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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE DAVID IPP AO QC

PUBLIC HEARING

OPERATION NAPIER

Reference: Operation E11/0475

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON THURSDAY 7 JULY 2011

AT 1.50PM

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

THE COMMISSIONER: Mr Alexis.

MR ALEXIS: Could I start with some short housekeeping. Could I provide a complete copy of Exhibit 45 which includes the front page of Mr Costello's memorandum.

10 THE COMMISSIONER: Yes, thank you.

MR ALEXIS: Copies have been circulated. And, Commissioner, I should, before I go to further documents, tender the email from Ms Hopkins to Mr O'Reilly of 16 March, 2011 at 12.09 attaching the 16 March Briefing Minute.

THE COMMISSIONER: Exhibit 47 is the email from Lexie Hopkins to Brendan O'Reilly with Briefing Notes attached.

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#EXHIBIT 47 - EMAIL FROM LEXIE HOPKINS TO BRENDAN O'REILLY WITH BRIEFING NOTE ATTACHED

MR ALEXIS: Thank you, Commissioner. Mr Watkins, before the luncheon adjournment I was dealing with your early morning meeting with Mr O'Reilly on 18 March, 2011, do you remember that?---Yes.

30 And the issues which had, by that stage, emerged on whether you had authority to enter into the contract to commit the Government to the purchase I think was plain to you?---Yes.

And you understood also that the issue of authority also involved the application of the Caretaker Conventions?---Yes.

40 And could I ask you to be shown Exhibit 5 please. And what's coming to you, Mr Watkins, is the Caretaker Guideline document that I'm sure you're familiar with. But should we understand that you received the Premier's email with the Guideline document in or about October 2010 from the Department of Premier and Cabinet?---Yes.

And should we understand that when you received this email with the attached Caretaker Guideline document you read it and understood it? ---Yes.

You were familiar with the principles contained in it?---I was.

You had worked through a few elections in your time?---A number.

And if we could look at page 3 of the Guideline document should we understand that you saw the arrangements provided for here consistent with perhaps a longstanding understanding that you had that no new significant decisions, appointments or contractual commitments should be made?---I understood that.

10 And in terms of assessing whether or not a contract ought to be regarded as major or not, and I'm looking in particular at the bottom of page 3 over to page 4, that was a judgment to be formed not only by reference to the dollar value of the commitment but also the content and extent of other financial and non-financial obligations, the duration of any commitment and, of course, whether that contract was likely to be politically contentious. You understood all that?---I did.

And should we also understand, Mr Watkins, that by the time the Caretaker period commenced on 4 March this year you well understood that that convention doesn't prevent the government taking action that it has already committed to and announced prior to the Caretaker period commencing?
20 ---Yes.

And so when you had negotiated the deal with Mr Linz, and I'll come to some detail in due course, should we understand that you were acutely aware that if no commitment and no announcement had been made prior to 4 March that that deal might be caught by these conventions?---That was a consideration I gave.

And should we understand that in terms of the contract that you were about to enter into which ultimately you did on 15 March is concerned you
30 understood that it was a major commitment as you understood that expression in the Caretaker guideline document?---Yes.

You understood that it was one that was likely, putting it no higher, but likely to be politically contentious?---I didn't regard it as politically contentious.

But you regarded it as something that could be politically contentious, particularly in the face of a looming election?---No.

40 THE COMMISSIONER: Mr Watkins, I don't understand why it wasn't politically, why you say it wasn't politically contentious. When it was proposed that the government purchase Currawong from the Unions that proposal was rejected because the government - so as I understand the evidence, didn't want to be seen to be entering into a commercial arrangement with regard to this land with the Unions?---Yes.

And so the whole thing was shelved while the Unions were owners?
---Correct.

It then came to a point where Eco Villages had an option to buy and it was contemplated that they would become the owners?---Yes.

So as it in fact transpired the government bought from Eco Villages and not the Unions?---Correct.

10 But the sale from the government, sorry, the purchase by the government from Eco Villages followed extremely closely on the actual acquisition by Eco Villages of the land from the Unions?---Yes.

20 So, I mean, there may be nothing in the argument, I accept that, but was it not an opportunity for many to say or to infer that an arrangement whereby Eco Villages gets the property and immediately thereafter sells to the government was suspect because it looked as if Eco Villages was just being used as a link to enable the land to pass from the Unions to the government. I'm not saying there's any substance in it but I'm, it just seems to be to be some, an inference that could obviously be drawn in some, perhaps erroneously and probably erroneously, but that there were - in politics there were those who would seek to take advantage of that. Is that not obvious? ---That was not obvious to me, especially given the, the fact that this had been under consideration since 2005.

Yes, I know it had been under consideration since then but it hadn't actually been implemented because of the politics?---That's right. But, Commissioner, my - at that stage when the decision had to be made to either proceed or not proceed - - -

30 Yes?--- - - - following Mr Linz's phone calls I was also well aware of recent history by the local community.

Look, I do understand that as well. It's not the local community that's in issue - - -?---And the Local Member.

- - - it's the, yes. It's the politics though generally?---I was trying to look well beyond politics.

40 I understand that. My question though concerns your answer to Mr Alexis' question, namely, that you didn't see it was potentially politically contentious? ---No, I didn't.

And in hindsight do you think you were right?---Yes, I do.

So despite the matters I've put to you you say it was not potentially politically contentious?---I, that's my - - -

Do you say there was no potential for political opponents of the Government to attempt to make capital out of this sale and the particular circumstances that I've described?---There was always potential.

Yes, Mr Alexis.

MR ALEXIS: And, Mr Watkins, do you say that given that you were waiting and remained in waiting for the Union sale to Eco Villages to complete before you commenced to negotiate, weren't you?---Yes.

10

And you were in regular, if not, virtually daily contact with people close to the action, so to speak, in that respect, weren't you?---I'd say regularly, yes.

And you were speaking, if not daily, certainly weekly, with Mr Fenn from Minister Kelly's office?---Yes.

Because he was able to derive information from contacts within Unions as to when the contract was going to complete?---That's my understanding.

20

And you were in, if not daily, certainly weekly, contact at this stage with Mr Ferguson from the Council?---I was.

And he had his sources as well, didn't he?---Correct.

And so via those conduits you were endeavouring to identify the right time to pounce?---Sorry, can you repeat that.

30

You were trying to identify the most appropriate time to open the negotiations?---I was prepared to enter the negotiations when the property changed hands.

And as soon as you took the first step to engage in those negotiations, and I'll come to some detail about your communications with Mr Linz in due course, but you must've understood, Mr Watkins, that if you were successful in that endeavour and if you were able to exchange a contract after those negotiations concluded the appearance, at least, might be that Eco Villages held this property for only a very short period of time?---That was not an issue that I addressed myself to.

40

Are you serious about that, Mr Watkins?---Yes, I am very serious about that.

Do you seriously suggest that you didn't pause and consider the implication arising out of Eco Villages holding this property for only a period of some weeks before concluding a deal that you'd negotiated and then selling it on to the Government?---No, because effectively the, as far as the broad community was concerned, notwithstanding settlement hadn't happened, there was a well-understood understanding that Eco Villages either owned

or had an option and therefore a legal option to purchase for a number of years.

But, Mr Watkins, as soon as news broke that you'd purchased this property for 12.2 million anyone could've searched the Land Titles Register and identified in a moment that Eco Villages had bought it pursuant to the Memorandum of Transfer at least for 9.5?---Yes.

10 And anyone comparing those two figures would come to a conclusion very quickly that perhaps won't be a correct conclusion, but they'd come to the conclusion that Eco Villages had made a very quick profit?---That's up for other people to value.

No doubt it is, but we're talking about whether or not this purchase was likely to be politically contentious and don't you think in that particular circumstance that I've just outlined to you your entry into this contract was likely to be, I put it no higher, but likely to be politically contentious?---No, I do not agree.

20 THE COMMISSIONER: Mr Watkins, you've read the media reports that have been published between the time of the purchase and the commencement of this inquiry?---Yes, I have.

About Currawong?---Yes, particularly those that emanated from the Manly Daily, Sydney Morning Herald and the Daily Telegraph.

And do you accept that what was written in those reports affected politics in New South Wales?---I don't believe they did.

30 Didn't they suggest that there had been some, or that there was a possibility that there had been some clandestine arrangement between the Unions, Eco Villages and the Government?---Yes.

Don't you think that's a matter of politics in New South Wales?
---Commissioner, my judgment is that I've, in my long career and the positions I've held the way the media deals with such issues has its own approach and on this occasion different parts of the media were taking different approaches.

40 Yes, but I get the impression, correct me if I'm wrong, is that you thought you just knew what was best for New South Wales and went ahead?---No, that's not correct.

And that you didn't really – well, it's clear, isn't it – the impression I get is that you simply waved aside the question of this aspect of the Caretaker Convention that concerns agreements that could be politically contentious?
---No, Commissioner.

You gave it serious thought?---I did.

MR ALEXIS: And, Mr Watkins, when you considered as seriously as you've told us the application of the Caretaker Convention I gather you regarded yourself as having exercised proper judgment and common sense?--Yes.

10 And you know, don't you, that the Convention in terms seeks to make clear in the application of it that to particular cases judgment and common sense is required and if there's any doubt about it you get advice from the Department of Premier and Cabinet?---Yes.

And we know you didn't take any advice from Mr O'Reilly or anyone else from that Department, don't we?---We do.

20 And in circumstances where there was no commitment having been given by the Government to the purchase of Currawong and no announcement of any such commitment prior to 4 March you must've appreciated that any contract entered into with Eco Villages was caught by the Caretaker Conventions unless you had some clear basis to form a judgment otherwise?---No, there was a commitment by the Government prior to Caretaker.

All right. Well, can you tell me what the commitment is that you're referring to that you say existed in relation to the purchase of Currawong before 4 March?---The Premier's letter.

30 So you say, do you, that the Premier's letter which, and let me assume in your favour, that the letter authorised you to both negotiate and enter into a contract was a commitment that was announced prior to the commencement of Caretaker within the expression that I've just taken you to on page 4 of Exhibit 5?---It was commitment made before Caretaker but not announced.

And do you say that the letter from the Premier was a, in terms, commitment to buy Currawong, do you?---Yes.

40 All right. Now, on the morning of 18 March when you had arranged to meet with Mr O'Reilly do you recall speaking with Minister Kelly during the course of a number of telephone conversations from about quarter to 7.00 that morning?---Yes, I can't recall the sequence but I spoke to a number of people that morning.

You spoke to Mr Kelly, may I suggest to you, at about 9.00pm on 17 March and then a number of times early the following morning before you met with Mr O'Reilly?---I can't recall 17 March but I certainly spoke to him on the 18th.

And can you tell us what you discussed with Minister Kelly either during the evening on the 17th or during those early morning conversations before you met with Mr O'Reilly on the 18th?---Yes. I conveyed to the Minister that - as I, as I recall that I was being put aside, that the purchase of Currawong was under question and that the Premier had a different view to the one that I believe that he and I had based on our discussions.

10 THE COMMISSIONER: Did you tell him, did you tell him why or in what respect the purchase of Currawong was being questioned?---I can't recall the exact detail, Commissioner, but - - -

You really can't recall saying anything to Mr Kelly about the backdated letter?---No, because at that stage I thought - I was just responding to my - the phone calls, right. So - - -

MR ALEXIS: And just so we're clear, Mr Watkins, I'm directing your attention to the early morning phone calls before you met with Mr O'Reilly on the morning of 18 March?---I believe I had other phone calls with, with Mr Kelly that, that morning and I can't recall whether I spoke about the letter prior to the meeting with Mr Kelly - prior to the meeting with Mr O'Reilly or subsequent to that when I referred to the, the, the letter.

20 Now, after you spoke with Mr O'Reilly did you then make - - -

THE COMMISSIONER: At which point?

MR ALEXIS: I'm sorry, I should be clear. After you had concluded the morning meeting with Mr O'Reilly at the café adjacent to the Governor Macquarie Tower, did you then place a call to Minister Kelly?---I may well have. I, I can't recall, as I say, I had a number of phone calls that, that day but - - -

Well, would you agree with this proposition, that before about 1.00pm on 18 March you had made at least four telephone calls to Minister Kelly from your mobile telephone?---Yes.

40 And could I ask you to focus in on the conversation or conversations that you had with Minister Kelly after your meeting with Mr O'Reilly at the café concluded?---Yes. The conversations as I recall were around the, the difference of view that was conveyed to me of the way the Premier was interpreting and Mr O'Reilly was interpreting the Premier's letter. I sought to establish with the Minister that my understanding of myself and he at the time we received the letter from the Premier was that not only did we have the authority to negotiate but we had the authority to purchase and that I had been operating on that basis and consistent particularly with the authority to negotiate up to 13 million, within the 13 million. As a result of, of those discussions I also conveyed that I had some very real concerns at the timing of the inquiry. I also questioned at that stage whether there were any other

motive behind the inquiry and I then established with Mr Kelly that my understanding was the same as the, he in the way we interpreted the Premier's letter which I always understood.

10 Well, Mr Watkins, when you tell us that you established that with Minister Kelly can you tell us what you actually said and what he said which led to that, as you put it, being established?---I cannot recall the exact words but the, the context of the conversation as I recall was along these lines, Tony, you and I always understood that this was the understanding that we had, we, we were given the authority just prior to Caretaker to go ahead and, and proceed and our understanding was that if I could achieve that within the \$13 million that I should go and achieve it and he agreed.

20 And - - -?---And I said, sorry, as a result of, as a result of that I - my initial reaction was to seek the confirmation of Minister Kelly in writing that that was our understanding and I was very conscious because of the political circumstances, the likely incoming government and the way in which the political situation might unfold in a matter of a couple of weeks that would potentially leave me exposed.

30 And what you mean by that I gather is that you thought that Minister Kelly may not be a minister after the election and therefore it was important to obtain something which confirmed the understanding that you had established?---That is only context. In dealing with any minister as I have over many years I felt it was important that if my judgment as put to me by Brendan O'Reilly may well have not been appropriate in the sense that he, and as conveyed to me the Premier had a different view, a view not held or not even contemplated by me and in my discussions with Minister Kelly was not the same I sought to establish that straightaway. Yes, I, I obviously knew and had my own views about the broad political aspects but that was not my immediate reaction.

THE COMMISSIONER: Mr Watkins, I understood this part of your evidence to be that you sought to confirm with Mr Kelly that at the time of the Premier's letter both you and he thought that the Premier had given authority for the execution of a contract for the sale of Currawong. Is that right?---Yes.

40 Did you also think that she had given authority for \$13 million as the purchase price?---I believe I had that authority based on the October Briefing Note and the agreement with the Minister previously and if I could achieve it within that, that was encompassed within the overall approval.

Are you saying that you thought that the Premier had therefore given authority for an execution of the contract at any price?---Yes, and I was guided then by the, the limit that I had.

MR ALEXIS: But does it follow, Mr Watkins, that if during the course of robust negotiations with Mr Linz if he didn't blink and he stuck on his 20 million you would have paid it?---No.

If you thought it was worth 20 million based on the evidence that you've just given would you have thought that you were authorised to execute a contract for 20 million?---No, because I'd have to go back to the Minister.

10 Now, during the conversation or conversations with Minister Kelly after you concluded your meeting with Mr O'Reilly did you tell him that there would be an investigation?---Yes.

Did you tell him that it was an investigation that would be conducted by the Internal Audit Bureau?---As I recall.

Did you tell him that the issue or the matter in issue was largely around whether or not you had authority to commit the government to the purchase of Currawong?---No, I hadn't seen the terms of reference at that stage.

20 But you knew generally rather than specifically from what Mr O'Reilly had told you that that was the matter in issue?---I knew broadly it was over the purchase of Currawong and my role within that purchase.

THE COMMISSIONER: Did you not know it was a question of your authority to contract?---Not singly, Commissioner, there was - - -

Not singly, but at all?---Well, that was one of the issues, yes.

30 So surely you told Mr Kelly that?---Yes, that was in the discussion that we had and that relates to the previous response that I gave.

MR ALEXIS: And whether as part of that issue or perhaps discussed independently or discreetly there was the question of whether or not there had been a contravention of the Caretaker Convention?---Yes.

Because they were all the matters that Mr O'Reilly had raised with you during that morning meeting?---Yes.

40 Now, should I also understand from you, Mr Watkins, that during the telephone conversation or conversations that followed the conclusion of your meeting with Mr O'Reilly you asked Minister Kelly if he would sign a letter?---I did.

And can you tell us as best you recall at what you said during the conversation in relation to such a request?---As the best that I can recall and based on the conversation we had I asked whether he would sign a letter that gave the understanding that we had based on the Premier's letter and the

October Briefing Note at the, at the time after we considered the Premier's letter.

And did you say anything else?---That, that I believe was the way I consider that was the context of the discussion.

10 And the point I'm seeking to make with you, Mr Watkins, did you articulate there and then on the phone with Minister Kelly the terms of the letter that you would, in due course, prepare or did you put it generally as you've just put to us in answer to my question?---No, it was the, I consider there were some three or four components, firstly the October Briefing Note, secondly, the letter that the Minister had written to the Premier, thirdly, the reply from the Premier and then our understanding based on the Premier's letter that I had the authority to go and execute the relevant papers as long as I could do it within the \$13 million limit.

And is what you've just told me the elements of the conversation on the subject of the letter?---Yes.

20 And so you told Minister Kelly, did you, that the letter would not only refer to those core elements but also to the execution of relevant papers?---I would've referred to those four components, I can't be certain about the order or the exact words that I used.

But just so we're clear, Mr Watkins, are you telling the Commissioner that during this conversation with Minister Kelly in relation to the letter that you were seeking to procure you told him that it would include reference to the execution of papers?---I cannot recall that I used those exact words but as I recall the reference was to complete the deal and execute papers.

30 Now, when you concluded that conversation with Minister Kelly did you then speak with Mr Costello?

THE COMMISSIONER: Before you get to that there are some questions I just would like to ask Mr Watkins. Mr Watkins, you've said, I think, at least twice, perhaps more, in the last 10 minutes that one of the core elements, as it's been described, of your authority was the understanding that you had and Mr Kelly had as to the authority conferred by the Premier's letter?---Yes.

40 How did you know that this was Mr Kelly's understanding?---I gained that from our, from our discussions.

Which discussions?---The discussions that we have, that we had following the receipt of the Premier's letter.

Well, that has not previously been mentioned, I'm not suggesting that's any fault of yours, but tell us about those discussions?---As I - - -

I'll invite Mr Alexis to ask you about that.

MR ALEXIS: Can you step us through those discussions, Mr Watkins?
---As I recall the letter from the Premier was date stamped the 15th.

25th I think?---25th, sorry. And as I recall I received a phone call from, it was Stephen Fenn of the Minister's office who conveyed the contents of that letter to me because I didn't receive it in my office until the Monday.
10 And as I recall I discussed the contents of that letter with Minister Kelly by telephone on the same day.

THE COMMISSIONER: But you didn't have it in front of you?---No, not on that day.

When Mr Fenn told you what the letter said did you write down what he said?---I made, I made a number of notes then I subsequently spoke to Mr Kelly as I recall on the Monday. It would've been normal for us to have a Monday meeting, but that meeting on Monday didn't take place because Mr
20 Kelly was either out of town or had other appointments. So over that period from when the letter had been received by both Minister Kelly's office and my own within a short period of days I had at least one or two discussions with the Minister.

MR ALEXIS: And was the one or two discussions with the Minister in relation to the actual letter or did it relate to what had been conveyed as to the content of the letter?---It was the, as I had the letter in front of me at the, some of those discussions I spoke to the Minister about that letter, the contents of it, the way that we both understood it and the context of that
30 letter in regard to what he had submitted and asked for, the Caretaker and particularly then the October Briefing Note that gave the ceiling of 13 million.

THE COMMISSIONER: How did it come about that you had the letter in front of you when you spoke to Mr Kelly?---Because the subsequent discussions at least, and I can't recall the number, when I came, on the Friday that the Premier's letter was dated as I recall I was driving to Newcastle after meetings in my office and as I recall I spoke with Minister Kelly on that day, I did not have the letter with me at that stage, I didn't
40 receive the letter until the following Monday as I recall. I don't recall receiving a fax copy on that day before I left but I may have, but I don't recall that so as from the 28th which was the Monday, the following Monday I had a copy of the letter.

Where did you have it?---In my office.

So how did it come about that you had it in front of you when you spoke to Mr Kelly on more than one occasion, because that's what you've said? I'm

interested to know how – I take it that you spoke to Mr Kelly while you were sitting at your desk?---Yes.

On the telephone?---Yes.

And I take it that this letter is filed somewhere?---I had a copy with me.

Why did you have - - -?---Because it was an important issue that I was dealing with.

10

And where was the copy?---The copy was on my desk.

Did you keep it in a file?---It was in loose papers on my desk with other material about Currawong.

How long did it remain on your desk?---I had a copy of it with me on my desk in papers from that period on.

20

Correct me if I'm wrong, but I understood your evidence to be that when you read the letter from the Premier you were satisfied that it gave you the authority?---Yes.

So why did you speak to Mr Kelly about it?---Because it was important to speak with Mr Kelly in the context of the letter that he'd sent, the October Briefing Note and also what actions I was going to take now because at that stage - - -

30

I understand that you needed to talk to Mr Kelly about what actions you were going to take but I'm interested in why did you need to talk to Mr Kelly about what the letter meant.---Well, it was, it was establishing with Minister Kelly that as a result of the correspondence that he had sent up that this was the Premier's response and this is what we understood the response to be.

40

If you, what I don't understand Mr Watkins and what I'm seeking clarity about, if it is correct that you had no doubt to what the letter meant, why did you think it necessary to debate this with Mr Kelly?---I didn't debate it Commissioner, I was establishing the position where we were with respect to Currawong because of the long history in it and that particular at that stage because I'd had previous discussions with Mr Linz where he had established the \$20 million. I said, I'm not sure how we might be able to take this forward.

All right. I'm now getting the impression that you're saying is that you did not discuss with Mr Kelly the issue as to whether the Premier's letter gave you the authority to contract or not.---Yes I did.

You simply told him that you had been given the authority.---In reading, in reading the letter and in discussing it with Mr Kelly, it was my understanding that I sought to establish and did establish that our joint understanding was that this gave us the authority to proceed based on what Mr Kelly had asked for in his letter.

10 Then why was it necessary to establish both his understanding and your understanding as to what the letter meant?---That's common practice for a professional chief executive like myself to ensure that there is a clear understanding between the relevant Minister and the chief executive.

So did you consider that there was any doubt - - -?---No.

- - -as to what the letter meant?---No, I didn't.

20 Even though there was no doubt as to what the letter meant you decided it was necessary to discuss with Mr Kelly what the letter meant?---No, I discussed with Mr Kelly the letter and the contents of the letter in the context of the history of Currawong particularly as to those other documents.

As to what it meant in relation to authority?---That was one of the aspects of it.

Yes. So even though you knew what it meant and was satisfied as to what it was meant and didn't entertain any doubt, you still discussed with Mr Kelly what it meant - - -?---Yes.

30 - - -as to authority?---Yes.

Why did you do that?---For the reason that I wanted to ensure that there was no difference of view between Mr Kelly and myself.

And when you discussed it with Mr Kelly did he have the letter in front of him?---I could not, I do not recall whether he or he didn't, I don't believe he remarked that to me.

40 And how did you discuss it with him, did you summarise the letter, did you read out every word, how did you do it?---I went through, as I recall, went through the letter and to the best of my recollection I also had the Minister's letter in front of me on that, that occasion with the other documents - - -

I'm interested in what you said to Mr Kelly.---Yes. And - - -

So I'm still not sure whether you're saying that you read the letter word for word to Mr Kelly or you summarised it for him?---I believe I would have summarised it.

So Mr Kelly's understanding was not based on reading the letter itself?---I didn't know whether Mr Kelly had the letter in front of him but - - -

But as far as you could tell it was based simply on your summary of the letter?---No, I recall that Mr Kelly had read the letter, I don't know when he had read the letter.

How do you recall that?---Based on our conversation.

10 And he'd said he'd read the letter did he?---As I recall, yes.

So what was the point of telling him what it meant by way of summary if he'd already read it?---Because it was a matter of establishing our joint understanding.

So this was an important conversation?---It was important in the context that we were four days out or thereabouts from Caretaker.

20 But it was an important conversation.---Yes, it was an important conversation.

Did you make a record of it?---Ah, no it was - - -

Did you confirm it in writing?---No, I didn't.
Why not?---Because at that, at that time I didn't consider that I needed to confirm it in writing.

30 But you've already explained how important it was and that there was going to be an election and there might be a new Minister and you needed to protect your position. Why didn't you make at least a note of it?---That was my, not my judgment at the time, Commissioner.

Mr Alexis.

40 MR ALEXIS: Mr Watkins, why did you think before having the conversation with Minister Kelly as you've told the Commissioner in answer to his questions, why did you think Minister Kelly might have a different view of the letter?---I didn't know whether Mr Kelly had a different view or not – pardon me – until I discussed it with him.

But when you spoke to Minister Kelly about the letter you must have had in your mind that he might have had a different view about it?---No.

Well, can I ask you to explain then, why you said in one of your answers to the Commissioner's questions that you spoke to Minister Kelly because you wanted to confirm whether or not he had a different view about the letter to you?---Well, in the context I was trying to establish whether we both had the same understanding.

But this context you're telling us about is the letter that the Minister had sent which led to the Premier's letter isn't it?---Yes.

Because you told us in your evidence that you wanted to discuss with Minister Kelly the Premier's letter in the context of the letter that he, the Minister, had sent to the Premier?---That was one element of it.

10 See, what I want to suggest to you Mr Watkins is that when you read this letter you thought it ambiguous?---No, I didn't.

And you thought it ambiguous because nowhere does it say that you have authority to enter into a contract to commit the Government to the purchase?---The letter was to negotiate with a view to purchase.

Well, have you got the letter in front of you behind tab 9 page 47A.---Yes.

20 The letter authorises the holding of direct negotiations with a view to purchasing.---Yes.

And when you read that you took that to mean that you could speak with Mr Linz, you could conduct negotiations and then when you and he had agreed on price if you did, you would then take that agreement as to price for approval to the Premier?---No, that was not my view.

30 And Mr Watkins, isn't it just plain English that that is the position based on the next paragraph where the Premier says in terms that she looks forward to your advice on these important negotiations?---No, I took the letter on the basis that I had the authority to directly negotiate and purchase and then advise her of the outcome.

But Minister, but Mr Watkins, if that be true then that means that on the basis of this letter you could have committed the Government to the purchase of Currawong at any price because there's no mention of any price in the letter?---I took this letter and the authority that authorisation I had from Minister Kelly to negotiate up to \$13 million as being the ceiling.

40 But Mr Watkins, you had read the Minister's letter to the Premier of 9 February hadn't you?---Yes, I had.

And you'd read that before Minister Kelly signed it and, as you understood it, it was sent to the Premier?---Yes.

And you knew that there was not one syllable of reference in that letter to the price to which you were seeking to negotiate with Mr Linz for, was there?---Correct, that's why I was relying on the \$13 million.

But Mr Watkins, when you read the Premier's letter, having read and understood the Minister's letter that lead to the Premier's letter it must have been obvious to you that the Premier would have had no idea what sort of money you would be negotiating over for the purchase of Currawong?---I was not aware of discussions that may have been held between the Minister and the Premier or indeed between the Minister's office and the Premier on all these occasions that may have occurred.

10 So you agree with my proposition that when we bring to account your knowledge of the content of the Minister's letter of 9 February and the terms of the Premier's reply it was obvious to you that she would have had no idea?---No, it wasn't obvious to me.

Well, you knew that the written communication that led to the Premier's letter did not indicate that to the Premier, didn't you?---Yes.

20 And therefore may I suggest to you that when you read this letter and you saw that she was looking forward to your advice on these important negotiations she was expecting you to come back and tell her what price had been concluded in the negotiations?---No, that was not, not my understanding.

Well, how could you not have that understanding, Mr Watkins, when there is no reference in this letter to the price and you knew there was no letter, no reference to the price in Minister Kelly's letter?---I'm not quite what the - I can't speak for the Premier, I can speak for myself and my understanding of the letter and my understanding of the letter is the way that I've explained it.

30 You see, what I want to suggest to you, Mr Watkins, is that when you got this letter you were highly motivated to achieve an outcome with the purchase of Currawong, weren't you?---If I could achieve it, yes, I was.

And at the time you received this letter and given that you saw a window of opportunity that could be exploited to acquire this property, the last thing you wanted to do was to go anywhere near Cabinet or a Budget Committee of Cabinet to get formal Cabinet approval?---No, that's not correct.

40 And what I want to suggest to you is that when you saw this letter you saw that it was ambiguous as to what it authorised you to do and you thought you'd take the risk and proceed irregardless of that ambiguity?---No, that's not correct.

Can I ask you to also consider this: don't you think when the Premier was writing this letter to Minister Kelly, conscious no doubt she was of the due commencement of the Caretaker Conventions, that the reason why she wanted advice back on the important negotiations was so that if those negotiations be successful the Caretaker arrangements could be then navigated through so as to give you the authority to execute a contract?

---No, that was not my understanding.

You see, there's nothing in this letter at all about Caretaker, is there?---No, there isn't.

And there's nothing in the letter which authorised you to make a judgment or a commonsense assessment of things that this authorised you to enter into a contract in Caretaker, in the Caretaker period, is there?---That's a judgment that I, I made because I was aware when Caretaker was as an
10 experienced Chief Executive.

Now, can I come back to the conversation or conversations you had with Minister Kelly after you meeting with Mr O'Reilly had concluded and can I ask whether or not during those communications with him he told you that he would endeavour to speak with Mr O'Reilly about the situation on your behalf?---I cannot recall those exact words.

Well - - -

20 THE COMMISSIONER: Did he say words to that effect?---Yes.

MR ALEXIS: And perhaps I can just try and suggest this to you: that Minister Kelly said to you something to the effect that he would get onto Brendan and have a word to him and try and sort it out?---I cannot recall the exact words but I do recall that he said that he would talk to Brendan.

And in the course of the further telephone communications you had with Minister Kelly throughout the rest of the day on 18 March he told you, didn't he, that he'd telephoned Mr O'Reilly?---I can't recall that.
30

And he told you that he'd explained to O'Reilly that this investigation was something that was something that was going to ruin your career?---No.

And he told you that he'd made some representations on your behalf but it seemed the investigation was going to continue?---No, I don't recall that.

All right.

40 THE COMMISSIONER: Can you explain why there were four telephone conversations?---During that day?

Yes, with Mr Kelly.

MR ALEXIS: Before 1.00pm.

THE COMMISSIONER: Before 1.00pm?---Yes.

In the space of about three hours I think?---Yeah. I, I was very concerned at the timing of the inquiry. I was very concerned that the, the actions that were being taken by central government when up until that point there was no doubt at all in my mind that what I was undertaking was an activity that I considered was authorised, that I considered was consistent with government policy and as a result of clearly becoming alarmed and as a long-held Chief Executive at the time of change in government I was concerned that were there other motives so during the discussions with Minister Kelly, not only did I discuss the other aspects that I spoke about
10 but were there any other agendas that he was aware of that I was not aware of, politically or otherwise.

And? And therefore?---And therefore it was myself trying to establish whether there were any other agendas running.

And was Mr Kelly trying to find this out for you?---I don't know what Mr Kelly did in that regard but that was my discussion.

I understand that you might have had those feelings but that doesn't explain
20 why there were four telephone calls to Mr Kelly unless you were trying to find out what Mr Kelly had found out for you?---I don't recall, Commissioner, the exact sequence and the, the content of each of those discussions as they unfolded.

Was Mr Kelly a friend of yours?---He's a professional - a long-held professional friend.

What does a professional friend mean?---Well, I mean in the context that I'd worked with him as a Minister for some eight years.
30

You mean you were friends in a professional capacity?---Yes.

Not social?---No, not, not in the context, Commissioner, that we would meet regularly outside of the professional activities.

You met from time to time socially at each other's homes?---No.

No.

40 MR ALEXIS: Mr Watkins, you spoke to Mr Costello during the course of the morning or early afternoon of 18 March didn't you about the preparation of the letter?--Yes, I did.

And can you tell us what you said to Mr Costello about the preparation of the letter?---As I recall I conveyed to Mr Costello that the Minister was prepared to sign a letter. I conveyed to Mr Costello the broad contents that should be in that letter, those four components that I referred to earlier, that was the context of the discussion.

And so is your evidence that there was a conversation over the telephone with Mr Costello, you'd told him that the Minister was prepared to sign a letter and you then proceeded to dictate the letter to him for preparation? ---I, I spoke about the, the contents, I wouldn't say dictated. I'm not sure what Mr Costello did at the other end but I certainly spoke about the, the contents that should be in there.

10 And you said to you - said to him, didn't you, that we've got to get a note signed at some stage, we'll put it aside but the Minister after the election, the Minister quite possibly won't be the minister after the election, we've only got a small window of opportunity to get him to sign the document so we'll do it today, something to that effect?---I don't recall those exact - the context of that, no.

20 But looking at the circumstances as you would have then seen them, and given your evidence already about how you saw the Minister's position come the election, what I put to you is likely to be said, isn't it?---No, the, the context of the, of the discussion that I had had with Mr Kelly, that was the, the basis of my discussion with Mr Costello.

But you told Mr Costello that it had to happen that day didn't you?---Yes, it should happen that day because that's what I'd established with Minister Kelly.

And one of the factors that you conveyed to Mr Costello was the election on the horizon and the fact that the Minister may not be the Minister after the election?---I can't recall those exact words, no.

30 But obviously enough if Minister Kelly was not returned after the election he wouldn't be able to sign a letter as Minister. That's what you understood isn't it?---Sorry, would you convey that again?

If the Minister wasn't returned after the election he wouldn't be able to sign it as Minister?---If that was the case but that, I'd established with Minister Kelly to sign it that day.

40 Now, you also told Mr Costello that the letter would have to be dated around the date of the Premier's letter?---No, I don't recall that.

Well, when you tell me you don't recall that do you accept from me that the dating of the letter was discussed and it was discussed as a date around the Premier's letter? Mr Watkins, we are dealing with your conversation with Mr Costello, do you follow that?---Yes.

And during the conversation which led to the preparation of the letter you told him, may I suggest to you, that the letter had to be dated after the Premier's letter?---I don't recall that.

And when the letter was spoken about, particularly the content, you understood, didn't you, that the letter that was being prepared was one that would be expressed in terms of approval is given rather than confirming that approval had been given?---My, my recollection of the call at the time of my discussion with Minister Kelly was to establish that the letter was for the prime purpose of establishing our clear understanding at that time which was the discussion I referred to earlier that I had with Minister Kelly on receipt of the Premier's letter, that was being called into question.

10

THE COMMISSIONER: And that understanding, as I've asked you before, I really want to get, make sure again that I understand correctly is that the Premier's letter meant that she had authorised the entering into of a contract for the purchase of Currawong?---Yes.

MR ALEXIS: Now, did you receive the draft of the letter by email from Mr Costello on your iPad?---Yes, I, I believe I did, I can't recall exactly receiving it but that would've been normal practice.

20 And you read the draft letter in electronic form after it was received I take it?---As I recall.

You then spoke with Mr Costello again?---Yes.

And do you recall making any amendments to the draft letter?---Yes, I recall talking about the execution of the documents at the end of the letter. And there may have been a couple of other amendments but I can't recall them being specific.

30 And, Mr Watkins, I gather when you saw the letter in its terms on your iPad you realised that the letter had to be dated before the date of the Currawong contract otherwise it wouldn't make sense?---No, my focus at the time and my discussions with the Minister was as I referred to you earlier. So it was not a matter of making sense in the context of which Counsel has asked me.

Mr Watkins, when you reviewed the draft letter you saw that it was not dated as part of the draft?---I can't recall dating letters for the Minister, we always send letters to the Minister undated because you don't know the date that he's going to sign them.

40

All right. And when you read the letter and you saw that in terms it said approval is given rather than expressing it in terms of approval is confirmed, you knew that for the letter to make sense it had to be dated before the date of the Currawong contract?---On reflection the way the Counsel asked that question, yes, but at the time of the, preparing the letter it was in the context of what I've just referred Counsel to.

Mr Watkins, are you seriously telling the Commission that when you looked at this letter and you made the amendments that you did and you confirmed with Mr Costello that it was in order for him to organise with Minister Kelly to sign you didn't think about the date that was going to be put on the letter?---I had, I didn't think about the exact date, what I established with Minister Kelly was that this was to give effect to our clear understanding of the position post the Premier's letter.

10 And therefore it would be dated post the Premier's letter?---It would be in that context, yes.

And prior to 15 March, namely, the date of the Currawong contract?---Be some time there but I was not specific about the date.

THE COMMISSIONER: So you were expecting the date to be more or less the date in which you and Mr Kelly had agreed that the Premier's letter meant?---Yes, somewhere around that time, Commissioner.

20 That was the date the letter was going to bear?---I was not specific on, it was in that, it was in that - - -

In about that period?---About that time.

MR ALEXIS: Now, Mr Watkins, once you had communicated to Mr Costello that the letter was in order for the Minister's signature did you understand from Mr Costello that he would make telephone arrangements with Minister Kelly to meet with him and get it signed?---As I recall I left it with Mr Costello to make arrangements for the letter to be executed.

30 Your next communication was with Mr Costello after he had procured the letter in its signed form?---As I recall.

And do you recall that conversation?---No, I don't recall any detail of that other than the letter's been signed.

40 And did you ask Mr Costello to put the letter somewhere?---No, I don't think I was specific about that at all, my inquiry at that time was had the letter been signed, I was in a retreat at University of Technology Sydney as Deputy Chancellor and I was trying not to disengage myself from that so - - -

When did you become disengaged from that?---No, I was saying trying not to, when did I finish that?

Yes?---The following lunchtime, Saturday lunchtime.

So what were you doing during the course of Friday afternoon, say from about 3 o'clock?---They, I would've taken a break or I can't recall the

specific times, but during some of the items I excuse myself from the room and went out and attended to things and came back.

Made some phone calls and sent some emails?---Yes.

Can I show you one of them, with a copy for you, Commissioner. And do you see, Mr Watkins, at 3.03pm on Friday, the 18th you sent Mr Costello an email asking him to send you a copy of the Caretaker rules and protocols?
---Yes.

10

And can I ask when prior to Friday, 18 March you'd actually looked at the Caretaker rules or protocols?---I'd looked at them certainly when we received them as a, as a Chief Executive I also referred to them in the morning meeting that I had with officers as has been referred to a number of times in the Commission.

Well, let me just be clear on that. When you say you referred to them during the morning with a number of officers to whom are you referring?
---I'm referring to the meeting I held on the Monday morning so the officers as I recall were Mr Costello, Mr Callaghan, Mr Simpson and there may have been one other.

20

Your Chief Counsel?---Yes. Kel O'Keefe.

And your evidence is that you referred to and discussed the Caretaker Guidelines with each of those present during the course of that morning meeting?---At the start of the meeting I gave an overview and I touched on what I considered the salient points of Caretaker in reference to the issue that I was addressing.

30

So can I ask you to explain why on the afternoon of Friday, the 18th you were asking Mr Costello to send you the Caretaker rules?---Yes, it would've been for, for me to, once again, review those in the context of the action that was being taken.

Just so the transcript is clear, Mr Watkins, in giving me that answer we should understand that you are reading the next email in the document that I just provided to you?---No, I just flicked over and saw that, but that wasn't the reason I, that was the purpose of why I would've wanted the, the Caretaker.

40

MR ALEXIS: Are you telling me, Mr Watkins, that when you were giving me that answer you weren't reading your reply to Mr Costello on the following page?---No, I turned over and my reply would not have been any different to whether I had - - -

THE COMMISSIONER: The point is Mr - - -?---Yes.

- - - Mr Watkins you - before giving the reply to Mr Alexis you had read the second email which has not yet been tendered?---I apologise, Commissioner, I thought it was simultaneous.

That's correct isn't it?---It was simultaneous, yes.

MR ALEXIS: Now, do you see Mr Costello responded to you and you then responded to him saying, "I believe I can map actions to fit within this framework," do you see that?---Yeah.

10

And what did you mean to convey when you said to Mr Costello that you believed you could map some actions to fit within the Caretaker framework? ---Well, what I'm referring to there I, I consider, well, my understanding would be that the Caretaker Conventions and how I had interpreted and applied the Caretaker Conventions, I, I could map my understanding of the actions that I had and was taking within the context of my understanding of the Caretaker Conventions.

20

What you're saying to us, Mr Watkins, is that you knew you'd have to justify your actions and you believed as you expressed yourself to Mr Costello that you would be able to map a way through?---One always has to justify your actions.

Because you knew that with the investigation that was about to get underway you'd have to justify your position?---Yes, I will, I will always be called to account of why I took certain actions.

I tender the series of emails, Commissioner.

30

THE COMMISSIONER: Yes. The email from Mr Watkins to Mr Costello of 18 March, 2011 3.03pm is Exhibit 48A and the email from Mr Watkins to Mr Costello of 18 March, 2011 at 10 past 3.00 is Exhibit 48B.

**#EXHIBIT 48A - EMAIL FROM MR WATKINS TO MS HOPKINS
SENT 18 MARCH 2011 AT 3:03PM**

40

**#EXHIBIT 48B - EMAIL FROM MR WATKINS TO MR COSTELLO
SENT 18 MARCH AT 3:10PM**

MR ALEXIS: Thank you, Commissioner. Now, Mr Watkins, can you please go to tab 16 of Exhibit 1, the folder in front of you, and can you look at the letter from Mr O'Reilly to you of 18 March together with the Instrument of Removal and Unattachment at page 80?---Yes.

And should we understand that you received this on the afternoon, pardon me, of 18 March?---It came to my office I understand on 18 March but I was in Terrigal at the retreat at that time.

So when did you first see it?---I, as I recall I received this in a sealed envelope and it was on my desk when I came to work on the following Monday.

10 Now, can I show you a further email, Mr Watkins. Mr Watkins after receiving the Caretaker Rules and Protocols did you then ask your personal assistant later on in the afternoon of the 18th to print off the agendas for the Minister's meetings that you'd had for the last two years?---Yes, I did.

And if you look at the second page you'll see the response later that afternoon telling you that she'd attend to that, do you see that?---Yes.

And you see also that in response to your inquiry about whether Mark was in on the Monday, that's a reference to Mr Matchett, is it?---Yes.

20 And she responded that she wasn't sure. Do you see that on the second page?---Yes.

And do you see she asked you, "Do you think you should speak with him"? ---Yes.

And did you explain the context to that question that she raised with you on the Friday afternoon?---No, I can't recall what the context was there.

30 All right. I tender those two emails, Commissioner.

THE COMMISSIONER: Exhibit 49A is the email from Mr Watkins to Ms Hopkins of 18 March, 2011 at 3.43pm and Exhibit 49B is the email from Mr Watkins to Ms Hopkins of 18 March, 2011 at 3.54pm.

#EXHIBIT 49A - EMAIL FROM MR WATKINS TO MS HOPKINS SENT 18 MARCH 2011 AT 3:43PM

40 **#EXHIBIT 49B - EMAIL FROM MR WATKINS TO MS HOPKINS SENT ON 18 MARCH 2011 AT 3:54PM**

MR ALEXIS: Thank you, Commissioner.

Now, Mr Watkins, should we understand from these communications that I stepped you through that by the afternoon of Friday, 18 March you considered that you would need to prepare a full response to this

investigation and you were marshalling the material that you would need to either to or rely upon in that respect?---Yes.

And can I also show you a further email from the Saturday, with a copy for you, Commissioner, and do you see at the bottom of that page there's an email from Ms Hopkins to Minister Kelly and do you recognise the email address of Minister Kelly there, the [ADDRESS GIVEN]?---Yes, I do.

10 And on Friday, the 18th you understood that to be Minister Kelly's home email address did you?---Yes, I was aware of that.

And do you see that this appears to be an email from Mr Costello to Ms Hopkins - to Minister Kelly I'm sorry, sent on his behalf by Ms Hopkins?---Yes.

And did you understand on the afternoon of Friday that Mr Costello had sent to Minister Kelly the documents referred to in this email?---Yes.

20 And had you spoken to Mr Costello about making sure that the Briefing Minute to Mr O'Reilly had been sent to Minister Kelly together with the other documents?---No, I didn't.

But you nonetheless became aware of this email?---I became aware of this email, yes.

And do you see that as we work up the page Ms Hopkins sent that to you and then you have forwarded that to Mr Fenn on the afternoon of Saturday, 19 March?---Yes.

30 And do you see in that email you've said, "These are the background papers that Tony has as well," do you see that?---Yes.

And so by the afternoon of Saturday the 19th did you understand that Minister Kelly had already received the Briefing Note that had been sent to Mr O'Reilly on the 16th together with the additional documents?---Based on the contents of this email, yes.

Can I just show you please - - -

40 THE COMMISSIONER: Are you tendering that, Mr - - -

MR ALEXIS: I will be but can I just - could Mr Watkins be shown Exhibit 12. And in fairness to you, Mr Watkins, I should give you the email from Mr Costello to Minister Kelly together with the attachments so you have Exhibit 12, is that so?---I do.

And do you see that insofar as Mr Costello's referring to the pages after attachment F which is referred to as the map were not submitted in the

original package to Mr Fenn and Mr O'Reilly, when you look at the attachments and you come to the map which is attachment F you see that the further documents sent with this email was the letter that had been signed and backdated on 18 March?---Yes.

Together with the October Briefing Note sitting behind it?---Yes.

10 Now, I asked you a moment ago when it was that you first saw the letter that Minister Kelly had signed and should we understand that by at least Saturday, 19 March you had received and seen that letter in its executed form?---It was certainly within these documents, I can't recall looking at those because I was on the road, I had driven from Terrigal on Saturday, had a function in Goulburn that night and a further function at Orange the next day before returning. So I wouldn't have, and I can't recall perusing all the attached documents but I understand that they were attached, yes.

20 And when time permitted for you to peruse the documents as you've said you appreciated from this email that the original package, as it's described in this email to Mr Fenn and Mr O'Reilly, did not include the backdated letter of 18 March or the October Briefing Note?---That was not a conscious thing I put my mind to, but I can see how you relate to that, yes.

Well, when you read this email it would've been obvious that that's what Mr Costello was drawing attention to, wasn't it?---Well, that was the end result, I can't recall being drawn particularly to that point, no.

30 Now, can I just come back to your email and perhaps I can do it before we have a short break. Can I ask why it was that you were sending the "background papers" to Mr Fenn on the afternoon of Saturday, the 19th? ---Yes, during Saturday I had a number of phone calls with Mr Fenn around the Currawong issue and I would've been, it would be my understanding that I was bringing Mr Fenn up to date with where things were.

Had you spoken to Minister Kelly by the time of sending this email to Mr Fenn on the Saturday afternoon?

THE COMMISSIONER: Spoke to him about what?

40 MR ALEXIS: I'm sorry, about the content of the email that Mr Costello had sent the afternoon before?---No, I cannot recall that.

Can I tender the email from Mr Watkins to Mr Fenn at the end of the email string.

THE COMMISSIONER: Yes. Well, Exhibit 50 will be the string of emails with the email from Mr Watkins to Mr Fenn of 19 March, 2011 at 5.15pm on the top.

#EXHIBIT 50 - EMAIL FROM MR WATKINS TO MR FENN ON 19 MARCH 2011 AT 5:15PM

THE COMMISSIONER: Is now a convenient time?

MR ALEXIS: Yes, it is, thank you, Commissioner.

10 THE COMMISSIONER: We'll adjourn for 10 minutes.

SHORT ADJOURNMENT

[3.13pm]

MR ALEXIS: Thank you Commissioner.

THE COMMISSIONER: Mr Alexis.

20 MR ALEXIS: Mr Watkins I'll have shown to you Exhibits 13 and 14. Mr Watkins - - -

MR BRANSON: Sorry.

MR ALEXIS: Do you see late on the Friday afternoon just before 6.00pm Ms Hopkins sent you an email asking her to give you a call and in doing so made the comment, "the flag is really flapping or completely wrapped around the flag pole." Do you see that?---Yes.

30 And you subsequently spoke to her and then after that conversation received the next email which is Exhibit 14, where she responds to your request and says, "here is what you want." Do you see that?---Yes.

And do you accept that between the two electronic communications there was a telephone discussion?---Yes, I accept that.

And can you tell us please what was discussed during that conversation?---I cannot recall the conversation but I believe it would have related to what these emails are portraying.

40

And can you explain to us what the reference to the flag was a reference to? ---Oh, that's just a colloquial way of saying that there's an issue running.

And may we take it that the way she's identified that issue was one that both you and she regarded as potentially very serious?---It was an issue that we had to deal with, yes.

But it was an issue that if resolved against you would have a significant impact on your long-standing career in the public service?---Depends on the end result, yes, it could.

But you appreciated that one consequence of this investigation might be that your position of chief executive officer of the LPMA could come to an end?---Yes.

And that was serious?---Yes.

10

Now on Saturday the 19th, and I took you a moment ago to Exhibit 50 which is the email that you sent to Mr Fenn about 5.15pm that afternoon, would you accept from that during the course of the Saturday from about quarter to 1.00 in the afternoon through until about quarter past 6.00 that night you had no less than eight telephone conversations with him, with Mr Fenn initiated from your mobile telephone?---I can't recall the number but I can relate to that.

20

Well, when you say you can relate to that, do you accept there was a significant number of telephone communications with Mr Fenn up to the sending of the email Exhibit 50 and at least two telephone communications with him after that email?---I don't have the time but I accept what you're saying.

30

Well, can you tell me what was discussed during all of those conversations and I'm not asking you to break each particular conversation with each discussion but can you tell us in broad content the subject matter that was passing between you and Mr Fenn over the telephone?---Yes, at that stage it was around the timing of the announcement that the Government could make with respect to the purchase. The fact that there were, I'd also had relayed to him my concerns about the circumstances where we were so it all related around the Currawong issue in one shape or form.

Well no doubt it did but did you speak with him about the email that had been sent to him and sent to Mr O'Reilly attaching the 16 March briefing note together with the back dated letter of 28 February and the October briefing note?---No, no, I can't recall this specific nature of that, no.

40

What I want to suggest is that by reference at least to Exhibit 50 and the email which conveyed Mr Costello's email which attached the 16 March briefing and the back dated letter, you speak with Mr Fenn at least about what you were proposing to do with the back dated letter in the investigation?---No, I don't recall that.

When you tell me you don't recall that, by that stage it's clear isn't it that you had received at least in an electronic form the back dated letter?---If that was in my emails, at that point in time I was at a function at Goulburn having driven down from Terrigal so I didn't - - -

So, Mr Watkins, you've told us you were busy but you at least had enough time to have all these conversations with Mr Fenn on the Saturday afternoon/evening, didn't you?---Yes, I did.

10 And do you seriously suggest to the Commissioner that during each of those many telephone calls you didn't at least refer once to the backdated letter, that fact that it had been obtained and to what use you were going to put to it?---It could well have but I can't recall the exact context of those discussions so I honestly cannot answer you directly.

And when you emailed Mr Fenn at quarter past 5.00 on the Saturday afternoon you said, "These are the background papers that Tony has as well." What you were seeking to confirm to Mr Fenn is that Minister Kelly has a copy of the backdated letter that he signed?---If that was contained in those papers it would've been conveyed, yes.

20 And the reason why that was important was because you wanted to speak with Minister Kelly about the use to which you were going to put that letter, correct?---No.

Now, can I ask you to look at Exhibit 15, Mr Watkins. And do you see that by 11.15pm on the Sunday night you'd worked up at least a draft statement of your position with respect to what you understood then was going to be the investigation?---Yes.

30 And may we understand that Sunday, 20 March was a day where you worked through all of the materials that you had available on the Currawong matter so as to construct the draft form of statement that we see attached to the email forming part of Exhibit 15?---I worked through the papers available to me, but I was outside, yes, so I just used whatever papers I had available at that time, yes.

And did you prepare this draft statement on your home computer?---I don't know whether it was on my home computer or my laptop but as I recall I prepared it at home after returning from Orange.

40 But because the email you sent from the LPMA address should we understand that you've got the capacity to send via that email address emails such as the one we see in Exhibit 15 without actually being in your office? ---Yes, I do.

In Queen's Square I mean?---Yes, I do.

And do you recall where you were when you sent this email at about 11.15pm on the evening of Sunday, the 20th?---Yes, I would've been at my home address.

Right. Now, you sent this email to Minister Kelly, Mr Fenn and Mr Costello, is that right?---That's what I see from the, yes.

Well, rather than just seeing it is there any doubt in your mind, Mr Watkins, that after working up the draft statement which you told those who received the email that you'd finalised in the morning that you sent it to the Minister?---No, it's quite clearly here.

10 And can I ask why on the Sunday evening you sent the draft statement to Minister Kelly at his home email address?---As I recall I sent it because I was providing the background, as I understood it, to the Currawong situation, as I headed that, the salient facts.

But by the time you'd prepared at least this draft you'd made the decision, hadn't you, to use the backdated letter as part of your defence to the IAB inquiry?---I had contained that within (not transcribable) so in that context, yes.

20 Well, remember not long into my examination of you earlier today, Mr Watkins, I asked you to identify when you made the decision to use the backdated letter?---Yes, I believe I said it was either, it may have been on the Monday, but it was in the context of preparing this material, both draft and in final form.

And so when we look at what's the first draft of your statement it's plain that by that time you'd made the decision to use the backdated letter?---I'd have to go through and see where I've specifically mentioned that in here, if you could point that out I'll confirm it.

30 Mr Watkins, if you look at the second page of the draft statement you'll see at the foot of the page, in the second last bulleted paragraph you refer expressly to the Premier's reply of 25 February?---Yes, I see that.

And then you set out in the last sentence of that bulleted paragraph what you thought that approval meant?---Yes.

"It is clear that this approval from the Premier was in direct reply to the Minister's request" et cetera, do you see that?---Yes.

40 And in the next bulleted paragraph you said, "On receipt of this letter the Minister wrote to the Chief Executive of the LPMA referring to his specific approvals of October" et cetera, do you see that?---Yes, I do.

And that was a reference to the backdated letter, wasn't it?---Yes, it would've been.

Couldn't be anything else, could it? It couldn't be anything else, could it? ---I'm just reading it so I want to reply to you honestly. I agree with you.

And if you turn to the second last page of the draft statement, the page with the word "summary" halfway down?---Yes.

And if you look at the preamble to those three numbered paragraphs on the page you see it in line with the terms of reference given to the IAB, "Re this matter I attest that." Do you see?---Yes, I do.

10 And that was said in anticipation of you receiving the formal terms of reference which I think came to you on the Monday?---I saw them on the, on the Monday as I recall. There were two terms of reference, there was the initial terms and then there was a final set that I received.

Well, we know that, Mr Watkins, but in this draft statement you were anticipating the receipt of those terms of reference, you then, when you prepared the draft, didn't have them available to you?---I don't recall that connection but - - -

20 Well, that's why the opening preamble to the numbered paragraphs refers in terms to the terms of reference because you expected to receive them and then respond directly to them?---No, I don't believe that they specifically address to the terms of reference, they address to what I, looking at them, what I believe was a summary of what I had given in the previous pages.

Well, if you look at numbered paragraph 2 you'll see in the second sentence about halfway through that paragraph you refer and use the word "specifically" and then refer in terms to the backdated letter?---Yes, I do.

30 So it's plain, isn't it, Mr Watkins, that by the time you started working up this draft statement you had manifest the intention to rely upon the backdated letter and represent that letter as if it was available to you before you entered into the contract?---That was not the conscious decision, I used that letter as, as part of a suite of papers, but it was used in that way, yes.

Well, it was used in a way which represented it as a document in your possession before you entered into the contract, correct?---Yes.

40 And you knew that representing the document that way was completely false?---Yes, I made an error of judgment.

Well, Mr Watkins, that might be for others to determine, but when you decided that you were going to use the backdated letter, and we see the evidence of that in the form of this draft statement, Exhibit 15, you'd spoken to Mr Fenn about that subject, hadn't you?---I can't recall speaking to Mr Fenn about that directly.

Well, before you sent the email to him on the evening of Sunday, 20 March you'd spoken to Mr Fenn and you'd told him that you'd got the backdated

letter and that you were going to use it in your defence?---I can't recall using those words, no.

But words to that effect?---I can't recall.

And you'd spoken to Minister Kelly, hadn't you?---I can't recall the, the, the discussion with Mr Kelly on that day or whether I did speak to him but if you've got some evidence - - -

10 Well, before you sent him the statement you spoke with Minister Kelly and you told him that you were going to send the draft statement to him?---I can't recall that.

And you told him that you were going to use the backdated letter in your defence?---I can't recall that.

Well, do you accept that words to that effect were conveyed to him on the Sunday before you sent the email with the draft statement?---No, I can't confirm that.

20

You can't say one way or the other, is that (not transcribable)?---No, I can't because I, I don't, I don't recall that the way that counsel is putting it to me, no, I can't.

Well, would you have sent the draft statement to him in an unsolicited manner?---Yes, I could. I sent it to the people that were associated immediately with the Currawong issue.

30

And so should we understand from that that if it be the case that you sent this to him without previously speaking with him you were nonetheless expecting some response from him as to whether or not he was content with the content of this draft statement?---No, I wouldn't, I can't recall seeking affirmation or any other confirmation of those things, no.

THE COMMISSIONER: Mr Watkins, in Exhibit 50 - do you have it there?
---50 sorry?

Yes, Exhibit 50, the email?---Yes, thank you.

40

The email that you sent to Mr Fenn - - -?---Yes.

- - - says, "These are the background papers that Tony has as well. It includes the letter from him to me"?---Yes.

That letter must be the backdated letter?---I, I would believe so in the way that is expressed, yes.

Yes, because it goes on to refer to the October 2010 briefing authority with the authority to (not transcribable)?---Yes, I agree.

The way it's written suggests to me that you had discussed this with Mr Fenn, do you understand what I'm saying?---Yeah, I understand.

10 Because there's no other identification of the letter so the - in writing it in these terms you're taking it for granted that he knows what you're talking about?---I agree that, Commissioner, that I'm, I'm advising the Chief of Staff of the Minister the papers that the Minister has and that they do include the letter that you're referring to.

The letter that - - -?---Well, the backdated letter as we refer to it.

Yes. And why did you specifically mention that letter to Mr Fenn?---I, I can't recall. I had - no, I can't recall why I would specifically mention that.

20 Well, the inference I'm sure that you will see immediately or an inference is that you had discussed it with him otherwise why mention it and why mention it without identifying the letter other than saying the letter from him to me?---I can understand the point you're making.

That, that suggests to me that you must have spoken to Mr Fenn on - before sending that email on the Saturday afternoon about the backdated letter?---I can't say that, that I definitely did or definitely didn't so that's a possibility, Commissioner. I'm trying to be honest in my reply to you.

30 I understand but why would you send it to him on a Saturday afternoon at 5.15pm? I mean it's a - - -?---This was a very live issue and it's not uncommon for myself to be sending communiqués on issues that are of importance over a weekend.

So what was, what, what task were you expecting Mr Fenn to undertake once he received this email and the papers to which you refer?---I can't say there was any specific task. I was informing Mr Fenn of the papers that I understood had gone to Minister Kelly - - -

40 Well, to be - - -?--- - - - to make sure everybody knew what papers people had.

I suggest to you that an impartial observer on reading this email would think that you were asking him to do something about the issue of authority because the second email is about that specifically and nothing else?---No, I can understand the point you're making but that's not as I recall the situation.

MR ALEXIS: Now, Mr Watkins in answering those questions of the Commissioner you refer to Mr Fenn as Minister Kelly's Chief of Staff?

---Yes.

And we know that that's the position he held but Mr Fenn was a personal friend of yours wasn't he?---I wouldn't call Mr Fenn a personal friend.

(not transcribable)?---He's a work colleague.

10 Well, he was a bit more than a work colleague, you and Mr Fenn were good friends and you were good friends with his wife or partner Jodi McKay who was then the Minister for the Hunter?---I wouldn't call it a, a friendship in that sense, it was a working relationship, yes.

Now, could you look at the documents behind tab 17 please and do we see that on Monday, 21 March at about 2.30 the initial form of the terms of reference were sent to you?---Yes, I do.

20 And we see that it was sent to your PA but they came to your attention during the course of that afternoon, did they not?---I would think so, I don't any evidence here but that, that would be normal.

And looking at page 84 in particular the terms of reference made plain to you I take it that in relation to Currawong there was an issue as to whether you as Chief Executive were authorised to execute the Contract for Sale on behalf of the Minister for Lands on 15 March, do you see that?---Yes, I do.

And in subparagraph (b) a further issue about whether the transaction that was negotiated by you had received final approval from executive government?---Yes.

30 And over the page in subparagraph (c), and I won't take you to all of them, but you knew that there was a live issue also concerning the Caretaker Convention and whether you'd contravened them?---Yes, I see that.

And if you look at the final terms of reference behind tab 18, page 86 is the email from the investigator to you which you received later on the Monday night which attached the final terms of reference?---Yes.

40 And may we understand that on the Monday night you received and read the final terms of reference in the form that we see at pages 87 and 88?---Yes, I would have read them, I'm not sure at the time but - - -

Well, Mr Watkins, if you weren't in your office at 10 to 8.00 on the Monday night you nonetheless would have received this electronically on your iPad and you were in a position to read it and understand the content of the further terms of reference?---Yes, the point I'm making is I'm not sure of the time that I, I actually read it.

All right. Well, can I ask you to look at Exhibit 16 please. And do you see, Mr Watkins, that Exhibit 16 is an email that you sent to Mr Matchett - - -?
---Yes.

- - - on the Monday night at about quarter to 11.00pm?---Yes, I see that.

And you see that in that email you've forwarded to him the letter that had been previously received behind Tab 18 containing the final terms of reference?---Yes, I do.

10

And you see that you in that email refer to those terms of reference as the TOR and tell him that in a following email you'll send him your statement in reply, can you see that?---Yes, I do.

And should we understand that on the Monday night you were working on the draft to which we'd made reference earlier that you'd circulated on the Sunday night and were working towards trying to finalise that statement at that time?---Yes.

20

And you subsequently sent the further version of that statement to Mr Matchett, didn't you?---Yes.

And you asked him to review both documents and look at what you've missed and whether he has anything to add?---Yes.

And should we understand that you received a response from Mr Matchett with some amendments to his, to your statement?---I, I was in the Commission when I heard that, yes.

30

And you heard the reference to the email that Mr Matchett sent you at 7.04am on the Tuesday morning with track changes to your draft statement?
---I heard that in the - in evidence, yes.

Do you recall working quite late on the Monday night on your statement?
---I don't recall but I wouldn't be surprised.

And wouldn't be surprised if you were continuing to work on this well after midnight?---That, I do that, yes.

40

And can I suggest to you that during the period leading up to and shortly after midnight on the Monday and into the Tuesday you were communicating with Minister Kelly?---I can't recall but if there's - - -

And you were communicating with Minister Kelly about the use to which the back dated letter would be made by you?---No.

And in those communications you told him that you wanted to use the letter to cover yourself?---No.

Do you deny that?---Well, I don't recall using those specific words, no.

Well, I want to suggest to you that you told him in words to the effect that you wanted to use the letter to cover yourself?---I don't recall using those words, no.

10 Do you recall using other words which conveyed to Minister Kelly that you were going to use the letter in some way?---I don't recall using words to that extent, no.

Well, do you recall using any words which conveyed that you were going to rely upon the back dated letter in the inquiry?---No.

You wouldn't have used the letter in the way that you did in your statement without speaking with Minister Kelly about that, would you?---Yes, the, I can't recall specifically talking to Mr Kelly about that, the, the decision was mine in the preparing the material.

20 But you know that you requested Minister Kelly to provide that letter to you?---Yes, I do.

You know that he responded to your request by providing it to you?---He did.

He wouldn't have used that letter in the course of the IAB inquiry to defend yourself with at least, without at least asking him if that was all right?

30 MR BRANSON: Can I object onto the microphone. Not in dispute what happened in and around 18 March I just understood my friend presumably on specific instructions to assert to this witness that he's in direct contact with my client about the use of the letter. Now - - -

THE COMMISSIONER: We sent - - -

MR BRANSON: Excuse me, may I finish? We've now gone away from that and we're going back to 18 March now that's not fair and I object to the form of the question.

40 THE COMMISSIONER: The way in which counsel cross-examines is entirely open to him - - -

MR BRANSON: Commissioner - - -

THE COMMISSIONER: He can go from whatever date he likes to whatever date he likes Mr Branson - - -

MR BRANSON: Well, your Honour - - -

THE COMMISSIONER: - - -and I will allow the question your objection is not upheld.

MR BRANSON: Thank you.

MR ALEXIS: Now as well as receiving Mr Matchett's tracked amendments to your draft statement you also received, recall receiving an email from Mr Ferguson sending you a valuation for the Currawong site?---Yes, I do.

10

And if you could look at Exhibit 17 please, which will be shown to you momentarily.---Oh, sorry.

And do you recall receiving that email and then passing that email together with the valuation onto Mr Matchett during the course of the Tuesday?
---Yes, I recall receiving that and - - -

20

Now can you look at the email from Mr Ferguson and can you focus on his reference in the opening paragraph second sentence to the valuation range, and in particular words, is very close to what the Government paid. Do you see that?---Yes, I do.

Now did you speak with Mr Ferguson before receiving this email?---Yes, I can't recall the exact date but I would have, I was in regular contact with Mr Ferguson so yes, I would have I believe.

Did you speak with him and ask him to send you the valuation?---Yes, I did.

30

Because he'd spoken to you about the valuation previously?---Yes, I, he had.

And did you ask him to send you the valuation because, by this stage, you wanted to use and rely upon the valuation as part of your defence statement?---No, it was part of the suite of papers that I was trying to gather, I had seen the valuation before I couldn't find it readily so I went to the source which I thought I could get it from quickly.

40

So, is your evidence Mr Watkins, that the valuation report from Knight Frank, the executive summary of which is attached to this email and we can go to the full valuation if we need to, was a valuation that you'd seen prior to 22 March?---Yes, I believe I received that some time during January.

And when you received it in January did you read it and understand it's content?---Yes, I went, I went over the content of it.

And did you understand that the open space proportion of the Currawong site had been valued at about \$500,000 by the valuer?---I would have read

that, I can't recall when I, but I would have read the, skimmed and went through the report, yes.

In other words you appreciated that the most valuable content of the subject land related to that zoned residential?---Yes.

10 Now, can I just ask you some questions about the document behind tab 19 of Exhibit 1, the index to the bundle of documents that was provided to the investigator. Now I gather Mr Watkins, that you became aware that arrangements were in place for the investigator to attend the office of the LPMA to collect the documents that had been set out broadly in that email that had been sent to you attaching the amended or the final terms of reference?---I was aware that there had been communication contact made, yes.

20 And you understood that Mr Costello and Ms Hopkins and Mr Matchett on the Tuesday were setting about the task of preparing those documents and indexing them in the way that we see at page 89?---I wasn't aware of the detail but I was aware that they were putting material together.

And before the time came when, as I think the evidence demonstrates, Mr Costello provided the bundle of documents in the index to the investigator, had you seen that bundle or the index or both?---No.

Not at all?---No, not at all.

30 And did you understand from Mr Costello before the bundle and the index was provided to the investigator that the back dated letter would form part of that material?---No, I wasn't involved in putting that material together.

But did you know that in provision of the documentation to the investigator the back dated letter would form part of it?---No, I wasn't aware of what the contents of the bundle of papers would have been pulled together for the investigator I was focused on my own papers.

40 All right. Now did you understand that at the time the investigator attended to collect the bundle of documents with the index, arrangements were discussed as between Mr Costello and her about a time for you to be interviewed by the investigator?---I can't recall the exact, where was that but I understood a time had been set, yes.

And you understood from that the interview would take place on the Thursday afternoon the 24th?---That was my understanding.

And you also learnt from Mr Costello that Ms Pettersson the investigator was happy to receive a statement from you?---I can't recall the context, the preparation of the statement was an issue by myself.

If you look at the document behind tab 20, starting at page 90, you'll see your email to the investigator of Tuesday 22 March at nearly quarter to 6.00 that evening, do you see that?---Yes.

And you see that you've said attached is the document as requested through Bob.---Yes.

10 So he conveyed to you hadn't he that he'd spoken to the investigator about that and that she was happy to receive your statement by email?---I assume that's the way it happened at the time, yes.

And so by the time you sent this email may we take it that what was sent was the result of a number of drafts that you'd worked through and prepared to get into a form that you were happy with?---There would have been a number of drafts, yes.

20 And you took the exercise I gather of working through the draft, as an exercise to ensure that your position in relation to the matters being investigated would be seen in the best possible light?---I prepared it with the best knowledge I had, yes.

And you knew that the investigator would receive this statement, would read this statement and would rely upon this statement in the course of the investigation?---Yes.

And can I just ask you to go please to the last page of this statement at page 100 of the Exhibit, do you have that?---Yes, I do.

30 And do you see that the email attached an unsigned version of the final statement?---Yes.

And subsequently I think at your interview on the Thursday you provided Ms Pettersson with a signed version of the statement together with the bundle of annexures of appendix documents referred to within it?---Yes.

And you know, don't you, that the signed copy of your statement forms part of the IAB report that ultimately was published on or around 6 April?---Yes, I do.

40 Now, if you could look please at page 94 of your statement.

THE COMMISSIONER: 94 of the statement?

MR ALEXIS: I'm sorry, 94 of Exhibit 1 behind tab 20. And do you see about halfway down the page you refer to the Premier's reply of 25 February?---Yes.

And then just passing over the next two bulleted paragraphs you there refer to the backdated letter which you described as a letter the Minister wrote on receipt of this letter, that's the Premier's letter?---Yes.

And you refer there to attachment K?---Yes.

And when we go to the folder which contains the documents that travelled with this statement annexure K is the backdated letter?---Right.

10 Is that right?---I haven't got, I haven't got that here but, I don't know whether it was attachment K or not, but I take that at face value.

And by the time you finalised the statement you had maintained the intention that you'd earlier formed over the weekend that we've already dealt with, I'm relying upon the letter to demonstrate that it was available to you before you entered into the contract on 15 March?---Yes.

20 And you wanted the investigator to deal with at least the first two matters of reference on the question of authority on the basis that that letter that you knew had been backdated was available to you and formed part of your authority to enter into the contract?---That was not the sole basis, no.

Well, Mr Watkins, you intended, didn't you, to mislead the investigator into believing that that letter was available to you and that you were relying upon that letter as part of your authority to execute this contract?---As part, yes.

30 Now, can I ask you to look at page 95 of the exhibit. And do you see about halfway down that page there's a bulleted paragraph that commences, "It was agreed"?---Yes.

And there's a reference there to that agreement relating to there being no cost to the budget?---Yes.

And the matter did not have to go before a budget committee?---Yes.

"And based on the authorisation of himself as Minister and the Premier I had approval to negotiate, complete an agreement and execute contractual documentation."?---Yes.

40 Now, and is that, Mr Branson, wants to know, Mr Watkins, is that a typographical error? It should say "and execute contractual documentation" instead of "executive contractual documentation"?---I think that's probably correct, yes.

In any event the agreement that you refer to in the particular paragraph we're focusing on can you tell me who that agreement was with?---Can you just focus me to the word agreement, where you're referring to in the document?

Paragraph says, "It was agreed" - - -?---Yes.

- - - "that there was no cost to the budget."

THE COMMISSIONER: "As there was"?---"As there was no cost to the budget, as advised by the Minister to the Premier in his letter and acknowledged back in the Premier's reply to the Minister the matter did not have to go before budget committee" - - -

10

MR ALEXIS: Just pausing there. With whom did you have that agreement?---That was the agreement with the, an understanding with the Minister's office and that's as conveyed in the Minister's letter to the Premier.

So are you telling the Commission that the agreement that you understood existed was one between you and Minister Kelly - - -

20

THE COMMISSIONER: You said the Minister's office?---The Minister's office.

MR ALEXIS: Well, do you mean by that Minister Kelly?---Well, he's one of the people in the Minister's office, but there are a number of policy advisers, there's a Chief of Staff, there's communication then between those people and other parts of the executive arm of Government.

30

Well, that might be so, but in the terms that you've expressed yourself in this paragraph you were conveying to the investigator that there was an agreement that the matter did not have to go before a budget committee as there was no cost to the budget?---Correct.

Well, with whom within the Minister's office did you have that agreement? ---That was the agreement of understanding as conveyed in the, in the letter signed by the Minister to the Premier and as conveyed in the Briefing Note that accompanied that.

40

Mr Watkins, you know, don't you, that there is nothing in the Minister's letter about the matter not having to go before a budget committee, don't you?---It refers to no cost to the budget as I recall.

There is nothing in that letter which refers to the matter not having to go before a budget committee, is there?---No.

So the letter doesn't help you, does it, insofar as it records an agreement with the Minister's office about the matter not going before a budget committee, does it?---Yes, I believe it does in the context that unless there is a cost to budget matters don't go to a budget committee. The budget committee considers budget matters for Government, expenditure.

Well, Mr Watkins, with whom did you have a discussion in the Minister's office to the effect that the matter did not have to go before budget committee as there was no cost to the budget?---As I recall, I can't recall the specific day, but as I recall in the preparation of this material I had discussions with the Chief of Staff and the Minister.

10 THE COMMISSIONER: You're really being asked to identify the person with whom you came to this agreement, Mr Watkins. Who was the person or persons with whom you came to this agreement?---The Minister and the Chief of Staff.

MR ALEXIS: Now, should we understand from that that Mr Costello nor any other personnel from within the LPMA was a party to that agreement? ---I can't be specific when you're referring to the term agreement.

THE COMMISSIONER: It's your term, Mr Watkins?---Sorry?

20 It's your term. It says, the third dot point commences, "It was agreed"? ---Well, the agreement in that context was between the Minister, myself and his Chief of Staff.

MR ALEXIS: All right. Now, - - -

THE COMMISSIONER: So was it in writing?---No, not in writing as a separate document, no.

30 So was there a file note of it?---No, it was in relation to the Briefing Note and the Minister's letter to the Premier and her reply.

And on what date was it entered into?---Beg your pardon, Commissioner?

On what date was it entered into?---The agreement?

Yes?---I would regard that it had been entered into finally as the date that my understanding was when I signed off the Briefing Note and then subsequently when the Minister signed the letter to the Premier.

40 So there was no oral agreement as such or are you saying that the agreement is to be inferred from some documents that you wrote and the Minister wrote?---Commissioner, the, there was, as I recall and conveyed to the Commission earlier that there was regular meetings between the Minister and I and Currawong was on the agenda and this was a matter of discussion. I was trying to pin down, I think counsel was after a written aspect and I was referring back to that.

Well, there's no written agreement is there?---(NO AUDIBLE REPLY)

There's no written agreement that says this matter does not have to go before the budget as there was no cost to the budget, it does not have to go before the Budget Committee as there was no cost to the budget. There's no written agreement to that effect is there?---There's no written agreement other than as conveyed in the Minister's letter and has, and as had been discussed with the Minister at, at meetings.

Well, these discussions at meetings, were they minuted?---No.

- 10 But this is an important question isn't it? I mean, wouldn't you expect an agreement by the Minister not to send a matter to the Budget Committee as something being worthy of being minuted?---That wasn't considered in the context of the way the Currawong issue was unfolding, no.

MR ALEXIS: Mr Watkins, can I just ask you about the meetings and/or discussions you had with Mr O'Keefe, the Corporate Counsel - - -?---Yes.

- - - of the LPMA I think on the Monday, 14 March?---Yes.

- 20 And should we understand that you accept from his evidence that you neither provided him with the Minister's letter of 9 February nor the Premier's reply of the 25th?---Yes, I don't recall providing him with those.

And you don't recall providing him with the backdated letter?---No, I don't recall that.

- 30 And you recall when he gave evidence in relation to that that he confirmed that he'd received none of those documents and that he was not involved in any due diligence discussion which involved questions and exploration of the appropriate financial delegations and authorisations or the Caretaker Conventions?---No, I disagree with that.

You wish to contend, do you, that he was involved in the exploration of matters concerning financial delegation and authorisation?---He was present at the meeting that I gave the, the overview where I went through and discussed those points and gave the salient issues and asked whether anybody had questions and then we moved specifically on to the matter at hand which was the contract.

- 40 Now, if you look at page 98 of your statement that you sent to the investigator, Mr Watkins, do you see under the - - -?---Sorry, can you refer me to - - -

THE COMMISSIONER: 98.

MR ALEXIS: Page 98 - - -?---98.

- - - of Exhibit 1 behind tab number 20, do you have that?---98, yes.

And do you see, Mr Watkins, that the preamble before the numbered paragraphs has expanded somewhat since the draft and you refer there to the terms of reference and then you identify each of the particular terms of reference in relation to each of the subparagraphs of that letter from the investigator?---Yes, I do, yes.

And do you see that before we get to each of the numbered paragraphs you used the expression, "I attest that"?---Yes.

10

What did you mean to convey by the use of that expression?---That's my belief.

So by using that expression were you seeking to convey to the investigator that you were attesting to the truth of the content of this document as if you were swearing an affidavit?---No, I didn't consider it as an affidavit.

Or that you were attesting to the truth of the content of this document as if you were swearing a statutory declaration?---No.

20

In any event, by using that expression you want to convey to her and leave her in no doubt that this was a document that truthfully represented as accurately as you possibly could the true position?---Yes, I'd agree with that.

And you know, don't you, having attested to the content of this statement that you falsely misled her when you referred to having the backdated letter available to you before entering into this contract?---Yes.

30

And do you see at numbered paragraph 3 you've specifically referred to that letter and quoted it in terms, do you see that?---Yes.

And conveying the existence of the letter and your reliance upon that letter in the terms that we see in paragraph 3 was completely and utterly false? ---Yes.

And may I suggest to you, Mr Watkins, that by referring to and relying upon the backdated letter you were wanting the investigator to think that it was a genuine letter?---I included it in that way, yes.

40

You knew that the letter and your reliance upon it would induce her to believe that you had the letter available to you before entering into the contract and before the commencement of Caretaker?---I cannot believe what - the way she should have addressed it but that's - I included the document.

Mr Watkins, you knew that by attesting to the truth of the content of this document, relying in terms upon the backdated letter would induce her to

think that you had it available to you before contract and before caretaker, correct?---Yes, I can understand that.

And you well understood that by so dealing with the letter in that way it was going to influence the outcome of the investigation that she was conducting? ---That was a matter for her to, yeah, that was not a conscious decision by me, I was trying to provide the information that I had.

10 So by misrepresenting falsely the existence of the letter you didn't think that was going to have some influence on the outcome of the investigation? ---No, that's what I referred to. I was relying on that letter as well as the Premier's letter and other information I provided to enable her to make the best decision she could.

Now, Mr Simon Kerr of Senior Counsel is a friend of yours?---No, I hadn't met Simon Kerr before.

20 You nonetheless asked him if he would look at your statement, look at the bundle of documents referred to in the statement and provide a legal opinion?---Yes, I did.

And you wanted to obtain that opinion and you wanted to obtain it urgently so that you could provide it to the investigator at the conclusion of your interview?---No, I had no intent of providing it to the investigator at that time.

When you received the opinion from Mr Kerr and you read the opinion, which I assume you did - - -?---Yes, I did.

30 Did you then decide that you'd give it to the investigator?---No, I didn't.

40 When did you decide to give it to the investigator?---At the end of the conclusion - or at the conclusion of the interview when the interview was formally over Ms Pettersson asked me specific questions about Caretaker and she - as I recall said, Caretaker's a difficult issue to understand. At that time I said that I had legal opinion, I wasn't going to share it with her but on the basis that - and this was specifically on the issue of Caretaker - on the basis that she understood not to use it without reference back to me I would provide it to her if she, if she wanted to have it and she said, "Thank you very much, that'd be very helpful", and I gave her the document.

Now, Mr Watkins, can I show you please with a copy for you, Commissioner, an email that you received from Mr Kerr of Senior Counsel on 24 March at 3.06pm, do you see that, under the heading "Original message"?---So this is down the bottom is it?

The lower part of the page contains the email from him to you at that time, do you see that?---Yes, dated - time of 3.06?

3.06 24 March?---Yes.

Now, you received this opinion and read it before your interview with Ms Pettersson commenced, didn't you?---Yes.

10 And if you just turn to the opinion should we understand that in order for Mr Kerr to provide the opinion he'd been provided with a copy of your statement that you'd emailed to the investigator and the bundle of documents that is referred to in it?---Yes, he had.

Thank you. And if you turn, just using the numbering of his, page numbering of his opinion, if you turn please to paragraph, page four.---Yes.

Do you see that in paragraph 21 he referred to and quoted the terms of the Premier's letter of 25 February?---Yes.

20 And when you read this you saw in paragraph 22 that he then referred to the letter from the Minister described at, in the use of the words, words critically, and then over on page 5 quoted it in terms?---Yes.

And you see that in quoting the letter in terms he emphasised the concluding words, "including the execution of relevant papers."---Yes, I do.

30 And so when you spoke to the investigator you knew that Mr Kerr's opinion, according to paragraph 23 of this document was that you were given approval to negotiate for the purchase of Currawong that the approval included the entering into of such a purchase and that that was something that occurred on 28 February 2011.

THE COMMISSIONER: That's paragraph 23 Mr Alexis.

MR ALEXIS: Paragraph 23.---Yes, I see that.

40 And in paragraph 26, you read, may I suggest to you, that according to Mr Kerr he was placing some emphasis on the terms of the 28 February letter where it refers to the execution of relevant papers and he said, as you see in paragraph 26, that that made clear that the approval included the entering into such a contract?---I see that.

And Mr Watkins, having read this opinion before as you say commencing the interview with Ms Pettersson, you understood didn't you that his learned opinion on the situation was fundamentally based on the back dated letter being in your possession and available to you before you negotiated this contract?---No, I also refer to point 30 in his opinion which related specifically to the Premier's letter.

But Mr Watkins, and thank you for that reference, it's plain isn't it that Mr Kerr's opinion was squarely and fundamentally based on your existence, the existence I'm sorry of the back dated letter prior to the entering into the contract?---Yes, it was part of that, yes.

His opinion was based on a lie wasn't it?---Yes, I'd misled him.

10 And you misled him because you wanted to procure and procure urgently the opinion of respected senior counsel because you wanted to deploy it as part of the investigation to try and achieve an outcome that was to your liking?---I used it as part of the swing of documents that, in that way, yes.

And can you just come back to the email under cover of which you received his opinion, do you see that the following day and I will come back to the interview, but do you see on the following day at about quarter to 8.00 that morning you sent it to Mr Mullins?---Yes.

20 And who did you understand on the morning of Friday 25 March Mr Mullins to be?---Mr Mullins was an ex-journalist that I'd been dealing with on matters unrelated to journalism.

And why did you send Mr Kerr's opinion to him on Friday morning?
---Because I'd been dealing with Mr Mullins on matters to do with the incoming Government and I was communicating with Mr Mullins who I'd spoken to previously about the situation I was in.

30 And you told Mr Mullins that the opinion from Mr Kerr cleared you from the accusations and the position of the Premier that she only authorised through the letter for you to negotiate and not purchase. Do you see that?
---Yes, I do.

And you set out in terms the essential conclusion that Mr Kerr had given you?---Yes, there's two aspects there and, both on the letter and the Caretaker Convention.

40 And in sending Mr Kerr's opinion to Mr Mullins on the Friday morning you falsely represented to Mr Mullins that Mr Kerr's opinion cleared you because you knew that that opinion of Counsel was based on a lie?---That was the way I approached it but I can understand your interpretation.

Well, you can more than understand it, do you accept it?---I accept the point you make, yes.

So why did you send it to Mr Mullins, what did you expect him to do with Mr Kerr's opinion?---I didn't expect him to do anything, he was a person I, as I said earlier, I was dealing with on matters of discussing in-coming Government priorities.

Didn't you send it to him because you wanted him to try and utilise it in some way so that it might get out into the media?---No.

Didn't you send it to him so if it got into the media the media could publish in your favour that respect senior counsel had delivered an opinion that cleared your name?---No, that wasn't the case.

That was the intent wasn't it, in sending it to Mr Mullins?---No it wasn't.

10 THE COMMISSIONER: Why did you send it to him?---Because I was sharing with him, I'd been having a number of discussions with him about the in-coming Government and some of the priorities that they were wanting to run with and clearly at that stage my, I had been exposed in the press, particularly the Sydney Morning Herald with respect to the Premier having a different view.

Right. So I don't understand why, what was the reason for sending him the opinion?---He was a confidant at the time that I was dealing with on other matters but I wasn't dealing with him as a journalist, he's currently, it's my
20 understanding he doesn't do journalism.

MR ALEXIS: What was the point Mr Watkins in telling Mr Paul Mullins that Mr Kerr's opinion cleared you from the accusations?---Well, it was my way of expressing to him that, that with respect, if I do it in reverse, Caretaker, there was legal opinion which addressed the Caretaker issue.

But why would he be interested in receiving that information, Mr Watkins?
---Only that I'd been in communication with him.

30 About what?---About priorities for the in-coming Government and I was sharing with him, clearly at that stage I had my name and reputation had been sullied across the front pages of a number of papers.

I tender the email together with Mr Kerr's opinion.

THE COMMISSIONER: The email from Mr Watkins to Mr Paul Mullins of 25 March 2011 at 7.43am followed by another email, this being part of string of email is Exhibit 51.

40

**#EXHIBIT 51 - EMAIL FROM MR WATKINS TO MR MULLINS
DATED 25 MARCH 2010**

MR ALEXIS: Thank you Commissioner. Can I just deal with one remaining topic Commissioner, if I may.

Mr Watkins, can you look at Exhibit 7 which is about to shown to you momentarily.---Thank you.

And do you see that after your interview with Ms Pettersson on the afternoon of 24 March the terms of that interview had been transcribed and was sent to you for your review and signature as to its correctness.---Yes.

And we see on the very last page of the Exhibit your signature certifying the record of the interview to be true and correct.---Yes.

10

Acknowledging receipt of a copy?---Yes.

And that you'd done that by 28 March?---Yes.

And can I ask you to go to the interview please and if you could come through, just looking at the pages, the page numbering at the top of each page, page 12, page four of 12.---Four.

20

Four of 12. And do you see at line six Mr Watkins that Ms Pettersson asked you the question as to the first term of reference, can you tell me why you believe you were authorised to execute the contract for the sale of land. Do you see that?---Yes, I see that.

And your expansive answer from line 10 to line 39 included, did it not, from about line 29 down to 35 a reference to the back dated letter?---Yes, at that section yes.

30

And do you see in particular you said to Ms Pettersson subsequently from line 31, "In discussions between the Minister and myself when this letter was received" and that's a reference to the Premier's letter, "we discussed that and we discussed the Caretaker and all the things material to that - - - ? ---Yes.

- - - and I subsequently received what I would regard as a direction from the Minister clearly articulated and I will find it and quote the, that is, the letter dated by Tony Kelly 28 February." And you then proceeded to read that letter onto the record?---Yes, I did.

40

And in conveying to Ms Pettersson that you had subsequent to the Premier's letter received the letter of 28 February and in quoting it in the terms that you did you were falsely conveying to her the receipt of the letter before you entered into the contract?---Yes, I was.

And you did that because you were intent on misleading her to believe that you actually had the letter at the time?---That was an outcome, yes.

And it was an intended outcome, wasn't it?---I relied on the letter as, as a, as supplementary to the Premier's letter, yes.

But in putting it in the way that you did to her you were intending to mislead her as to the availability of that letter before you entered into the contract, correct?---That was the result.

Well, it was more than the result, it was the intended result, wasn't it?
---That is the result, I can't honestly say that that was the intended, the way you phrase it was my intention in that way, but that's the end result the way it's conveyed, yes.

10

It was the intended result, wasn't it?---It's the end result.

You see at line 41, Mr Watkins, she asked a question about Caretaker Conventions?---Yes.

And then do you see your answer commencing at line 44 and then over to the top of page 5 of 12 you refer in the second line to your Corporate Counsel?---Yes.

20

And do you see that in that respect you said that you'd met with Corporate Counsel of the organisation, the Corporate Secretary and Chief Financial Officer and your Chief of Staff?---Yes.

"We went through and analysed the whole situation, the analysis was over the letters I had received and the direction from the Minister."?---Yes.

30

And when you were referring to the direction from the Minister you were referring to the backdated letter, weren't you?---No, that was only one, one reference, I was also referring to the October Briefing Note and I was also referring to verbal understandings and directions subsequent to the receipt of the Premier's letter.

But it's plain from your answer at line 33 on page 4, Mr Watkins, that you describe the backdated letter from the Minister as a direction which you then articulated and read onto the record, do you see that?---Yes.

40

And over on top of page 5 you employed the same description of the letter at line 5, you see the words, "The direction from the Minister."?---Well, I still regard my previous answer as being the one that I was referring to there.

But what you were seeking to do was to mislead Ms Pettersson that you'd had a discussion which included your Corporate Counsel about the analysis of the letters which included the backdated letter, didn't you?---I wasn't trying to mislead Ms Pettersson at all in the reference to the way that you, no, I wasn't.

Well, if that's true, Mr Watkins, why didn't you draw to her attention the fact that the direction that you described as the letter of 28 February was not before you when you had this meeting with your Corporate Counsel?
---Because as I referred to your reply earlier the context of the direction there encompassed those three aspects that I referred to.

See, you've already told me, I think, that you never provided your Corporate Counsel with access to any of these letters before the exchange of the contract?---No, I discussed these at the, at the meeting.

10

But you never showed the documents to him, did you?---They were available if he wished to see them but no.

Mr Watkins, you never gave them to him and asked for his opinion?---No, I didn't give them to him. I didn't give them to him.

And should we understand the meeting on the Monday morning, that at one stage you had three lawyers sitting in front of you?---Yes, I did.

20 And you didn't ask one of those lawyers to look at these letters and give you their considered view on whether or not they provided you with authority?
---No.

And you had every opportunity to get that advice from them, didn't you?
---Yes.

And you didn't exercise that right?---No.

30 And when you were speaking with Ms Pettersson at page 5 of 12 in this record of interview you wanted to create the impression that you'd had the benefit of advice from Corporate Counsel about your authority and therefore your position was based on the advice of the Corporate Counsel of the LPMA?---No, I was conveying the way in which I held the meeting on the 14th.

If that's a convenient time, Commissioner.

40 THE COMMISSIONER: Yes, thank you, Mr Alexis. I think everybody will realise that there's a possibility that we won't finish tomorrow in which case we will go on on Monday. We'll adjourn until 10.00am.

AT 4.35 PM THE MATTER WAS ADJOURNED ACCORDINGLY
[4.35pm]