology and Commerce from what was the Institute of Technology which is not UTS.

10 Thank you. And other formal qualifications, sir?---A member of the CPA.

Thank you. Very well, thank you. It just - it wasn't mentioned yesterday, sir?---Yeah, okay.

I just wanted to clarify that, thank you very much. Look, if we could just run through a few things which, which I think are massively common ground but it's your evidence, is it not, that at the very late point in time commencing about mid-morning on Friday, 11 March when you first became aware that the Currawong acquisition had marched along somewhat down the track, your first involvement was the consideration as to whether
20 the Caretaker Convention covered the situation and if so whether there'd been compliance with the Convention, is that correct?---No, not quite. My first role was I indicated to Mr - asked Mr Watkins whether he was satisfied that he had met the Caretaker Conventions.

I'm sorry, I put it - - -?---Not do an assessment.

I put it incorrectly. So your first involvement, if I can use that phrase please, was with respect to Mr Watkins' view as to whether the Caretaker Conventions assuming it to be applicable had been complied with, is that so,
30 sir?---That is so, yes.

Thank you. And it wasn't until Monday, 14 March that you became aware or involved in any of the depth and detail of the acquisition itself, the acquisition process, correct?---That's correct, yes.

And you were shown some documents at that time, do I correctly understand you?---Yes.

40 Including a letter from Minister Kelly of 9 February to the Premier or not? ---It would have been about that time, yes.

All right. And the Premier's response to Mr Kelly of 25 February?---Yes, I'd seen that one, yes.

All right. But I don't think at that time you'd seen the Briefing Note of 8 October, 2010 had you?---Not at that stage.

No. Now, sir, as at 14 March do I correctly understand that you believed that the exchange of contracts for the acquisition of Currawong proceed by 5.00pm the following day in accordance with that email of 10 March that you'd seen, is that right?---Yes.

Right. And so far as you knew that that would proceed notwithstanding that you had no idea at all as you told us about the basis upon which the transaction would be funded?---That's right, yes.

10 That's correct, isn't it?---Yes.

No one had kept you in the loop, correct?---Yes.

And indeed so far as you were aware no one, no member of your staff whether a specialist specialist or otherwise had been briefed with respect to the funding of the purchase. Is that correct?---That's correct.

20 Right. Was there anything on that day, 15 March, that came to your attention that you can remember other than that exchange was going to proceed on, on time or at least as scheduled?---In what sense?

Well, I'm just, is there anything you can recall or note that day, that's Tuesday the 15th, that you can now recall as being significant or not?---Not that I'm, not that I'm aware of.

30 Right. What about the following morning? Do you remember on the Wednesday, 16 March anything that occurred with respect to the exchange of contracts the previous day?---I had the call from Mr Watkins indicating that he needed a, a briefing submission put together.

Right. But did you regard that as being a matter of concern or was it a neutral event, using a phrase - at that time?---I suppose just a neutral event I suppose.

Yes. In other words it was a recording, wasn't it, or in the nature of a recording, by way of minute as to what had occurred the previous day?---Yes.

40 Is that right?---Yes.

Thank you. When - well, is this the position: that on the Thursday, the 17th late afternoon or early evening you first became aware there may have been some issue with respect to the authorisation of Mr Watkins to arrange the exchange of contracts (not transcribable)?---Not on, not on, not on the, not on the 17th I don't think.

All right?---The Friday the 18th, yes.

Well, did you not tell us that you'd had a conversation with Mr Watkins on the evening or late afternoon of Thursday the 17th about whether or not a letter may be necessary to clarify the approval process or not?---Yes, that was, that was the discussion we had when he'd asked me just to go through the papers to see if there was anything that might have been overlooked.

Yes?---Yes.

10 But I think, sir, you told us that was on Thursday, the 17th?---That was, yes.

Thank you. And I think you've told us, did you not, that the upshot of this - it was a telephone conversation was it with Mr Watkins?---No, that was in his office I think.

Right?---Yeah.

And did you not express the view to him that you didn't think that any further letter was necessary?---I did, yes. I said that - - -

20 And was that view based on what you'd seen with respect to the correspondence involving the Premier and Mr Kelly?---Yes, it was.

And it's correct, isn't it - - -

THE COMMISSIONER: Sorry, yes, that's right.

MR BRANSON: Thank you. Sorry.

30 THE COMMISSIONER: I beg your pardon.

MR BRANSON: I am going a bit fast, I'm sorry. Mr Costello, if I am going too fast please put your hand up. I apologise to you. Now, and just let me clarify this. The discussion you had with Mr Watkins on 17 March do you regard that, or would you describe that discussion as friendly, unfriendly or otherwise?---It was quite friendly.

40 Right. And at the conclusion of that discussion were you left with the indelible impression that the then view of Mr Watkins was that no letter was necessary or appropriate?---Yes, we weren't going to take any further action.

MR DUNNE: Your Honour, sorry, if I could just make an objection. My friend has been referring to the term "letter" from Mr Costello. Mr Costello's evidence initially was that a memo was required.

THE COMMISSIONER: I don't think it's important, Mr Dunne.

MR DUNNE: Thank you, your Honour.

THE COMMISSIONER: I don't recall that. You may well be right but I don't think that Mr Costello's being misled in any way.

MR BRANSON: I'll put the question. Economical question. May I just clarify this please, Mr Costello. Were you or were you not discussing with Mr Watkins on 17 March the preparation of a note for the file or was it a letter or something else please?---Yes, a file note, yes.

10 A file note. I'm sorry, I apologise. Thank you, Mr Dunne. Well, now, we know from your evidence that things changed the next day, correct?---Yes.

And you've told us in depth and detail about that and I don't want to take you through with that. But may I bring you please, and we'll have to go to that private examination. Has Mr Costello got, or can he be given - - -?
---I've got a copy of that document.

Have you? Thank you.

20 THE COMMISSIONER: Can you just tell me where it is? Exhibit 44.

MR BRANSON: Correct. Now, can I just ask you this please, Mr Costello. You agree that your recollection of the events of 18 March were likely to have been more accurate when you gave your evidence in private examination on 2 June than when you gave your evidence yesterday?---Not sure what the question is.

Was your recollection better on 2 June than it was yesterday as to what happened on 18 March when you met Mr Kelly at the Lindt Café?---I
30 thought it would've been about the same.

About the same. All right. That's fine. Have you had occasion to go back with the transcript which is Exhibit 44?---No, I haven't.

Thank you. Now, will you look please at – get to page 38, 38PT down the bottom right-hand corner. Apologise, Commissioner.

THE COMMISSIONER: Yes, Mr Branson.

40 MR BRANSON: 44, thank you, Mr Alexis, I apologise again. Now, you recall, I think, I'm just summarising – you told the Commission in your private examination that the reason for meeting at the Lindt Café was essentially because Mr Kelly has a residence near Martin Place, he was going out to some functions later that night and having got back from Bathurst it was practical and convenient for you to meet with him there?
---Yes.

Right. You told us yesterday he was there when you arrived?---Yes.

And is this not what happened that, first of all, before that meeting you agree that Mr Kelly had not seen the letter?---That is so, yes.

Now, perhaps just run us through again what happened with respect to the letter as best you remember now please?---We sat down, we ordered our coffee. Mr Kelly, I gave Mr Kelly a copy of the letter, he read through the letter, he indicated, "Yes, I've spoken to Warwick about this.

10 Yes. Just go slowly?---Sorry?

Just go slowly?---Okay.

There's no rush?---So he indicated that he had discussed the letter with, or had discussed signing the letter with Mr Watkins.

Yes?---Read the letter then said, "I'm happy to sign that." Signed the letter and then he said, "What date should I put on this?" And I indicated, I said, "Mr Watkins had indicated either the date of the 25th or some subsequent
20 date shortly after that." Mr Kelly said, "Well, will I put the 25th, the 26th, 27th?" I said, "Well, I don't know, any date you like." Mr Kelly then pulled out his phone, I assume to look at his calendar, and then said, "Yes, I'll do the 28th" and signed it the 28th.

All right. And do I correctly understand that the evidence you've given to date is that prior to you meeting Mr Kelly there had been no discussion at which Mr Kelly was aware as to what day or date that letter should bear?
---That's my -- well, I, I, my discussion, I had no discussion with Mr Kelly on, on a date before then.

30

Thank you. Now, I think you told us -- well, it's in your evidence, Exhibit 44, the meeting or your coffee break it was 15, 20 minutes?---Something like that, yes.

Now, after Mr Kelly had signed and dated the letter what did you talk about, do you remember?---We talked about the, things that had occurred while he was up in Bathurst that day for the Country Labor meeting.

40 Yes?---We talked about the convenience of having the unit close by Martin Place sort of thing because I thought that he was over the north side somewhere. We talked about, I think he was going to, he had received an invitation to a concert in town that night but had to decline that because he had to host a function in Parliament House.

With the Premier, do you know?---Beg your pardon?

With the Premier, do you know?---I've got no idea.

Thank you. Go on?---And the other thing we discussed was basically, you know, what some of his activities were going to be like on, come election day.

Did you talk about his farm, do you remember?---I think his farm got mentioned a couple of times as part of that discussion, yes.

10 Did you have any discussion with him at that meeting about the use that may be made of the letter that he had just signed and dated?---Not to my recollection, no.

Look, in terms of any phone calls between you and Mr Kelly, first of all on that day, do you agree that they related to setting up a time for the meeting given that Mr Kelly had been in Bathurst and he had to come back and you were waiting to receive something - - -?---Documents.

- - - you told us about yesterday?---Yes, that's right.

20 Is that correct?---That's right, yes.

So on that day the phone calls related to setting up the meeting, correct? ---Yes.

Do you remember any other phone calls that Mr Kelly - - -?---The only, sorry.

30 Go on?---The only other phone calls we had was, prior to him going to Bathurst there was an understanding in the, our Bathurst office that he may call in for a visit. I got a call from the, our Senior Manager up there, it would be towards lunchtime just asking whether we had heard anything from the Minister 'cause they were waiting to greet the Minister but he wasn't there, could we find out what's happening. I then phoned Minister Kelly, asked him whether he was going to the meeting. He said, no, they'd run out of time, he's already on his way back to Sydney so I phoned Bathurst and said, "No, you can go about doing your normal business."

Did you phone Mr Kelly on his mobile presumably?---Yes, would've been his mobile because he was in his car, in the car.

40 Thank you. And look, finally, isn't this the position from your perspective that at all times you were of the view having looked at the correspondence of Mr Kelly to the Premier on 9 February and the Premier to Mr Kelly on 25 February that Mr Watkins had authority to exchange contracts for the purchase of the Currawong site?---I was quite confident from the correspondence I'd seen that Minister Kelly was endorsing all the action was to be taken, yes.

I've said finally, and of course it's always Counsel's error, do you remember at your private examination giving some evidence about what you understood to be, based on your experience, a practice in the public service that had annued for about forty years of documents occasionally being backdated.---Yes, I do.

For various purposes?---Yes.

10 And I think, we don't need to go through this in depth and detail, you told us yesterday what at least you had in your mind about the use of 28 February letter signed by Mr Kelly, correct?---Yes, that's right.

And which was to put it in a drawer and at some subsequent date it would be put on the file.---Yes.

20 And your understanding clearly was that the letter signed by Minister Kelly on 18 March and dated 28 February was not going to be used for the purposes of the IAB investigation being conducted by Mr O'Reilly?
---That's my understanding, yes.

Thank you. Thank you sir. Just one thing, after 18 February do you recall having any telephone conversations with Mr Kelly?---No.

Thank you.

THE COMMISSIONER: Mr Branson, in light of that cross-examination you may care to withdraw your comment about Mr, the quality of Mr Costello's evidence yesterday particular the word jibbering.

30 MR BRANSON: I will, I'll do that. I apologise sir that I characterised your evidence, not by way of justification but by way of explanation I think that a combination of my learned friend who's conducted this inquiry with admirable efficiency and has been a model of ethical propriety there was al speeding up process between Counsel and a witness which was like a tsunami washing over me. I've already apologised to you, Commissioner, and I formally apologise to Mr Costello and I withdraw the epithet jabbering, it was entirely inappropriate and incorrect.

40 THE COMMISSIONER: Thank you Mr Branson.

MR BRANSON: Thank you, sir.

THE COMMISSIONER: That's handsomely done. Now is there anyone else who wishes, other than Mr Dunne, who may wish to question Mr Costello? Mr Taylor.

MR TAYLOR: (not transcribable)

THE COMMISSIONER: Yes, certainly, please do.

MR TAYLOR: Mr Costello, my name is Taylor, I appear on behalf of Mr O'Reilly.---Okay, yes.

Is it fair to say that you had a number of conversations with Mr O'Reilly concerning the Currawong, sorry, acquisition?---I did, yes.

10 Is it your recollection that the first of those telephone conversations occurred on 18 March?---That is my recollection, yes.

And is that purely from your recollection?---In what sense?

By that, I mean, you don't have any contemporaneous file notes or - - -?---
I'm, no, there's no - - -

- - -or any document to assist you in recalling when you first spoke with Mr O'Reilly?---No, I don't know.

20 Okay. And do you accept that your recollection may or may not be completely accurate?---Compared to?

Well, there was a lot going on - - -

THE COMMISSIONER: Recollection of what?

MR TAYLOR: Well, there was a lot going on from 16 March in relation to this matter.----Yes.

30 You were having conversations with a number of people.---Yes.

Including Mr Watkins and others and Mr O'Reilly?---Yes.

And in that scenario do you concede that your recollection may be faulty - - -

THE COMMISSIONER: Mr Taylor, in fairness if you wish to put it to Mr Costello that his recollection is faulty about a particular statement, you should do so. I will not allow a question in these general and vague terms.

40

MR TAYLOR: Well, it's going to lead to that your Honour, I apologise. Are you able to say how many conversations you had with Mr O'Reilly? ---No idea.

Was it more than one?---It would be more than a dozen I suppose in total.

Thank you. Over what period of time?---Over about three weeks I suppose.

And you were present when Mr O'Reilly gave his evidence?---Yes, I was.

And other than the matters that you've referred to in your evidence in dealing with the conversations with Mr O'Reilly, do you accept his evidence of the conversations he – and the contact he had with you as being accurate?---I'd say reasonably, I wouldn't know because I'd have to compare to, compare to what though?

Well, compared to what he said?

10

THE COMMISSIONER: It's too difficult Mr Taylor, if you want to say that there is a difference that you contend, which you, in respect of which you content Mr Costello is making a mistake please put that to him.

MR TAYLOR: Yes, thank you, Commissioner. At some stage did Mr O'Reilly tell you that Mr Watkins had submitted the back dated letter in respect of the IAB investigation?---At some stage, yes.

20 Are you able to say when that was?---I, I think that was on 25 March, I think.

Yes, thank you Commissioner, that is all I have to asked Mr Taylor.

THE COMMISSIONER: Thank you. Is there anyone else who wishes to ask any questions, no. Mr Dunne.

MR DUNNE: Thank you, your Honour.

30 Mr Costello, can you tell us on a, in March of this year approximately how many emails you would have been receiving at work?---At any time over the last few months I've been getting anything up to 130, 150 a day.

And that would require the period - - -?---That would be the last few months.

- - -during that period. And some of those emails would have attachments to them?---Yes.

40 Some of them quite lengthy?---Yes.

You've given evidence that during the period from 11 March at least until 19 March you've been involved in a number of meetings each day. Is that correct?---Yes, yes.

And a number of telephone calls?---Yes.

And I presume you've had other correspondence - - -?---To tell with, yes.

- - -that comes in. Do you read all those a hundred, how many did you say?
---I said about 130 something, no I don't.

Are you able to read those 130 emails a day?---Impossible.

And look at the scanned documents that's attached?---Documents.

10 I'll take you to a response to a question from Mr Alexis at page 7, 26 of the transcript and 727 and if I can just summarise those questions and your answers. You asked about an email you received which attached the draft statement from Mr Watkins.---Okay, yep.

Is that right? And you were asked questions about, the detail in the scanned document. Do you recall that?---Yes.

20 And you gave an answer on page 727 at line 33 when you were asked and when you looked at the document you saw that he was relying on the bullet point on the second page of the Premier's letter. Your response was, "As I said, I don't recall that I actually read all the way through that document."
---Where are we?

I'm sorry, on page 727.---I'm sorry, I haven't got that document.

THE COMMISSIONER: Line 33.

MR DUNNE: I don't think he has the transcript.

THE WITNESS: Oh sorry, that's okay, I can take from there, yeah, okay.

30 THE COMMISSIONER: Line 33.

THE WITNESS: Yes, okay.

MR DUNNE: And you ask your Honour to accept that evidence in the context of the evidence you've just given about your work load over that period of time, the volume of emails, the telephone calls and - - -

40 THE COMMISSIONER: Mr Dunne, that's a matter for submissions, I won't allow that question.

MR DUNNE: Okay. If I can take you to a question asked to you by Mr Alexis in relation to the first time you saw the Premier's letter and that is on page 686 of the transcript about line two or three. You were asked, when was the first time you saw the Premier's letter.

THE COMMISSIONER: Which - just a minute. You've got - just make sure that Mr Costello has it, Mr Dunne.

MR DUNNE: Yes, sorry, 686?---Yes, I see that.

THE COMMISSIONER: 686, line?

MR DUNNE: Line 2 or 3, your Honour, it's, "When was the first time you saw the Premier's letter?" "I think it was at that, in that telephone call while the telephone conversation was going on on the 10th I think"?---Yes.

10 And then further at about line 12 the Commissioner asked you, "And did you say that Mr Matchett brought it to you?" "I think Mr Matchett, yes." And then following, "So he, he put it in front of you when you were on the telephone to Mr Watkins"?---Yes.

Do you tell his Honour that at that stage you saw the letter or did you read the letter?---I, I would have read the letter, it's only a short letter.

Yes, thank you.

THE COMMISSIONER: Yes, Mr Alexis.

20

MR ALEXIS: Commissioner, there's one subject I wish to take up with Mr Costello but before I do could I remind you, Commissioner, of what he raised with Mr Dunne at transcript 761 - - -

THE COMMISSIONER: Yes.

MR ALEXIS: - - - line 25 and following - - -

THE COMMISSIONER: Yes.

30

MR ALEXIS: - - - and could I particularly in that respect, Commissioner, draw attention to the evidence of Ms Hopkins with respect to the preparation of the index which, which starts at 179 at about line 40 and particularly over on 180 down to about line 12. The subject of her evidence was the matter I think, Commissioner, you wanted to raise with Mr Dunne.

THE COMMISSIONER: Yes, very well. Well, Mr Dunne, do you have an answer for me?

40 MR DUNNE: I think your Honour's question was did I have a reason.

THE COMMISSIONER: Yes. The reason as I'm sure you understand for the question is that it - on one view is there a compelling view that I should not accept Mr Costello's evidence and should prefer Ms Hopkins' evidence on this issue because Ms Hopkins was not questioned about this.

MR DUNNE: Yes, your Honour.

THE COMMISSIONER: Now, I'm giving you an opportunity while your client is in the witness box of saying whatever you want to say about that. If you don't want to say anything you don't have to.

MR DUNNE: Well, a reason, your Honour, I've got an explanation, I don't know if that's the same thing.

THE COMMISSIONER: Yes.

10 MR ALEXIS: Could I suggest, Mr Dunne have a short adjournment to perhaps have the opportunity to get some instructions before (not transcribable) on this matter.

THE COMMISSIONER: Yes. Well, I thought that you would have got the instructions because I did give you liberty to speak to Mr Costello but you can have a, we'll have an adjournment of five to 10 minutes while you speak to Mr Costello.

20 SHORT ADJOURNMENT [12.03pm]

THE COMMISSIONER: Mr Dunne.

MR DUNNE: Yes, your Honour. I suppose there's two aspects to what I want to address your Honour on.

THE COMMISSIONER: Well, the - - -

30 MR DUNNE: The first is - - -

THE COMMISSIONER: Before you say anything it has occurred to me that one way of - if you want to you may explain it by asking Mr Costello questions. Another way is by simply telling me. It's for you to decide what you want to do.

MR ALEXIS: There is a third option, Commissioner, with respect and that is Mr Dunne does nothing.

40 THE COMMISSIONER: Yes, I've said. You may do nothing. This is an entirely voluntary act on your part.

MR DUNNE: I understand.

THE COMMISSIONER: But I don't want anything to happen without you being aware that it might happen.

MR DUNNE: I'm, I'm grateful to your Honour. Your Honour, could I just have a word for a moment (not transcribable)

THE COMMISSIONER: You may wish to address this in written submissions as well at the end. You have a number of opportunities. This isn't - I'm asking you this not to prejudice your client but to benefit him.

MR DUNNE: I fully understand. I don't propose - - -

10 MR BRANSON: (not transcribable)

THE COMMISSIONER: I beg your pardon?

MR BRANSON: (not transcribable) but not in this Commission.

MR DUNNE: Commissioner, I don't propose to take any step.

THE COMMISSIONER: I can't hear you, Mr Dunne.

20 MR DUNNE: I don't propose to take any step, your Honour.

THE COMMISSIONER: All right. Thank you. Yes, Mr Alexis.

MR ALEXIS: Thank you. Can we have transcript page 179 on the screen please and if - Mr Costello, you might find it easier reading it in the written hard form - could be shown the transcript of Ms Hopkins' evidence and Mr Costello - - -?---Sorry, where, where are we now?

30 Yes, I'm about to take you there, sir?---Oh, sorry, okay.

If you have page 179 of the transcript and do you see at about point 3 on the page just again adopting the numbers down the side, I raised with Ms Hopkins the index - - -?---Yes.

- - - that we find at page 89 of Exhibit 1?---Yes.

Do you see that question?---Yes.

40 And can I just pass over her evidence concerning the way in which the index was prepared by you dictating from the documents to her and bring you directly to the questions from line 30, do you see that?---Yes.

And you'll see the question that I put in relation to the index and I asked her, "Did you faithfully type everything that he," that is you, Mr Costello, "that he said to you with respect to the description of each document?" "Yes, as he told me I typed." And then do you see in the next question I specifically asked her about the ninth document and you know the ninth document - - -?---Copy of the letter.

- - - is the backdated letter, don't you?---Yes.

And do you see in that question I put to her this proposition, "Is your evidence that he dictated the words," and you'll see that I've quoted from the terms of the index?---Yes.

You see the quoted words?---Yes.

10 "Approval from Minister to proceed with acquisition" and then date "28 February, 2011"?---Yes.

You see her evidence was, "That's what I've typed, yes"?---Yes.

And then I've asked her, "Is there any doubt in your mind about the fact that he dictated that to you and that's what you typed as see there," your, her answer was, "No." Do you see that?---Yes.

No doubt in her mind?---Yes.

20 And then you'll see the question, "You knew instantly that he was referring to was the letter that you'd seen in the afternoon of the previous Friday that the Minister had signed et cetera?" "Correct, yes." And then over the page at the top of 180 you'll see I asked, "Didn't you think when Mr Costello was telling you this that what he was doing was using this letter as part of a folder of documents to be given to the investigator in relation to this serious inquiry." Her answer was, "That's what he was doing, yes." "Well, that's what you understood he was doing." Answer, "Yes," "And you knew that you were participating in that by preparing this index, didn't you?" Answer, "Yes"?---Yes.

30 Now, would you agree with me, Mr Costello, that there is not even a shadow of a doubt about the fact that her evidence if accepted in this inquiry puts you right in the middle of the preparation of this index and in particular dictating to her the description of document 9 referred to in that index?
---That is right, yes.

Now, if you just come through the transcript over to page 102 and you'll see that your solicitor, Mr - - -

40 THE COMMISSIONER: 102?

MR ALEXIS: I'm sorry, I withdraw that, I'm sorry. 182?---Yes.

And you'll see that your solicitor, Mr Dunne, commenced to ask some questions of Ms Hopkins. You'll see at line 30 and following there's, there were some questions concerning the briefing minute of 16 March that you prepared, do you see that?---Yes.

And then if we come over the page at 183 you'll see that at line 20 she was asked some questions about the preparation of what's been described as a brief to the IAB and in particular reference was made to an index, do you see that?---Yes.

And then you see the question from after line 30 down to 40 about Mr Matchett's involvement, do you see that?---Ah - - -

10 You see the question, "Isn't it the case that Mr Matchett collated those documents"?---Yes.

And she said, "I don't recall that, no"?---Yes.

20 And then take your time if you need to, Mr Costello, but as one follows the following questions and answers that were put on your behalf by your solicitor, I think it's fair to say that none one question was put to Ms Hopkins which challenged the proposition that you dictated the terms of the index to her as she typed that document and in particular that you were involved in the inclusion of the index of the backdated letter. Now, do you agree with that?---Yes.

Now, the reason why your solicitor didn't ask one question on that subject matter is because you did not instruct him to challenge her evidence at the time she gave her evidence to this Commission, isn't it?---That's right, yes.

30 Thank you, Mr Costello. Now, can I deal with one other matter and if you have Exhibit 1 before you there in the witness box could you go to the document behind tab 15 and I'm coming, just so you appreciate where I'm going, Mr Costello, to the evidence that you gave this morning to Mr Watkins' counsel on the subject of the change in the funding arrangements. Do you recall your evidence on that subject this morning? ---Yes.

And if you look at the briefing minute behind tab 15 which you told us yesterday you prepared the day after exchange on 16 March do you see in paragraph 3.4 on page 68 that it was there said that "the acquisition of Currawong was being effected with no net impact on the budget," do you see that firstly?---Yes.

40 And should we now understand that expression as an expression that is different to the expression "nil net additional cost to government"?---Yes.

I think you drew that distinction this morning?---Yes.

And then we see in that paragraph "as the funding is being source from additional Crown sale, Crown sales," do you see that?---Yes.

Secondly, sale of land gifted from Pittwater Council?---Yes.

And thirdly the reference to the open space funding?---Yes.

And that is a reference to the funding out of the SRDF?---Yes.

So the day after exchange at the time at least that you prepared this briefing minute you understood that the funding arrangements were to involve those three sources?---Yes.

10 What changed?---At the end of the day the, the gifted land from Pittwater Council hadn't come through and it hadn't been sold, there had been no additional Crown sales and we had part of the money from the open space funding, not all of it because we hadn't, hadn't finished the valuations and as a result we had to use CLE revenues to be able to fund the acquisition.

Now, my learned friend Mr Curtin put to you that those changed funding arrangements came from Mr Paul Miller. The question he put was that he was the author of the new funding arrangement and you agreed with that. Do you remember that evidence you gave?---Yes, yes.

20

THE COMMISSIONER: I'm not sure if that's right.

MR CURTIN: Well, I didn't put it, I asked.

THE COMMISSIONER: And that wasn't Mr Curtin's proposition, the witness volunteered that it was Mr Miller and then Mr Curtin put it back to him.

30 MR ALEXIS: Yes, thank you. Mr Costello, perhaps you may not have therefore intended this but were you identifying Mr Miller as the author of the new funding arrangement?---I suppose I did, yes, in that - - -

THE COMMISSIONER: I beg your pardon?---Yes, in, in answering the question I said Paul Miller, yes.

40 MR ALEXIS: But can you just attend to the point of my question. Did you intend to convey to the Commissioner that it was Mr Miller that was the author and I'm putting emphasis on the word author, of the new funding arrangement?---He was the author of the Cabinet Minute, what's, I, I can't work out the distinction there.

Well - - -

THE COMMISSIONER: Whose idea was the new funding arrangement? ---I'd have to say it was something that came in a Cabinet Minute, I put a note up to Mr O'Reilly indicating that time was getting near where we needed to make a decision on whether the government was going to commit

with the settlement or take the consequences of not proceedings and out of that, the Cabinet Minute was created.

So other than the Cabinet Minute you do not know the answer to Mr Alexis's question?---That would be right, yes.

MR ALEXIS: But Mr Costello, before this contract was completed you knew that Mr Miller was the General Counsel of the Department of Premier and Cabinet, didn't you?---Yes, yes.

10

And the idea that he would be the author of some new or changed funding arrangement is nonsense is it?---There was no one else to be the author.

So Mr Costello, you sent the Department of Premier and Cabinet a memorandum didn't you on or around 30 March - - -?---I did, yes.

- - -to explain how this contract was going to be completed?---I did, yes.

20 And can I -have we given out all the copies? Thank you. Now Mr Costello, just have a look at this document with a copy for you Commissioner. Now, Mr Costello, is Julie Leach your personal assistant?---Yes.

She was on 30 March?---Yes.

And you see that you've emailed this document to her for the purpose of having her TRIM the attachment, that is to file it electronically, is that so? ---Yes.

30 And so should we understand from that Mr Costello, that by the date that you asked her to TRIM the document it had been sent to the Department of Premier and Cabinet?---I would assume so, yes.

And just if you jump to the last page of the document you'll see that under your hand as Acting Chief Executive, and on 30 March you have referred to the Director of the Premier's Department and from that reference we should understand it was to the Director General that it was sent?---Yes.

40 And the subject of your memorandum related to the options that were then available at the end of March with respect to the completion of the contract?---Or termination.

Or termination. And this document that you prepared dealt with the options that were then available, didn't they?---Yes.

And if you could just look at some material under the sub-heading, current position, and in particular the paragraph under the heading, Business Case for Acquisition and Value for Money Assessment – do you see that on the first page?---I haven't got a first page, no I haven't got a first page.

THE COMMISSIONER: There's no first page here Counsel.

MR ALEXIS: All right. Can I pass over the first page and we'll seek to supplement the document. But if we come to the second page of the document which is your first page after the email I think?---Yes.

Is that a page that a page that starts with three bullet pointed paragraphs?
---It is, yes.

10

Thank you. And if you come down to the third paragraph on the page, you see the reference to the acquisition representing value for money.---Yes.

And then it says, "it's proposed that this expenditure would be off-set by the following".---Yes.

And there's the \$7 million contribution from the SRDF.---Yes.

And the \$6 million anticipated from the sale of Council land.---Yes.

20

We have, again, the reference to the net additional cost to government.
---Yes.

And then you see the next paragraph, it is seen that these two funding sources will enable the site to be acquired without the need for any additional budget funding, in effect, under the proposed arrangements government will only have to spend the SRDF obligations to acquire the entire site.---Yes.

30

So, if this document that was sent by you on 30 March to the Department of Premier and Cabinet represents a change in the funding arrangements, the only change we should understand is that the proposed sale of Crown Land has been removed, otherwise the source of funding is the same isn't it?
---Yes.

Thank you. And could I just ask you to note what is contained in the next page or so dealing with options and you'll see higher cost of later acquisition.---Yes.

40

The sub-heading, consequences of not proceedings despite exchanging contracts.--- Yes.

And you deal with the prospect of damages claims and the like from the vendor.---Ah hmm.

And then over on the next page you deal with the adverse consequences on other related transactions.---Yes.

And then you see your conclusion and the recommendations for approval and completion.---Yes.

Now, would you agree with me that nowhere in this document that you prepared and put up to the Director General on 30 March, do you make any reference to withholding monies that are to be remitted from the CLE account to the Consolidated Fund?---Yes, I see that.

10 And can I suggest that the omission to refer to that as to how the acquisition was going to be funded was deliberate on your part?---No, it wasn't.

Because you didn't want to bring to the attention of the Department of Treasury and Cabinet that that's how the completion of this contract was going to be funded?---No, I assumed that everybody would know that because we're buying it, coming to the Crown it would have been taken out of the Crown Leasehold Entity.

20 Why would you assume that everyone would know this sir, Mr Costello?
---There's no other source of fund available.

Now, did you see the minute that went up to Cabinet as a result of your memorandum?---I did, yes.

And can I show you this document just to ensure that we have the correct document. Do you see the date of the minute as 1 April?---1 April, yes.

30 The day after your memorandum was sent on the 30th. And do you see, and if you need time to read it, let me know, but do you see that the content of this minute that went up to Cabinet is to a large, if not very significant extent lifted from your memorandum?---Yes.

And you understand that it was in the result of this minute being put up to Cabinet, that Cabinet approved completion of the contract of 4 April?
---Yes.

Thank you, I tender Commissioner Mr Costello's email to his personal assistant subject to finding and including the first page of the memorandum.

40 THE COMMISSIONER: Yes, the email from Mr Costello to Ms Leach of 3 March 2011 at 2.52pm with accompanying attachment is Exhibit 45.

#EXHIBIT 45 – EMAIL FROM MR COSTELLO TO MS LEACH OF 3 MARCH 2011 AT 2:52PM WITH ATTACHMENT

MR ALEXIS: And can I also tender the briefing minute dated 1 April, 2011.

THE COMMISSIONER: The briefing minute of 1 April, 2011 is Exhibit 46.

#EXHIBIT 46 – BRIEFING MINUTE DATED 1 APRIL 2011

MS FISHER: Excuse me Commissioner, might I have a copy of that.

10 THE COMMISSIONER: Certainly.

MS FISHER: (not transcribable)

THE COMMISSIONER: Yes. I'm sure arrangements will be made, Ms Fisher.

MR ALEXIS: And Mr Costello apologies if I've already asked you this but the briefing minute dated 1 April 2011 which has now been marked Exhibit 46, did that, as you understand, get prepared by Mr Miller after the receipt
20 of your memorandum, Exhibit 45?---Yes.

Thank you Mr Costello, that's all I wish to asked.

THE COMMISSIONER: Yes, you may be excused Mr Costello.

THE WITNESS: Thank you, Commissioner.

THE COMMISSIONER: Thank you for your evidence.

30 MR ALEXIS: Commissioner, I call Mr Warwick - - -

THE COMMISSIONER: Yes.

MR ALEXIS: Commissioner, I call Mr Warwick Watkins.

THE COMMISSIONER: Yes. Mr Watkins.

MR CURTIN: Mr Watkins will take an oath, Commissioner, and a section
40 38 order.

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

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

10

THE COMMISSIONER: Mr Alexis.

MR ALEXIS: Thank you, Commissioner. Sir, could you state your full name please?---Warwick Arthur Watkins.

10 And you are the Chief Executive Officer of the LPMA or at least until April this year before the change in departmental arrangements?---I was.

You are the Surveyor-General of New South Wales?---I am.

You are the Registrar-General of New South Wales?---I am.

You hold a Diploma in Agriculture with Honours from the Hawkesbury Agricultural College now the UWS, is that so?---I do.

20 You gained further postgraduate degrees and diplomas from the University of New England including a Masters Degree in Natural Resources, is that so?---Yes.

And you've spent some time at Harvard Business School in Boston, USA? ---Yes.

And can I just run through your currently held positions. Should we understand that you are the Commissioner of the Soil Conservation Service of New South Wales?---Yes.

30 You are also the Norfolk Island Surveyor-General?---Yes.

You're the Deputy Chancellor at the University of Technology in Sydney? ---Yes.

You're the President of the Board of Surveying and Spatial Information? ---Yes.

You hold the Chair of the Geographical Names Board?---Yes.

40 You hold the Chair of the Australian and New Zealand Land Information Council?---Yes.

You are an advisory board member of the ARC Centre of Excellence for ultrahigh bandwidth devices for optical systems?---No, I've relinquished that role.

Thank you. You hold the Chair of the Australian Spatial Consortium Steering Committee?---Yes.

You're the Deputy Chair of the CSIRO Water for a Healthy Country National Research Flagship Advisory Council?---Yes.

You're a member of the National Land and Water Resources Audit Advisory Council?---That, I've relinquished that.

Thank you. You're a member of the Australian Government's Consultative Committee on Knowledge Capital?---Yes.

10

You are an Honorary Associate member of the Graduate School of Government?---Yes.

You're a Fellow of the Australian Property Institute?---Yes.

And you are an Honorary Fellow of the Institution of Surveyors of New South Wales?---Yes.

20

And in terms of your position as Chief Executive of the LPMA, as it was then known, should we understand that you held that position for about 12 years?---In one form or another, yes.

Thank you. And prior to that you were the Director-General of the Department of Conservation and Land Management?---Yes.

You were the Director-General of the State and Regional Development? ---Yes.

30

You were the Chief Executive Officer of Waterways Authority?---Correct.

You were previously the Director-General of the Department of Information, Technology and Management?---Yes.

And should we also understand, Mr Watkins, in that vast array of positions you've also headed the New South Wales Electricity Reform Taskforce? ---Yes.

40

You are a former Vice-President of the World Association of Soil and Water Conservation?---Yes.

And you are a former Deputy Commissioner of the Murray-Darling Basin Commission?---Yes.

And, sir, we should understand also that you're a former Director of the CRC for Smart Internet Technology?---I am still a Director of that organisation.

Thank you. And you are a former Director of the Land and Water Australia and a part Foundation Director of Landcare Australia Limited?---Yes.

Mr Watkins, have I left out anything of significance concerning your relevant work history?---No.

In total how long have you worked in the Public Service for?---It would be approximating 41 years.

- 10 Thank you. Now, Mr Watkins, when this inquiry commenced back on 27 June your Counsel informed the Commission that you had made a significant mistake in participating in the production of the document that we now know to be the letter of 28 February, 2011?---Yes.

You were in the hearing room when that announcement was made?---I was.

And we should understand, should we, that that was an announcement that your Counsel made on your instructions?---It was.

- 20 And does that accept that the backdated letter, as we have referred to it, was a letter that was actually procured from Minister Kelly on 18 March, 2011? ---Yes.

And should we also understand that the letter was prepared in terms of the language used in it and the backdating of it so that during the course of the week commencing 21 March it could be used so as to make it look as if you had that letter available to you before the exchange of the contract and before the commencement of the Caretaker period when you knew that you did not?---No, that was not my intention at the time.

- 30 Well, at some point it became your intention, didn't it?---I did use it for that purpose.

At some point it became your intention, didn't it?---Yes.

And at what point in time did it become your intention?---When I was preparing the material for the IAB I used that document as one of the source documents in preparation of my statement.

- 40 So should we understand that when we identify the time at which you commenced to prepare the statement that ultimately was given to the IAB that will identify the point in time at which you made that decision?---Yes.

Right. Now, could I show you this email please, with a copy for you, Commissioner. Should we understand from this email, Mr Watkins, that - -

THE COMMISSIONER: Is there, excuse me, Mr Alexis, is there any possibility of putting this on the screen?

MR ALEXIS: Now, Mr Watkins, you see on 16 March at about 9.48am your personal assistant Ms Hopkins was wishing to speak with you as soon as possible concerning Mr O'Reilly?---Yes.

And does that provide us with some timeline as to when it was that you first spoke with Mr O'Reilly?

10

THE COMMISSIONER: About this issue.

MR ALEXIS: Yes, of course?---About the Currawong issue, yes.

And so we should understand, should we, that the conversation that you had with him occurred sometime during the morning of 16 March and after the time indicated in the email?---Yes.

Because you spoke to your personal assistant, she told you that Mr O'Reilly had rung for you and you then telephoned Mr O'Reilly?---Yes.

20

And should we understand, Mr Watkins, that Mr O'Reilly said to you, "What going on with the Currawong site? I understand you have approval to negotiate but I have been told you bought it." Do you remember that? ---Words to that effect, yes.

You told him, "I have." He said, "Hang on, Warwick, how do you buy it when, what is your expenditure delegation, there are no records of it going up to Cabinet, I have no record of any of this." He said that to you?

30

---Words to that effect, yes.

You then said, "Oh, look, I might have blown the expenditure delegation part but I believe I had the authority to do it from the Premier's letter." You said that to him, did you?---I didn't say the first part of that sentence, I did say the second.

So are you telling me that you made no reference in this conversation with Mr O'Reilly to having, "Blown the expenditure delegation" part?---I do not recall using the word blown, but I do recall a conversation about delegations.

40

And you told Mr O'Reilly that you may have exceeded that expenditure delegation?---I may, yes.

He said to you then, "No, Warwick, it says negotiate, it doesn't say purchase, and the issue I've got is the expenditure delegation. Where did the money come from to buy it and where is the Cabinet process?" He said that to you, didn't he?---Yes.

And you responded by saying, "I might have exceeded my financial delegation but this was a very good deal for not only the, for Government but also for the public." You said that to him?---Words to that effect, yes.

And he then said to you that he needed the material to- -?---Yes, he did.

- - -understand what it was that had occurred. Is that so?---He did.

10 And could you be shown Exhibit 1, please?

THE COMMISSIONER: Are you tendering this email or not, Mr Alexis?

MR ALEXIS: I don't think I need to, Commissioner. That's enough.

THE COMMISSIONER: Yes, quite so.

MR ALEXIS: But it does assist in tying the timing down and we have Mr
Watkins' evidence. Now, Mr Watkins, if you could come to the document
20 behind tab 15, please. And after speaking with Mr O'Reilly did you then
have this Briefing Minute at pages 68 to 78 inclusive prepared for despatch
to Mr O'Reilly in accordance with his request?---That was not the ah,
response to Mr O'Reilly, this Briefing Note was initially not prepared in
response to Mr O'Reilly's questions.

Well, whether it was initially prepared for that purpose or another purpose,
you do understand, don't you, that this document was sent to Mr O'Reilly?
---Yes, I do.

30 And on the 16th?---Yes.

And- - -

THE COMMISSIONER: After your, after your telephone call?---Yes. I
had another, I think a couple of telephone calls, Commissioner, with my
staff because I was in Melbourne at the time.

I understand?---Yes.

40 MR ALEXIS: And Mr Costello prepared the Briefing Minute behind tab 15
with you on the telephone providing him with information to be contained
within it. Is that so?---Yes, there was dialogue.

And so if we were to look at the content of the memorandum at pages 68
and 69 in particular, the content, particularly the source of funding and
matters of that type, came from you and were conveyed to Mr Costello over
the phone. Is that right?---Yes.

Now, can I show you, please, while you have that document open, an email, and a copy for you, Commissioner, to Mr O'Reilly. Can you distribute copies of this? And do you see, Mr Watkins, that your personal assistant is emailing Mr O'Reilly at about 12.09pm on 16 March attaching a scanned copy of the Briefing Note to which we have referred behind tab 15?---Yes.

And do you see that the email indicates that it has also been sent to Minister Kelly that day?---Yes.

10 And is that consistent with what you understood occurred with the Briefing Note, namely that one went to Mr O'Reilly and one went to Minister Kelly's office?---Yes. The Briefing Note was prepared for Minister Kelly's office. It was subsequently forwarded to Brendan O'Reilly.

Thank you. I don't need to tender that email, Commissioner. Now, did you then have a further conversation with Mr O'Reilly?---On what day?

20 Either during the afternoon of the 16th or during the course of 17 March, during which he conveyed to you that he had raised his concerns with the Premier and that he was going to remove you from your position?---That was the evening, yes.

THE COMMISSIONER: The evening of the 16th, was it?---No, evening of the 17th.

Evening of the 17th.

30 MR ALEXIS: And it was during that evening conversation, was it, that he told you that you were going to be stood down pending an internal IAB investigation?---I don't, I cannot recall the ah, the reference to the IAB but I certainly recall the reference to I was going to be stood aside and there was going to be an investigation.

And whether he referred expressly to IAB or whether you inferred that that's the internal organisation that was going to be doing it, you understood nonetheless that there was an issue that would be the subject of investigation- -?---Yes, I did.

40 - - -within the Department of Premier and Cabinet?---Ah, yes. It was subject to our discussion next morning.

Yes. But when you put the telephone down on the evening of 17 March, you understood that there was a problem and the problem was going to be the subject of an investigation and it concerned the purchase of Currawong? ---Yes.

And in particular that problem related to the question of whether or not you had authority to commit Government to the purchase of that property?

---It ah, that was part of the, yes.

And you knew that the matter in issue and the matter in issue as between you and Mr O'Reilly was what each of you thought the Premier's letter meant?---The detailed discussion on that happened the next morning not that evening.

All right. So the next morning we should understand that you met Mr O'Reilly in a coffee shop adjacent to the Governor Macquarie Tower?

10 ---Yes.

And it was during the course of that conversation that the matter in issue that I've suggested you understood became plain to you?---Yes.

The interpretation that you put on the Premier's letter was different to Mr O'Reilly's?---Yes.

And you understood immediately, may I suggest, that if his interpretation be right then you could be at the wrong end of an allegation that you
20 committed the Government to the purchase of this property without having authority to do so?---Yes.

You were concerned about that?---I was.

And in that context you spoke with Mr O'Reilly on the morning of 18 March and you engaged in a discussion to try and persuade him to your view?---I did.

30 You were unsuccessful?---I was.

You then sought to persuade him from taking the step that he indicated he would take the night before and stand you down pending the outcome of the internal investigation?---Yes, I tried to negotiate.

And what you tried to negotiate was to ensure that any action taken against you pending the outcome of the investigation was as least visible as possible so that you could retain at least your appearance as CEO of the LPMA?
---Yes.

40 In other words you didn't want the organisation to know that you had been stood down and stood down pending an investigation, you wanted to maintain the appearance of control of the organisation?---That was the agreed position with Mr O'Reilly.

Thank you.

THE COMMISSIONER: Mr Alexis, is this a convenient time?

MR ALEXIS: It is, thank you, Commissioner.

THE COMMISSIONER: Adjourn till 1.45.

LUNCHEON ADJOURNMENT

[1.00pm]